

EROAD Limited / Coretex Limited

EROAD response to Statement of Issues

PUBLIC VERSION

Key: Confidential material in this submission has been removed. Its location in the document is denoted by [].

1 November 2021

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CONFIDENTIALITY

- 1 Confidentiality is sought in respect of the highlighted information. Release of this information would be likely to unreasonably prejudice EROAD and/or Coretex's commercial position. The Parties request that they are notified if the Commission receives any request under the Official Information Act 1982 for the release of any part of the confidential information. They also request that the Commission seek and consider their views as to whether the confidential information remains confidential and commercially sensitive before it responds to such requests.

EXECUTIVE SUMMARY

- 2 EROAD appreciates the opportunity to respond to the potential concerns presented in the Commerce Commission's (**Commission**) Statement of Issues (**SOI**).
- 3 We summarise the key points in our response below. The response follows the structure of the SOI.

Statement of Issues	EROAD response
Market definition	
<p>Telematics solutions which include eRUC systems are likely to comprise a separate product market based on the following:</p> <ul style="list-style-type: none"> • customer feedback that eRUC is a critical component of their telematics offering; • paper RUC does not offer the advantages of eRUC and is therefore not a close substitute; • electronically-assisted RUC similarly does not offer the same level of cost savings and accuracy; and • significant barriers to developing an eRUC system. 	<p>The evidence of actual competition is consistent with a market characterised by differentiated customer preferences and differentiated service offerings, rather than separate markets based around individual product features. We have provided case studies of RFPs that EROAD has recently been involved in, which illustrate this dynamic.</p> <p>The evidence shows that EROAD and Coretex compete with telematics suppliers that do not offer eRUC, as shown by:</p> <ul style="list-style-type: none"> • information provided on RFPs; • win/loss and churn data. <p>This is better evidence of substitutability with non-eRUC telematics solutions than a limited survey of the parties' current customers.</p> <p>The Commission has understated the efficiency benefits that can be achieved through electronically-assisted RUC, which is also a close substitute for eRUC. A number of telematics suppliers offer electronically-assisted RUC as part of their telematics offering.</p> <p>Finally, the Commission has understated the constraint from Waka Kotahi, whose channels continue to comprise a substantial part of the market.</p> <p>The appropriate market definition is therefore the market for telematics, which includes electronically-assisted RUC solutions. Paper RUC supplied through Waka Kotahi's channels is not in the market, but constitutes a further constraint.</p>
Counterfactual	
The counterfactual may include Coretex becoming a more significant competitor by:	Addressed in Coretex's separate submission.

Statement of Issues	EROAD response
<ul style="list-style-type: none"> • introducing Corehub into New Zealand; or • acquisition by an alternative purchaser. 	
Closeness of competition between the parties	<p>Even if Coretex constitutes a weak constraint on EROAD, the evidence suggests that EROAD is a strong competitive constraint on Coretex.</p> <p>Coretex was a weak constraint on EROAD as of the date EROAD filed the clearance application. Its position in the New Zealand market [] since then.</p> <p>'Competition' implies a process of rivalry between competitors. EROAD and Coretex are not rivals; [].</p>
Constraints on the merged entity	<p>Navman is likely to be the merged entity's main rival.</p> <p>RUC Monkey is unlikely to be a strong constraint.</p> <p>Telematics solutions involving electronically-assisted RUC do not offer the same convenience as eRUC and therefore are not a strong constraint.</p> <p>Navman is EROAD's closest competitor currently (and in the counterfactual) and will be the merged entity's closest competitor post-closing.</p> <p>The Commission has understated the significance of the constraint posed by RUC Monkey.</p> <p>The Commission has equally understated the constraint posed by telematics suppliers that offer electronically-assisted RUC.</p> <p>Electronically-assisted RUC offers most of the efficiency benefits of eRUC, meaning the merged entity could have no confidence that leveraging eRUC to increase the price of its plans would be profit-maximising.</p> <p>Finally, the Commission has understated the constraint from Waka Kotahi's RUC channels, which continue to comprise a substantial part of the addressable market.</p>
Barriers to new entry	<p>Barriers to developing an eRUC solution are significant given:</p> <ul style="list-style-type: none"> • the regulatory requirements; • the fact that eRUC is unique to New Zealand, meaning scale must be achieved locally; and • high costs of switching, meaning entrants may have to rely on winning new customers. <p>The Commission has overstated the barriers for telematics suppliers expanding to include eRUC in their portfolio:</p> <ul style="list-style-type: none"> • There is actual evidence of recent entry in the form of Navman (late 2017), which was an expansion of its existing offering, and RUC Monkey (late 2018), which is an example of standalone entry. • Recent changes to Waka Kotahi's Code of Practice have reduced regulatory barriers to developing eRUC. • Road-user charging is being introduced in other countries, meaning there is real prospect of entry from off shore telematics providers. • Telematics suppliers are able to sell eRUC to their existing customer base as an expansion on their current offering, and therefore do not need to build a customer base from scratch. • EROAD estimates that the unaddressed portion of the addressable market is perhaps [] times larger, and therefore there is a significant unserved customer base.

Statement of Issues	EROAD response
Coordinated effects	
<p>The market might be vulnerable to firms coordinating to:</p> <ul style="list-style-type: none"> • set the level of prices, quality or innovation in the market; • allocate customers between each other; and/or • use standards or regulations to raise barriers or reduce the degree of competition between the parties. 	<ul style="list-style-type: none"> • The market is not vulnerable to coordination – suppliers compete fiercely on services and technology development and there is little transparency of competitors' price. • The market is not vulnerable to customer allocation – the supply side of the market is asymmetric, customer groups are not clearly defined, and suppliers are unable to coordinate on R&D pipelines. • Competitors do not coordinate to lobby for changes to legislation, standards or regulations and confidential information is not exchanged.
Vertical effects	
<p>Vertical effects are unlikely to arise:</p> <ul style="list-style-type: none"> • the Proposed Transaction will not result in increased vertical integration; and • there is limited evidence of EROAD/Coretex providing inputs to rivals. 	<p>EROAD agrees that vertical effects are unlikely to arise.</p>
Conglomerate effects	
<p>Conglomerate effects are unlikely to arise. eRUC is normally sold as part of a bundle. Bundling already occurs in the market and the Proposed Transaction would not create new opportunities to do so.</p>	<p>EROAD agrees that conglomerate effects are unlikely to arise for the reasons the Commission provides.</p>

PART 1: THE RELEVANT MARKET

The relevant market is the supply of telematics solutions

- 4 The Commission has expressed a provisional view that the relevant market is for telematics solutions that include eRUC systems, based on the following:
- 4.1 customer feedback that eRUC is a critical component of their telematics offering;
 - 4.2 the Commission's view that paper RUC and electronically-assisted RUC do not offer the advantages of eRUC and are therefore not close substitutes; and
 - 4.3 barriers to developing an eRUC solution.
- 5 To the contrary, the evidence strongly supports the conclusion that the relevant market is the supply of vehicle telematics solutions (whether or not the offering includes eRUC). Specifically:
- 5.1 The market is characterised by differentiated customer preferences and differentiated service offerings, but this does not support the conclusion that telematics systems that include eRUC are a separate product market.
 - 5.2 A separate market for telematics systems that include eRUC implies that EROAD and Coretex do not compete with telematics suppliers such as

Smartrak, Blackhawk, Argus, etc, who do not offer eRUC. The RFP, win/loss and churn data provided with the clearance application [] clearly shows EROAD and Coretex competing with telematics suppliers that do not offer eRUC.

- 5.3 Electronically-assisted RUC is included within that market definition, because:
 - (i) it is marketed by a number of telematics suppliers as part of their telematics offering, and (ii) contrary to the Commission's provisional view, electronically-assisted RUC offers many of the same advantages as eRUC and is a close substitute.
- 6 While paper RUC does not form part of this market as defined above, it nonetheless constrains telematics suppliers, and is therefore relevant to the competition assessment. We deal with the constraint posed by paper RUC below in Part 3 below.

Differentiated customer preferences and service offerings

- 7 As we explained in the clearance application, telematics comprises a wide range of complementary features and functions for managing commercial vehicle fleets. The various features of the service form an integrated solution to meet the customer's needs; for example in relation to regulatory compliance, health & safety, asset tracking and management, efficiency and sustainability, and load/job management (e.g. sensors and controls for specialist vehicles). The common theme that links these features is the use of in-vehicle sensors and technology, data capture and reporting/analytics to facilitate the safe and efficient management of commercial vehicle fleets.
- 8 Customer preferences are differentiated. While all commercial fleet operators can potentially benefit from the full suite of telematics offerings, customers place different weight on different features depending on their commercial strategy and fleet management needs (which may change over time). Equally, service offerings are differentiated, as suppliers have pursued varying research and development programmes depending on their view of the market, the opportunities/needs they see developing in the market and their commercial strategy. Attachment A to the Commission's SOI illustrates the differentiation in the service offering. While there is a degree of commonality in the various offerings, features vary between suppliers. EROAD, for example, does not offer sensors and controls for concrete mixers, whereas Navman and Coretex do. Coretex and Blackhawk, in turn, do not offer pool booking, whereas EROAD and Smartrak do.
- 9 The market is also characterised by constant development, driven by a virtuous cycle of evolving customer needs and reducing technology costs. One aspect of this cycle is the 'cost to track': as the cost of asset tracking technology has reduced, it has become economic to track smaller vehicles/assets, and uptake of tracking has therefore increased. It is now economic for a building company to track the vehicles used by individual tradespeople, which would have been prohibitively expensive ten years ago. In the future, we will be tracking not just the vehicle but the individual tools in the vehicle. Telematics providers such as Blackhawk are building their business on these changes. Another example of this development cycle is the introduction of in-vehicle cameras to monitor driving behaviour and traffic situations. EROAD developed cameras in 2020 in response to customers indicating that they needed this feature in the portfolio.
- 10 EROAD's experience is that, for most customers, telematics is just one aspect of the digital transformation of their business. The value of telematics to the customer is as part of an integrated digital strategy for the business as a whole. For example,

some customers integrate their EROAD telematics data into MyTrucking,¹ which is transport management software for the transportation sector. Alongside integration with the customer's cloud accounting software (e.g. Xero or MYOB), MyTrucking is an end-to-end digital solution for managing the business.

- 11 Differentiation is a normal feature of technology markets, and does not imply the existence of separate markets. Rather, each supplier has developed a bundle of features to support fleet management and competes with other differentiated service offerings. Competition is across the bundle: customers are not looking for just one feature; they are looking for a suite of features that best match their digital transformation and fleet management needs. There is, accordingly, no distinct locus of demand for any one feature.²
- 12 In EROAD's experience, eRUC is not the principal driver of a customer's purchasing decision. In EROAD's experience, while eRUC was historically an important feature for customers, eRUC has become less and less important to customers over time, and customers now consider eRUC to be a "hygiene factor" – i.e. a convenient solution to RUC compliance, but nothing more. Rather, the customer approaches the purchase of telematics from the perspective of its whole-of-business digital strategy. In that context, the principal requirements for a telematics solution are more likely to be health and safety, efficiency and sustainability as these features drive significant savings for the customer.
- 13 Changes in market conditions continue to highlight the value of utilising telematics as part of fleet management. For example, in recent COVID-19 lockdowns there was immediate and strong demand for better track-and-trace and contactless delivery features. EROAD's experience is that these types of features are much more likely to influence the purchasing decision than eRUC. In addition, customers are increasingly interested in sustainability features (such as emissions reporting, fuel optimisation and journey management for EVs), and EROAD expects this to be a significant focus for customers over the next few years, particularly as the Government's first emissions reduction plan is implemented to achieve the reduction targets set out for the first 2022-25 emissions budget. This is expected to include a range of pricing interventions that will work directly on company bottom-lines to drive change, especially in transport, which is New Zealand's second largest source of emissions.³ It is these other features that are more likely to influence a customer's purchasing decision, and even customers that have RUC compliance obligations will often choose a non-eRUC provider that can better serve its requirements in relation to these other features.
- 14 For those reasons, EROAD also agrees that the total bundle price for telematics solutions is the relevant price for testing demand and supply side reactions.⁴ This is consistent with the fact that [

¹ See: <https://mytrucking.com/>.

² The integration of individual telematics features is not just commercial but also technical. In most cases, the various telematics features are built on the same platform and constitute an integrated product.

³ *Te hau mārohi ki anamata | Transitioning to a low-emissions and climate-resilient future: Have your say and shape the emissions reduction plan* (Ministry for the Environment, 2021) available at: <https://environment.govt.nz/assets/publications/Emissions-reduction-plan-discussion-document.pdf> at 54.

⁴ SOI at [35].

[⁵] In general, telematics suppliers do not price individual features separately, with limited exceptions (for example, EROAD offered its logbook product as an optional add-on when it was initially launched).

- 15 The Commission appears to have formed the provisional view that telematics systems including eRUC comprise a distinct market principally on the basis of customer feedback that eRUC is a “critical component” of their offering. In the context of a market characterised by differentiated customer preferences and service offerings, surveying a limited group of customers who currently use eRUC leads to confirmation bias: the Commission is, by definition, talking only to those customers who valued eRUC relatively highly amongst the range of features they required for their particular needs. This does not constitute good evidence of the range of consumer preferences across the market, and does not capture the trade-offs that consumers make in the competitive process, as illustrated by the case study set out below from paragraph 19.

RFP, win/loss and customer churn data clearly shows EROAD and Coretex competing with telematics suppliers that do not offer eRUC

- 16 The better evidence of the product scope of the market is who EROAD and Coretex are actually competing with. In the clearance application, [
], we have provided information relating to RFP processes, win/loss data, and customer churn data. That information clearly shows EROAD and Coretex competing against telematics suppliers who do not offer eRUC.

- 17 EROAD’s [] RFP data⁶ illustrates that where EROAD has lost RFPs, a significant percentage of those lost RFPs have been to Smartrak ([] of customers lost, or [] of total connections lost), which does not offer an eRUC solution. While EROAD does not have data on the customer feature requirements for all of the RFPs it has lost, the available data suggests that a material number of the customers that chose Smartrak over EROAD in recent RFPs did indicate that eRUC was one of their requirements.⁷ Those customers included [
].

- 18 EROAD’s [] churn data⁸ shows that EROAD recently lost two existing customers to non-eRUC providers ([⁹ to [], and [¹⁰ to []], despite both of those customers using eRUC during their time with EROAD. Accordingly, EROAD’s [] win/loss data illustrates that a large number of customers who either currently use eRUC or would have used eRUC had they chosen EROAD, chose instead to go with a non-eRUC provider, suggesting that customers weigh a number of different telematics features in their purchasing decision and that eRUC is not a ‘must have’ feature.¹¹

⁵ [
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⁶ [
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⁷ [
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⁸ [
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⁹ [
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¹⁰ [
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¹¹ Also refer to Coretex’s win/loss data at [186] to [188] of the clearance application.

- 19 EROAD's win/loss data is consistent with feedback that EROAD has received from customers that have chosen a non-eRUC provider, despite indicating eRUC is one of their requirements. For example:

Case study: []

[], who has EROAD installed in a division of their fleet,¹² decided earlier this year to choose [] as its telematics provider for the [] connections in its [], emphasising the fact that [] offered better sustainability features, which was particularly important given [].

[] informed EROAD that:

[

]

Case study: []

In 2019 EROAD and [] (and likely other providers in the market due to it being an open RFP) competed head to head for []. Had EROAD won the RFP, [] would have used EROAD's eRUC feature in approximately [] vehicles. [] primary requirements in its RFP were [].

[].

Both EROAD and [] were able to meet the requirements of the RFP. EROAD was initially selected as the preferred supplier but EROAD and [] were unable to agree terms. [] instead decided to use [], which it considered was equally able to meet its requirements and presumably offered more favourable terms.

Case study: []

In 2020 [], churned from EROAD to [] despite [] using eRUC during its time with EROAD. EROAD was informed by [] that:

[

]

- 20 Furthermore, those providers that do not offer an eRUC feature have material market share, together accounting for approximately [] of the market for vehicle telematics in New Zealand.¹³ It is difficult to see how the Commission can conclude that eRUC is a 'must-have' feature given that a number of other suppliers have not felt the need to invest in it, and have achieved significant market share without it.¹⁴ This further reinforces that selective customer feedback from

¹² [].

¹³ Refer to Figure 22 of the clearance application.

¹⁴ As we explain in more detail below, many telematics suppliers that have not invested in developing eRUC nonetheless offer electronically-assisted RUC as a substitute. The sustained market share they have achieved supports the view that electronically-assisted RUC is a substitute for eRUC.

customers who have already purchased an eRUC solution is not the best evidence of market-wide consumer demand preferences.¹⁵ Indeed, all of those customers that have invited EROAD to participate in an RFP but have ultimately chosen a non-eRUC provider are customers that have decided non-eRUC systems *are* a close substitute for eRUC systems.

- 21 Finally, an independent review into the New Zealand RUC system in 2016 by Allen + Clarke noted that eRUC has been described by customers as "a nice bonus":¹⁶

Non-RUC features such as fleet management and reporting were also highlighted as a benefit of eRUC systems. Many transport operators stated that eRUC was a factor in their decision to purchase eRUC systems, however they saw more value in the in-depth reporting systems and fleet management features. One transport operator said they use eRUC systems more for vehicle tracking rather than the purchasing of RUC but described eRUC as "a nice bonus" ... For many operators, it was the other fleet management and reporting features that tipped the balance and made eRUC systems worthwhile for their fleet.

The Commission has understated the substitutability of electronically-assisted RUC for eRUC

- 22 The Commission has understated the constraint of alternative RUC systems, including particularly electronically-assisted RUC, which the Parties consider is included in the product scope of the relevant market. The Commission's provisional view that electronically-assisted RUC is not a substitute for eRUC appears to stem from an incomplete description of what electronically-assisted RUC involves.¹⁷
- 23 RUC systems of any kind assist customers at various points of their RUC compliance process, and can meet the needs expressed by the Commission at paragraph 36 of the SOI to varying degrees—from basic manual compliance (paper) to end-to-end service (eRUC) provided by electronic service providers (**ESPs**) and some or all points in between (electronically-assisted RUC).
- 24 To comply with their RUC requirements, vehicle operators:
- 24.1 must register their vehicle accurately with the Motor Vehicle Register;
 - 24.2 must fit their vehicle with approved distance recorders;¹⁸
 - 24.3 must retrieve the data necessary for their licences from the vehicle (e.g. dates of licences and vehicle details);
 - 24.4 must order licences in advance of travel;¹⁹
 - 24.5 must retrieve the licence;

Conversely Coretex, which does have an eRUC solution, is the only supplier in the market [].

¹⁵ SOI at [36].

¹⁶ Allen+Clarke *Evaluation of the New Road User Charges System: Cycle Three Report* (2016) available at: <https://www.transport.govt.nz/assets/Uploads/Report/RUC-Evaluation-Cycle-3.pdf> at p 31.

¹⁷ SOI at [19.2].

¹⁸ There are currently 12 approved hubodometers for heavy vehicles and four approved electronic distance recorders (eRUC); light vehicles must use the vehicle's odometer.

¹⁹ One licence represents 1,000km of travel.

- 24.6 must pay for the RUC licence;²⁰
- 24.7 must display the licence in the vehicle;
- 24.8 may track location travelled by vehicle;
- 24.9 may calculate any off-road rebates;²¹
- 24.10 may claim off-road rebates (**RUCOR**) as each licence expires;²² and
- 24.11 must maintain records to support legal compliance.

25 The Commission identifies the following benefits of eRUC systems:²³

- 25.1 reduce the costs of operations through avoiding the manual work to calculate and pay RUC;
- 25.2 improve cash-flow through allowing licences to be purchased in smaller and cheaper increments in advance of when they are required (for example, 1,000km in advance instead of 5,000km), incurring lower transaction fees (\$2 vs \$8 at the counter) and are being instantly displayed on the device; and
- 25.3 allows for more accurate calculation of payments and refunds when using private roads (which provide significant savings).

²⁰ Note that heavy motor vehicle RUC licences are subject to rate changes (Road User Charges Act 2012, s 86). RUC licences for light vehicles do not expire. See Waka Kotahi *Road user charges handbook* (July 2020) <https://www.nzta.govt.nz/assets/resources/road-user-charges/docs/road-user-charges-handbook.pdf> at p 8.

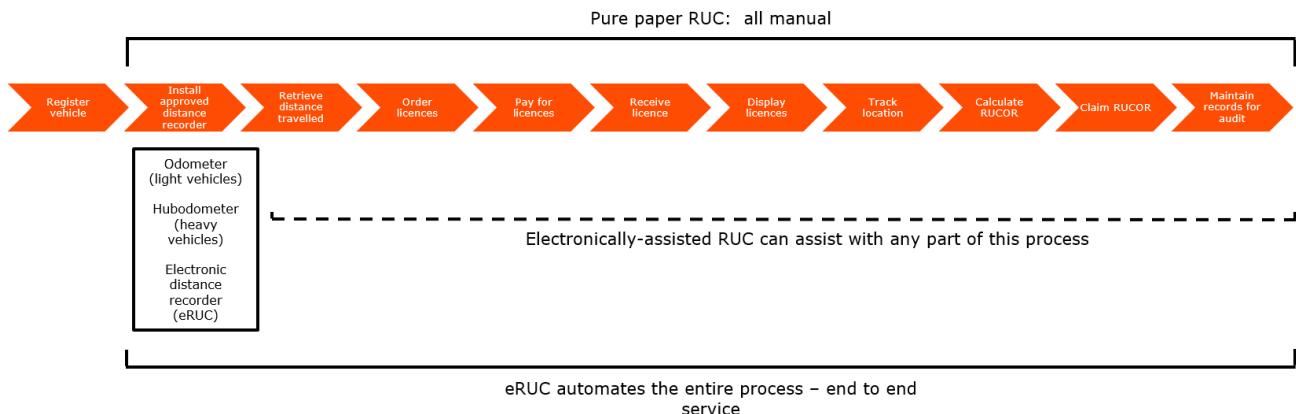
²¹ RUC are not required to be paid when using private roads ("off-road rebates"). SOI at [18].

²² See Waka Kotahi *Road user charges handbook* (July 2020) <https://www.nzta.govt.nz/assets/resources/road-user-charges/docs/road-user-charges-handbook.pdf> at p 19.

²³ SOI at [36].

- 26 The following diagram outlines the RUC compliance path and the systems that vehicle operators can adopt to achieve compliance:

Figure 1: RUC compliance path



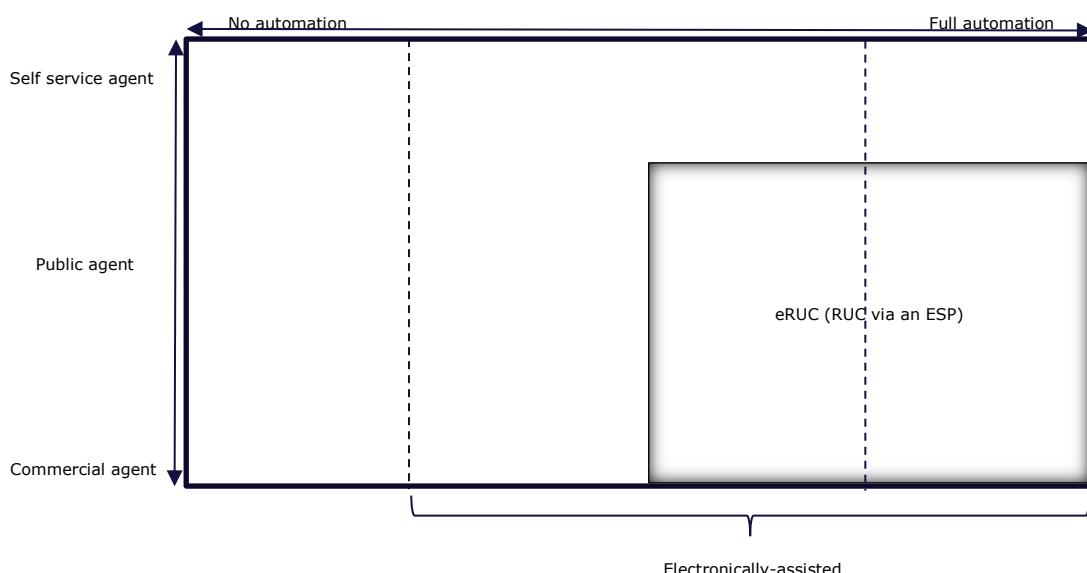
- 27 eRUC is an end-to-end electronic system supplied to customers and regulated by Waka Kotahi. However, electronically-assisted RUC can address all the same aspects of the RUC compliance workflow as eRUC, with the exception of the approved distance recorder and electronic licence.
- 28 Electronically-assisted RUC can provide electronic assistance at various steps of the RUC compliance path and extends beyond merely “providing alerts that a new RUC licence needs to be purchased”.²⁴ Because the vehicle’s hubodometer or odometer is the official distance recorder (instead of an electronic distance recorder where an eRUC system is used), electronically-assisted mechanisms for reading the distance meter and making it electronically available do not need to satisfy any regulatory standard – they will only need to meet customer preferences for accuracy and reliability. Waka Kotahi only sets standards for an electronic mechanism when it interacts directly with their system – i.e. to purchase licences, file claims, or receive licences in an electronic format. For example, even where the electronic assistance method is tracking the location of a vehicle to support claiming off-road rebates, in the absence of any specific regulatory controls, Waka Kotahi’s role relates to assessing the quality of the evidence produced at the time of claiming off-road rebates and not the quality of the device used to create that evidence.
- 29 As such, the term “electronically-assisted RUC” encompasses a variety of solutions across a spectrum that vehicle operators can choose to use to achieve efficiencies in RUC compliance (either by purchasing a solution commercially or developing processes in-house), including:
- 29.1 systems that use GPS to automatically notify vehicle operators when the remaining distance on a paper RUC licence is low;
 - 29.2 systems that orders paper RUC licences online automatically;²⁵

²⁴ SOI at [37.2] and [19.2].

²⁵ For example, EROAD AutoRuc automatically purchases RUC in legally minimum amounts by purchasing the new licence just before the current licence expires, ensuring compliance. See <https://www.eroad.co.nz/nz/products/ruc-compliance/eroad-autoruc/>.

- 29.3 systems that display licences electronically or track and display the status of a fleet's licences;²⁶ and/or
- 29.4 systems that automatically calculate off-road usage, provide the relevant evidence, and can generate RUCOR claims.²⁷
- 30 There are also benefits of paper RUC that mean a number of consumers continue to prefer that channel. Paper RUC allows vehicle operators to avoid the upfront investment and ongoing charges associated with acquiring an eRUC or electronically-assisted solution from a telematics provider or fleet manager.²⁸ Paper licences can be purchased directly from Waka Kotahi (online)²⁹ or over the counter from an agent.
- 31 Another way to visualise the relationship between the different compliance options is as follows:

Figure 2: Relationship between RUC systems³⁰



- 32 Customers can and do make choices about the degree of electronic assistance they require for RUC compliance, and are not limited to eRUC systems to achieve and

²⁶ While eRUC systems are approved for the commercial supply of electronic licences (Road User Charges Act 2012, s 43), the electronic display of RUC licences is not limited to ESPs.

²⁷ For example, Argus Tracking's RUC collect solution enables vehicle operators to easily claim off-road RUC usage: <https://argustracking.co.nz/ruc-collect> (accessed 24 October 2021). The Commission refers to an interview where an interviewee "identified the ability to get a refund where RUC does not apply as one of the most valuable features" (SOI at footnote 45). That benefit does not apply solely to eRUC.

²⁸ For example, the administration costs can be spread across more licences purchased in one transaction either online or over the counter at a Waka Kotahi-approved agent – while eRUC increases the number of transactions. Transaction fees vary by means of purchase: Waka Kotahi *Road user charges handbook* (July 2020) <https://www.nzta.govt.nz/assets/resources/road-user-charges/docs/road-user-charges-handbook.pdf> at p 12.

²⁹ <https://transact.nzta.govt.nz/v2/purchase-ruc>.

³⁰ A self-service agent is where the customer acts as their own agent, connecting directly to the Waka Kotahi back office to complete transactions, and generating their own licences; a public agent is someone acting on behalf of Waka Kotahi and supplying RUC to the public generally (for example, Waka Kotahi's online platform, the Post Shop network or VTNZ testing stations); and a commercial

monitor RUC compliance.³¹ That electronically-assisted RUC is a commercial substitute for eRUC is further demonstrated by the fact that both EROAD and other telematics suppliers offer electronically-assisted RUC as part of their offering alongside other telematics features, and other telematics suppliers market electronically-assisted RUC as having the same benefits as eRUC. For example, Argus' Smart Renew product, which automates the purchase and delivery of RUC licences and registration, is advertised as having the following benefits, which closely track the Commission's description of the benefits of eRUC:³²

BENEFITS

- Easy to setup and use.
- Save on administration time and costs.
- Always compliant, reduce the risk of costly fines.
- Delivered to the address you want delivered to, NOT just the registered address.
- Complete all fleet management in one place, even compliance purchasing.
- Improve your cashflow. Buy RUC and REGO when you need them, rather than buying more than you need.

33 A market definition limited to the supply of telematics solutions which include eRUC systems does not capture the scope of competition that is actually occurring. Customer purchasing decisions and supply-side dynamics are broader than RUC compliance and, in any event, electronically-assisted RUC provides a commercial substitute for eRUC as part of the integrated service offerings of those telematics suppliers that have not developed their own eRUC solution.

No other areas of overlap raise concerns

34 EROAD agrees that there are no competition concerns that may arise in relation to specialised sensors and electronic logbooks:³³

34.1 Specialised sensors: there is no overlap between the Parties for the supply of specialised sensors. [

].³⁴

34.2 Electronic logbooks: EROAD agrees that there are numerous suppliers already and further entry would not be difficult,³⁵ particularly given the alignment with requirements overseas.³⁶

³¹ agent is a bilateral arrangement with customers to provide RUC services (for example, an ESP or a telematics provider or fleet manager providing electronically-assisted RUC services).

³² See from paragraph 57 below.

³³ <https://argustracking.co.nz/automated-ruc-registration-purchasing/> (accessed 30 October 2021).

³⁴ SOI at [47].

³⁵ SOI at [45]; and []

³⁶ SOI at [46]; clearance application at [97] and [101].

³⁶ Clearance application at [98].

PART 2: COUNTERFACTUAL

- 35 The Commission's views regarding the counterfactual are addressed in more detail in Coretex's separate submission.
- 36 However, as explained in more detail below, the [] in Coretex's market position identified in the clearance application has continued in the intervening period. [].

PART 3: HORIZONTAL UNILATERAL EFFECTS***Coretex and EROAD are not close competitors in New Zealand***

- 37 The Parties are not close competitors for telematics generally, or in relation to eRUC specifically. At the time of submitting the Application, the data showed that Coretex was a weak competitive constraint on EROAD and other competitors in the market. Updated connection numbers and data on share of eRUC show that Coretex's position has [], and that Coretex accordingly remains a weak competitive constraint.

Coretex's telematics connections in New Zealand have [] since the Application was submitted

- 38 Coretex is [] and poses minimal competitive constraint on EROAD. EROAD considers that Coretex's current market share for telematics solutions in New Zealand (approximately []) is likely to [] Coretex's significance as a competitor. This is evidenced by:
- 38.1 [];

- 38.2 Coretex's [] number of connections. As demonstrated below in Figure 3, in the last few months since the Parties submitted the Application, Coretex's total number of connections in New Zealand has []. At the time of submitting the Application, Coretex had [] connections in New Zealand.³⁷ Since then, Coretex's connections have [] by [] connections to [] connections;³⁸

³⁷ Clearance application at [117].

³⁸ [].

Figure 3: Coretex total telematics connections 2019 - 2021

[

]

38.3 Consistent with EROAD's internal documents,³⁹ EROAD expects [

].⁴⁰ [

];

and

38.4 [].⁴¹

Cortex share of supply of eRUC has also [] in recent months

39 Reflecting its [] in the New Zealand vehicle telematics market, Coretex's share of supply of eRUC collected has also [] since the Application was submitted. Figure 4 below demonstrates that over the course of 2021, Coretex's share of supply of heavy eRUC has decreased from [] in 2020 to [] in 2021.⁴²

³⁹ [].

⁴⁰ [].

⁴¹ Clearance application at [176].

⁴² As at September 2021.

Figure 4: Coretex's share of heavy eRUC 2017 to 2021

[

]

40 [

]. EROAD expects [].

- 41 Over this same period, Navman and RUC Monkey's share of supply has steadily increased (as demonstrated in Figure 5 below). Since entering in 2017 and 2018 respectively, Navman and RUC Monkey's market share has increased from [] in 2018 to [] in 2021 (year to date). As EROAD's market share has been stable over this period (EROAD's market share was [] in 2018 and remains at [] in 2021), Navman's and RUC Monkey's success appears to be [].
- 42 Figure 5 below updates Figure 34 in the Application (which set out eRUC providers' share of \$RUC collected for heavy vehicles in 2018 and 2020) to include data for 2021, to provide the most recent view of eRUC providers' share of eRUC. This graph demonstrates that [].

Figure 5: eRUC providers' share of \$RUC collected for heavy vehicles in 2018, 2020, and 2021 (to date)⁴³

[

]

- 43 The graphs above focus only on eRUC in order to illustrate clearly Navman and RUC Monkey's growth in recent years, at Coretex's expense. However, this does not represent the full range of competitive dynamics in relation to eRUC which, as explained further below, also includes the constraints from providers of electronically-assisted RUC and Waka Kotahi's channels, including particularly its internet channel. Figure 6 below includes 'paper' RUC provided via electronically-assisted RUC and Waka Kotahi. This is a better representation of the range of competitive constraints on suppliers of eRUC, as explained more fully in paragraphs 65 to 71 below.

Figure 6: Total heavy RUC in 2021 (January to September) ⁴⁴

[

]

- 44 EROAD expects that [], and that Navman will [].

⁴³ January to September 2021.

⁴⁴ January to September 2021.

***The [
characterised as competition***

] cannot reasonably be

- 45 The Commission has suggested in the SOI that, even if Coretex currently imposes a weak constraint on EROAD, EROAD is a strong competitive constraint on Coretex.⁴⁵ In support of this proposition, the Commission points to the fact that EROAD has been competing in New Zealand for Coretex's customers, that Coretex customers identified EROAD as their next best alternative, and evidence from Coretex's win/loss data.

- 46 []. But EROAD disagrees that the [] can properly be characterised as EROAD competitively constraining Coretex. Competition, as that concept is used in the Commerce Act, is a process of rivalry between suppliers in relation to the price and quality of goods or services, requiring innovation, investment and delivery.⁴⁶ That rivalry implies a degree of reciprocal tension between competitors. That tension is absent as between EROAD and Coretex because []

[]. To say that EROAD is a competitive constraint on Coretex implies that Coretex is competing against EROAD. From EROAD's perspective, it is not: []

[].

- 47 An analogy can be made to markets transitioning between technologies and the extent of substitutability between old and new technologies. With the introduction of mass-market digital cameras, consumers rapidly abandoned traditional emulsion film cameras. That migration from emulsion film cameras to digital was a rapid one-way transition. However, it did not reflect close competition between emulsion and film cameras but rather than opposite: it was because emulsion film was not a competitive substitute for digital that the technology moved from market dominance to irrelevance in a short space of time.

The merged entity will be constrained by other competitors, including from suppliers of electronically-assisted RUC and by Waka Kotahi

Navman is EROAD's closest competitor

- 48 EROAD agrees with the Commission's assessment that Navman is likely to be the merged entity's strongest competitor.⁴⁷ Navman is a strong 'all-round' player, offering the most comprehensive range of telematics features of any telematics provider in New Zealand. EROAD's win/loss data supports this, illustrating that over the period January 2017 to June 2021, [] of EROAD's churned connections churned to Navman.⁴⁸ []

[], which indicates that Navman is EROAD's closest competitor and poses a significant competitive constraint. For example, in 2019 Navman won [], which is New Zealand's

⁴⁵ SOI at [60].

⁴⁶ Lewis Evans, "Competition: What do you mean?" *Competition & Regulation Times* (issue 7, April 2002) at p 1.

⁴⁷ SOI at [66].

⁴⁸ As explained in the clearance application, this data is for customers for 20+ connections.

largest privately owned fleet with [] connections. EROAD was the incumbent for some of these connections.

- 49 Navman is also gaining share in relation to eRUC specifically. Figure 7 below demonstrates that over the last twelve months, Navman and RUC Monkey's share of supply of heavy eRUC has increased, including over the last few months since the Parties submitted the Application. As explained in the Application,⁴⁹ EROAD is unable to differentiate between Navman's and RUC Monkey's share of RUC collected, but EROAD's view is that Navman is now the principal competitor in relation to this feature, reflecting its overall position in the telematics market.

Figure 7: Navman and RUC Monkey's share of heavy eRUC 2018 - 2021

[

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- 50 EROAD expects that any attempt by the merged entity to increase prices, including by attempting to leverage its eRUC product,⁵⁰ would be unprofitable as customers would churn to Navman. While there are some costs of switching providers, these are not significant if another supplier is able to offer a better product fit, or the incumbent seeks to increase prices. EROAD's experience is that [

]. For example, [

].

The Commission has understated the significance of the constraint posed by RUC Monkey

- 51 The Commission has suggested that resellers that provide RUC Monkey are unlikely to be a strong constraint on the merged entity on the basis that RUC Monkey operates at a smaller scale than other telematics solution suppliers, and given its small presence in New Zealand [].⁵¹ We disagree.

⁴⁹ Clearance application at [203].

⁵⁰ For the reasons set out at paragraphs 74 to 83 below, EROAD does not consider this would be feasible.

⁵¹ SOI at [67].

- 52 Currently, there are two providers (Vehicle Technology and CTrack) that have publicly partnered with RUC Monkey and sell RUC Monkey's eRUC solution as a feature alongside their broader telematics offering.
- 53 Vehicle Technology sells RUC Monkey's eRUC solution alongside their MixTelematics units. As noted at paragraph 160.2 of the clearance application, MixTelematics is a strong global player with a strong presence in Australia (with approximately [] connections in Australasia), and EROAD expects [].
- 54 In addition, EROAD understands that []⁵² [].
- 55 While Vehicle Technology and CTrack currently have reasonably low market share of the vehicle telematics market ([]), and as a result, RUC Monkey has yet to achieve significant market penetration in relation to RUC collected,⁵³ Smartrak is a significant competitor, with 5% of the market and recent success in winning customers from EROAD. In addition, this does not take into account any other telematics providers that may choose to partner with RUC Monkey in the future. Finally, EROAD considers that RUC Monkey's market share understates its competitive constraint in RFPs, as evidenced by [].
- 56 Accordingly, for those telematics providers that lack an eRUC solution, RUC Monkey provides these providers with the ability to match the offerings of EROAD and Navman. Given RUC Monkey's technology has already been approved by Waka Kotahi, EROAD would anticipate providers could integrate RUC Monkey's solution into their telematics offering and start providing an eRUC feature within the space of a few months. Accordingly, were the merged entity to attempt to leverage its eRUC feature and increase its overall prices,⁵⁴ other telematics providers could reasonably quickly look to offer a competing eRUC solution.

The Commission has understated the constraint posed by providers of electronically-assisted RUC

- 57 As noted above at paragraph 32, customers are not limited to eRUC systems to achieve and monitor RUC compliance. In addition to paper RUC (discussed further from paragraph 65), there are a larger number of competitive telematics providers that offer electronically-assisted RUC. Providers of electronically-assisted RUC solutions provide various levels of electronic assistance, which assist customers at all stages of the RUC compliance workflow (set out in Figure 1 above). The Commission's description of electronically-assisted RUC as merely "providing alerts

⁵² [].

⁵³ Figure 7 above sets out Navman and RUC Monkey's share of RUC collected, although EROAD is unable to differentiate between Navman's and RUC Monkey's share.

⁵⁴ For the reasons set out at paragraphs 74 to 83 below, EROAD does not consider this would be feasible.

that a new RUC licence needs to be purchased⁵⁵ is an incomplete description of the service.⁵⁶

- 58 EROAD is aware of at least six other providers of electronically-assisted RUC, although there are likely to be additional providers. Table 1 below sets out EROAD's understanding of the RUC services provided by Smartrak, Blackhawk, Argus, Trackit, Cartrack and Precision Tracking. Together, these suppliers make up a substantial proportion of the vehicle telematics market in New Zealand (approximately []%).

Table 1: Solutions offered by providers of electronically-assisted RUC services

Provider	Description	Electronically-assisted RUC services			
		Automatically notifies operators when remaining distance on RUC licence is low	Orders paper RUC licences online automatically	Displays RUC licences electronically	Automatically calculates off-road usage and can generate electronic off-road rebate claims
EROAD ⁵⁷	EROAD's RUC compliance includes automatic RUC licence purchasing in legally minimum increments and automatic processing of off-road usage for RUC refund claims.	✓	✓	✓	✓
Smartrak ⁵⁸	Smartrak offers integration with Waka Kotahi's systems which enables automatic RUC licence renewals and GPS automatically recording off-road travel which generate claim forms for RUC refunds.	✓			✓
Blackhawk ⁵⁹	Blackhawk is a device and network agnostic platform. Spark offers RUC reminders and RUC off-road reminders. Spark has a partnership with Blackhawk to distribute and implement Blackhawk's platform. ⁶⁰	✓			✗
Argus ⁶¹	Argus' Smart Renew automatically purchases RUC licences ⁶² and RUC	✓	✓		✓

⁵⁵ SOI at [37.2] and [19.2].

⁵⁶ For a description of electronically-assisted RUC, refer to paragraphs 28 to 29 above. Argus also provides a useful description of electronically-assisted RUC at their website: <https://argustracking.co.nz/automated-ruc-registration-purchasing>.

⁵⁷ See: <https://www.eroad.co.nz/nz/solutions/ruc-compliance/>.

⁵⁸ See: <https://smartrak.com/fleet-servicing/>.

⁵⁹ See: <https://www.spark.co.nz/help/other/terms/business-terms/fleet-tracking-terms/>.

⁶⁰ See: <https://www.blackhawk.io/partnering-blackhawk>.

⁶¹ See: <https://argustracking.co.nz/fleet-management/>.

⁶² See: <https://argustracking.co.nz/automated-ruc-registration-purchasing>.

Provider	Description	Electronically-assisted RUC services			
		Automatically notifies operators when remaining distance on RUC licence is low	Orders paper RUC licences online automatically	Displays RUC licences electronically	Automatically calculates off-road usage and can generate electronic off-road rebate claims
	Collect allows users to automatically claim off-road RUC usage with no set-up required. ⁶³				
Trackit ⁶⁴	Trackit's dashboards allow users to see the status of RUC licences on a single screen, with the remaining distance on the licence and estimated purchase date for the next RUC licence based on historical vehicle usage. Licences and off-road refunds can also be automatically processed.	✓	✓	Allows single screen display of status of all licences	✓
Cartrack ⁶⁵	Cartrack's fleet management services includes time and distance based reminders for RUC licences.	✓			
Precision Tracking ⁶⁶	Precision Tracking's RUC rebate solution tracks all off-road kilometres and submits accurate RUC rebate claims on behalf of the customer.				✓

- 59 It is not necessary for providers to make a significant investment in order to offer an electronically-assisted RUC solution. As noted above, electronically-assisted RUC solutions offer varying levels of electronic assistance/automation. The relationship between the level of investment required and the level of automation achieved is linear, meaning that providers could choose to reasonably quickly and easily develop a basic electronically-assisted RUC solution if required, and then continue to improve it over time. For example, EROAD would expect that a telematics provider could reasonably quickly and cheaply build a basic GPS system that tracks distance and acquire a printer to print RUC labels. While these steps would require reasonably little investment for the provider, they would deliver significant benefits to customers.
- 60 For example, the vast majority of electronically-assisted RUC solutions will not require Waka Kotahi certification:⁶⁷

⁶³ See: <https://argustracking.co.nz/ruc-collect>.

⁶⁴ See: https://www.trackit.co.nz/Solutions/Road_User_Charges.aspx.

⁶⁵ See: <https://www.cartrack.co.nz/fleet-management/>.

⁶⁶ See: https://www.precisiontracking.co.nz/ruc_rebates.html.

⁶⁷ Please note the information in this paragraph updates the description of electronically-assisted RUC in paragraph 210 of the Application. Also refer to paragraph 28 above.

- 60.1 It is only when a provider's technology interacts directly with Waka Kotahi's system (for example, to purchase licences, file claims, or receive licences in electronic format) that the provider would come within the ambit of the standards and regulations set by Waka Kotahi.
 - 60.2 As the vehicle's odometer or hubodometer acts as the official distance recorder, electronic assistance mechanisms for reading the distance meter and making it electronically available to the customer do not need to satisfy any regulatory standard, as long as they meet the customer's tolerances for accuracy and reliability.
 - 60.3 This is the case even when a provider's electronic assistance method is able to track the location of a vehicle to support off-road processes. In the absence of any specific regulatory controls, Waka Kotahi's standards and regulations relate to assessing the quality of the evidence produced at the time of claiming an off-road rebate, rather than the quality of the device used to create that evidence.
- 61 If an electronically-assisted RUC solution interacts with Waka Kotahi systems, the provider will require Waka Kotahi certification, however the certification process is simpler than the process for eRUC providers as it need only address the specific elements of the solution that interact with Waka Kotahi's systems. In particular, the supplier does not have to develop or be responsible for an electronic distance recorder and the associated communications, security and processing capabilities, along with the field and independent testing that this involves. Providers of electronically-assisted RUC must then demonstrate that their systems can interface reliably and effectively with Waka Kotahi's back office and must also satisfy the 'fit-and-proper' criteria to act as RUC agents. However, these are longstanding processes that have been applied and refined extensively over many years of Waka Kotahi approving over-the-counter and industry self-service agents.
- 62 There are several reasons why a customer may choose an electronically-assisted RUC solution over an eRUC solution. For example:
- 62.1 Customers may want to address a single part of the RUC compliance process, and do not need a comprehensive solution to do so.
 - 62.2 Electronically-assisted RUC is generally a cheaper alternative to eRUC. EROAD offers electronically-assisted paper licence and electronic licence RUC solutions in addition to its core eRUC solution. These electronically-assisted paper RUC solutions are popular with cost-sensitive customers who wish to avoid paying for eRUC. [].
 - 62.3 As explained below at paragraph 84, the vehicle telematics market in New Zealand is relatively immature. Customers may not recognise a current business need for the wider functionality of an eRUC solution.
- 63 There is considerable customer demand for electronically-assisted RUC solutions. Although Waka Kotahi does not report on RUC collected via this channel (as electronically-assisted paper RUC falls under the data for paper RUC⁶⁸), EROAD

⁶⁸ Except for EROAD's electronically-assisted RUC solutions, which fall under EROAD's eRUC share. See Figure 8 below.

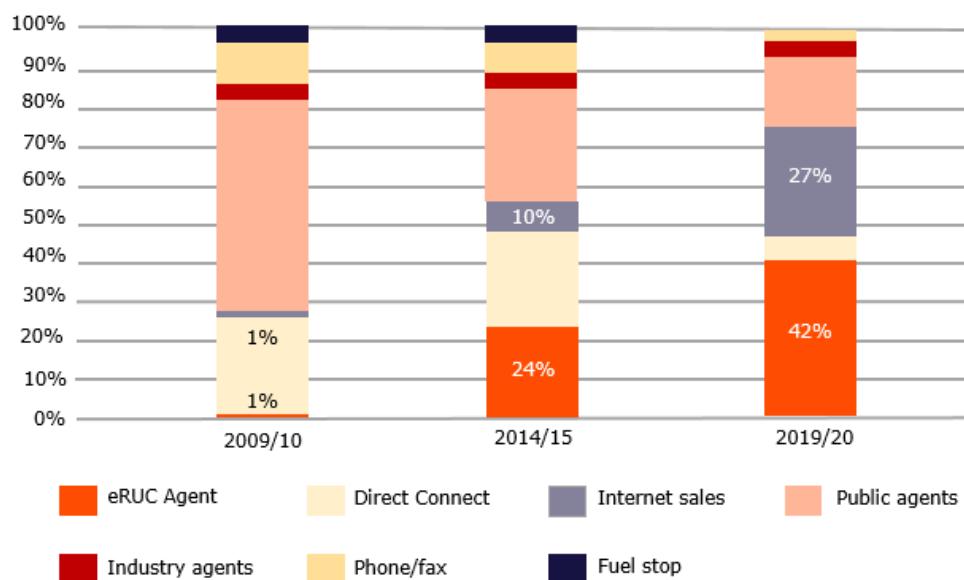
expects that electronically-assisted RUC is a material component of total demand for paper RUC (as illustrated in Figure 8 below).

- 64 For example, even though EROAD has an eRUC solution, [].⁶⁹ EROAD estimates that it purchases approximately [] RUC labels per month.⁷⁰ It is also relevant to note that given EROAD has an eRUC solution, [].

The Commission has understated the significance of the constraint posed by Waka Kotahi

- 65 The Commission has misunderstood the nature and significance of the constraint posed by Waka Kotahi. Waka Kotahi is a supplier of RUC to the market and a RUC agent in its own right, directly delivering 27% of all RUC transactions via its internet service and phone/fax channels. Waka Kotahi has been focused on promoting the use of its internet channel, and has been very successful in achieving this goal. As Figure 8 demonstrates, Waka Kotahi's internet channel (shaded purple in the graph below) has grown from 10% in 2014/15 to 27% in 2019/20, a larger increase than any other channel.

Figure 8: RUC by channel in 2009/10, 2014/15 and 2019/20



Source: EROAD, based on Waka Kotahi data

- 66 The decline in industry self-service (which fell from a 27% share in 2009/10 to a 6.3% share in 2019/20) is strongly correlated with the favourable pricing of Waka Kotahi's internet channel and its subsequent growth, in addition to the growth in eRUC.⁷¹
- 67 EROAD considers Waka Kotahi to be a significant competitive constraint on EROAD's eRUC solution. In particular, EROAD [] the explicit

⁶⁹ See clearance application at [209].

⁷⁰ [].

⁷¹ Of course, the general convenience of internet purchasing instead of having to manage printer and label stocks is also a factor.

cross-subsidy of Waka Kotahi's internet channel by the public and commercial (eRUC) channels. As described in the Regulatory Impact Statement for Road User Charges (Administration Fee Credit Card Bank Charges),⁷² Waka Kotahi recovers a portion of the credit card fee for purchases from its internet channel via a fixed (averaged) amount included within the regulated RUC administration fee charged across all RUC channels. At the time they were set, RUC administration fees recover \$0.67 towards credit card charges per transaction conducted via Waka Kotahi's internet channel.⁷³

- 68 As a result of Waka Kotahi recovering credit card fees through a fixed amount built into existing administration fees:
 - 68.1 credit card fees for Waka Kotahi's internet channel are shared across all RUC channels (meaning a substantial portion of these fees are actually borne by eRUC customers); and
 - 68.2 EROAD's eRUC customers who wish to pay by credit card also have to pay a credit card fee (as commercial RUC agents on-charge the exact bank charge amounts they incur by accepting credit card payments).⁷⁴
- 69 The Regulatory Impact Statement notes that "this has the result that, in effect, Waka Kotahi is discounting some purchases, compared to what the commercial [eRUC] agents are charging"⁷⁵ and that this arrangement "creates an incentive for customers to purchase RUC from Waka Kotahi at a significantly cheaper cost than other commercial [eRUC] agents who currently pass on bank charges."⁷⁶
- 70 Many companies (for example, courier companies) prefer to purchase RUC via credit card as credit cards also provide other benefits (e.g. cash flow and cash-back benefits). For this reason, these customers prefer to use Waka Kotahi's internet channel to purchase their RUC as the administration fee for eRUC (coupled with the additional credit card fee) means that it is considerably cheaper to purchase RUC via Waka Kotahi's internet channel. [].

- 71 Figure 9 below illustrates that paper RUC still remains a substantial constraint on eRUC, comprising []% of heavy RUC⁷⁷ collected in 2021. Paper RUC comprises

⁷² Regulatory Impact Statement, Road User Charges: Administration Fee Credit Card Bank Charges, July 2015, p 2. See: <https://www.treasury.govt.nz/sites/default/files/2016-06/ris-transport-ruca-sep16.pdf>.

⁷³ Regulatory Impact Statement, Road User Charges: Administration Fee Credit Card Bank Charges, July 2015, p 2.

⁷⁴ Regulatory Impact Statement, Road User Charges: Administration Fee Credit Card Bank Charges, July 2015, p 3.

⁷⁵ Regulatory Impact Statement, Road User Charges: Administration Fee Credit Card Bank Charges, July 2015, p 3.

⁷⁶ Regulatory Impact Statement, Road User Charges: Administration Fee Credit Card Bank Charges, July 2015, p 4.

⁷⁷ As noted at [200] of the clearance application, because RUC applies to both heavy vehicles and light diesel vehicles, and the majority of light diesel vehicles in New Zealand are private passenger vehicles (approximately 83%), shares based on total RUC collected would likely overstate the addressable customer base for telematics providers because most private passenger vehicles are unlikely to seek an eRUC solution. Accordingly, to better approximate the addressable customer base for an eRUC solution, the estimates in Figure 9 (and Figures 4, 5, 6 and 7 above) are limited to heavy vehicles only and exclude all light diesel vehicles.

the various Waka Kotahi channels described above (in particular, Waka Kotahi's internet channel), in addition to electronically-assisted RUC.⁷⁸ For the reasons described above, these other channels pose a considerable constraint on eRUC.

*Figure 9: Total heavy RUC in 2021 (January to September)*⁷⁹

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Fleet management companies offer a further constraint in relation to RUC compliance

72 In addition, fleet management companies offer a further constraint in relation to RUC compliance. Fleet management companies manage or lease vehicles and commercial equipment. As part of that service these companies provide a telematics offering and can manage the RUC compliance workflow for customers by taking on the administrative requirements on behalf of vehicle/fleet operators. For example, they can manage the paper RUC licence purchase and distribution to customers. Fleet companies often partner with a telematics provider to automate parts of this process. Examples of fleet managers operating in New Zealand who provide administrative assistance for RUC compliance include the following:⁸⁰

72.1 **Custom Fleet** offers specialist fleet management services, ensuring fleet vehicles are operating efficiently and offers specialist management systems (Fleet Office) and fleet reviews (Key Solutions).⁸¹ Custom Fleet's parent company is Element Financial Corporation, a global fleet management and commercial leasing company.⁸² EROAD understands that Custom Fleet have a strategic partnership with Procon Telematics for telematics and facilitating electronically-assisted RUC via GPS.

⁷⁸ However note that [].

⁷⁹ January to September 2021.

⁸⁰ Clearance application at [210].

⁸¹ <https://www.customfleet.co.nz/fleet-management/index.html> (accessed 28 October 2021).

⁸² <https://www.customfleet.co.nz/about-us/index.html> and <https://www.elementfleet.com/about-us> (accessed 28 October 2021).

- 72.2 **Fleet Partners** offers different fleet management services, including registration management and comprehensive online reporting.⁸³ Fleet Partners also promotes EROAD's telematics solutions [].⁸⁴ EROAD understands that Fleet Partners also has a strategic partnership with Logbookme for telematics and electronically-assisted RUC.
- 72.3 **LeasePlan** can manage the purchase and distribution of RUC labels, amongst other fleet services.⁸⁵ LeasePlan manages more than 21,000 vehicles for government, corporate and SME clients.⁸⁶ EROAD understands that LeasePlan have a strategic partnership with Smartrak for telematics and facilitating electronically-assisted RUC via GPS.
- 72.4 **SG Fleet** provides a "full suite of outsourced fleet solutions to both the government and corporate sector".⁸⁷ EROAD understands that SG Fleet have a strategic partnership with Navman for telematics. This partnership led to [].
- 72.5 **Yoogo Fleet** provide telematics in every vehicle, bundling the price of their telematics offering into the vehicle lease price []. EROAD understands that Yoogo has partnered with Blackhawk,⁸⁸ to offer Yoogo Telematics, which offers many features including electronically-assisted RUC.
- 73 As noted above at paragraph 7, fleet management is a core requirement for many customers. For these customers, fleet management companies have a material advantage over other telematics providers such as EROAD. [].

].

The merged entity cannot profitably leverage eRUC to increase the price of its plans

- 74 When EROAD launched its eRUC solution in 2011, the only alternative was manual (paper) RUC that customers purchased over-the-counter from approved RUC counter agents. As the Commission observes, fully manual paper RUC compliance:

⁸³ <https://www.fleetpartners.co.nz/> and <https://www.fleetpartners.co.nz/business/fleet-management> (accessed 28 October 2021).

⁸⁴ <https://www.fleetpartners.co.nz/trucks-trailers-forklifts/solutions/telematics> (accessed 28 October 2021). [].

⁸⁵ <https://www.leaseplan.com/en-nz/fleet-management/fleet-services/what-is-fleet-management/> (accessed 28 October 2021).

⁸⁶ <https://www.leaseplan.com/en-nz/about/> (accessed 28 October 2021).

⁸⁷ <https://www.sgfleet.com/nz> and <https://www.sgfleet.com/nz/fleet-solutions/fleet-management-services> (accessed 28 October 2021).

⁸⁸ See: <https://appadvice.com/app/yoogo-fleet/1179209970> (accessed 30 October 2021).

- 74.1 carries a substantially higher administrative cost than an eRUC solution;
 - 74.2 makes it uneconomic to claim offroad rebates (as the manual work involved in claiming accurate reductions for use of private roads is more difficult); and
 - 74.3 negatively impacts cash flow compared to an eRUC system (due to the need to purchase RUC licences in larger increments).⁸⁹
- 75 The Commission's observations regarding paper RUC are not universally applicable across all customers. To respond to each in turn:
- 75.1 a customer that prefers to use paper RUC can lower administration costs by purchasing greater amounts less frequently;
 - 75.2 off-road rebates are not a material potential saving for every businesses. EROAD's assessment is that the real value of total RUC refunds increased only 3% from 2009 to 2019, whereas the real value of total RUC revenue grew 60% over the same period. Thus, the value of rebates as a share of total revenue has decreased from 5% to 3% since eRUC was introduced, suggesting that the industries that generate rebates have not grown in step with general increases in the number of RUC eligible vehicles;
 - 75.3 not all businesses or operations have evenly distributed cashflows that mean they would realise a cashflow benefit from more frequent, smaller purchases; for example, where the business operates within a strong seasonal pattern, seasonal RUC purchasing makes sense too; and
 - 75.4 as explained above, there are other benefits to using Waka Kotahi's RUC channels, for example for those customers who prefer to pay by credit card.
- 76 At the time that EROAD launched its eRUC solution, EROAD's solution was a compelling alternative to paper RUC. However, the competitive advantage to EROAD from its eRUC product has eroded as other RUC solutions have entered the market.
- 77 First, other telematics providers have developed eRUC solutions. Navman launched its eRUC solution in 2017 and has grown its market share in relation to eRUC considerably over this period. EROAD expects []. Other telematics suppliers have partnered with RUC Monkey.
- 78 Second, in recent years at least six telematics providers have developed electronically-assisted RUC solutions. As discussed above, these solutions can automate a significant component of the total RUC compliance process.
- 79 This means that, were EROAD to consider leveraging its eRUC product to raise the price of its bundles, EROAD would be alive to the very real risk that its customers would move to the nine or so providers that offer RUC compliance tools – i.e. other providers of eRUC (in particular, Navman) and providers of electronically-assisted RUC.

⁸⁹ SOI at [37.1].

- 80 Contrary to the Commission's view, electronically-assisted RUC systems do enable customers to capture most of the efficiency gains of an eRUC solution. The Commission has correctly identified the following efficiency benefits of eRUC systems:⁹⁰
- 80.1 reducing the costs of operations through avoiding the manual work to calculate and pay RUC;
 - 80.2 improving cash-flow through allowing licences to be purchased in smaller and cheaper increments in advance of when they are required; and
 - 80.3 allowing for more accurate calculation of payments and refunds when using private roads (which provide significant savings).
- 81 However, these benefits can also be achieved through an electronically-assisted RUC solution:
- 81.1 As explained at paragraph 29.4 above, many electronically-assisted RUC solutions automatically calculate off-road usage and generate electronic RUCOR (off-road rebate) claims. As far as EROAD is aware, this function is part of Smartrak's, Blackhawk's, Argus's, Trackit's and Precision Tracking's electronically-assisted RUC solutions. [].
- This factor is therefore effectively neutral as between eRUC and electronically-assisted RUC.
- 81.2 Electronically-assisted RUC solutions can considerably minimise the corporate overhead costs involved in calculating and paying RUC. For example:
 - (a) all electronically-assisted RUC solutions record distance via GPS and make it electronically available to the customer. This means that drivers no longer need to carry out the manual task of reading/collecting and reporting the daily reading; and
 - (b) several telematics providers' solutions not only automatically notify operators when the remaining distance on their RUC licence is low,⁹¹ but also automatically order a new RUC licence online.⁹² Accordingly, all the workflow tasks associated with purchasing a RUC licence can be avoided through an electronically-assisted RUC solution.
 - 81.3 Electronically-assisted RUC solutions therefore considerably reduce the administrative costs associated with using pure paper RUC. The level of avoided costs saved from an electronically-assisted RUC solution will vary depending on the solution and the customer's individual circumstances. For example, each customer will have a different workflow for RUC transactions, influenced by the size and makeup of their fleet, internal accounting systems and financial controls. The level of costs that a customer can avoid via an

⁹⁰ SOI at [36].

⁹¹ EROAD understands this feature is available as part of Smartrak, Blackhawk, Argus, Trackit and Cartrack's electronically-assisted RUC solutions.

⁹² EROAD understands this feature is available as part of Argus and Trackit's electronically-assisted RUC solution.

eRUC solution will also differ depending on their particular circumstances. For example, even with an eRUC solution, a customer may incur significant overhead cost processing eRUC invoices in their internal accounting and expense management systems.⁹³ Consequently while, as a general principle, eRUC will be somewhat more efficient for most customers than electronically-assisted RUC, the difference in avoided costs is not necessarily significant (and certainly not as substantial as the comparison between eRUC and purchasing paper RUC from retail agents), and may be negligible depending on the customer.

- 81.4 Electronically-assisted RUC can support cashflow management. Electronically displayed licences allow an operator to fine-tune purchasing of licences by tracking the licence distance travelled. Customers can therefore purchase subsequent licences on a shorter timeframe as needed, rather than potentially further in advance with manual purchasing.
- 82 Finally, Waka Kotahi's internet channel offers a streamlined approach to processing RUC transactions that is demonstrably attractive to customers, evidenced by the significant increase in the utilisation of this channel between 2010 and 2020 (see Figure 8 above).
- 83 Were the merged entity to attempt to leverage eRUC to increase the price of its plans, it would therefore be relying solely on the difference in avoided corporate overhead costs between eRUC and electronically-assisted RUC. The ability to claim offroad rebates and the use of money benefits of eRUC are neutral in comparison to electronically-assisted RUC. The difference in avoided costs saved as between eRUC and electronically-assisted RUC: (i) is much lower than in comparison to paper RUC, and (ii) varies significantly from customer to customer in ways that are not transparent to the supplier when it is participating in RFPs. The merged entity therefore could not be confident that a price increase would be profit-maximising. The likelihood is that a substantial number of customers would prefer either a competing eRUC solution, or an electronically-assisted RUC solution offered by another telematics supplier, or Waka Kotahi's internet channel, and the level of customer diversion would be practically impossible to quantify in advance of a price increase. Consequently, it is very unlikely that the merged entity would be able to increase the price of its plans through leveraging its eRUC solution.

As the vehicle telematics market in New Zealand is still immature, suppliers are incentivised to keep prices low to drive growth

- 84 Finally, it is also worth noting that the vehicle telematics market in New Zealand is a relatively immature market. To date, a substantial proportion of the addressable market continues to use paper RUC.⁹⁴ EROAD estimates that currently only []% of light and heavy vehicles in New Zealand that would benefit from a telematics solution use a telematics service. Accordingly, for the foreseeable future all suppliers in the market are incentivised to keep prices down in order to drive uptake, rather than to seek to extract additional profits from existing customers.

⁹³ EROAD's eRUC solution generates two invoices for every RUC transaction – one from EROAD and one from Waka Kotahi. eRUC also typically generates more transactions than paper RUC or electronically-assisted RUC, because RUC is purchased for each vehicle separately, in smaller increments, at the point it is required. Therefore, if a customer's invoicing process is onerous, eRUC may increase rather than decrease overhead costs.

⁹⁴ Paper RUC comprised []% of heavy RUC collected in 2021 (January to September) and EROAD expects paper RUC would be an even more significant percentage of light RUC collected.

The Commission has overstated the barriers to developing an eRUC solution

85 The Commission’s provisional view is that barriers to developing an eRUC solution are high because:

- 85.1 regulatory requirements for approving an eRUC solution are onerous;
- 85.2 the fact that road user charging is unique to New Zealand means scale must be achieved locally; and
- 85.3 switching costs are high, meaning entrants may have to rely on winning new customers.

Waka Kotahi is liberalising regulatory requirements to encourage a broader range of eRUC solutions

86 Waka Kotahi has revised its eRUC Code of Practice to take advantage of:⁹⁵

- 86.1 the increased diffusion and supply of RUC-suitable component and platform capabilities across a growing range of vehicle, equipment and information and communication technology sources. For example, Volvo’s partnership with Verizon to combine Volvo’s in-built telematics and Verizon’s cell network to replicate after-market telematics functionalities;⁹⁶
 - 86.2 further improvements to Waka Kotahi’s back office functions and ability to support electronic and electronically-assisted transactions. For example, in 2010 Waka Kotahi was unable to support full eRUC for light vehicles as their system could not recognise an alternative to the vehicle odometer as the official distance recorder; this situation has since changed, but demand for this has proven weak in the absence of other pressures; and
 - 86.3 increased regulator experience, allowing Waka Kotahi to move away from prescribing the form of eRUC to relying more on performance-based functional standards. For example, the presumption that an electronic distance recorder would be a single “black box” has been removed from the Code of Practice – allowing room for distributed systems potentially leveraging suitable technology within the vehicle.
- 87 One of the objectives of the Code of Practice is to “minimise barriers to potential ESPs entering the market”.⁹⁷ Waka Kotahi indicates in its guide to the system requirements for an eRUC system that it “will consider alternative methods to achieve the outcomes, especially if ESPs provide sound technical reasons”.⁹⁸ The changes introduced to the Code of Practice in October 2021 open the door to a wider range of service providers offering eRUC, such as original equipment manufacturers (**OEMs**) to introduce within-vehicle eRUC options (rather than in-vehicle devices

⁹⁵ The changes have progressed since they were identified by EROAD as a possibility in the clearance application; see at [215] of the clearance application. Waka Kotahi *Code of practice for electronic road user charges management systems* (October 2021) available at: <https://www.nzta.govt.nz/assets/resources/road-user-charges/eruc-guidelines/docs/ERUC-code-of-practice.pdf> (**Code of Practice**).

⁹⁶ [].

⁹⁷ Code of Practice at section 1.2.

⁹⁸ Code of Practice at 11.

fitted to the vehicle). These changes will encourage more providers to seek approval for their eRUC systems and are set out at **Appendix A**.

- 88 For providers of electronically-assisted RUC, the incremental investment required to develop an eRUC solution is reduced given they have already automated parts of the RUC compliance process for vehicle operators. It would be easier for these providers to invest in the development of an end-to-end service, or partner with a telematics provider (to provide an electronic distance recorder, for example RUC Monkey) to do so, and become ESPs.
- 89 Liberalisation of the Code of Practice reflects a shift in the market from vehicle-centric to business-centric solutions. By way of example, [

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Road-user charging is not unique to New Zealand

- 90 While RUC has historically been a regulatory setting unique to New Zealand,¹⁰⁰ there are trials to introduce similar systems occurring overseas, most relevantly in the United States and Australia at both the federal and state level:
 - 90.1 In the United States, California trialled a road user charge in 2016/2017 and EROAD participated in a pilot to test the feasibility of a "Mileage-Based User Fee" along the eastern seaboard in 2017. The Eastern Transport Coalition of states has received further funding to continue its multi-state truck pilot. Work is underway designing a national RUC pilot. There are more than 30 states that have, or are about to, undertake RUC studies. Some states have further progressed towards the implementation of RUC schemes; for example, Virginia is planning to implement RUC for fuel-efficient vehicles from July 2022 (a "highway use fee").
 - 90.2 Australia is conducting a "National Heavy Vehicle Charging Pilot".¹⁰¹ The trial explicitly seeks to test the quality of telematics data. EROAD participated in the first trial, and vehicle operators provided their data and data drawn from other telematics companies' systems. Phase 2 has been delayed due to the impact of COVID-19, but funding was reconfirmed in the current budget year and it is likely work will recommence in early 2022. While mandatory RUC may not be implemented in the very short-term, wider system preparations are underway to support the introduction of RUC; for example, improving the transparency of tax rate setting and its relationship to the costs of maintaining and improving road freight corridors.

⁹⁹ [

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¹⁰⁰ SOI at [76.1].

¹⁰¹ See <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/road-transport-infrastructure/heavy-vehicle-road-reform/charging-pilot> (accessed 26 October 2021).

- 90.3 South Australia and Victoria have confirmed that distance-based charging will apply to electric vehicles, and New South Wales have indicated they will do the same in 2027.
- 91 Therefore, there is increasing interest in RUC systems in two key jurisdictions where a number of New Zealand telematics suppliers already compete and could readily expand their offering, or use New Zealand with its existing framework as a trial run for expanding their offerings to these jurisdictions.¹⁰² For example, of providers active in New Zealand offering an eRUC or electronically-assisted RUC system:
- 91.1 Navman,¹⁰³ Smartrak,¹⁰⁴ Cartrack,¹⁰⁵ Ctrack¹⁰⁶ and Vehicle Technologies¹⁰⁷ are all active in Australia; and
- 91.2 Navman,¹⁰⁸ Cartrack¹⁰⁹ and Ctrack¹¹⁰ are active in the United States.
- 92 The trials in the United States have also led to the development of various odometer readers and suppliers, including partnerships to deliver RUC suitable information flows – such as that between Verizon and Volvo.¹¹¹
- 93 As RUC systems are increasingly likely to be of general application in a number of countries, it increases the likely return on investment for telematics suppliers with an improved guarantee of a wider customer base. This could encourage further expansion by not only those who provide appropriate or adaptable systems already (as identified above) but by telematics suppliers generally who see an opportunity to expand their suite of telematics solutions for customers to provide an eRUC-capable system. These providers would then be well placed, having trialled their systems overseas, to seek approval in New Zealand – and vice versa.

Switching costs are not a significant barrier to developing an eRUC solution

- 94 As discussed at paragraph 19 above, there is evidence of customers switching between suppliers of telematics solutions (whether or not the package that the customer chooses includes an eRUC system).¹¹² While there are obviously costs of switching,¹¹³ these are not a barrier to competition in relation to telematics generally, and therefore are not uniquely a barrier in relation to eRUC. As above, EROAD is also aware of examples where the new telematics supplier has paid to buy customers out of their current contract(s). [

¹⁰² SOI at [43].

¹⁰³ See <https://www.teletracnavman.com.au/>.

¹⁰⁴ See <https://smartrak.com/> (provides Australia contact details).

¹⁰⁵ See <https://aus.cartrack.com/contact-us>.

¹⁰⁶ See <https://ctrack-anz.com/>.

¹⁰⁷ See <https://vehicletech.co.nz/contact-us>.

¹⁰⁸ See <https://www.teletracnavman.com/company/contact-us>.

¹⁰⁹ See <https://www.cartrack.us/contact-us>.

¹¹⁰ See <https://ctrack.com/>.

¹¹¹ See <https://www.verizonconnect.com/solutions/oem/volvo/> (accessed 28 October 2021).

¹¹² SOI at [76.2].

¹¹³ The Commission identifies certain barriers at [76.2] of the SOI, raised during its interviews.

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- 95 In any event, telematics suppliers that currently offer an electronically-assisted RUC solution have an existing customer base to which they can offer eRUC as part of an expanded offering. Expanding the service offering to existing customers is common in the market, as all telematics suppliers are constantly evolving their service to meet changing customer needs.
- 96 We also disagree that “many of the customers that would find value in an eRUC system may already have purchased it from an existing supplier”.¹¹⁵ As explained above at paragraph 84, and in the clearance application, the market for telematics solutions in New Zealand to be relatively immature, with low adoption of telematics solutions (including of RUC systems) relative to the addressable market.¹¹⁶ The market is not yet saturated. Given that, in future, the scope of RUC compliance is likely to increase rather than decrease, EROAD expects new customers to continue to emerge.

The addressable market is likely to expand

- 97 The Commission refers to “speculation that as more New Zealanders move towards driving electric vehicles (EVs), which are currently exempt from RUC, fuel taxes will be replaced with a new funding system”.¹¹⁷ EROAD agrees that RUC or another form of distance charging will apply to more vehicles in future, in substitution for fuel taxes as a funding source for Waka Kotahi, making it easier for telematics providers “to achieve the necessary scale to justify the investment in an eRUC system”.¹¹⁸

¹¹⁴ [].

¹¹⁵ SOI at [76.3].

¹¹⁶ Clearance application at [134] and above at paragraph 84.

¹¹⁷ SOI at [21] and footnote 85.

¹¹⁸ SOI at footnote 85.

- 98 The role of RUC is likely to change in New Zealand. For example, in 2020, the Ministry of Transport started preliminary work into the broader application of RUC as a replacement for fuel taxes, and congestion charges:¹¹⁹

Future of the land transport revenue system

- We are doing some preliminary work into GPS-based road charging, as a potential replacement for fuel excise duty and RUC
- Multiple potential objectives in mind
 - manage demand
 - capture the real cost of transport (externalities) by setting different rates by time and location
- We are also actively considering congestion pricing options to improve network performance in Auckland, our biggest city, with specific consideration being given to the economic, social and environmental implications
- We have some challenging but exciting work ahead of us

42

March 2019

Ministry of Transport

Potential private sector role ...

49

Act as “retailer” and provide:

- device
- customer management role
- billing and payment services
- added value services
- “plan”

Who will provide services? (on their own or in conjunction with others)

- existing eRUC providers (tech, systems, system knowledge)
- fuel retailers (brand, customer relationships, retail outlets)
- mobile phone companies (brand, customer relationships, tech, comms)
- electricity retailers (brand, customer relationships)
- OEMs for new vehicles (brand, customer relationships – white label tech?)
- offshore operators
- innovators / new entrants

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Ministry of Transport

- 99 Electric vehicles (**EVs**) are exempt from RUC until 31 March 2024 (for light vehicles) or 31 December 2025 (for heavy vehicles).¹²⁰ This extended exemption is a current policy choice, to “encourage New Zealanders to buy light EVs”.¹²¹ The external review of the RUC system in 2016 found that industry associations expect electricity-powered vehicles to be required to pay RUC,¹²² and, as identified in the NZ Herald article cited by the Commission, extending RUC has already been floated by officials.¹²³

¹¹⁹ Ministry of Transport *New Zealand Transport System* (2020).

¹²⁰ See <https://www.nzta.govt.nz/vehicles/licensing-rego/road-user-charges/ruc-exemptions/> (accessed 26 October 2021).

¹²¹ *Te hau mārohi ki anamata | Transitioning to a low-emissions and climate-resilient future: Have your say and shape the emissions reduction plan* (Ministry for the Environment, 2021) available at: <https://environment.govt.nz/assets/publications/Emissions-reduction-plan-discussion-document.pdf> at 61.

¹²² Allen+Clarke *Evaluation of the New Road User Charges System: Cycle Three Report* (2016) available at: <https://www.transport.govt.nz/assets/Uploads/Report/RUC-Evaluation-Cycle-3.pdf> at p 61.

¹²³ Thomas Coughlan “Fuel taxes could be gone in three years as Waka Kotahi urgently looks to replace funding system” (*NZ Herald*) (2 September 2021) available at: <https://www.nzherald.co.nz/nz/politics/fuel-taxes-could-be-gone-in-three-years-as-waka-kotahi-urgently-looks-to-replace-funding-system/ENVPYQJHRJS7FESD5LURRV6IGY/>.

- 100 The discussion document recently released for the Government's first emissions reduction plan signals further road user charges in future, noting one of its steps to reduce reliance on cars in the first emissions budget (for 2022 to 2025) is to:¹²⁴

Reduce congestion and support emission reductions by enabling congestion pricing, and work with Auckland Council to implement it. Create a model that other councils can adopt, with emphasis on Wellington in this emissions budget period. Look at using other pricing tools to reduce emissions. Ensure regulation enables and encourages local government to use these tools.

Investigate ways to raise revenue for transport in future, including to replace the land transport funding system. This will include revenue, funding, and pricing options, and how these may be used together.

- 101 This draft plan signals a clear intent to introduce further RUC (or similar) requirements on a wider range of vehicles, providing telematics suppliers with confidence that the addressable market is likely to increase to form part of the Government's climate change response in the transport sector. With the pace of technology change in telematics generally, EROAD expects that telematics providers are well-placed to invest in the development of their own eRUC systems should they wish to broaden their product suite.
- 102 While RUC has historically been treated separately, it is increasingly aligned with tolling. For example, Transurban, Australia's largest toll provider which is present in the United States and a contender to deliver congestion pricing in New Zealand, has run multiple studies on using telematics to support tolling and is positioning itself to expand as road network manager in a RUC environment.¹²⁵

Conclusion

- 103 The clearest evidence that barriers to developing eRUC are comparatively low is that two suppliers have entered within the last five years (Navman and RUC Monkey).
- 104 But in addition to that evidence of actual entry, the combination of liberalised regulatory settings, application of RUC (or similar charges/pricing) more broadly in New Zealand and overseas and the increasing addressable market, means that the conditions of entry and expansion for RUC systems will decrease further. And, as the Commission identifies, a "key parameter of competition is how fast competitors develop and deploy new features".¹²⁶

Waka Kotahi exercises countervailing power, as can customers

- 105 The Commission is testing whether Waka Kotahi may exercise some countervailing power.¹²⁷ EROAD considers that it does. Waka Kotahi can control the behaviour of RUC system providers as it:¹²⁸

¹²⁴ *Te hau mārohi ki anamata | Transitioning to a low-emissions and climate-resilient future: Have your say and shape the emissions reduction plan* (Ministry for the Environment, 2021) available at: <https://environment.govt.nz/assets/publications/Emissions-reduction-plan-discussion-document.pdf> at p 59 and 68; this plan is a requirement under s 5ZG of the Climate Change Response Act 2002 with the emissions budget required under s 5X.

¹²⁵ For example, see <https://www.transurban.com/content/dam/transurban-pdfs/03/Industry-Report-FY21.pdf>.

¹²⁶ SOI at [15].

¹²⁷ SOI at [83].

¹²⁸ [].

- 105.1 is a credible alternative provider and RUC agent in its own right (see above from paragraph 65), directly delivering 27% of all RUC transactions via its internet service and phone/fax channels. Its internet channel is the most basic form of electronically-assisted RUC;
- 105.2 has the power to authorise a range of commercial, public and self-service agents to ensure the wide availability of channels through which vehicle operators can meet their RUC obligations;
- 105.3 regulates ESPs under the Road User Charges Act 2012 and accompanying regulations and the Code of Practice, setting service quality and behavioural standards for ESPs. It has the power to define the technical standards of function and form that an electronic distance recorder and an eRUC system must meet to be approved. As above at paragraph 86, Waka Kotahi's incentives are to lower, not raise, barriers;
- 105.4 has broad discretion to condition the service quality and behaviour of eRUC providers (ESPs), and to enable or incentivise other agents. As a positive example, the Ministry of Transport "has taken a market-led approach to encouraging uptake of eRUC" and this strategy was viewed in 2016 as effective.¹²⁹ Given the significance of the role it plays in RUC, the Ministry or Waka Kotahi could equally discourage uptake. It has wide audit and investigation powers and rights to cancel any approvals it has issued; and
- 105.5 has access to wider resources if needed as an instrument of government, including funding injections and/or changes to the regulatory framework. It is also responsible for providing advice to the Ministry of Transport on the costs to operate the RUC system, fee revenues needed to recover those costs, and the allocation of revenue shares both across channels and time. This advice is then incorporated into the Ministry's advice to Government on the setting of RUC administration fees.
- 106 Waka Kotahi would not fail to act if it saw EROAD, or any ESP, act in a manner that threatened the integrity of the eRUC system. Waka Kotahi audited ESPs in 2019 and issued a revised and more detailed audit methodology in 2021, indicating a more assertive stance to monitoring ongoing compliance.
- 107 The Commission also refers to limited evidence of countervailing power by customers.¹³⁰ Waka Kotahi does not disclose the identity of all RUC agents, such as providers of electronically-assisted RUC systems for self-supply. EROAD expects there will be in-house solutions where the customer is approved by Waka Kotahi – Waka Kotahi's 2020 data shows that [] of RUC transactions were processed by the "direct connect" channel (i.e. industry self-service). The underlying system for these in-house solutions may have been developed in partnership with a telematics provider – for example, Argus or by using a white-label solution.

¹²⁹ See Allen+Clarke *Evaluation of the New Road User Charges System: Cycle Three Report* (2016) available at: <https://www.transport.govt.nz/assets/Uploads/Report/RUC-Evaluation-Cycle-3.pdf> at p 27. While ESPs are established as "fit and proper agents" of Waka Kotahi, the Government can intervene should the private supply of eRUC services be seen to undermine RUC generally; see [].

¹³⁰ SOI at [80].

PART 4: COORDINATED EFFECTS

The supply of telematics is not vulnerable to coordination

Coordination on price, quality and innovation is unlikely

108 The supply of telematics solutions is not vulnerable to coordination on price, quality and innovation.¹³¹ The market is dynamic:

- 108.1 suppliers compete fiercely on their technology development – there is no incentive to coordinate on innovation;
- 108.2 suppliers deploy varying resource levels to developing and servicing features; and
- 108.3 prices are not transparent and can be agreed on a bilateral basis for the term of a contract (with renewal rights).

Coordination on customer allocation is unlikely

109 The supply of telematics solutions is not vulnerable to coordination through customer allocation.¹³² Coordination is unlikely because:

- 109.1 given many customers procure services via RFPs, coordination would require that certain suppliers decline invitations to participate in RFPs, or offer terms that are materially worse than they have offered previously or to other customers in the market. It would be difficult to conceal this type of conduct from customers, and therefore customers would be able to disrupt the coordination;
- 109.2 with the exception of specialist vehicles that require specific control systems (e.g. reefers and construction vehicles), there are not clearly defined and persistent customer groups that would support stable coordination over any extended period of time. Rather, customer needs are differentiated and changing with business need;
- 109.3 given that EROAD does not currently offer sensors/controls for specialist vehicles, the Proposed Transaction will not change the competitive dynamic in relation to those features, and therefore results in no merger-specific change to the likelihood of coordinated outcomes in sector verticals;
- 109.4 the supply-side of the market is highly asymmetric, with a large number of suppliers of different sizes, relative areas of product strength, and commercial strategies. Against that background, coordinated behaviour is very unlikely; and
- 109.5 suppliers have no visibility of each other's research and development pipelines. Accordingly, there is no way to monitor the investments other suppliers are making in new features until the relevant product is announced. At this point, the investment is sunk and therefore the supplier is strongly incentivised to offer the feature to customers. In the absence of any clear method of coordinating on technology pipelines, it would be very difficult for suppliers to arrive at coordination on customer allocation.

¹³¹ SOI at [91].

¹³² SOI at [92].

Coordination through standards and regulations is unlikely

- 110 The supply of telematics solutions is not vulnerable to coordination through standards and regulations.¹³³
- 111 Only certain telematics features are subject to regulatory requirements or standards. For example, eRUC and logbook solutions are subject to regulatory requirements administered by Waka Kotahi but cameras and asset tracking solutions are not. Therefore the potential for coordination through standards and regulations applies only to a limited scope of telematics features.
- 112 EROAD does not lobby the Government or its agencies. EROAD engages in Government-initiated public and industry consultations on policy, legislative and regulatory matters of interest, and participates in various industry conferences.¹³⁴
- 113 EROAD corresponds with Waka Kotahi on specific issues of interpretation or application of existing rules and regulations where these appear to be inconsistent with the law or a source of avoidable cost or risk for EROAD or its customers. In these activities, EROAD's objectives are not usually to achieve a specific technical setting, but to improve understanding (EROAD's or the Government's) to support the better functioning of the regulatory framework or of EROAD's services within those frameworks.
- 114 EROAD does not engage with other ESPs in Government consultation, except to the extent it is required by the Government process:
- 114.1 To date, only the Code of Practice reviews in 2020 and 2021 have brought all four ESPs together:
- (a) Waka Kotahi organised, set the agenda and chaired the meetings.
 - (b) Prior to the meetings, each ESP had opportunities to provide proposed changes and subsequent written comments directly to Waka Kotahi, which Waka Kotahi aggregated and anonymised before sharing with the group for the meetings.
 - (c) Waka Kotahi indicated it consulted with wider industry parties in the prelude to the Code of Practice reviews. However, Waka Kotahi did not identify the participants or any views they expressed.
- 114.2 The Ministry of Transport process regarding future funding of the land transport system proceeded bilaterally, with no information shared with participants about other participants or their views. The Ministry did indicate that wider industry groups and alternative technology providers (such as telecommunications) were engaged with, but did not provide details of that consultation.
- 115 EROAD participates in research workshops at the invitation of Waka Kotahi or the Ministry of Transport. EROAD is often the only telematics company at these events (for example on road safety).

¹³³ SOI at [95].

¹³⁴ [

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- 116 EROAD does not give and has not received information on other ESPs or telematics companies as part of any of these regulatory processes/engagement, except at the most general level of observation or example.
- 117 Where EROAD does engage with other parities on developing a policy position this is typically through customer industry or sector bodies such as the Automobile Association (**AA**), the various road transport associations, Local Government New Zealand and Infrastructure New Zealand.¹³⁵
- 118 The Proposed Transaction would not change these dynamics.

PART 5: VERTICAL EFFECTS

- 119 EROAD agrees that the Proposed Transaction is unlikely to substantially lessen competition through vertical foreclosure.¹³⁶ EROAD competes at the same level of the supply chain as Coretex and supply arrangements between competitors are unusual. [

]. As the Commission identifies,¹³⁷ the rarity of these arrangements and failure of other negotiations demonstrates that reselling others' products is difficult and unusual given consumer preferences for integrated solutions.

PART 6: CONGLOMERATE EFFECTS

- 120 EROAD agrees that that the Proposed Transaction is unlikely to substantially lessen competition through conglomerate effects. Bundling already occurs in the market (however defined),¹³⁸ and the Proposed Transaction would not create new opportunities to do so.¹³⁹

¹³⁵ For other examples of relevant trade and industry associations see Appendix 4 of the clearance application.

¹³⁶ SOI at [99].

¹³⁷ SOI at [99.2] and footnote 105.

¹³⁸ For example, see Appendix 14 of the clearance application for EROAD's plans.

¹³⁹ SOI at [102]–[103].

APPENDIX A: AMENDMENTS TO THE CODE OF PRACTICE (OCTOBER 2021)

2020 edition	2021 edition	Impact of change
The electronic distance recorder is the in-vehicle unit that acts as the primary data capture device and electronic distance licence display	The electronic distance recorder is a fit-for-purpose sub-system integrating a mix of hardware elements (including power, sensors, processors, memory, display/s and communications components, including any added after-market) and software that meets the functional requirements set out in the regulations	[].
The primary distance recorded should be derived from wheel revolutions The electronic distance recorder should validate the primary distance measured and onboard time against global navigation satellite system (GNSS) location/time, inertial subsystem, and ignition circuit data	The distance recorded must be derived from at least two independent sources and cross referenced against each other. The sources may include, but are not limited to; wheel revolutions, GNSS and inertia subsystems	[].
[An electronic distance recorder should] continue to accurately display the distance travelled, irrespective of communications network coverage	[An electronic distance recorder should] continue to accurately measure and record and be able to display the current distance travelled, irrespective of communications network coverage	[].
[An electronic distance recorder should] be permanently connected to any external inputs	[An electronic distance recorder should] be securely associated, either physically and/or digitally, to any external inputs	[].
[An electronic distance recorder should] have sufficient security mechanisms to mitigate the risk of physical and electronic tampering	[An electronic distance recorder should] have sufficient security mechanisms to mitigate the risks from physical and electronic tampering	[].