

Statement of Issues

Lineage Logistics / Cold Storage Nelson

13 May 2022

Introduction

1. On 4 March 2022, we registered an application (the Application) for the proposed acquisition by Lineage Logistics New Zealand (Lineage) of 100% of the shares in, or the assets of, Cold Storage Nelson Limited (CSN) (the Proposed Acquisition).¹
2. To grant clearance to an acquisition the Commission must be satisfied that the acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so Lineage and CSN (the Parties) and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues). Our views may change, and new competition issues may arise, as the investigation continues.

The concerns we have tested

The issues for which we continue to have concerns

5. As outlined in this document, the Parties are involved in the provision of cold storage services in various locations around New Zealand.
6. At this stage, our primary concern is whether the Proposed Acquisition would substantially lessen competition due to horizontal unilateral effects for the supply of cold storage services in the Waikato/Bay of Plenty region. We are still assessing the appropriate scope of the relevant market, in particular whether we should define markets for certain types of customers and if the geographic markets for those customers should be limited to Tauranga. Although our concerns are greatest in the

¹ A public version of the Application is available on our website at:
<http://www.comcom.govt.nz/clearances-register/>.

case the geographic market is limited to Tauranga, we also have preliminary concerns on a broader market that includes the entire Waikato/Bay of Plenty region.

7. We are also continuing to consider whether the Proposed Acquisition would substantially lessen competition due to coordinated effects in the Waikato/Bay of Plenty region through customer allocation.

The issues for which we no longer have concerns

8. We are not planning to investigate further whether the Proposed Acquisition would substantially lessen competition due to horizontal unilateral effects or coordinated effects in any South Island market. The only area that a potential overlap arises is in the Canterbury region. However, we do not have concerns in this region for the following reasons.
 - 8.1 The evidence we have gathered so far indicates that Lineage and CSN do not impose a strong competitive constraint on one another in the Canterbury region. CSN's pallet capacity is relatively small compared to Lineage's and most market feedback from competitors suggested that there is limited competition between the two.²
 - 8.2 Our market enquiries found that the merged entity would continue to face competition from competing suppliers of cold storage in the Canterbury region including Coolpak Coolstores and Americold.
9. We are not planning to investigate further whether the Proposed Acquisition would substantially lessen competition due to vertical or conglomerate effects in any markets. This is because:
 - 9.1 the Proposed Acquisition will not result in increased vertical integration as the Parties compete at the same level of the supply chain and there is no evidence that the Parties, or other players within the industry, provide inputs to rivals;³ and

² For example, [] said that it did not consider Lineage and CSN to compete with each other in the region, that CSN is distribution focused whereas Lineage is export focused and that the CSN site is old, out of date and too small to provide service: Commerce Commission interview with [], [] said that CSN has always been at maximum occupancy while Lineage has had existing customers: Commerce Commission interview with [], [] (a smaller provider in the region) said that it considers itself to compete more closely with CSN than with Lineage: Commerce Commission interview with [], [] (a Lineage customer) said that CSN has not taken any steps to win its business: Commerce Commission interview with [] and [] (a Lineage customer) did not name CSN as an alternative provider in the region: Commerce Commission interview with []. [] was the only exception who believed CSN and Lineage competed in Christchurch: Commerce Commission interview with [].

³ A merger between suppliers (or buyers) who are not competitors but who at different levels of the supply chain could cause a substantial lessening of competition due to vertical effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively, such as refusing to supply an input (which we refer to as "foreclosing rivals").

9.2 the evidence does not suggest any rivals in the market supply a “must have” product, and suppliers all appear to provide the same general types of services in order to service all customer needs.⁴

10. We do not discuss the issues above further in this Sol. We invite submissions on our position.

Process and timeline

11. We have agreed with the Applicant an extension of time from the initial 40 working day statutory timeframe until **23 June 2022** in which to make a decision.
12. The Commission welcomes submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **27 May 2022**, including a confidential and public version of any submission made. Please read the instructions for making a submission, which can be found starting at paragraph 120 of this document.
13. All submissions received will be published on our website with appropriate redactions.⁵ All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on 3 June 2022.
14. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The Parties

15. The Parties both supply cold storage services (including frozen and chilled storage, blast freezing, and various ancillary services)⁶ in various locations in New Zealand. These services are used for temperature-sensitive products such as dairy, seafood, meat and frozen vegetables which require cold storage before they are exported, after they are imported, or (for domestically produced products) before they are distributed domestically.

⁴ A merger between suppliers (or buyers) who are not competitors but who operate in related markets can result in a substantial lessening of competition due to conglomerate effects. This can occur where the merging parties have complementary products. The merging parties may bundle (ie, provide together at a discount) or tie (ie, only provide one product if purchased with another) those complementary products, so that competitors are unable to provide a competitive constraint on the merged entity.

⁵ Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

⁶ Cold storage services are described further below at paragraphs 19-28.

16. Lineage is the New Zealand subsidiary of Lineage Logistics Holdings, LLC, a global cold storage and logistics company headquartered in the United States.⁷ Lineage entered New Zealand via its acquisition of Emergent Cold in 2020. Lineage operates in the Auckland, Waikato/Bay of Plenty, Hawke's Bay, Canterbury and Otago regions.⁸
17. CSN is a privately held New Zealand cold storage and logistics company based in Nelson, with operations in the Waikato/Bay of Plenty, Tasman and Canterbury regions.⁹

Background to the industry

18. Our assessment of the Proposed Acquisition has focused on the supply of cold storage services in the Waikato/Bay of Plenty region, as this is where the Parties' operations currently overlap. As mentioned above, we are not planning to investigate further any effects in Canterbury (and we do not discuss Canterbury further in this Sol).

Cold storage services

19. 'Cold storage' generally refers to a range of different types of temperature-controlled storage services, as well as ancillary services commonly offered by cold storage service providers.

Frozen, chilled and ambient storage

20. The most common cold storage services are:¹⁰
 - 20.1 *frozen storage*, which is the storage of frozen products in a very cold environment, commonly below minus 18 degrees Celsius; and
 - 20.2 *chilled storage*, which is the storage of cool or frozen products at a temperature below, but near, zero degrees Celsius. Chilled storage is sometimes referred to as 'cool storage' in the industry.
21. Although not technically a 'cold storage' service, many cold storage service providers also offer *ambient storage*, which refers to the storage of products (including but not limited to food products) at a temperature above zero degrees Celsius, sometimes room temperature.
22. The provision of frozen, chilled and ambient storage requires a service provider to have physical storage space and racking for the relevant product (which is often, but not always, stored on standardised pallets) in the facility, as well as refrigeration equipment that allows the relevant space in the facility to be brought to, and kept at, the correct temperature.¹¹ Generally, the colder the temperature required:

⁷ The Application at [2.1].

⁸ The Application at [2.3].

⁹ The Application at [3.3].

¹⁰ The Application at [10.4]-[10.5]; Commerce Commission interviews with [].

¹¹ The Application at [10.5]; Commerce Commission interviews with [].

- 22.1 the more expensive and sophisticated the relevant refrigeration equipment required; and
- 22.2 the greater the investment required in the physical facility, for example the depth of insulation required in the walls and floors.
23. Most cold storage service providers' facilities are divided into multiple 'rooms', each of which contains its own refrigeration equipment and insulation allowing the temperature and other conditions to be adjusted room-by-room. Generally, a room that can be used for frozen storage can also be used for chilled and ambient storage by simply increasing the temperature.¹² The reverse is not necessarily true: a room without sufficient equipment and insulation cannot be used for frozen storage without further investment.¹³
24. The setup of the rooms used for cold storage can differ between providers and even between rooms in the same facility. For example, some providers offer fully-automated systems that can store product on racks many pallets high and several pallets deep without any manual labour involved in storing and retrieving the product. Other systems include manual systems with product stored closer to the ground on pallets or individual cartons, placed on racks by forklift or by hand.¹⁴

Blast freezing

25. Many, but not all, cold storage service providers offer *blast freezing* services, which is the process of freezing fresh product very quickly by 'blasting' freezing air through it.¹⁵ Similarly, some but not all customers require these services, as some frozen storage customers have their own blast freezing capacities. It appears that blast freezing is more commonly required for meat and seafood products than other types of food products.¹⁶
26. Generally, blast freezing requires specific equipment in a facility over and above that required for the provision of frozen storage, with one provider commenting that blast freezing is a significantly more expensive service to offer.¹⁷ However, one provider told the Commission that it is possible to use 'pre-cool rooms' within a facility to provide blast freezing services.¹⁸

¹² Commerce Commission interview with [redacted]. However, this may not be an efficient use of the relevant equipment: Commerce Commission interview with [redacted].

¹³ Or potentially damage to the equipment and the facility: Commerce Commission interviews with [redacted].

¹⁴ Commerce Commission interviews with [redacted].

¹⁵ The Application at [10.6].

¹⁶ Commerce Commission interviews with [redacted].

¹⁷ Commerce Commission interview with [redacted].

¹⁸ Commerce Commission interview with [redacted].

need to be stored between harvest and the time they are distributed); or

29.2.2 imported goods that require storage prior to being distributed.

29.3 Storage of frozen or chilled products on pallets or cartons before distribution by local distributors (eg, food service distributors). These goods may be stored for only a few hours before being “picked” for domestic distribution to supermarket distribution centres, food service distributors, or quick-service restaurants (QSRs).

30. Some cold storage facilities (particularly those offering containerisation services) send product from their facilities directly to a port for export. In such cases, the cold storage provider often requires an export licence or certification for the relevant destination. Although some licences can be relatively straightforward to obtain, market participants have mentioned that export licences for China have recently become very difficult to obtain.²³
31. Although some cold storage service providers cater to all types of customer requirements, the evidence suggests providers more commonly focus on sub-sets of customers. For example, smaller cold storage providers commonly provide picking and packing services for local distribution, whereas larger providers tend to provide longer-term bulk storage catering for thousands of pallets at once.²⁴
32. Many customers have some ability to self-supply these services, including having their own cold stores and/or blast freezers. However, as food production peaks and troughs seasonally, many of these customers do not have sufficient capacity to hold all of their production at peak times and seek third party cold storage on an ‘overflow’ basis. Industry participants have commented to the Commission that it is more efficient for customers to seek third party storage for the extra capacity they need than to build extra internal cold storage capacity for their peak production which will be unused for much of the year.²⁵
33. It appears uncommon for customers to enter into long-term capacity agreements with cold storage service providers, where a customer requests and pays for a certain capacity regardless of whether the customer is actively using the capacity. However, we have been provided with some examples of such arrangements, particularly where a significant part of a facility is set aside for a specific customer.²⁶

²³ Commerce Commission interviews with [redacted].

²⁴ Commerce Commission interviews with [redacted].

²⁵ Commerce Commission interviews with [redacted].

²⁶ Commerce Commission interviews with [redacted].

34. More commonly, it seems customers reach short-term, flexible agreements with cold storage providers on the pricing and terms of the services they expect to require and liaise with the provider on an ongoing basis in respect of their forecast capacity requirements.²⁷ Long-term contracts appear uncommon, with pricing and terms commonly renegotiated every two to three years.²⁸

The Parties' facilities in the Waikato/Bay of Plenty region

35. This section provides detail about the facilities operated by the Parties in the Waikato/Bay of Plenty region, the region where the Commission has concerns.

*Lineage*²⁹

36. Lineage currently operates one cold storage facility in Kerepehi, in the northern Waikato region. The facility is approximately 100km (90 minutes' drive) from both Tauranga and Auckland, with road access but no rail access to their respective ports. This facility has [] pallets of frozen storage capacity and does not offer blast freezing or picking and packing services. The facility serves a range of customers, primarily []. Lineage [].
37. Lineage is planning to open a further facility in Tauriko, Tauranga, in approximately [].³⁰ This facility will have approximately 10,000 pallets of frozen capacity when it opens and will ramp up to a total capacity of 30,000 pallets.³¹ The facility will offer three blast freezing rooms and is approximately 20km (20 minutes' drive) from the Port of Tauranga. Lineage [] once it is complete.
38. A Lineage internal document indicated that the Tauriko facility was intended to []. In respect of [], Lineage explained to the Commission that this was because []. However, Lineage [] at the Tauriko facility, and Lineage [].

²⁷ Commerce Commission interviews with [].

²⁸ Commerce Commission interview with [].

²⁹ Generally, see the Application at Part F and Appendices 2 and 6; Commerce Commission interview with [], [], provided via email from Bell Gully to Commerce Commission (1 April 2022); email from Bell Gully to Commerce Commission (8 April 2022); emails from Bell Gully to Commerce Commission (2 May 2022).

³⁰ The Application at [16.11].

³¹ Lineage submits that its Tauriko facility will ramp up from 10,000 pallets, [] to a total of 30,000 pallets, []: The Application at Appendix 2.

CSN³²

39. CSN currently operates two cold storage facilities in Tauranga. The first is a facility at Sulphur Point (at the Port of Tauranga) which offers frozen and chilled storage and blast freezing. The facility [

]. CSN submits that [

].³³ CSN also submits that [

].

40. The other is a site at Te Maire, just outside the Port of Tauranga, which has a frozen capacity of [] pallets and also offers blast freezing services as well as ancillary services including transportation. The Te Maire site services a range of import and export customers, primarily in the meat and seafood industries. [

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Other suppliers of cold storage services in Waikato/Bay of Plenty

41. Aside from the Parties, other suppliers of cold storage services in Tauranga include a range of small- to medium-sized providers such as *Port Pack & Cold Storage*, *RealCool*, *Maleme Cold Storage* and *Brett Marsh Transport*.³⁴

42. Other suppliers (including future suppliers) of cold storage services in the broader Waikato/Bay of Plenty region include:

42.1 *Big Chill*, which has announced plans for a large cold storage facility to be located at Ruakura Superhub. The Ruakura Superhub is a location near Hamilton that is the planned site of a future inland port operated by the Port of Tauranga, due to open in mid-2022;

42.2 [

],³⁵

³² Generally, see the Application at Part F and Appendices 9 and 13; Commerce Commission interview with []; [], provided by Duncan Cotterill to Commerce Commission (1 April 2022); [], provided by Duncan Cotterill to Commerce Commission (1 April 2022); [], provided by Duncan Cotterill to Commerce Commission (1 April 2022).

³³ Although CSN []: [], provided by Duncan Cotterill to Commerce Commission (1 April 2022).

³⁴ Table 1 below contains further information on the location and size of competitors' facilities.

³⁵ Commerce Commission interview with [].

- 42.3 *Icepak*, owned by Hall's Transport (which in turn is owned by Talley's), which has a large facility at Waharoa, near Matamata;³⁶ and,
- 42.4 Smaller providers including *Cool Storage Express* in Hamilton and *Aotearoa Park* in Cambridge.

The relevant markets

43. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.
44. When assessing relevant markets we consider:³⁷
- 44.1 whether customers could easily switch to alternative products in response to a price increase (known as 'demand side' substitution); and
- 44.2 whether suppliers could easily switch their manufacturing process to produce different products (known as 'supply side' substitution).
45. Market definition has been, and we expect will continue to be, a main focus for our investigation. We are keen to receive submissions from the Parties, and third parties, on our current approach to market definition as set out below.

The Applicant's view

46. Lineage submits that the relevant product market for the purposes of assessing the Proposed Acquisition is the supply of 'cold storage services'.³⁸ In Lineage's view, this market includes all types of customers and all services including frozen storage, chilled storage, blast freezing and other ancillary services.³⁹
47. Lineage also submits that the relevant geographic markets are regional, and that the regions relevant for the Commission's assessment of the Proposed Acquisition are:⁴⁰
- 47.1 Waikato/Bay of Plenty, having regard to the products stored ultimately transiting via the Port of Tauranga; and
- 47.2 Canterbury (including Timaru), having regard to the products stored ultimately transiting via Lyttleton Port and the Port of Timaru.

³⁶ Commerce Commission interview with [redacted].

³⁷ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019.

³⁸ The Application at [14.1].

³⁹ The Application at [14.2].

⁴⁰ The Application at [14.3]-[14.4].

48. Lineage submits that such market definitions are consistent with the Australian Competition and Consumer Commission's (ACCC) decision in *Emergent Cold/Oxford*, in which the ACCC defined a market for the supply of third-party cold storage services in Victoria.⁴¹

Our current views

49. We have not yet formed firm views on the scope of the relevant markets. At this point we consider:
- 49.1 the relevant product market includes all cold storage services;
 - 49.2 there may be separate customer markets for exporters and/or fast-moving consumer goods (FMCG) customers; and
 - 49.3 if we find a separate customer market for exporters and/or FMCG customers then the geographic market may be limited to Tauranga.
50. However, as discussed further below, we are continuing to assess the scope of the relevant markets.

Product dimension

51. We are continuing to assess whether different cold storage services form separate product markets. This includes assessing whether there are separate markets for the following different types of services:
- 51.1 cold storage (frozen, chilled and ambient);
 - 51.2 blast freezing; and
 - 51.3 other ancillary services (see paragraph 27).
52. The information received by the Commission to date indicates that there is very limited (if any) demand-side substitution between different types of cold storage services listed above. For example, if a customer requires frozen storage for a food product, the customer cannot substitute chilled storage or blast freezing services for the frozen storage services they require.
53. The information received by the Commission to date indicates that only some supply-side substitution between different types of cold storage services is possible.
- 53.1 Suppliers may be able to viably switch supply from frozen to chilled storage, but not in the other direction. The information received indicates that:

⁴¹ See: <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/emergent-cold-proposed-acquisition-of-ab-oxford-cold-storage-company>.

- 53.1.1 there is considerably more capital investment required to set up frozen storage than chilled or ambient storage;⁴² and, as such,
- 53.1.2 although areas or rooms used for frozen storage can be used for chilled or ambient storage by raising the temperature in the room, the reverse is not true if a facility has only been built for chilled or ambient storage.⁴³
- 53.2 Blast freezing is a separate service to frozen and/or chilled storage, which generally requires specialised equipment and a separate space.
- 53.3 Customer requirements mean there are a range of ways in which products can be stored (for example on pallets, in individual cartons, or in bins) and a range of ways a room can be set up to accommodate them (for example, different types of racking such as satellite racking). There can be some cost and time involved in switching between different storage methods, although it may be desirable to switch if an opportunity arises.⁴⁴
- 53.4 The provision of ‘picking and packing’ services requires both labour and a physical area at the correct temperature, which not all providers are able to offer.⁴⁵
54. Despite the limits on supply-side substitution, suppliers of cold storage services generally provide the range of temperature-controlled storage options and ancillary services requested by their customers, and may commence providing additional services if requested by a customer.⁴⁶ As such most suppliers can provide the entire ‘bundle’ of services required by their customers.
55. Accordingly, at this stage, we consider it is likely appropriate to define a product market that covers all cold storage services. We consider any major differences in services in the competition analysis below, including a scenario where we limit the competitors to only those that have frozen storage. We welcome submissions on this approach.

⁴² For example, market participants have indicated that specific insulated flooring and more expensive refrigeration equipment is required for frozen storage rooms.

⁴³ Market participants have indicated that although switching storage capacity is possible, it is not particularly common, primarily because demand for frozen storage is much greater than for chilled or ambient storage and there is accordingly significantly larger capacity for frozen storage than for chilled or ambient storage. Commerce Commission interviews with [redacted].

⁴⁴ Lineage submits that switching is possible in response to customer requests: Email from Bell Gully to Commerce Commission (13 April 2022). On the other hand, [redacted] commented at interview that there are significant delays and costs involved in switching at present: Commerce Commission interview with [redacted].

⁴⁵ For example [redacted] told us that it deals with pallet loads only, as its storage area was low-oxygen and so not suitable for labour: Commerce Commission interview with [redacted].

⁴⁶ Commerce Commission interviews with [redacted]. For example, Lineage submits that it recently [redacted] for a customer who requested this: Email from Bell Gully to Commerce Commission (13 April 2022).

Customer dimension

56. We are continuing to assess whether there may exist markets for specific customer groups. We may define a customer market where:⁴⁷
- 56.1 different customers have different supply alternatives;⁴⁸
 - 56.2 a supplier can identify customers with varying abilities to switch to alternative suppliers and charge different (higher) prices to customers based on their (more limited) ability to switch; and,
 - 56.3 customers who would otherwise be charged a higher price cannot acquire the product from customers who paid a lower price (known as arbitrage).⁴⁹
57. The investigation to date has identified that there is a wide range of users of cold stores and their requirements vary (see paragraphs 29-34). We have focused our analysis on those customers in the Waikato/Bay of Plenty region that are most likely to use the Parties' existing and future facilities. Having identified such customers, we have then assessed whether it would be appropriate to define a market narrower than for "all customers" as the Applicant has argued. We have focused on customers in the Waikato/Bay of Plenty region because, as discussed earlier, we do not have competition concerns in the Canterbury region.
58. Based on the location of the Parties' current and future facilities,
[]⁵⁰ and other evidence received to date we consider the customer groups in respect of which the Parties will most likely overlap in the Waikato/Bay of Plenty region are:⁵¹
- 58.1 primary product exporters such as dairy and meat ("exporters"); and,

⁴⁷ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019 at [3.23].

⁴⁸ This also requires that suppliers who currently provide services to one customer type cannot easily reconfigure their offer to provide services to another customer type without incurring significant costs (limited supply-side substitution between customer types).

⁴⁹ To define a customer market, it is not necessary to find existing evidence that such customers are paying a higher (quality-adjusted) price. These customers might be protected from price discrimination by competition between the merging firms but then face a higher price post-acquisition.

⁵⁰ [

] . [

⁵¹ In principle, individual customers could meet the conditions for a customer market. For example, this might be the case where the location of the customer means it would be costly to transport goods to Hamilton. We are considering the possibility that such customers exist. However, if only a few customers meet the conditions for a customer market, it is more likely that existing rivals will have sufficient capacity for those customers to switch.

58.2 FMCG customers.

59. There is mixed evidence on whether it is appropriate to define a separate customer market for primary product exporters.

59.1 These customers may not view all the cold stores listed in the Application as good alternatives. For example, there is some evidence to suggest that large primary product exporters:

59.1.1 may wish to be located close to the port to make exporting more efficient;⁵²

59.1.2 may have significant storage requirements which limit their ability to use smaller cold stores (unless they are prepared to split volumes between different cold stores)^{53, 54}; and/or

59.1.3 use only cold stores that have necessary export licences, especially those for China which, as discussed above at paragraph 30, we understand may be difficult to obtain.

59.2 Suppliers are likely able to identify those customers seeking to export. However, as primary product exporters also supply domestically, suppliers may not be aware of the precise volumes that are to be exported (and so are captive to cold stores near the port).⁵⁵

59.3 We are still considering whether arbitrage is possible. In this case, arbitrage could take the form of an exporter using the cold store space of a customer type that is not captive to cold stores near the port. There may be practical difficulties in doing this. For example, cold stores may impose requirements for users to reveal the ownership of the goods they are storing.

⁵² For example, [

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⁵³ [

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⁵⁴ We considered whether separate markets may be appropriate for “big” and “small” customers. However, we have heard that customer requirements are mainly driven by industry rather than size. We will take account of any difference in competitive options in the competition analysis.

⁵⁵ Commerce Commission interview with []. In that interview, [

60. The evidence is also mixed on whether it is appropriate to define a customer market for FMCG customers.

60.1 There is some evidence to suggest that FMCG customers may not view all the cold stores listed in the Application as good alternatives. For example, these customers may wish to be located close to population centres to make it easier to distribute products to stores or require a cold store that allows for order picking.⁵⁶

60.2 Suppliers are likely able to identify FMCG customers.

60.3 Arbitrage may not be possible, in particular if the customer requires picking and packing services.

61. We continue to assess whether the evidence supports separate customer markets for either primary product exporters and/or FMCG customers. As the possibility exists for these customer markets, we consider the implications for the geographic market (see paragraphs 62–63 below) and the impact of the Proposed Acquisition in the competition analysis.

Geographic dimensions

62. We are continuing to assess the geographic scope of the relevant markets. Our assessment of the geographic market is closely related to whether it is necessary to define separate customer markets as discussed above. If it is not, then a broad market including all suppliers in the Waikato/Bay of Plenty region (as the Applicant submits) may be appropriate. However, the geographic market for the separate customer markets discussed above may be narrower for the reasons we discuss below.

63. At this point there is some evidence to suggest the geographic scope of the customer markets identified above may be limited to the Tauranga area (that is, including Tauranga city and Tauriko but excluding Kerepehi). However, the evidence on this is mixed at this stage. This is an area we are seeking submissions on and will be investigating further.

63.1 Some evidence suggests that exporters and FMCG customers prefer locations close to the port. [

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[Some exporters and

⁵⁶ [

]

⁵⁷ [].

⁵⁸ [

FMCG customers indicated it would be more costly to use a location like Ruakura.⁵⁹

- 63.2 On the other hand, some cold store suppliers, exporters and FMCG customers we have spoken to indicated that other locations in the region such as Hamilton or other locations in the 'Golden Triangle' (between Auckland, Hamilton and Tauranga) may be acceptable, and even Rotorua.⁶⁰ The Port of Tauranga is also building an inland port at Ruakura near Hamilton due to open in 2022, which may make it easier to transport goods for export out of the Waikato.⁶¹

Summary of market definition

64. Our current views as to the appropriate market definition are as follows.

- 64.1 The relevant product market includes all cold storage services. We take into account differences between the cold storage suppliers in our competition analysis.
- 64.2 There may be separate customer markets for each of primary product exporters and FMCG customers. It is possible either or both satisfy the test for customer markets. The main reason that these markets may be relevant is the geographic dimension for these customer markets may be limited to the Tauranga area (including Tauriko but excluding Kerepehi), which would imply fewer alternatives than a broad geographic market definition. Our competition analysis below therefore assesses the impact of the Proposed Acquisition on a Tauranga market. As we are yet to conclude on these customer markets, the competition analysis also includes an assessment on a broader Waikato/Bay of Plenty market (which would be relevant if the market included all customers or if the geographic market for either exporters or FMCG customers extended beyond Tauranga).

65. We invite submissions on our preliminary views on customer markets, including:

- 65.1 whether it is appropriate to define markets for primary product exporters and/or FMCG customers including whether:
- 65.1.1 these customers have fewer supply alternatives;
- 65.1.2 it is possible to identify these customers;

⁵⁹ For example [] thought it may be costly for some customers such as fishing companies that dock in Tauranga and customers located in certain areas to transport to Hamilton: Commerce Commission interview with []. See also Commerce Commission interview with [].

⁶⁰ For example, Commerce Commission interview with [], Commerce Commission interview with [], Commerce Commission interview with [], Commerce Commission interview with [], Commerce Commission interview with [].

⁶¹ [].

- 65.1.3 it is possible for these customers to arbitrage to avoid higher prices;
- 65.2 whether there are any other customer groups for which it may be appropriate to define a customer market; and
- 65.3 the appropriate geographic market.

With and without scenarios

- 66. Assessing whether a substantial lessening of competition is likely requires us to compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual) and to determine whether competition is likely to be substantially lessened by comparing those scenarios.
- 67. At this stage, we consider that the most competitive likely scenario without the Proposed Acquisition is the status quo, including Lineage's planned new facility in Tauriko [].
- 68. The Parties submit that [] in the counterfactual.⁶² However, [].⁶³ Given [], we do not intend to consider this further.

Horizontal unilateral effects in Waikato/BOP region

- 69. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a market participant can profitably increase prices above the level that would prevail without the merger (and/or reduce quality).^{64, 65}
- 70. To assess this, we have been considering:
 - 70.1 how closely Lineage and CSN currently compete to supply cold storage services;
 - 70.2 the strength of existing competitors;

⁶² The Application, at [].

⁶³ Commerce Commission interview with [].

⁶⁴ Harm from a substantial lessening of competition can manifest in different ways. Aside from an increase in prices or a decrease in quality or service, an adverse effect from the Proposed Acquisition could also be a delay or reduction in capacity expansion.

⁶⁵ When we refer to 'higher prices' in this Sol we also refer to a decrease in quality, service, ie, higher quality-adjusted prices.

- 70.3 the extent to which the merged entity would be constrained by future entry and expansion (including potential entry/expansion); and
- 70.4 the extent of countervailing power.
71. At this stage, we are not satisfied that the Proposed Acquisition would not have or be likely to have the effect of substantially lessening competition for the supply of cold storage services in the Waikato/Bay of Plenty region.

Our approach in this section

72. As we identified above, we consider there are potentially separate customer markets for each of exporters and FMCG customers. The main reason that these markets are relevant is that the geographic extent for these customer markets may be limited to Tauranga. The analysis for each of these customer markets is similar (for example, the main alternatives to the merging parties, constraint from new entry) so for ease we just refer below to competitive conditions in a “Tauranga market”. The “Tauranga market” analysis should be taken as considering the impact for each of those customer markets. We identify where the analysis differs for either exporters or FMCG customers.
73. We have also included an analysis for a Waikato/Bay of Plenty geographic market. This analysis is relevant if there were not customer markets for exporters or FMCG customers, or if the geographic market for either of those customer markets was broader than Tauranga.

Closeness of competition between the merging parties

Applicant’s view

74. Lineage submits that CSN does not currently provide a substantial competitive constraint on Lineage or other cold storage providers in the region.⁶⁶

Our current view

75. The evidence we have gathered so far indicates that Lineage and CSN impose a competitive constraint on one another regardless of whether we use a Tauranga or Waikato/Bay of Plenty geographic market.
76. On a Tauranga market, we consider the evidence shows the merging parties will be close competitors. Lineage’s planned Tauriko expansion will be located near to CSN’s Te Maire site and therefore will likely compete closely for customers seeking close access to the port. [

]. The evidence of this competition is as follows:

76.1 []

⁶⁶ The Application at [16.1]-[16.20].

76.1.1 [

]67

76.1.2 [

]68 [

]69

76.2 [

]70

76.3 [

]71

76.4 Market feedback in respect of Lineage’s planned Tauriko site was more limited, due to little industry knowledge of the planned expansion. However, two cold storage operators who were aware of Lineage’s plans to enter Tauriko, identified that this would result in the Parties competing.⁷² [

]

77. On a Waikato/Bay of Plenty market, the merging parties will still be close competitors. In addition to the Tauranga sites, Lineage also has the Kerepehi site. Most comments received were in respect of Lineage’s Kerepehi site, which some but not all customers viewed as a competitor to CSN’s sites in Tauranga, in particular for products stored by export and FMCG customers.⁷³

67 [].

68 [].

69 [].

70 [].

71 Commerce Commission interview with [].

72 Commerce Commission interviews with [].

73 For example, [] considered the Parties close competitors, although [], and both [] and [] considered that the Parties currently compete directly with one another: Commerce Commission interviews with []. In contrast, [], a current CSN customer [], did not consider Lineage Kerepehi as an alternative to CSN: Commerce Commission interview with []. [

78. We consider Lineage and CSN's customers are likely to benefit from the constraint the Parties impose upon one another, particularly those customers that may benefit from a location close to port (such as exporters and FMCG customers). There is a real and significant risk the Proposed Acquisition would eliminate this constraint. However, we invite further submissions on the closeness of competition between the Parties.

Constraint from existing competitors

Applicant's view

79. Lineage submits that the merged entity will face strong competition from multiple existing competitors.⁷⁴

Our current view

80. At this stage, we are not satisfied that current constraints will be sufficient to prevent the Proposed Acquisition causing a substantial lessening of competition through horizontal unilateral effects in Tauranga and the Waikato/Bay of Plenty region. The primary reasons for this, respectively, are:

80.1 on a Tauranga market, the merging parties would have a [] market share and rivals are relatively small; and

80.2 on a Waikato/Bay of Plenty market, the merging parties would have a [] market share and some rivals' capacity is committed to other customers.

Market shares

81. Table 1 below sets out all facilities (including all planned new entry and expansion) in the region, ordered by approximate distance from the Port of Tauranga.⁷⁵ It reflects the situation beyond []. The Parties' facilities are in **bold**. The table lists market participants' total estimated pallet capacities, which we use as our market share metric (which both the Parties and other market participants have submitted is standard practice in the industry).⁷⁶

[] did not perceive CSN as currently imposing a material competitive constraint in the Bay of Plenty: Commerce Commission interview with [].

⁷⁴ The Application at [16.13].

⁷⁵ As a proxy for the relative ease with which each facility could be used by export/FMCG customers, both of which may require proximity to the Port and/or central Tauranga (as discussed above).

⁷⁶ The Application at [16.2]; Commerce Commission interview with [].

Table 1: Cold store facilities in Waikato/Bay of Plenty

Name	Location	Total	Frozen	Chilled
<i>Tauranga area</i>				
CSN Tauranga	Tauranga	[]	[]	[]
CSN Te Maire	Tauranga	[]	[]	[]
Port Pack & Cool Storage	Tauranga	[]	[]	[]
Real Cool Cold Storage Tauranga	Tauranga	[]	[]	[]
Maleme Coldstorage	Tauranga	[]	[]	[]
Brett Marsh Transport Ltd	Tauranga	[]	[]	[]
Lineage Tauriko	Tauranga	[]	[]	[]
<i>Waikato/Bay of Plenty region</i>				
Icepak Waharoa	Waharoa	[]	[]	[]
Aotearoa Park Cold Storage	Cambridge	[]	[]	[]
Big Chill Ruakura	Hamilton	[]	[]	[]
Coolstorage Express	Hamilton	[]	[]	[]
[]	[]	[]	[]	[]
Lineage Kerepehi	Kerepehi	[]	[]	[]

82. Table 2 below sets out the Commission’s current assessment of market shares for a geographic market of either Tauranga or the broader Waikato/Bay of Plenty region under various scenarios. The full tables are in **Attachment A**. The scenarios we have calculated shares for each market are as follows.

82.1 *Total, cold*: total capacity of cold store facilities;

82.2 *Non-committed, total cold*: total capacity that is not committed to a long-term customer. As noted earlier, some facilities have long-term contracts with customers which means they are not in a position to compete for customers in the short to medium term.⁷⁷ We have excluded this capacity from this market share calculation;⁷⁸

⁷⁷ We have excluded the major committed capacities that we are aware of. These are: [], []

].

⁷⁸ We place the following caveats on these estimated figures. First, the length and nature of the commitment varies and it is a matter of judgement what is included. Our approach has been based on interviews with the facilities’ owners on whether they could use the capacity to compete. Second, as the terms of the commitment are not publicly known, a provider’s committed capacity may nevertheless impose a competitive constraint.

- 82.3 *Total, frozen*: capacity of frozen storage (ie, excluding chilled storage). As discussed above, it is possible to switch from frozen storage to chilled, but it appears to be much more difficult the other way around; and
- 82.4 *Non-committed, frozen*: capacity of frozen storage that is not committed to a long-term customer.

Table 2: Parties' combined shares under various scenarios

Geographic market	Total, cold (%)	Non-committed, total cold (%)	Total, frozen (%)	Non-committed, frozen (%)
Tauranga	[]	[]	[]	[]
Waikato/Bay of Plenty	[]	[]	[]	[]

83. Under all scenarios, the merged entity would be the single largest provider of cold storage services.

83.1 On the Tauranga market we estimate the Parties' combined market shares will be [], approximately []-[].⁷⁹

83.2 On a geographic market that includes the Waikato/Bay of Plenty region, the Parties combined market shares will be [], approximately []-[].

Remaining competitors

84. On a geographic market limited to Tauranga (as may be appropriate for an exporter and/or FMCG customer market), the other providers include Port Pack, Real Cool, Maleme Cold Storage and Marsh Transport. These providers are small compared to the Parties. They have a combined total pallet capacity of only [] pallets, which results in a market share of []-[] depending on the scenario. At this point we are not satisfied these rivals would be sufficient to replace the lost competition from the Proposed Acquisition.⁸⁰

⁷⁹ We do not have information to create market shares for each of exporters and FMCG customers. However, the total capacity shares would be reflective of the options available to each customer group.

⁸⁰ For example, [

85. If the relevant geographic market is broadened to include the Waikato/Bay of Plenty region, there will be other providers [], including Big Chill, Icepak [] which could impose some constraint on the Parties:

85.1 Big Chill intends to open a frozen storage capacity with capacity for 16,000 pallets in [].⁸¹ Big Chill [

[]. Big Chill [].⁸²

85.2 Icepak has a facility with approximately [] pallets of frozen storage. [

].⁸³

85.3 [

].⁸⁴

86. There are other smaller providers in the region including Cool Storage Express and Aotearoa Park, as well as storage used for fruit in the broader Bay of Plenty that may be an alternative to storage near the Port of Tauranga for some customers.

87. At this point we are not satisfied that these competitors would be sufficient to replace the lost competition from the Proposed Acquisition.

88. We invite submissions on whether the constraint from remaining competitors in Tauranga and the Waikato/Bay of Plenty region would be sufficient to thwart an exercise of market power by the Parties post-merger.

Barriers to entry and expansion

Applicant's view

89. Lineage submits that the merged entity will continue to face competitive constraint from the threat of new entry.⁸⁵ Lineage submits that barriers to entry and expansion in the Waikato/Bay of Plenty region are relatively low, because:⁸⁶

⁸¹ See for example Aaron Leaman, 'Big Chill Distribution to have major footprint at Ruakura Superhub' (16 February 2022), <https://www.stuff.co.nz/waikato-times/news/127776033/big-chill-distribution-to-have-major-footprint-at-ruakura-superhub>.

⁸² Commerce Commission interview with [].

⁸³ Commerce Commission interview with [].

⁸⁴ Commerce Commission interview with [].

⁸⁵ The Application at [16.15]-[16.20].

⁸⁶ The Application at [16.15]-[16.20]; email from Bell Gully to the Commerce Commission (2 May 2022).

- 89.1 although entry/expansion requires capital expenditure, this can be decreased by leasing a facility, converting an existing facility or completing a facility in stages;
- 89.2 it is not necessary for a new facility to have an ‘anchor’ customer to justify construction, [];
- 89.3 demand for cold storage services is high and is not forecast to decrease;
- 89.4 certifications do not present any barrier; and
- 89.5 land availability does not present a barrier, particularly in the broader Waikato/Bay of Plenty region (outside of Tauranga city).

Our current view

90. We assess whether entry or expansion is likely to be sufficient to constrain the merged entity by considering whether entry is likely, sufficient in extent and timely enough to pose a constraint (the ‘LET test’). We also consider the barriers to such entry/expansion as part of this assessment.⁸⁷
91. At this stage, we are not satisfied the LET test is satisfied in respect of the Tauranga market. In particular, we are not satisfied entry is sufficiently likely, with the primary barrier being the ability to find a suitable site. Market feedback indicates that there are some barriers to entry/expansion.
- 91.1 *Capital cost of entry.* Multiple industry participants have commented on the high capital cost of entry, in particular the costs of modern automated racking equipment and refrigeration and blast freezing equipment.⁸⁸ However, capital may not be a significant barrier to entry/expansion if expected demand is sufficient to recover these costs in a reasonable timeframe.
- 91.2 *Obtaining sufficient customers.* Related to the capital cost of entry, a new entrant would need to gain sufficient customers to justify the risk involved in an investment in a new facility. Multiple industry participants agreed that demand for storage in the Waikato/Bay of Plenty region is high and not forecast to decrease.⁸⁹ Some customers may already be using existing suppliers and so a new entrant may need to convince these customers to switch. Some customers identified costs of switching.⁹⁰ However, there are examples of customers switching providers⁹¹ and using multiple suppliers.⁹²

⁸⁷ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019 at [3.91]-[3.112].

⁸⁸ Commerce Commission interviews with []].

⁸⁹ Commerce Commission interviews with [].

⁹⁰ Commerce Commission interviews with [].

⁹¹ Commerce Commission interviews with [].

⁹² Commerce Commission interviews with [].

- 91.3 *Finding a suitable site.* New entrants must find a suitable location. There is evidence to suggest it is more difficult and costly to find suitable land in Tauranga, with the resource consent process adding another layer of difficulty.⁹³ This may make entry/expansion (other than on an existing site) difficult within Tauranga. For example, [] told the Commission that [].⁹⁴
92. Despite these barriers, we recognise that Lineage was able to build a new site in Tauriko []. We are testing whether any additional entry and expansion is likely.
93. The barriers to entry on a Waikato/Bay of Plenty market seem lower. There appear to be more locations to build cold storage, such as the new industrial development adjacent to the inland port at Ruakura where Big Chill is building a new facility []. Cold store suppliers considered that there was potential for more new entrants in the broader Waikato/Bay of Plenty region.⁹⁵ There is some evidence to suggest other cold store operators may consider entry in the wider Waikato/Bay of Plenty, although there are no firm plans of which the Commission is currently aware.
- 93.1 One cold storage operator commented that it was actively looking at opportunities in the Waikato/Bay of Plenty region but that any entry would take several years.⁹⁶
- 93.2 One cold storage operator commented that if it were to enter another region, it would be Waikato/Bay of Plenty, although it had not actively considered this opportunity.⁹⁷ The operator also said it had the capital to expand if a sufficiently long-term proposal with credible clients presented itself.
94. In summary, due to the lack of suitable sites we are not at this stage satisfied the LET test is satisfied in respect of Tauranga (since entry is not sufficiently likely). However,

⁹³ Commerce Commission interviews with []. Further, []

[].

⁹⁴ Commerce Commission interview with [].

⁹⁵ [] told the Commission that there are potential entrants with a sufficiently long-term investment approach and enough capital to enter (although did not name those potential entrants): Commerce Commission interview with []. [] agreed that there are players with a sizeable presence who could come in and compete, and that the region is underserved for cold storage making entry more attractive: Commerce Commission interview with [].

⁹⁶ Commerce Commission interview with [].

⁹⁷ Commerce Commission interview with [].

the barriers to entry seem lower in the broader Waikato/Bay of Plenty area and, as there is recent entry, the LET test may be satisfied. We welcome submissions on the relative extent of any barriers to entry, and the likelihood, sufficiency and timeliness of any potential entry.

Constraint from countervailing power

Applicant's view

95. Lineage submits that customers could exercise countervailing power to thwart any attempted price increase by the merged entity in a number of ways, including:⁹⁸
- 95.1 self-supplying some or all of their cold storage requirements, including expanding any existing in-house cold storage capacities. Even the threat of such self-supply could prevent the merged entity from attempting to increase prices;
 - 95.2 sponsoring third-party entry/expansion;
 - 95.3 bypassing third party cold storage partly or entirely, including by storing product offshore (for import/export customers) or in refrigerated containers; and/or
 - 95.4 for customers who contract with the merged entity in a number of locations, constraining any attempted price increases by the merged entity in one location through credibly threatening to switch away from the merged entity in other locations.
96. Lineage also submits that the Port of Tauranga, although not a cold storage customer, is highly incentivised to keep the supply chain competitive and cost efficient and would be incentivised to apply pressure to bring pricing down including through sponsoring entry or assisting customers to find alternatives to the Parties.⁹⁹

Our current view

97. We are not satisfied the countervailing power will be sufficient to prevent the Proposed Acquisition causing a substantial lessening of competition in the markets we are assessing. It is plausible that some larger customers may be able to exert countervailing power through the threat to self-supply or sponsor entry; however, we consider there are limits to this constraint. We note in particular:
- 97.1 On a Tauranga market, the threat may not be credible if the customer is unlikely able to find a location.
 - 97.2 On a broader Waikato/Bay of Plenty market:

⁹⁸ The Application at [17.1]-[17.6].

⁹⁹ The Application at [16.21]-[16.22].

- 97.2.1 the threat may not be credible where the customer is too small or where the customer's volumes are too seasonal to justify entry,¹⁰⁰ and
- 97.2.2 any benefits that a larger customer gains from such a threat would not be market-wide.

Many customers are unlikely to see self-supply as an option

98. Market feedback indicates that some customers do not see self-supply of cold storage services as a viable option. The main barriers were as follows:
- 98.1 Some customers identified the large capital costs of entry discussed above and suggested this capital could be better directed towards other investments in their businesses.¹⁰¹ [] indicated to the Commission that it was only when [] that self-supply tended to occur, and that customers have needed to put their limited capital towards business expansions rather than cold storage capacity.¹⁰² Other market participants have confirmed this view.¹⁰³
- 98.2 The demand for cold storage of some customers is seasonal and they use third party cold storage to deal with 'overflow'. It may not make economic sense, in our assessment, for some of these customers to build cold storage capacity to cover their peak requirements, when that storage will sit unused for much of the year.¹⁰⁴
99. Despite these barriers, some customers indicated that self-supply (either via expansion of an existing cold store or 'greenfields' entry) could be possible, although only one of these players had undertaken a feasibility analysis.¹⁰⁵ Some customers' threats of self-supply may be sufficient to discipline a price increase by the merged

¹⁰⁰ An ACCC ex-post review of a cold store merger in Australia found that the merger resulted in price increases for smaller customers but not larger ones. The ACCC believed this was because larger customers had a greater threat to self-supply or sponsor entry: ACCC, *Ex post review of ACCC merger decisions* (February 2022) at 16–17:

<https://www.accc.gov.au/system/files/Ex%20post%20review%20of%20merger%20decisions.pdf>

¹⁰¹ Commerce Commission interviews with []

[]. For example, [] told the Commission that it would prefer to purchase more strategic assets like [] than self-supply cold storage: Commerce Commission interview with [].

¹⁰² Commerce Commission interview with [].

¹⁰³ [] told the Commission that generally, macroeconomic indices make entry look unattractive for self-supply at present: Commerce Commission interview with [].

¹⁰⁴ Commerce Commission interviews with []. [] also indicated to the Commission that it understood this to be the case: Commerce Commission interview with []. Further, [] told the Commission that cold storage providers know the seasonal nature of customers' demand, which given the high costs of entry would make threats of self-supply less realistic: Commerce Commission interview with [].

¹⁰⁵ Commerce Commission interviews with [].

entity. For example, one supplier told the Commission that a large customer had previously used such threats to leverage lower prices.¹⁰⁶

100. We consider threats of self-supply are likely to be most credible for larger suppliers that have sufficient scale.¹⁰⁷ Any negotiated lower prices such customers would gain may not be market-wide and may not protect smaller customers. Some of the customers that would fall within our proposed customer markets for exporters and FMCG customers may be large enough to credibly threaten self-supply. However, if the market was limited to Tauranga, the threat may not be credible if the customer is unlikely able to find a location.

Sponsoring entry

101. There is some evidence that larger customers could sponsor entry. For example, [

] ¹⁰⁸ However, it is unclear that sponsoring entry is an option available for customers other than large customers.

Other abilities of customers to exercise countervailing power

102. The evidence does not yet support the claim that the Port of Tauranga would sponsor entry or exert influence in the manner that Lineage submits. Market feedback received by the Commission indicates that ports do not have a history of such behaviour and industry participants did not consider that such would be likely, although one cold storage operator suggested that ports could potentially influence behaviour if they were a cold storage provider's landlord.¹⁰⁹
103. Lineage suggested to the Commission that customers could bypass third party storage entirely, by storing product overseas or in refrigerated containers.¹¹⁰ To date, we have not received any evidence from market participants that this would be a viable option for all customers to thwart any price increase by the merged entity, although we continue to assess this.
104. Separately, we are assessing whether customers who purchase cold storage services from the Parties in multiple locations around New Zealand may be able to thwart a price increase by the merged entity in the Waikato/Bay of Plenty region. It could be that a customer who purchases services from the merged entity in another region could threaten to switch away from the merged entity in that other region if faced with a price increase in Waikato/Bay of Plenty. The Parties suggested to the

¹⁰⁶ Commerce Commission interview with [].

¹⁰⁷ Further, [] commented to the Commission that a threat of self-supply would need to be backed by a willingness to actually enter, as there is a real risk for a customer runs that the supplier 'calls your bluff' on the threat: Commerce Commission interview with [].

¹⁰⁸ Commerce Commission interview with [].

¹⁰⁹ Commerce Commission interviews with [].

¹¹⁰ Another example of customer power may include where Lineage [] for a customer who requested this: Email from Bell Gully to Commerce Commission (13 April 2022).

Commission that this could be viable for some customers in the Waikato/BOP region post-merger because [

].¹¹¹ Such a threat would only be credible if the customer faced few costs to switch to another supplier. This leverage would also only protect the specific customer and not those that only use the Parties in Waikato/Bay of Plenty.

Summary of current views on horizontal unilateral effects in the Waikato/Bay of Plenty region

105. We are not satisfied that current and potential constraints will be sufficient to prevent the Proposed Acquisition causing a substantial lessening of competition through horizontal effects in the Waikato/Bay of Plenty region.

105.1 As noted earlier, we continue to assess whether a Tauranga market is appropriate for exporters and/or FMCG customers. On this market, the Parties are likely to be close competitors with a [] combined market share. Other rivals in the market are smaller. The cost and difficulty of finding a location in Tauranga may make entry and expansion for rivals difficult.

105.2 On a broader Waikato/Bay of Plenty market, the merged entity would [] market share. It would face rivals with more similarly sized facilities, although the capacity of some of these competitors is committed to other customers. The barriers to entry on this broader market are lower than Tauranga since there are more locations and there is some evidence of potential entry.

106. We invite submissions on this, in particular:

106.1 the ability of rivals to enter or expand in and around Tauranga;

106.2 the extent to which rivals with committed capacity impose a constraint;

106.3 the size of customer that could credibly threaten to self-supply or to sponsor entry; and

106.4 the ability of national customers to credibly threaten to switch in other regions.

Coordinated effects

107. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike unilateral effects, which can arise from the

¹¹¹ Email from Bell Gully to the Commerce Commission (2 May 2022).

merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.¹¹²

108. As a result of the Proposed Acquisition, CSN will no longer be an independent competitor. We are considering whether this might result in coordinated effects by asking whether:
- 108.1 the relevant markets may be vulnerable to coordination because the markets have the necessary features to sustain an agreement (such as a metric to coordinate on, the ability to monitor and punish deviations from the agreement and aligned incentives to coordination); and
- 108.2 the Proposed Acquisition will make coordination more likely, complete or sustainable to such a point that it causes a significant lessening of competition (for example, by removing an aggressive market participant or increasing symmetry among competitors).
109. Coordination can take place on different elements of competition. In this case we have been considering whether any markets might be vulnerable to firms coordinating to:
- 109.1 set the level of prices, quality or innovation in the market; and/or
- 109.2 allocate customers between each other.

The Applicant's views

110. Lineage submits that cold storage markets in New Zealand are not vulnerable to coordination and the Proposed Acquisition would not change those factors. Lineage submits that:¹¹³
- 110.1 Prices are not transparent. Arrangements are the subject of bilateral negotiations and as such there is no 'price list' to facilitate the coordination of, and the detection of any cheating on, a tacitly colluded price.
- 110.2 The relevant markets consist of competitors of many different sizes, including global, regional and local players, with different cost basis and margin requirements.
- 110.3 The Proposed Acquisition will not result in the removal of a maverick competitor.
- 110.4 The relevant markets are characterised by strong customers with a substantial degree of countervailing power.

¹¹² Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019 at [3.84].

¹¹³ The Application at [18.1]-[18.2].

Our current views

111. We continue to assess whether the Proposed Acquisition could make any types of coordination significantly more likely, complete or sustainable. As we explain below, at this stage it seems unlikely that price, quality and innovation would be an effective means of coordination, however we continue to assess whether coordination through allocation of customers may be possible.

Coordination on price, quality or innovation

112. At this stage we consider it unlikely that the Proposed Acquisition would make coordination on price, quality or innovation significantly more likely, complete or sustainable (on any market defined). This is mainly on the basis that the market conditions may make it hard for the parties to reach and sustain an agreement.
- 112.1 As the Applicant notes, prices are subject to bilateral negotiation which likely makes it hard to use price level as a metric for coordination. Similarly, quality levels may be difficult to monitor since that would entail access to information on rivals' customer service levels.
- 112.2 There is differentiation between the market participants in terms of geographic location and services offered (such as customer focus and technology). For example, the cold stores are spread throughout the regions, have some differences in their customer profiles and range from being several decades old to newly built. This is likely to make it more difficult to identify a level of price, quality and innovation that the market participants would agree upon.

Coordination on customer allocation

113. We continue to assess whether the relevant markets may be vulnerable to coordination through customer allocation. Such coordination might occur if the market participants reached an understanding to compete only for customers in certain industries or avoided competing for each other's customers. For example, market participants could reach an understanding that each focuses on a particular type of customer such as meat, dairy, fish, or FMCG.
114. There are some factors that may make the relevant markets vulnerable to coordination.
- 114.1 Market participants may be able to monitor which cold stores customers are using, which could make customer allocation possible as a metric of coordination.
- 114.2 As identified in paragraphs 89-94, we consider the barriers to entry to a Tauranga geographic market may be high, which would prevent other suppliers disrupting the coordination. Barriers to entry are likely lower on a broader Waikato/Bay of Plenty market.

115. Other factors may make it harder to coordinate. As above, there is differentiation among cold store suppliers and customers which may make coming to an understanding on how to allocate customers difficult. Some customers are on long-term contracts which would likely disrupt attempts to coordinate.
116. Some cold stores already have a focus on certain types of customers.¹¹⁴ However, most cold stores serve a mix of customer types. This suggests that coordination through customer allocation is not currently occurring. The Proposed Acquisition would therefore need to make a sufficient change to the market that it makes coordination likely. The impact of the Proposed Acquisition is that it will remove a major competitor in the market, which may make it easy to coordinate (as there will be one fewer supplier to reach an agreement with). How this will affect the likelihood of coordination is affected by the extent of the relevant market.
- 116.1 If we define a geographic market that only covers the Tauranga area, the Parties will have a significant market share with other rivals being relatively small. The level of asymmetry between market participants may reduce the likelihood that the incentives of the market participants would be sufficiently aligned to coordinate.
- 116.2 On a broader Waikato/BOP market, there may be greater symmetry between market participants (compared to a Tauranga market). However, there is greater risk that coordination could be disrupted through new entry.
117. We welcome submissions on any potential coordinated effects from the Proposed Acquisition.

Next steps in our investigation

118. The Commission was scheduled to decide whether or not to give clearance to the Proposed Acquisition by 4 May 2022, however this date has been extended by agreement with Lineage until **23 June 2022**.¹¹⁵ This is so that we can test and consider the issues identified above further.
119. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

Making a submission

120. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further

¹¹⁴ For example, [] and []

¹¹⁵ The Commission maintains a clearance register on our website at <https://comcom.govt.nz/case-register/case-register-entries/lineage-logistics-new-zealand-cold-storage-nelson-limited> where we update any changes to our deadlines and provide relevant documents.

evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.

121. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "Lineage/CSN" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **27 May 2022**.
122. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.

Attachment A: market share estimates

Tauranga area

Owner	Name	Total, total cold		Non-committed, total cold		Total, frozen		Non-committed, frozen	
		Pallets	%	Pallets	%	Pallets	%	Pallets	%
CSN	CSN Tauranga []	[]	[]	[]	[]	[]	[]	[]	[]
	CSN Te Maire	[]	[]	[]	[]	[]	[]	[]	[]
Lineage	Lineage Tauriko	30,000	[]	[]	[]	[]	[]	[]	[]
<i>Parties Total</i>		[]	[]	[]	[]	[]	[]	[]	[]
Others	Brett Marsh Transport Ltd	[]	[]	[]	[]	[]	[]	[]	[]
	Maleme Coldstorage	[]	[]	[]	[]	[]	[]	[]	[]
	Port Pack & Cool Storage	[]	[]	[]	[]	[]	[]	[]	[]
	Real Cool Cold Storage Tauranga	[]	[]	[]	[]	[]	[]	[]	[]
Grand Total		[]	100%	[]	100%	[]	100%	[]	100%

Waikato/Bay of Plenty region

Owner	Name	Total, total cold		Non-committed, total cold		Total, frozen		Non-committed, frozen	
		Pallets	%	Pallets	%	Pallets	%	Pallets	%
CSN	CSN Tauranga []	[]	[]	[]	[]	[]	[]	[]	[]
	CSN Te Maire	[]	[]	[]	[]	[]	[]	[]	[]
Lineage	Lineage Kerepehi	[]	[]	[]	[]	[]	[]	[]	[]
	Lineage Tauriko	[]	[]	[]	[]	[]	[]	[]	[]
<i>Parties Total</i>		[]	[]	[]	[]	[]	[]	[]	[]
Others	Aotearoa Park Cold Storage	[]	[]	[]	[]	[]	[]	[]	[]
	Big Chill Ruakura	[]	[]	[]	[]	[]	[]	[]	[]
	Brett Marsh Transport Ltd	[]	[]	[]	[]	[]	[]	[]	[]
	Coolstorage Express	[]	[]	[]	[]	[]	[]	[]	[]
	Icepak Waharoa	[]	[]	[]	[]	[]	[]	[]	[]
	[]	[]	[]	[]	[]	[]	[]	[]	[]
	Maleme Coldstorage	[]	[]	[]	[]	[]	[]	[]	[]
	Port Pack & Cool Storage	[]	[]	[]	[]	[]	[]	[]	[]
	Real Cool Cold Storage Tauranga	[]	[]	[]	[]	[]	[]	[]	[]
Grand Total		[]	100%	[]	100%	[]	100%	[]	100%