

## **PBT'S RESPONSE TO SOI**

### **Public version**

- 1 PBT welcomes the opportunity to respond to the Commission's SOI.
- 2 We understand the Commission is testing a theory of harm in the SOI that:
  - 2.1 PBT is, despite its market and commercial position, somehow a "disruptive influence in the market"; and
  - 2.2 it follows that assigning PBT's small courier book to NZ Post could SLC in the market for standard weekday courier services.
- 3 As we read it, the theory runs that PBT offers market leading pricing to some of its [] customers (albeit with PBT having failed to grow share by attracting business from the tens of thousands of other customers served by rival firms).
- 4 We acknowledge that testing theories of harm is an important part of the merger control process. But the Commission can put the "disruptive influence" proposition to one side because PBT is not a maverick influence keeping its rivals honest lest they lose share to such a vibrant upstart. [] We do not believe completion can or would SLC.
- 5 We elaborate below. But please say if there's anything further you need.

### **PBT'S MARKET OFFER**

- 6 The Commission theorises – based on ~[] PBT customer interviews – that PBT offers a market leading standard weekday courier service. SOI [9.2] records, for instance: *"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"*.
- 7 PBT is [] the customers you spoke to. But in saying that, PBT observes that any such support is, regrettably, at the edge of its small customer base. Moreover, the apparent support is not tied to a price/service offer sufficient to make PBT's courier business [] capable of winning market share in recent times.

- 8 On SOI [9.2], may we also emphasise that “price”, “cheaper” and “higher priced” in any clearance context is shorthand for “all dimensions of competition, including quality, range, level of innovation, service or any other element of competition valued by buyers”.<sup>1</sup>
- 9 “Quality” in the courier business includes reliability; with reliability meaning products are consistently delivered within specified timeframes, products are delivered without damage and suppliers offer effective recourse should something go wrong. On this point, we respectfully refer to previous regulator commentary on inter-courier competition in the **Schedule** to this SOI response.
- 10 With price only shorthand for the price/quality dynamic, there is no basis for the Commission to say that “PBT’s prices are below those of its closest competitors”.<sup>2</sup>
- 11 Nor can the Commission attempt to judge relative courier price differences by:
- 11.1 Canvassing the opinion of certain PBT customers (those customers will, of course, be biased towards PBT given they currently use PBT in the same way that Freightways, NZ Post or Aramex customers will prefer their respective services).
- 11.2 Or by accounting for static nominal or headline pricing and ignoring quality and service.
- 12 Instead, market sales data is the appropriate and objective way to understand consumer preferences. On that front, the on-record evidence is that:
- 12.1 very few consumers purchase PBT’s courier services, preferring instead NZ Post, Freightways, Aramex, TGE and others’ offers; and
- 12.2 [].
- 13 Picking up the SOI’s key theme, if PBT really were a “disruptive influence in the market” with a “market leading” offer then it would be doing a lot better than it actually is. It is right to point out that PBT’s management are shareholders in the business. They have done everything they can to advance PBT couriers and

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<sup>1</sup> Commerce Commission *Merger & Acquisition Guidelines*, at [2.18].

<sup>2</sup> SOI, at [54.2]. See also: *Re Queensland Co-operative Milling Association Ltd* (1976) 25 FLR 169 at 188–189; *Fisher & Paykel Ltd v Commerce Commission* [1990] 2 NZLR 731 (HC) at 759; *New Zealand Bus Ltd v Commerce Commission* [2007] NZCA 502, [2008] 3 NZLR 433 at [239]; *Commerce Commission v Woolworths Ltd* [2008] NZCA 276, (2008) 8 NZBLC 102,336 at [119].

maximise profit.<sup>3</sup> Running a courier business in a highly competitive market is hard. [] – which is an outcome driven by workable competition.

- 14 Going back a step, PBT has offered courier services for 30 years.<sup>4</sup>
- 15 In that time, of New Zealand’s 645,000 businesses,<sup>5</sup> PBT has attracted ~[] of them – some []%.
- 16 Those PBT customers buy ~\$[]m worth of courier services from PBT. On NZ Post’s estimates, that figure comprises ~[]% of the ~\$[]m per year that businesses spend on couriers, with the remaining ~\$[]m spent on NZ Post, Freightways, Aramex and others.<sup>6</sup> Similarly, PBT estimates its market share to be just ~[]%.
- 17 It follows over 90% of courier customers believe NZ Post, Freightways, Aramex, TGE and others [] (with, again, price measured across the price/quality paradigm as it must be).
- 18 PBT has faced that reality for some time. Over the last 10 years, PBT’s courier volumes have been stagnant:
- []
- 19 The SOI theorises at [55.2.2] that PBT may have a low market share because “PBT may face capacity constraints which prevent it from profitably expanding”.
- 20 PBT confirms it does not have “capacity constraints”.
- 21 PBT – like other actual and potential couriers – can quickly, easily and affordably scale up by contracting more owner-drivers. Whether expansion would be “profitable” is a function of market conditions. With New Zealand’s courier market so competitive, expansion may not be “profitable” at the moment – but that does not mean firms face barriers to entry or expansion if prices were to rise to supracompetitive levels.<sup>7</sup>

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<sup>3</sup> PBT disagrees with the Commission’s suggestions at, for instance, SOI [54.3] and [56.1] that the business is not profit-maximising.

<sup>4</sup> NZ Post clearance application, at [14].

<sup>5</sup> <https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2023/#:~:text=New%20Zealand%20had%20605%2C000%20enterprises,3.0%20percent%20from%20February%202022.>

<sup>6</sup> NZ Post clearance application at [79].

<sup>7</sup> On this front, [82] of the SOI quotes one industry player and one customer to support its theory that barriers to entry and expansion are high. But those third-parties appear only to be saying that, based on current market conditions and competition, expansion may be unprofitable.

- 22 Similarly, at SOI [85.1], the Commission labels “winning market share from an existing player ... to achieve “run density”” as a “barrier to expansion”. Run density is not an entry or expansion barrier. Run density is, instead, simply a hallmark of an efficient courier business. As set out above, there are no barriers to courier firms scaling up their offers in response to price signals and market opportunities and, in doing so, gaining greater run density.
- 23 On this front, we observe that merger control does not aim to preserve a certain number of incumbents in all markets. Rather, s47 is concerned to ensure that any given transaction will not SLC in light of that market’s particular characteristics, before and after the transaction in question.
- 24 Again, PBT submits there is no likelihood of a SLC in the affected market in this matter. We have given reasons above and elsewhere. [].

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## SCHEDULE: COMMENTARY ON COURIER COMPETITION

- 1 Customer demand for courier services reflects much more than nominal or headline price.
- 2 One can point to several Commission and international merger decisions in support.
- 3 For example:
  - 3.1 In NZ Post's acquisition of Freightways' Express Freight Services businesses,<sup>8</sup> the Commission observed that:<sup>9</sup>

*The parcel delivery markets are characterised by vigorous competition. There are a large number of operators in the various markets, and customers commonly deal with more than one operator in order to have access to a range of services. Customer loyalty is limited to a company's ability to meet service and price expectations.*

- 3.2 In FedEx/TNT,<sup>10</sup> the Commission observed:

*"small package international air delivery services can be separately differentiated along a continuum depending on the consignment's ... service features, such as reliability, track and trace capability, door-to-door delivery and other qualitative features".<sup>11</sup>*

- 3.3 The European Commission (**EC**) made similar observations in its decisions on the same deal:<sup>12</sup>

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<sup>8</sup> Commerce Commission [Decision No. 296](#).

<sup>9</sup> At [105]. The Commission also noted that "NZ Post submits that the costs to the customer of switching between competitors is low and that customer loyalty is limited to a company's ability to meet service and price expectations. That is, it is a feature of the market that customers compare the services and value offered by different operators. It is also a feature of the market that many customers maintain multiple relationships with operators in order to compare rates and to select service providers to handle their delivery requirements, overflow requirements, and to take advantage of specialised services offered" (at [80]).

<sup>10</sup> [FedEx Corporation and TNT Express N.V. \[2015\] NZCC 24](#) at [57].

<sup>11</sup> At [47].

<sup>12</sup> European Commission [Case M.7630 – FedEx / TNT Express](#) (8 January 2016) at [50]. For further comments on product differentiation based on quality of service, see the EC's comment at [101] that "it should be noted that in *UPS/TNT*, the Commission did not find it justified to define separate product markets on the basis of quality criteria of the delivery service. The Commission considered that the fact that each customer has its own needs in terms of quality of service demonstrates that the small package delivery markets are differentiated along many different dimensions, including on

*... small package delivery providers are able to differentiate their service in numerous aspects. The parameters of differentiation can be grouped by: speed of delivery (ranging from early morning next day express services to two or more days' standard delivery); geography (ranging from domestic to extra-EEA services) and quality of service (such as reliability, security, late pick up time, comprehensive track and trace ability).*

*[and]*

*"[w]hilst all integrators (and to a lesser extent, the ground based operators and freight forwarders) provide services of a similar nature, there are perceived differences between the quality of the services provided by each of them."<sup>13</sup>*

4 The EC added:<sup>14</sup>

*Generally, for small package delivery customers in the EEA, particularly express delivery, the key characteristics for their shipping needs are: a) door-to-door transportation (typically from the customer's location to a specific address); b) assured transit time (the commitment that a package will be delivered on a particular day with a high level of certainty whether early in the morning or at end-of-day); c) track and trace capabilities (real-time package information systems are critical for customer service as they are directly linked to security, reliability and quality); d) reliability; e) security; and f) global or at least EEA-wide coverage.*

5 The Office of Fair Trading (**OFT**) adopted a similar approach in *BET UK/Target Express Holdings*:<sup>15</sup>

*... previous EC decisions have distinguished between standard and express delivery services, on the basis of speed and reliability of the delivery and value-added services. The parties and third parties who commented on this case have agreed that the*

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destination, committed timeframe of delivery and quality of service. Absent contrary indications from the market investigation, there is no reason to depart from this approach in the case at hand."

<sup>13</sup> At [54].

<sup>14</sup> At [60].

<sup>15</sup> Office of Fair Trading [BET UK Ltd / Target Express Holdings Ltd ME/2826/07](#) (7 March 2007).

*difference in terms of price, speed of delivery and the certainty of guaranteed delivery by a certain time continue to be relevant.*

- 6 The OFT repeated these comments in Home Delivery Network/DHL Express (UK) Limited:<sup>16</sup>

*The OFT has also previously considered the distinction between standard and express delivery services on the basis of speed, reliability, traceability of the status of the parcel, proof of delivery and insurance. Finally, this distinction is also consistent with previous European Commission decisions in the sector.*

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<sup>16</sup> Office of Fair Trading [Home Delivery Network Limited / DHL Express \(UK\) Limited ME/4389/10](#) (15 February 2010) at [29].