

## Statement of Issues

### NZ Post/PBT

28 February 2024

### Introduction

1. On 20 November 2023, the Commerce Commission registered a clearance application (the Application) from New Zealand Post Limited (NZ Post) seeking clearance for it, or any interconnected body corporate, to acquire certain courier business assets of PBT Group Limited (PBT) (the Proposed Acquisition).<sup>1</sup> Specifically, NZ Post seeks to acquire PBT's existing contracts with businesses who have signed contracts to use PBT's courier services (PBT Courier Contracts).<sup>2</sup>
2. To clear an application, we must be satisfied that an acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so NZ Post and PBT (together, the Parties), and other interested parties, can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition concerns may arise, as the investigation continues.

### The concerns we are continuing to investigate

5. Based on the evidence before us, we are currently not satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in one or more relevant markets.
6. The evidence before us currently indicates that, while they do not compete closely, NZ Post and PBT do provide overlapping courier services in New Zealand.
  - 6.1 NZ Post provides a broader range of courier services than PBT does, including urgent and overnight deliveries, standard or non-urgent deliveries (typically

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<sup>1</sup> A public version of the Application is available on our website at: <https://comcom.govt.nz/case-register>

<sup>2</sup> As noted in the Application, NZ Post would not be acquiring any assets associated with PBT's other businesses, or PBT's contractual arrangements with the courier van owner-operators PBT currently contracts to provide local delivery services. However, NZ Post submits that it may enter into contracts with some former PBT drivers (the Application at [19.3]).

completed over 2-3 business days)<sup>3</sup> as well as weekend deliveries. NZ Post offers these services to businesses and consumers in both urban centres and rural locations across New Zealand. In comparison, PBT only provides standard weekday courier deliveries for business customers.<sup>4</sup> As such, the main area of overlap between NZ Post and PBT is in PBT's core service which is the supply of standard weekday courier deliveries for business customers.

- 6.2 PBT customers we have spoken with have indicated that they do not see NZ Post and PBT as close substitutes given NZ Post appears to charge significantly more for the same service.
7. Although we are still assessing this point, we currently consider that PBT appears to compete more closely for the supply of standard weekday courier deliveries with Freightways Group Limited (Freightways)<sup>5</sup> and Aramex New Zealand Holdings Limited (Aramex). This is because PBT's service level and pricing is more similar to these providers (although the evidence we have seen suggests that PBT's prices tend to be cheaper).
8. We are still to conclude on the definition of the relevant market(s) for assessing the competitive effects of the Proposed Acquisition. However, for the purposes of this Sol, we have defined a national market for the supply of standard weekday courier deliveries between urban areas for business customers. We have done so because our current evidence indicates that this is the main area of overlap between the merging parties which only a subset of all couriers can provide. For the reasons discussed below, we currently consider our proposed definition of the relevant market would best isolate the key competition issues in this matter. Regardless of how broad or narrow the market is, we are focused on assessing the closeness of competition between NZ Post, PBT and other courier providers, and the strength of competitive constraints from all sources.
9. Our main concern relates to how the Proposed Acquisition may enable NZ Post to profitably raise prices in the supply of standard weekday courier deliveries between urban areas for business customers, compared to a counterfactual in which PBT remains independently owned.
- 9.1 There are few competitors that offer a similar nationwide standard weekday service to PBT; this service can only be offered by providers that have a

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<sup>3</sup> For the purpose of the Sol, we have referred to non-urgent deliveries, typically completed over 2-3 business days, as standard weekday deliveries.

<sup>4</sup> PBT provides weekday delivery within and between urban areas in the same island, and national standard (2-3 day) delivery between urban areas in different islands and from an urban area to a rural area, to business customers throughout New Zealand. PBT does not compete for deliveries that are urgent, same-day or overnight and before 9am. PBT makes deliveries within and between urban centres using its own network, which has branches in 17 urban centres (and all major ones) in the country. It makes rural deliveries using NZ Post's wholesale service, which incurs additional costs.

<sup>5</sup> As discussed further below, Freightways offers courier services through several brands of varying price and service levels, with PBT competing most closely with the Post Haste and Castle Parcels brands.

national network (such as NZ Post, certain Freightways' brands and Aramex), and cannot easily be fulfilled by smaller and/or point-to-point providers.

- 9.2 The evidence we have gathered to date indicates that PBT's standard weekday courier service is often cheaper than the offerings by competing network couriers such that the removal of PBT may leave customers with only higher priced alternatives.
10. In summary, we are currently not satisfied that the Proposed Acquisition would not substantially lessen competition due to unilateral effects because the evidence to date suggests that:
- 10.1 the Proposed Acquisition would remove an effective, low-cost option for business customers that require standard weekday courier services between urban areas. Other existing network courier providers offering similar services appear to charge higher prices and/or operate at a smaller scale than PBT. As such, we are currently not satisfied that they would be likely to materially constrain NZ Post and prevent a substantial lessening of competition;
  - 10.2 barriers to expansion for smaller network and point-to-point couriers appear to be high, particularly due to the costs associated with establishing a national network and achieving sufficient scale to compete effectively;
  - 10.3 for the same reason, timely entry by new network couriers appears unlikely (including any expansion of point-to-point couriers to become network couriers); and
  - 10.4 although it appears that some larger customers have countervailing power in that they can establish (or credibly threaten to establish) their own, albeit limited, delivery network, many of them do not appear to possess it, and it is not clear that such countervailing power would be used to protect all market participants. Further, the evidence suggests that many customers are unwilling to sponsor entry and expansion of courier providers.
11. We are also currently not satisfied that the Proposed Acquisition would not substantially lessen competition due to coordinated effects because the evidence to date suggests that:
- 11.1 the supply of courier services may be vulnerable to coordination, particularly because there are only a few large providers, all of which face profitability pressures,<sup>6</sup> and there is likely to be a degree of transparency in pricing; and
  - 11.2 the Proposed Acquisition may change conditions in the relevant market so that coordination is more likely, more complete, or more sustainable: coordination may be easier with fewer suppliers, and PBT's removal may qualify as the removal of a disruptive influence.

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<sup>6</sup> For example, according to the Application at 4, courier providers are facing low and declining margins.

12. We have not currently identified competition issues outside of these core concerns, but would welcome any submissions on this, particularly on whether there might be other existing or potential markets impacted by the Proposed Acquisition such as market(s) for:
- 12.1 standard weekday deliveries for business customers seeking courier deliveries within urban centres (eg, from one location in Auckland to another location in Auckland); and
  - 12.2 the provision of wholesale network access to courier providers.
13. We explain our reasons for our current views below and invite submissions on them.

### Process and timeline

14. We have agreed with NZ Post to extend the period in which to make a decision from the initial 40 working day statutory timeframe until **30 April 2024**.
15. We would like to receive submissions and supporting evidence from NZ Post, PBT and other interested parties on the issues raised in this Sol. We request responses by close of business on **13 March 2024**, including a confidential and public version of any submission made. All submissions received will be published on our website with appropriate redactions.<sup>7</sup> All parties will have the opportunity to cross-submit on the public versions of submissions received from other parties. Cross-submissions must be received by close of business on **20 March 2024**.
16. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

### The Parties and the Proposed Acquisition

17. NZ Post and PBT are the largest and fourth largest of New Zealand's network couriers respectively. The Parties overlap in the supply of courier delivery services to Business-to-Business customers and Business-to-Consumer customers.
- 17.1 NZ Post is a state-owned enterprise under the State-Owned Enterprises Act 1986.<sup>8</sup> It operates a domestic small parcel courier business and is the largest provider of such services in New Zealand.<sup>9</sup>

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<sup>7</sup> Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

<sup>8</sup> The Application at [6]-[7].

<sup>9</sup> The Application at [8] and 4. NZ Post also owns Fliway Group Limited, which it submits specialises in the delivery of items that are typically too big to be carried by courier networks but are still transported as individual items rather than in bulk. The Application at [9].

- 17.2 PBT is 75% owned by Waterman Capital, and 25% owned by Brendon Thomas, Chris Western, and Dave Lovegrove (or their nominees).<sup>10</sup> PBT provides a range of services including freight, logistics, third-party logistics, storage and distribution services.<sup>11</sup> However, of most relevance to the Application and this Sol, PBT operates a courier business that provides courier services to business customers throughout New Zealand.<sup>12</sup>
18. With the Proposed Acquisition, NZ Post would acquire PBT's existing contracts with businesses which have signed contracts to use PBT's courier services. NZ Post submits in the Application that it seeks to acquire the PBT Courier Contracts as it presents an opportunity for it to quickly add volume to its existing courier business without having to materially increase costs.<sup>13</sup>

### **Relevant background on the courier industry**

19. Courier services can involve parcels or packages being picked up and delivered within the same city, between major cities, or from one location to another within New Zealand. The courier services offered by each courier can vary based on time. Services can be urgent (picked up and delivered within a few hours), same day, next day, overnight or within a few days. Services can also involve the option of weekend or evening delivery.
20. Courier services are supplied to both businesses and consumers. As a result, there are four main types of deliveries:
- 20.1 Business-to-Business (B2B) deliveries, where a parcel or package is couriered from one business to another business;
  - 20.2 Business-to-Consumer (B2C) deliveries, where a parcel or package is couriered from a business to a consumer (eg, for delivery of online shopping);
  - 20.3 Consumer-to-Business (C2B) deliveries (eg, for return of an online purchase to a retailer); or
  - 20.4 Consumer-to-Consumer (C2C) deliveries, where a parcel or package is couriered from one consumer to another consumer.
21. NZ Post and PBT both supply B2B and B2C courier services, although we understand that the majority of NZ Post's services are B2C, and the majority of PBT's services are B2B.<sup>14</sup> PBT does not currently provide any C2B or C2C services.

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<sup>10</sup> The Application at [12].

<sup>11</sup> The Application at [15].

<sup>12</sup> The Application at [16]. PBT does not offer services to individual customers.

<sup>13</sup> The Application at [3], [4] and [36]. The PBT Courier Contracts comprise [ ] customer contracts.

<sup>14</sup> The Application at [64].

22. NZ Post submits, and our market enquiries to date have confirmed, that there are two types of couriers: network couriers; and point-to-point couriers.<sup>15</sup>
- 22.1 Network couriers collect parcels from customers anywhere in New Zealand and deliver them anywhere in New Zealand using their own central warehouses/depots to sort parcels.<sup>16</sup>
- 22.2 Point-to-point couriers offer faster parcel delivery services by offering a decentralised delivery model. That is, point-to-point couriers do not use depot services to sort parcels, but instead collect the goods from the sender and take them straight to the recipients.<sup>17</sup>
23. NZ Post and PBT both supply network courier services in New Zealand. As discussed above, NZ Post offers a broad range of services including urgent and overnight deliveries, standard or non-urgent deliveries (typically completed over 2-3 business days) as well as weekend deliveries, while PBT only offers standard weekday delivery services.
24. Other well-known network couriers are:
- 24.1 Freightways, which operates several courier brands, including New Zealand Couriers, Post Haste, Castle Parcels, Now Couriers, Sub 60 and Kiwi Express; and
- 24.2 Aramex, which entered New Zealand in 2016 when it purchased Fastway Couriers.
25. We understand that there is a spectrum of price and quality of service across the courier industry. Some market participants described the various network couriers as operating within different ‘tiers’ based on price, service quality and network size. We consider that:
- 25.1 NZ Post and Freightways’ New Zealand Couriers brand could be considered as ‘tier one’ providers, as the evidence gathered suggests that the two offer the best service (including the timeliest deliveries) and are generally considered to be the most expensive;<sup>18</sup>

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<sup>15</sup> The Application at [24].

<sup>16</sup> As discussed further below, network courier companies in New Zealand include companies such as NZ Post, Freightways, Aramex and PBT.

<sup>17</sup> Point-to-point courier companies include companies such as Urgent Couriers, Deadline Express and Uber Connect.

<sup>18</sup> For example, see Commerce Commission interviews with [

- 25.2 providers such as Aramex, PBT and Freightways' Post Haste and Castle Parcels brands could be considered to be 'tier two' providers as they are cheaper and provide a lower service level offering (for example, slower deliveries);<sup>19</sup> and
- 25.3 providers such as Team Global Express Pty Limited (Team Global Express, which was formerly known as Toll) and Parcel Express Limited (Parcel Express) could be considered to be 'tier three' providers because their courier networks are smaller than the other providers.<sup>20</sup>
26. In addition to suppliers that provide courier services direct to businesses and customers, there are active aggregators/resellers that negotiate rates with courier companies on behalf of customers for a fee. Examples of aggregators/resellers include:<sup>21</sup>
- 26.1 aggregators such as Online Distribution, Vertical Logistics, R3pack, GoSweetSpot (33% owned by Freightways), Parcelport, and Trade Me; and
- 26.2 pick and pack logistics providers such as DHL Supply Chain, Schenker, Smartbox, and Supply Chain Solutions.

### The relevant markets

27. We discuss below the relevant market for assessing the core concerns that we currently have about the Proposed Acquisition.
28. Market definition is a tool that helps identify and assess the close competitive constraints a merged entity is likely to face. We define markets in the way that we consider best isolates the key competition issues that arise from a specific merger or acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act 1986 (the Act), as a matter of fact and commercial common sense.<sup>22</sup>
29. We have yet to reach any definitive views on the relevant market(s) for assessing our core concerns. However, for the purposes of the Sol, we have defined a market for the supply of standard weekday courier deliveries between urban areas for business customers.
30. We invite submissions on our current approach to market definition and for parties to provide us with further evidence on the scope of the relevant markets.

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<sup>19</sup> The Application at [16], [90] and [97] and Commerce Commission interviews with [ ] and [ ].

<sup>20</sup> For example, see Commerce Commission interview with [ ].

<sup>21</sup> The Application at [66]-[67].

<sup>22</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81] and Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [3.7]-[3.10].

### What NZ Post submits

31. NZ Post submits that the relevant market is the national market for the provision of domestic courier services, which involves the pickup and delivery of ambient parcels under 25kg in weight.<sup>23</sup>
32. In defining this market, NZ Post submits that:
  - 32.1 health and safety and other operational requirements mean that domestic couriers typically only pick up and deliver parcels with a weight less than 25kg (for international parcels the limit is 30kg);<sup>24</sup>
  - 32.2 courier services only involve ambient parcels because, with the exception of groceries or meal kits which are packaged with ice and insulated bags and can be transported by couriers, the transportation of chilled or frozen goods requires specialist assets and processes and falls outside the courier market;<sup>25</sup>
  - 32.3 network and point-to-point couriers are in the same market because customers do not care how their parcel is delivered;<sup>26</sup>
  - 32.4 all major courier providers operate in the same or similar urban areas across New Zealand as PBT, and the fact that there are some locally focused couriers in a region does not mean the market is not New Zealand-wide;<sup>27</sup> and
  - 32.5 given all couriers offer B2B and B2C, defining separate B2B and B2C customer markets would not assist in informing the competition analysis.<sup>28</sup>
33. NZ Post alternatively submits that there could be national markets for the provision of domestic courier services to business for delivery to:<sup>29</sup>
  - 33.1 other business customers (a B2B courier market); and
  - 33.2 consumers (a B2C courier market).

### Our view

34. Based on the evidence currently before us, we consider that our core concerns arising from the Proposed Acquisition are best isolated by defining a national market for the supply of standard weekday courier deliveries between urban areas for business customers (who may require deliveries to other businesses and/or to consumers, ie, B2B and/or B2C deliveries).

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<sup>23</sup> The Application at [44]. We understand that ambient parcels are parcels that do not require temperature-controlled environments (ie, are not chilled or frozen).

<sup>24</sup> The Application at [51].

<sup>25</sup> The Application at [52].

<sup>26</sup> The Application at [53-54].

<sup>27</sup> The Application at [57] and [59].

<sup>28</sup> The Application at [65].

<sup>29</sup> The Application at [45].



35. We note that PBT provides its service both to business customers that are end-users, such as retailers needing deliveries to customers, and to wholesale customers which resell to end-users, such as logistics providers. While we understand that business customers and wholesale customers can be charged differently, the current evidence indicates that both groups face the same alternative suppliers for the same service. Accordingly, we consider competition to serve both groups in the same assessment, and do not define separate markets for the two functional levels.
36. We discuss in turn below our preliminary views on the product dimension, geographic scope and customer dimension of this market.
37. We invite submissions on our current approach to market definition and for parties to provide us with further evidence on the scope of the relevant market(s).

*Product dimension*

38. We currently consider that standard, weekday deliveries between urban centres for business customers may constitute a distinct product market for the following reasons.
- 38.1 On the demand side, a business customer seeking to send its volumes between many urban centres, especially at scale, is unlikely to be able to use point-to-point couriers, or receive competitive rates from couriers specialising in urgent or overnight deliveries, which incur extra costs and are priced higher.<sup>30</sup>
- 38.2 On the supply side, we currently consider that point-to-point couriers, and any other couriers that lack networks covering at least all major urban centres around the country, could not in the foreseeable future switch to providing national services between the major urban centres in response to a small but significant non-transitory increase in price, referred to as SSNIP, for the latter.<sup>31</sup>

*Geographic dimension*

39. We currently consider that it is appropriate to define a national market to assess our concerns.
40. We note that the relevant product market already has a geographic aspect – by focusing on the service of (standard, weekday) deliveries between urban centres around the country, which can only be efficiently provided by couriers with networks covering at least all major urban centres. As regards geographic market definition, we assess

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<sup>30</sup> We understand that business customers could not use point-to-point couriers to send their deliveries between urban centres because most point-to-point couriers only operate within urban centres and those few that operate between some centres lack coverage comparable to PBT's. For example, see Commerce Commission interview with [ ] and Commerce Commission interview with [ ].

<sup>31</sup> Couriers currently lacking networks would need to expand materially to constrain PBT. Our detailed assessment of the prospects for expansion is included below.

whether business customers based in different parts of the country have the same set of providers for this service, or different sets.

41. Couriers that are realistic alternatives for PBT's customers – providing scale deliveries between urban centres around the country – have similar-sized or larger networks. Accordingly, PBT's customers would likely face the same set of alternative providers wherever in the country the customers are based.<sup>32</sup>

#### *Customer dimension*

42. As noted above, the services provided by PBT and its competitors are supplied to business customers requiring standard deliveries between urban centres. The current evidence does not indicate that there are further customer subgroups with significantly different needs that face different pricing and/or sets of alternative providers, such that separate markets should be defined based on customer type.

#### **With and without scenarios**

43. Assessing whether a substantial lessening of competition is likely requires us to:
- 43.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and
- 43.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

#### **The factual**

44. With the Proposed Acquisition, NZ Post would acquire the PBT Courier Contracts, which total [ ] existing customer contacts. We understand that, in this industry, customer contracts such as these tend to often be relatively informal/for short term periods. However, if the Proposed Acquisition proceeds, NZ Post would be responsible for fulfilling these contracts/commitments.<sup>33</sup>

#### **The counterfactual**

45. NZ Post submits that the Proposed Acquisition is best assessed against a status quo counterfactual, ie, NZ Post operating as it currently does and PBT retaining its courier business (under current or new ownership).<sup>34</sup> For the purposes of this Sol, we also

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<sup>32</sup> We currently consider that this should be the case so long as customers can arrange pick-up from an urban centre. On the current evidence, all business customers likely to be affected by the Proposed Acquisition can do so.

<sup>33</sup>

[ ].

<sup>34</sup> The Application at [43].

consider it is appropriate to assess the Proposed Acquisition against a counterfactual where the PBT Courier Contracts remain independent of NZ Post. In this scenario, either:

- 45.1 the PBT Courier Contracts are retained by PBT; or
- 45.2 the PBT Courier Contracts are purchased by an independent third party that would continue to operate in competition with NZ Post.

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<sup>35</sup> [

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<sup>38</sup> [

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50. We invite submissions on the likely without-the-acquisition scenarios.

### **Unilateral effects**

51. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase prices above (and/or reduce quality below) the level that would prevail without a merger or acquisition.<sup>39</sup>

### **NZ Post's submissions**

52. NZ Post submits that the Proposed Acquisition would not be likely to substantially lessen competition due to unilateral effects because, in its view:<sup>40</sup>
- 52.1 PBT is not a particularly strong or aggressive competitor, which is illustrated by its modest market share;
  - 52.2 there is nothing to suggest that PBT's competitive significance is greater than its existing market share, or any reason to believe that PBT would become more competitively significant in the future;
  - 52.3 NZ Post would continue to be constrained by the strong competition currently provided by Freightways, which is a clear leader in B2B and an increasingly significant force in B2C;
  - 52.4 NZ Post would also continue to be constrained by competition from Aramex, while other smaller competitors also provide some constraint on NZ Post and face no barriers to grow to replace the level of constraint currently provided by PBT; and
  - 52.5 large customers and resellers would continue to be able to exercise countervailing power to constrain NZ Post.

### **Summary of our current view**

53. We are continuing to explore the issues set out in this Sol, but we are currently not satisfied that the Proposed Acquisition would not substantially lessen competition due to unilateral effects, leading to higher prices or lower quality in the national market for the supply of standard weekday courier services between urban centres for business customers.<sup>41</sup>
54. Overall, our current assessment indicates that:

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<sup>39</sup> Mergers and Acquisitions Guidelines above n23 at [3.62]

<sup>40</sup> The Application at [72].

<sup>41</sup> Our concerns rest on evidence gathered from a range of market participants (described below) and submissions which raised concerns that the Proposed Acquisition is anti-competitive and would result in higher prices. Public versions of these submissions are on our case register.

- 54.1 a material number of PBT's customers currently receive low prices for this service, and in some cases possibly the lowest prices in the market;
- 54.2 PBT's prices are below those of its closest competitors, being Aramex and Freightways' Post Haste and Castle Parcels brands;
- 54.3 post-acquisition, NZ Post could have the ability and incentive to raise prices to the customers that it would inherit from PBT to levels just below Aramex's and Freightways' Post Haste and Castle Parcels brands; and
- 54.4 given the scale required to offer an equivalent service, the merged entity is unlikely to be constrained by the expansion of smaller courier providers (such as point-to-point couriers), or by new entry. Customers are also unlikely to exercise countervailing power to constrain the merged entity.
55. Key evidence that underlies this assessment is as follows.<sup>42</sup>
- 55.1 For weekday, interurban deliveries, PBT provides the cheapest services, at least for a proportion of its customers.<sup>43</sup> Evidence received to date indicates that Aramex and Freightways' Post Haste and Castle Parcels brands typically provide services at higher price points than PBT, and NZ Post and Freightways' New Zealand Couriers brand provide services at significantly higher price points.
- 55.2 PBT may compete most closely with Aramex and Freightways' Post Haste and Castle Parcels brands, although we are still assessing the closeness of competition. PBT's price points appear to be closer to those providers' [ ]. PBT does not appear to compete closely with NZ Post or Freightways' New Zealand Couriers brand.
- 55.2.1 In particular, there is little evidence that PBT is constraining NZ Post's prices for the same service.
- 55.2.2 There is also little evidence of PBT winning customers from NZ Post, despite PBT's lower prices. PBT may face capacity constraints which prevent it from profitably expanding, may offer higher prices to new customers than to existing ones, and/or may be targeting more price-sensitive customers than NZ Post does,<sup>44</sup> while offering a service that is nonetheless substitutable.

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<sup>42</sup> Additional references are provided in our detailed assessment below.

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<sup>44</sup> Less price-sensitive customers may include retailers and logistics providers that can more easily pass on courier costs to their respective customers – such as retailers with market power.

55.2.3 There is also little evidence of NZ Post winning customers from PBT. On our current evidence, PBT’s customers advise that NZ Post will not offer pricing close to PBT’s.

56. While there is little evidence that PBT is constraining NZ Post’s prices for the same service, we are concerned that the Proposed Acquisition could give rise to unilateral effects.

56.1 If NZ Post acquires PBT’s customers, it may face incentives to raise the prices of PBT’s services over time.

56.1.1 [ 45 ]

56.1.2 NZ Post may make more profit on customers acquired from PBT if it raised prices from PBT’s current levels to levels close to those offered by PBT’s closest competitors, being Aramex and Freightways’ Post Haste and Castle Parcels brands. According to our current evidence, those competitors prices tend to be materially higher than PBT’s existing prices.<sup>46</sup> As a result, NZ Post may be able to raise its prices close to those providers’ current levels without a high risk of losing the customers to competitive responses from them.<sup>47</sup>

56.1.3 NZ Post may also face incentives to raise the prices charged to customers inherited from PBT to help cover its own costs. As noted in the Application, NZ Post has invested more than \$200million in its Te Iho network transformation programme and “sees the acquisition as a way to add volume to its existing courier business without materially increasing its costs.”<sup>48</sup> While the acquisition of the PBT Courier Contracts may not increase NZ Post’s costs, if its ongoing fixed costs have been raised by its own investments it may still seek to contribute to them with revenues from customers acquired from PBT, thereby facing an incentive to raise prices above PBT’s historic levels. We continue to assess this issue.

56.1.4 Overall, over time, NZ Post may have the ability and incentive to raise prices to the customers that it inherits from PBT with the Proposed Acquisition. The evidence currently does not strongly indicate that NZ

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<sup>45</sup> [ ].

<sup>46</sup> [ ].

<sup>47</sup> We received feedback that PBT has not already raised its prices to particular customers to match Aramex’s and Freightways’ Post Haste and Castle Parcels brands. In our view, this indicates that PBT may be constrained by customers’ perceptions of service quality (lower quality services may be more prone to delays, damage or delivery instructions not being followed.) As we explain in detail below, we have seen mixed evidence about the relative quality of PBT’s, Aramex’s and Freightways Post Haste and Castle Parcels brands’ services, but some customers said PBT is perceived (perhaps unfairly) as offering the lowest quality. To retain customers with such perceptions, PBT may need to maintain prices below rivals’.

<sup>48</sup> The Application at [35]-[36].

Post's pricing to non-PBT customers in this particular market would be affected, although we continue to investigate this issue.

56.2 Aramex and Freightways' Post Haste and Castle Parcels brands could also face incentives to raise their prices. As noted above, these courier providers appear to compete more closely with PBT, especially for more price-sensitive customers. The loss of PBT as a low-cost independent competitor could relax constraints on those providers.

56.3 NZ Post is not likely to be constrained from raising prices to customers that it inherits from PBT by prospects of expansion, entry or countervailing power.

56.3.1 Barriers to expansion for smaller courier providers appear to be high, particularly due to the costs associated with establishing a national network and achieving sufficient scale to compete effectively.

56.3.2 For the same reason, timely entry by new couriers appears unlikely including any expansion of point-to-point couriers to become network couriers.

56.3.3 Although it appears that some larger customers have countervailing power in that they can establish their own, albeit limited, delivery network, many of them do not appear to possess it, and it is not clear that such countervailing power would be used to protect all market participants. Further, the evidence suggests that many customers are unwilling to sponsor entry and expansion of courier providers.

57. We discuss further, in turn below:

57.1 the loss of competition with the Proposed Acquisition;

57.2 the constraint provided by other existing courier providers;

57.3 the constraint from new entry or expansion by courier providers; and

57.4 the countervailing power of customers.

58. We invite submissions on our assessment of unilateral effects.

### **The loss of competition with the Proposed Acquisition**

59. In assessing the loss of competition as a result of the Proposed Acquisition, we have assessed:

59.1 the loss of competition between NZ Post and PBT; and

59.2 the loss of competition between PBT and other courier providers.

60. Based on the evidence we have received to date, we are not yet satisfied that the Proposed Acquisition would not remove an important competitive constraint currently provided by PBT.

*Loss of competition between NZ Post and PBT*

61. The Proposed Acquisition would remove competition between NZ Post and PBT for business customers that require standard, weekday courier deliveries between urban areas. However, we do not currently consider that NZ Post and PBT compete closely for the supply of this delivery service.

62. The evidence we have received to date is generally aligned with NZ Post’s submissions in the Application that, rather than competing closely with PBT, Freightways (particularly the New Zealand Couriers brand) is NZ Post’s closest, and largest, competitor. For example:

62.1 some market participants referred to NZ Post and Freightways as the “dominant players”;<sup>49</sup>

62.2 [ ] advised that it does not come across PBT often when competing in RFPs or winning customers<sup>50</sup> and [ ];<sup>51</sup>

62.3 PBT said it considers [ ] to be its biggest competitors for the courier side of its business;<sup>52</sup> and

62.4 existing PBT customers have told us that NZ Post has not tried to match PBT’s prices and most PBT customers we have contacted considered that NZ Post’s pricing is much higher than PBT’s.<sup>53</sup>

63. Further, internal documents from the Parties show some evidence of PBT taking customers from NZ Post or Freightways (largely due to being able to offer a cheaper price), but little evidence of NZ Post taking customers from PBT.

64. That said, other information from the Parties indicate that NZ Post does consider PBT to be a competitor. For example:

64.1 [ 54

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<sup>49</sup> For example, see Commerce Commission interviews with [ ].

<sup>50</sup> Commerce Commission interview with [ ].

<sup>51</sup> [ ].

<sup>52</sup> Commerce Commission interview with PBT (13 December 2023).

<sup>53</sup> For example, see Commerce Commission interviews with [ ].

<sup>54</sup> [ ].



64.2

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- 65. Further, some market participants consider NZ Post and PBT to be competitors. For example, one large customer noted that while NZ Post and PBT are “in a different league” they are still competitors with the main difference being NZ Post’s ability to deliver items more quickly than PBT.<sup>56</sup> Another customer considered its only options for delivery were NZ Post and PBT.<sup>57</sup> [ ] said Freightways, PBT, Aramex and NZ Post all compete in the same space and offer largely the same product.<sup>58</sup>
- 66. We invite submissions on the extent to which the Parties impose a competitive constraint on one another and competitively react to each other in the supply of standard, weekday courier delivery services between urban areas for business customers, including how the Parties’ pricing and service level compare.

*Loss of competition between PBT and other courier providers*

- 67. As noted above, the Proposed Acquisition would remove competition between PBT and other courier providers for business customers that require standard weekday courier deliveries between urban areas.
- 68. The evidence before us currently suggests that PBT competes more closely with ‘tier two’ providers Aramex and Freightways’ Post Haste and Castle Parcels brands for business customers that require standard weekday courier deliveries between urban areas, although we are continuing to investigate the closeness of this competition. The Proposed Acquisition would remove the competitive constraint that PBT currently provides towards these courier companies.
- 69. Market participants advised that tier two providers compete closely with one another. For example:
  - 69.1 [ ] advised that PBT would mostly compete with Freightways’ Post Haste and Castle Parcels brands.<sup>59</sup>
  - 69.2 [ ] told us that there are only two big players that provide a service at a lower-end price point: PBT and Freightways’ Post Haste brand.<sup>60</sup> The customer said that while there is currently competition between these two providers, taking out PBT would remove the existing constraint on the Post Haste and likely affect the level of competition at that end of the market.
  - 69.3 [ ] indicated that PBT, Aramex and Freightways’ Post Haste brand compete most closely with one another because they are all in the same tier,

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55 [ ].

56 Commerce Commission interview with [ ].

57 Commerce Commission interview with [ ].

58 Commerce Commission interview with [ ].

[ ].

59 Commerce Commission interview with [ ].

60 Commerce Commission interview with [ ].

with some offering a less premium service compared to NZ Post. This customer also said that if it was not with PBT, it would most likely be with Aramex (but noted that, if cost wasn't an issue, it would be with NZ Post).<sup>61</sup>

70. That said, we have also received consistent feedback from customers that PBT offers a competitive alternative to the other 'tier two' network courier providers and its pricing is typically lower than its competitors.<sup>62</sup> For example:
- 70.1 [ ] told us that PBT is the cheapest and its prices are very low, with not many couriers offering similar rates;<sup>63</sup>
- 70.2 [ ] told us that PBT has "really good" rates, and that no one is matching PBT's rates or quoting near to what it offers;<sup>64</sup>
- 70.3 [ ] said that PBT has been "very competitive" when tendering compared to their competitors, with prices that were "significantly lower" than another tier two provider;<sup>65</sup> and
- 70.4 [ ] said that other providers are mostly more expensive than PBT, and that PBT offers a more competitive price for the majority of the parcels it sends.<sup>66</sup>
71. While we have received feedback that indicates that Aramex's and Freightways Post Haste and Castle Parcels brands' pricing of standard, weekday courier deliveries for customers is generally higher than PBT's, PBT may still constrain Aramex's and Freightways' Post Haste and Castle Parcels pricing. As such, the loss of PBT as a competitive constraint with the Proposed Acquisition could therefore enable tier two suppliers, such as Aramex and Freightways' Post Haste and Castle Parcels brands, to raise their prices and/or decrease the quality of their service (while still being lower than NZ Post's pricing and/or service levels).
72. We invite submissions on the extent to which PBT imposes a competitive constraint on other courier providers, particularly Aramex, Post Haste and Castle Parcels, in the supply of standard, weekday courier delivery services between urban areas for business customers, including how these courier providers compare in terms of price and service levels.

### **The constraint provided by other existing courier providers**

73. We are currently not satisfied that the constraint from other courier providers would be sufficient to replace, or substantially replace, the competitive constraint lost

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<sup>61</sup> Commerce Commission interview with [ ]. This market participant also considered that NZ Couriers competes with these providers.

<sup>62</sup> Although one customer noted that PBT and Aramex's pricing was almost on par (Commerce Commission interview with [ ]).

<sup>63</sup> Commerce Commission interview with [ ].

<sup>64</sup> Commerce Commission interview with [ ].

<sup>65</sup> Commerce Commission interview with [ ].

<sup>66</sup> Commerce Commission interview with [ ].

through the Proposed Acquisition in the supply of standard, weekday deliveries between urban areas for business customers.

74. Post-acquisition, ex-PBT customers that wish to switch from NZ Post to another provider for their standard weekday deliveries would likely consider Aramex and Freightways' Post Haste and Castle Parcels brands as their next best alternative. However, evidence suggests that some customers may not consider these companies to be comparable alternative to PBT. For example, as set out above, customers have told us that Aramex and the Freightways' Post Haste and Castle Parcels brands are currently more expensive than PBT.<sup>67</sup> We have also received evidence that their service levels may be worse than PBT's.<sup>68</sup>
75. The evidence before us also currently suggests that the smaller courier providers mentioned in the Application are unlikely to act as sufficient constraints. This is partly due to:
- 75.1 perceived or actual service quality issues. For example, one customer told us that it would be reluctant to use a tier three supplier because they understood their offerings to be "rubbish" and that it is hard to shift a customer's mindset from a bad experience, even if this bad experience was over 15 years ago;<sup>69</sup> and/or
- 75.2 these providers having a more limited network compared to larger courier providers. The comparatively smaller volumes the smaller courier providers put through their networks do not appear to justify investment into expanding their respective networks to offer services on a similar scale to their larger competitors. This means that these smaller providers must contract with a larger courier provider to service the parts of the country that the smaller providers cannot reach themselves,<sup>70</sup> which affects how competitive the smaller courier providers can be in terms of price.<sup>71</sup> We discuss this point further below in the expansion section.
76. As noted above, PBT appears to offer its customers lower prices compared to most, if not all, other network courier providers. Post-acquisition, ex-PBT customers would be faced with a set of options that no longer includes PBT as a low-cost alternative. Without PBT there to act as a competitive constraint, and without other viable alternatives for customers, Aramex and Freightways' Post Haste and Castle Parcels brands may each have the ability and incentive to profitably raise prices without the threat of customers switching to PBT.

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<sup>67</sup> For example, see Commerce Commission interviews with [ ], [ ].

<sup>68</sup> In particular, this feedback related to [ ]. For example, see Commerce Commission interviews with [ ], [ ] and [ ].

<sup>69</sup> Commerce Commission interview with [ ].

<sup>70</sup> For example, [ ] told us that it uses local contractors in areas where its current volumes do not warrant it having its own final mile delivery equipment (Commerce Commission interview with [ ]).

<sup>71</sup> Commerce Commission interview with [ ].

77. Further, the removal of PBT as an existing competitor may also affect the price NZ Post charges for standard courier deliveries to business customers.
- 77.1 We are still assessing what NZ Post would likely offer PBT's existing customers post-acquisition, as well as the extent to which NZ Post and PBT's prices compare on a like-for-like service basis (to account for the possibility that NZ Post's service levels may be higher than PBT's).
- 77.2 However, several customers expressed a concern that they would be transferred to NZ Post's higher pricing post-acquisition.<sup>72</sup> Even if NZ Post did not immediately transfer PBT customers to NZ Post pricing post-acquisition, we are considering whether NZ Post would, over time, have an incentive to raise prices to, at least, just below what Aramex and Freightways' Post Haste and Castle Parcel brands typically charge. Such a price increase could represent a material price increase for some customers.
78. We invite submissions on the extent to which existing network courier providers would impose a competitive constraint on NZ Post in the supply of standard, weekday courier delivery services to business customers if it acquired the PBT Courier Contracts, including on how their service standards and prices compare to the Parties.

#### **The constraint from expansion of courier providers and entry by new providers**

79. To constrain an exercise of market power by NZ Post, entry or expansion in response to a price increase or other exercise of market power by the merged entity has to be likely, sufficient in extent, and in a timely fashion, satisfying what is termed the 'LET test'.<sup>73</sup> While we look at evidence of whether parties are already planning to enter or expand (and consider the impact of that entry or expansion), what matters for our analysis is whether entry and expansion in addition to that already planned would be likely if prices increased post-acquisition.<sup>74</sup>
80. We have considered both the conditions of entry and expansion, and also whether entry or expansion is likely. We are currently not satisfied that expansion of existing courier providers or entry by new courier providers would be sufficient to prevent an exercise in market power by NZ Post in the supply of standard, weekday courier delivery services to business customers.

#### *There appears to be barriers to smaller network couriers expanding*

81. Based on the evidence currently before us, it appears that there would be significant barriers to smaller courier providers expanding to replace the level of constraint which PBT exerts on courier providers such as Aramex and Freightways' Post Haste

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<sup>72</sup> This is because, in the past, these PBT customers received significantly higher quotes from NZ Post's for the same service as what PBT was currently providing them. For example, see Commerce Commission interview with [redacted], Commerce Commission interview with [redacted], Commerce Commission interview with [redacted].

<sup>73</sup> *Mergers and Acquisitions Guidelines* above n23 at [3.95]-[3.96].

<sup>74</sup> *Ibid* at [3.99].

and Castle Parcels brands in the supply of standard, weekday courier delivery services between urban centres for business customers (as noted above, we do not currently consider that PBT and NZ Post compete closely for the supply of this service).

82. The biggest barrier to expansion for existing courier providers appears to be securing sufficient customer volumes to justify the necessary investment in the expansion of their networks or the services they offer. Having fewer volumes to put through a network increases the cost per item for a courier provider to transport, leading to higher prices compared to larger providers. This in turn makes it harder for smaller courier providers to compete for price sensitive customers, which prevents courier providers gaining the customer numbers to achieve scale and then economies of scale.

82.1 [ ] told us that having sufficient volume is necessary to support offering a new service. It noted that while its strength is in relation to [ ] services, it does not currently have sufficient scale to offer [ ] deliveries economically. This is because it is very subscale compared to a provider like NZ Post, and [

]. It also said that it could cost anywhere from hundreds of thousands to millions of dollars to expand into offering a platform to service more customers and that any expansion has to be planned carefully, as scaling up too quickly could result in heavy losses.<sup>75</sup>

82.2 One customer echoed this point, saying that it is hard for ‘tier two’ courier providers to take the “next step up” as investment is difficult when the network has only a certain volume going through it.<sup>76</sup>

83. On the other hand, one party supported the Applicant’s view that expansion of an existing network operator is relatively easy, as it would only involve additional delivery trucks. In particular, [ ].<sup>77</sup> However, this feedback is inconsistent with the feedback from the smaller network providers we have contacted to date.

84. Another barrier to expansion is having sufficient funding. For example:

84.1 [ ] told us that securing access to sufficient funding affects its ability to expand. [

]. It also suggested that bigger players can

<sup>75</sup> Commerce Commission interview with [ ]

<sup>76</sup> Commerce Commission interview with [ ].

<sup>77</sup> Commerce Commission interview with [ ].

squash attempts to enter a new area by undercutting that competitor’s pricing.<sup>78</sup>

84.2 [ ] said that it faces difficulties expanding, saying expansion is “very hard”. For example, it noted that if it wanted to introduce additional services, it would need a lot of money to do so. It also told us that expanding requires taking the risk on investing, as companies need to implement the new product or service before having the customers. It considers the only existing player with sufficient funds to expand is NZ Post.<sup>79</sup>

85. Information from the Parties also indicates that there are barriers to expansion.

85.1 [

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85.2

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86. Further, we do not consider it likely that point-to-point couriers (that do not have access to an existing national network through sister courier companies) could easily expand into offering network courier services within and between urban areas akin to PBT’s current offering.

86.1 While it is relatively easy to create point-to-point offerings within a densely populated area (as Fast Horse has done in Auckland), significantly more investment, or contracting with another courier provider to deliver in areas the point-to-point courier doesn’t currently operate in, would be required to establish a network covering urban centres nationally. However, as we discuss below, contracting with another provider to use their network is likely to affect how competitive a courier provider can be.

86.2 For example, a point-to-point operator told us that the barriers to expand into the kind of network that NZ Post and Freightways have are “massive” because it would require a nationwide network. Without the ability to offer a nationwide network, it would not be able to attract customers and it would not have an incentive to contract with the existing national network courier

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<sup>78</sup> Commerce Commission interview with [ ].

<sup>79</sup> Commerce Commission interview with [ ].

<sup>80</sup> [

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<sup>81</sup> [ ].

providers - namely with NZ Post and Freightways - to provide a nationwide network because they are already “dominant.”<sup>82</sup>

*New entry also appears unlikely*

87. The evidence currently before us also suggests that there are barriers to de-novo or greenfields entry.
88. Although NZ Post told us that a new entrant could compete with as little as a single truck,<sup>83</sup> we do not believe that such small-scale entry would allow a rival to meaningfully compete with NZ Post for customers, especially large business customers requiring a national service. In any event, a courier provider operating at a small scale would need to rely on contracting with third party logistics providers for any deliveries outside the area it operates in, which would affect how competitive it is able to be in terms of pricing and service levels. For example, one smaller courier provider we spoke with told us that these sorts of wholesale relationships affect how competitive it can be, as it is “ beholden ” to other players and restricted in the prices it can offer.<sup>84</sup>
89. This point was echoed by another courier company, which said that a key barrier to expansion or entry is the cost of accessing a linehaul network, as it does not currently have one of its own. It noted that there are currently two dominant players (NZ Post and Freightways) with sufficient volumes to do the linehaul piece more economically than a new player.<sup>85</sup> This provider said that it is difficult to achieve the necessary volume to justify trucks going to all destinations every night to carry out nationwide deliveries, meaning it cannot be competitive on price.
90. Further, as discussed in the expansion section, securing the sufficient customer volumes to justify creating the national network that is necessary for competing for larger customers is likely to also be a barrier to entry.
91. The combination of the above factors means that we are not currently satisfied that new entry or expansion is likely to be sufficient in extent, or would occur in a timely fashion, to constrain NZ Post.
92. We invite submissions on the conditions of entry and expansion for new and existing courier providers, and on the likelihood of entry/expansion in the supply of standard, weekday courier delivery services for business customers in response to a post-merger exercise of market power by NZ Post.

**The countervailing power of customers**

93. A merged entity’s ability to increase prices profitably may be constrained by the ability of certain customers to exert substantial influence on negotiations. Countervailing power is more than the ability of customers to switch from a merged

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<sup>82</sup> Commerce Commission interview with [ ].

<sup>83</sup> Commerce Commission interview with [ ].

<sup>84</sup> Commerce Commission interview with [ ].

<sup>85</sup> Commerce Commission interview with [ ].

entity to competing suppliers. The size and importance of a customer is also not sufficient by itself to amount to countervailing power. Countervailing power exists when a customer possesses a special ability to substantially influence the price the merged entity charges.<sup>86</sup> This may be the case if a customer:

- 93.1 can switch or credibly threaten to switch to suppliers of the same product in other geographic markets where competitive conditions are different;
  - 93.2 can switch or credibly threaten to switch to suppliers of other products it acquires from the merged entity;
  - 93.3 can take action to reduce the merged entity's sales (eg, by promoting less or giving less favourable placement to the merged entity's products); and/or
  - 93.4 can feasibly sponsor new entry or expansion.
94. We are currently not satisfied that countervailing power would be sufficient to prevent an exercise in market power by NZ Post in the supply of standard weekday courier deliveries between urban centres to business customers. Countervailing power exists when a customer possesses special characteristics that give that customer the ability to substantially influence the price the merged firm charges. In this case, it would be the ability to sponsor entry and expansion in the supply of standard weekday courier services. To this extent, countervailing power would be distinct from the ability of customers to switch from buying courier services from NZ Post to buying courier services from another network courier supplier.
95. We have received mixed evidence from market participants on the likelihood of customer-sponsored entry.
- 95.1 One customer in the logistics industry said that sponsoring an existing courier provider to expand was not something it wants to do.<sup>87</sup>
  - 95.2 One smaller courier provider said that it had been approached by one of its customers that required a service it didn't currently offer. However, the customer was unwilling to invest in the courier provider to establish this service.<sup>88</sup>
  - 95.3 One customer in the retail industry told us that it helped with the expansion of a courier provider by guaranteeing it specific volumes and that it could do the same with another provider in the future.<sup>89</sup>

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<sup>86</sup> *Mergers and Acquisitions Guidelines* above n23 at [3.113]-[3.115].

<sup>87</sup> Commerce Commission interview with [ ].

<sup>88</sup> Commerce Commission interview with [ ].

<sup>89</sup> Commerce Commission interview with [ ].



- 95.4 One large customer said that it was “very likely” that it could sponsor the entry or expansion of another provider, for example, to facilitate expansion into services its current provider does not currently offer.<sup>90</sup>
96. We accept that Urgent Couriers has been able to expand off the back of receiving the delivery contract for Hello Fresh and having the surety of guaranteed customer volumes,<sup>91</sup> although we note that this operator is in the point-to-point space and sits outside the relevant market.
97. We agree with NZ Post’s submission that large-scale courier customers may have sufficient countervailing power and the ability to bypass courier services and self-deliver, or credibly threaten to do so. This is because these types of customers are the only ones likely to have the sufficient customer demand and capital required to set up their own delivery service in response to rising prices or worsening service.
98. However, any customers that do possess the ability to do this are likely to only be able to offer it in selected regions in New Zealand. For example, Mighty Ape’s own Jungle Express service offers same day or overnight service in only Auckland, Wellington and Christchurch. One customer we spoke with said that while it could set up its own courier network in response to a worsening of service levels, it would work better in larger cities such as Auckland and Christchurch and would be difficult to do regionally.<sup>92</sup>
99. Further, customers are likely to struggle to establish a wider offering outside major cities due to similar struggles that existing courier providers have with expansion, such as securing sufficient volumes to justify expansion. For example, one customer said it struggled to see how doing its own courier deliveries could work, as it would not have sufficient delivery volumes in all areas to make this an economical proposition.<sup>93</sup> Competitors tended to agree that customers could not set up their own delivery network, with one saying that no business “in their right minds” would do so.<sup>94</sup>
100. Regardless, to the extent there are customers that could exercise countervailing power, it would only protect these customers rather than all market participants.
101. We therefore consider that there is a limited number of business customers that require standard, weekday courier deliveries between urban areas that would be large enough to exercise countervailing power. Our current evidence indicates that the majority of PBT’s relatively large business customers are unlikely to have sufficient capital or incentive to establish their own delivery networks.

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<sup>90</sup> Commerce Commission interview with [ ].

<sup>91</sup> As set out in the Application, at [111].

<sup>92</sup> Commerce Commission interview with [ ].

<sup>93</sup> Commerce Commission interview with [ ].

<sup>94</sup> For example, see Commerce Commission interview with [ ] and Commerce Commission interview with [ ].

102. Further, to the extent that any customers within the relevant market do have a degree of countervailing power, their negotiating power is likely to decrease as the Proposed Acquisition would remove an important alternative for them. These customers are also unlikely to be able to turn to point-to-point couriers as a viable alternative, as they generally operate within, rather than between, urban centres. Customers would therefore likely have to use multiple point-to-point couriers for their deliveries, which they would likely not find feasible.<sup>95</sup>
103. We have also not yet received any evidence of wholesale customers (eg, resellers and aggregators) having countervailing power.<sup>96</sup> NZ Post consider that wholesale customers are free to shop around. However, we do not consider this constitutes countervailing power but instead the ability of wholesale customers to leverage their existing options to secure better prices or terms.
104. We invite submissions on evidence of instances where customers have exercised countervailing power, particularly against NZ Post and PBT in the supply of standard, weekday courier delivery services to business and wholesale customers. We also invite customers to provide further evidence of their negotiation power (or lack thereof) with NZ Post and PBT.

### Coordinated effects

105. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to act in a coordinated way.<sup>97</sup>

### NZ Post's submissions

106. NZ Post submits that the Proposed Acquisition would not be likely to substantially lessen competition due to coordinated effects because, in its view, coordination would be infeasible. It submits that:<sup>98</sup>
- 106.1 prices to business customers are individually negotiated between and are not readily observable;
- 106.2 services are differentiated in terms of quality levels;
- 106.3 providers' market shares are asymmetrical;

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<sup>95</sup> For example, some customers noted that it is not desirable to use several courier providers (Commerce Commission interviews with [ ] and [ ]).

<sup>96</sup>

[ ]

<sup>97</sup> *Mergers and Acquisitions Guidelines*, above n23 at [3.84].

<sup>98</sup> The Application at [123]-[130].

- 106.4 Aramex and point-to-point operators would provide a strong moderating influence on any attempted coordination;
- 106.5 margins have been driven towards marginal cost; and
- 106.6 there is nothing to suggest PBT has been, or could become, a key driver of competition or be a rogue or disruptive force.

### **Summary of our current view**

- 107. Our core concern is in relation to the national market for the supply of standard, weekday courier deliveries between urban areas for business customers. As noted earlier, we consider that PBT currently competes more closely with Aramex and Freightways' Post Haste and Castle Parcels brands for the supply of this service. The Proposed Acquisition could therefore make coordination more likely in this market as PBT's removal could facilitate coordination between the remaining pair. We continue to investigate this possibility.
- 108. In carrying out our assessment, we are considering whether:
  - 108.1 the relevant market(s) have characteristics which make it/them vulnerable to coordination; and
  - 108.2 the Proposed Acquisition is likely to change conditions in the relevant market(s) so that coordination is more likely, more complete, or more sustainable.
- 109. For the reasons set out below, at this stage we consider that the Proposed Acquisition may raise competition concerns due to coordinated effects.

### **Are the relevant market(s) vulnerable to coordination?**

- 110. We note that a range of features may make a market more vulnerable to coordination, in the sense of making it more likely that firms would be able to successfully coordinate their behaviour to increase their profits. Not all features need be present for a market to be vulnerable to coordination. Nor does the existence of some or all of these features inevitably mean that firms would engage in coordinated behaviour.
- 111. Our preliminary view is that the market for standard, weekday deliveries between urban areas for business customers may be vulnerable to coordination. In particular:
  - 111.1 providers' services are generally homogeneous;
  - 111.2 providers have some information on each other's prices;
  - 111.3 supply is concentrated; and
  - 111.4 there is some symmetry in providers' sizes and cost structures.

112. These factors generally increase the scope for courier providers to achieve and sustain some level of coordination. We discuss these factors below.

113. [

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114. The rest of this section focuses on potential coordination concerns in the national market for standard, weekday deliveries between urban areas for business customers.

#### *Homogeneous service*

115. Coordinated conduct can be facilitated where the good or service supplied is homogeneous. Homogeneous services have substantially the same characteristics as one another in the eyes of customers. With homogeneity, it can be easier for suppliers to reach agreement on pricing levels and more difficult to deviate from coordinated outcomes through differentiation.

116. We received feedback that there are no material differences between the services offered by network couriers,<sup>99</sup> although we understand that there may be some variance in quality levels between them.<sup>100</sup>

#### *Suppliers have some information on each other's prices*

117. The extent to which suppliers can observe each other's prices and volumes is relevant to our assessment, as transparency makes coordination on prices/volumes more achievable.

118. The evidence currently before us suggests that courier providers may be able to obtain some information about each other's prices.<sup>101</sup> For example, competitors' prices (or the relativity between prices) may be communicated to them by their customers throughout the negotiation process.

119. However, we have also received information to suggest that courier pricing to business customers is complex and differs from provider to provider, which may make coordination on price more difficult.<sup>102</sup>

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<sup>99</sup> For example, see Commerce Commission interview with [ ] and [ ].

<sup>100</sup> For example, a higher-quality courier service is less likely to suffer from delays, breakages or poor care in delivery (for example, ignoring a customer's instructions as to a convenient or secure place to leave parcels).

<sup>101</sup> For example, see Commerce Commission interviews with [ ] and [ ].

<sup>102</sup> For example, see Commerce Commission interviews with [ ] and [ ].

*Relatively concentrated market*

120. The fewer competitors there are in a market, the easier it is for them to coordinate. This is because it is easier to reach agreement between a small number of suppliers and easier to detect and punish cheating.
121. The market relevant to our core concerns is currently quite concentrated, with only a small number of network couriers (likely limited to PBT, Aramex, Freightways and NZ Post).

*Some symmetry of size and cost structures*

122. Similarity of cost structures, production capabilities, and product ranges can make it easier for suppliers to arrive at a tacit understanding, allow the responses of competitors to be more predictable, and make a coordination strategy more stable.
123. Our preliminary view is that there are likely to be cost similarities between large suppliers of courier services in establishing and running a national network and offering a similar range of services: in particular, network couriers able to deliver between urban centres around the country all have substantial fixed costs.<sup>103</sup>
124. At the same time, total annual demand for business courier services is relatively predictable, while being subject to occasional – but also relatively predictable and long-lasting – negative shocks, for example when global trade frictions reduce incoming freight and the total volume of parcels for delivery. Suppliers with high fixed costs which face demand that is predictable and mainly subject to downside risk may face incentives to coordinate to avoid falling into losses, especially since New Zealand prices for courier services are low by international standards.<sup>104</sup>
125. We invite submissions on the extent to which the relevant market(s) are vulnerable to coordination.

**Would the Proposed Acquisition make coordination more likely, complete or sustainable?**

126. We note that where a merger or acquisition materially enhances the prospects for any form of coordination between businesses, the result is likely to be a substantial lessening of competition. This could happen if the Proposed Acquisition is likely to change conditions in the market for the supply of courier services in New Zealand so that coordination is more likely, more complete, or more sustainable.
127. We have not reached any concluded views on whether the Proposed Acquisition could materially facilitate coordination in the relevant market(s). However, at this stage, we are concerned that the Proposed Acquisition could make coordination more likely, more complete and/or more sustainable in the national market for

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<sup>103</sup> [ ] noted that you can get a sense of competitors' costs from public documents like annual reports and noted that all providers are playing in the same labour and property pool. However, it also noted that [ ]'s costs were harder to get a sense of (Commerce Commission interview with [ ]).

<sup>104</sup> The Application at [74].

standard, weekday deliveries between urban areas for business customers. This is because:

- 127.1 the Proposed Acquisition would eliminate a key competitor leaving fewer competitors between whom coordination would be easier;
- 127.2 PBT may be the last remaining competitor with the ability and incentive to disrupt or de-stabilise coordination; and
- 127.3 other providers in the market(s) may have a limited ability to act as a moderating influence.

*Coordination would be easier with fewer suppliers*

- 128. The loss of an independent PBT would mean the loss of a provider potentially able to disrupt coordination. A reduction in the number of suppliers would likely make any understanding over coordinated prices or sales easier and would make it easier to detect and punish deviation from coordinated outcomes. We currently consider that this could materially facilitate coordination, given our preliminary view is that entry or expansion into the relevant market is not likely, and would not occur in a timely manner.

*The impact of the removal of PBT*

- 129. Although NZ Post submits that PBT is not a disruptive influence, and could not become one in the future, we have been provided with some evidence to the contrary.
- 130. The evidence currently before us suggests that PBT may have been acting as a disruptive influence in the market, so that its removal may make it easier for at least some remaining providers to coordinate on price. As noted in our assessment of unilateral effects above, our current evidence indicates that Aramex, Freightways' Post Haste and Castle Parcels brands and PBT appear to be competing relatively closely with lower-price/quality services than are offered by NZ Post and Freightways' New Zealand Couriers brand. Accordingly, we are currently concerned that the loss of PBT, with prices that appear to be the lowest in the market (for some customers at least) and occasional instances of disruptive behaviour, may facilitate coordination between Aramex and Freightways at least. Instances of PBT's disruptive pricing and other behaviour include the following feedback from existing customers.
  - 130.1 [ ] told us that PBT is the cheapest and its prices are very low, with not many couriers offering similar rates.<sup>105</sup>
  - 130.2 [ ] told us that PBT has "really good" rates, and that no one is matching PBT's rates or quoting near to what it offers.<sup>106</sup>

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<sup>105</sup> Commerce Commission interview with [ ].

<sup>106</sup> Commerce Commission interview with [ ].

130.3 [ ] said that PBT has been “very competitive” when tendering compared to their competitors, with prices that were “significantly lower”.<sup>107</sup>

130.4 Further, a courier provider gave an example of PBT offering lower prices than competitors in order to fill trucks moving up the island (typically trucks move more parcels from north to south), which, it said, “disrupts the market”.<sup>108</sup>

*Limited moderating influences in the relevant market(s)*

131. Given how concentrated supply currently is, there are a limited number of suppliers that could provide a moderating influence on any attempted coordination. It is unlikely that point-to-point couriers would be able to act as much of a moderating influence post-acquisition given the likely difficulties they would face in expanding to offer deliveries between urban centres.
132. As such, where there is a lack of other competitive constraints, the loss of PBT could potentially make coordination more likely, more complete and/or more sustainable, and even the loss of a comparatively small player could create a substantial lessening of competition.
133. We invite submissions on the extent to which the Proposed Acquisition might make coordination more likely, more complete or more sustainable.

**Other potential competition issues**

134. Our core concerns at this stage relate to the Proposed Acquisition removing PBT as a particularly competitive option for customers requiring standard weekday courier deliveries between urban centres. We have not currently identified competition issues outside of these core concerns, but would welcome any submissions on this. For example, we would welcome any submissions on whether the Proposed Acquisition would reduce the competitive alternatives for:

134.1 standard, weekday deliveries for business customers within given urban centres. For example, in some urban centres there appear to be some point-to-point couriers which would likely be an alternative to some existing PBT customers. However, if this is not the case and if there are urban centres with no or a limited number of point-to-point couriers, PBT’s removal could have effect on competition within the urban centre; and

134.2 wholesale network access to other courier providers. Like many other courier providers, PBT and NZ Post currently carry out some deliveries for other couriers on a wholesale basis. However, with the Acquisition, decisions on allowing wholesale access to PBT’s network would no longer be made independently from decisions to access NZ Post’s network.

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<sup>107</sup> Commerce Commission interview with [ ].

<sup>108</sup> Commerce Commission interview with [ ].

## Next steps

135. We are currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by **30 April 2024**. However, this date may change as our investigation progresses.<sup>109</sup> In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
136. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the issues identified above.

## Making a submission

137. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the parties or any other interested parties are able to provide regarding the issues identified in this Sol.
138. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference 'NZ Post/PBT' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **13 March 2024**.
139. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.
140. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.
141. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

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<sup>109</sup> The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/clearances-register/> where we update any changes to our deadlines and provide relevant documents.