

Non-Confidential Version
Restriction of Publication Part Claimed

Authorisation Application for
Resale Price Maintenance by
HP New Zealand

Company Number: 5571925

Pursuant to section 58(7) of the Commerce Act 1986
19 March 2021

Table of Contents

1. Details of Applicant and Other Parties-----	3
2. Annexure A - Submission in support of authorisation application for resale price maintenance-----	13
3. Executive Summary -----	13
4. Background-----	16
5. Market Definition -----	24
6. Proposed Conduct -----	25
7. Counterfactual-----	33
8. Public Benefits -----	35
9. Public Detriments-----	40
10. Schedule 1 - Relevant HP organisational charts -----	42
11. Schedule 2 - Product segments and HP Online Store revenue -----	45
12. Schedule 3 - Market shares -----	46

1. Details of Applicant and Other Parties¹

Applicant details

1.1 This application is made by:

HP New Zealand: 5571925
KPMG, 18 Viaduct Harbour Avenue, Auckland 1010
Telephone: N/A
Website: <https://www8.hp.com/nz/en/home.html>

1.2 **Attention:** Colin Chang (Country Counsel, HP)
Telephone: +61 410 656 972
Email: colin.chang@hp.com

The Applicant requests that all correspondence is directed in the first instance to:

K&L Gates
31/1 O'Connell St
Sydney NSW 2000

Attention: Ayman Guirguis
Partner, K&L Gates
+61 2 9513 2308
ayman.guirguis@klgates.com

1.3 Other than the fact that HP New Zealand is a related body corporate of HP Inc., a US listed entity, there are no related entities of HP New Zealand that will be affected or have an interest in this application.

Other parties to the agreement

2.1 The proposed HP Online Store partners and their contact details are as follows:

[

¹ Please note the numbering in this section corresponds to the authorisation application questions in the Commission's notice for seeking authorisation under section 58 except for question 11 of the Commission's notice (which corresponds to section 10 in this section) - https://comcom.govt.nz/data/assets/pdf_file/0025/90934/Section-58-Authorisation-application-for-agreements-December-2020.pdf.

]

2.2 The details of the relevant contact person for each party are as follows:

[

]

Organisational charts

3. Please refer to Schedule 1 of Annexure A for organisational charts that show the structure of ownership and control of HP New Zealand.

Copy of the proposed agreement for which the parties seek authorisation

4. The proposed agreement between HP New Zealand and the selected T1 distribution partner has not been finalised in relation to the HP Online Store in New Zealand (**NZ**).

[

]

Please also note that the following details will be discussed in more detail in sections 2, 4 and 5 in Annexure A, including:

- 4.1 when the parties intend to enter into, or give effect to, the agreement;
- 4.2 whether authorisation is only being sought for a specific time period and, if so, what time period;
- 4.3 the key terms of the agreement and how these will affect the behaviour of the parties;
- 4.4 the rationale for the agreement; and
- 4.5 the likely relevant scenario(s) for each party if the agreement does not go ahead.

Relevant competition agencies that have considered the agreement/similar arrangements

5. Similar applications were made in Australia (in the form of Notifications) to the Australian Competition and Consumer Commission (**ACCC**), in respect of the:

- (i) **HP Online Store in Australia** - the Notification was lodged with the ACCC on 16 July 2019. A supplementary submission in relation to this application was made to the ACCC on 26 September 2019.

In relation to the Australian HP Online Store, the ACCC decided to allow/not oppose the proposed conduct in its 'Statement of Reasons' on 10 October 2019 in response to HP's Notification.

- (ii) **HP Online Marketplace Stores in Australia** - the Notification was lodged with the ACCC on 20 July 2020.

Similarly, the ACCC decided to allow/not oppose the proposed conduct in its 'Statement of Reasons' on 2 October 2020 in response to HP's Notification.

HP provides the Commission with a confidential copy of HP's Notifications to the ACCC in respect of the HP Online Store and HP Online Marketplace Stores in Australia in Confidential Annexure B. HP provides a copy of the ACCC's 'Statement of Reasons' for the abovementioned Notifications as Annexure C.

Whether the Applicant requests that the Commission varies, revokes or replaces an existing authorisation

6. The Applicant is not requesting that the Commission vary, revoke or replace an existing authorisation.

Description of the relevant products and/or services

7. For a description of the products and/or services supplied and/or acquired (as applicable) by the parties that are relevant to the agreement, please refer to sections 2 and 3 of Annexure A and Schedule 2 to this application.

7.1 the parties' view on the appropriate market definition can be found in section 3 of Annexure A, Schedules 2 and 3 to this application

7.2 the names and contact details for HP New Zealand's key customers and/or suppliers (as applicable) relevant to the agreement are as set out below:

Key customers and/or suppliers	Contact details
T1 Distributors	
Ingram Micro	78 Apollo Drive Rosedale, Auckland 0632 PH: 9414 0100
Exeed Ltd	55 Waiouru Road East Tamaki, Auckland 2013 PH: 9302 2144
Sektor Ltd	525 Great South Road Penrose, Auckland 1061 PH: 9579 9855
Dove Electronics	10 Print Place Middleton, Christchurch 8024 PH: 3338 4722
T1 Resellers	
Spark Digital	167 Victoria St West Auckland PH: 0800 694 364
The Laptop Company	207 Castle Street Dunedin 9016

	PH: 3471 8400
Datacom	Level 5, 58 Gaunt Street Auckland 1010 PH: 0800 72 97 97
Fujitsu	Level 2/46 Sale Street Freemans Bay, Auckland 1010 PH: 9358 9720
Cyclone Computers Ltd	8 Wigram Road Middleton, Christchurch 8025 PH: 3338 0320
Acquire	205 Marua Road Auckland 1051 PH: 09 579 2555
T2 Resellers	
Lexel Systems	72 Paul Matthews Road Albany, Auckland, 0632 PH: 9414 1777
Softsource Limited	42 Tawa Drive Albany, Auckland 0632 PH: 9918 3712
Noel Leeming Commercial	26 The Warehouse Way Northcote, Auckland 0627 PH: 9359 4400
PB Technologies	587 Great South Road Manukau, Auckland 2104 PH: 9262 0561
Key Channel Partners/T1 Retailers	
Noel Leeming	26 The Warehouse Way Northcote, Auckland 0627 PH: 9359 4400
Harvey Norman	77-78 Tory Street Te Aro, Wellington 6011

	PH: 4381 4250
The Warehouse Group	25 The Warehouse Way Northcote, Auckland 0627 PH: 9468 5895
Warehouse Stationery	Cnr Greenmount and Ti Rakau Drive East Tamaki, Auckland 2013 PH: 9272 9138
JB HiFi	Level 1, 7 Link Drive Wairau Valley, Auckland 0627 PH: 9815 4610
PB Technologies	587 Great South Road Manukau, Auckland 2104 PH: 9262 0561

7.3 the names and contact details of HP New Zealand's main competitors in each market identified above that are not party to the agreement are listed below:

Key Competitors	Contact Details
Apple	PO Box 912015 Auckland 1142 PH: 0800 692 7753
Dell	152 Fanshawe St, Auckland PH: 0800 289 335
Acer	600 Great South Road, Ellerslie, 1051 Auckland PH: 64 9 969 5600
Lenovo	Address not known PH: 0800 446 833
Fuji Xerox	79 Carlton Gore Road Newmarket, 1023, Auckland PH: 9356 4200

Canon	28 The Warehouse Way, Northcote Auckland 6027 PH: 800 222 666
Epson	7/9 Fanshawe St, Auckland 1010 PH: 0800 237 766
Brother	27 Matawara Place, Tauriko Tauranga, 3171 PH: 7543 5600

7.4 the names and contact details for any other relevant market participants or interested parties are as follows:

For the proposed HP Online Store partners - their contact details are listed in 2.1 and 2.2 above.

As discussed above, the relevant partners of the HP Marketplace Stores will be decided if and when HP intends to roll out such stores.

Please see 7.2 and 7.3 above for contact details of other interested persons being HP's channel partners and competitors.

The Commission's jurisdiction

8. The extent to which the agreement is likely to affect competition in the relevant market(s), such that the Commission has jurisdiction to authorise the agreement, including the following details can be found in sections 3 - 7 of Annexure A and Schedules 2 - 3 of this application.

8.1 how firms compete in the relevant markets, including how the parties seek to acquire and retain customers, how sales are made and the key dimensions of competition such as price, quality or innovation;

8.2 the parties' existing competitors, including approximate market shares (explaining how these have been calculated), and the extent to which these competitors would mitigate a lessening of competition;

8.3 the likelihood, extent and timeliness of entry and expansion by potential competitors, and the extent to which such entry or expansion would mitigate a lessening of competition;

- 8.4 the countervailing power of suppliers and/or customers in the relevant markets and the extent to which that countervailing power would mitigate a lessening of competition; and
- 8.5 any other relevant factors.

Public benefits and lack of public detriments

9. HP New Zealand considers the agreement will be likely to result in such a benefit to the public that it should be permitted, having regard to the Authorisation Guidelines (December 2020) (**Authorisation Guidelines**). The quantitative and qualitative evidence of the benefits and detriments that may result from the agreement, including the following, are addressed in sections 6 and 7 of Annexure A:

- 9.1 the proposed benefits that will arise from the agreement, including the likelihood and magnitude of the benefits;
- 9.2 how and when these benefits will arise (including whether the benefits are one-off or recurring);
- 9.3 whether these benefits can be achieved absent the agreement; and
- 9.4 any detriments that may result from the agreement.

In this regard, HP wishes to emphasise that the Commission must consider *both* quantitative and qualitative public benefits and detriments in considering authorisation applications.² The Commission must seek to quantify the likely benefits and detriments to the extent practicable.³ However, the Courts have clearly indicated that qualitative benefits must not be discounted as against quantified benefits, it ultimately requires a delicate evaluative judgment encompassing both.⁴ In light of this, please note that:

- The very limited e-commerce presence of HP in NZ and its current complete lack of an online direct-to-consumer retail presence in NZ, as well as the scope of the Proposed Conduct being restricted to only affecting the selected T1 Distributor (and even then, only in respect of that partner's supply of HP products in HP Stores), have significant implications for the proportionality of quantitative analysis that HP is in a position to provide to the Commission.⁵
- Notwithstanding the above limitations, HP has undertaken its best endeavours to provide quantifiable evidence to the Commission where possible, and detailed qualitative evidence where this is not feasible or the relevant evidence is not available.

Copies of relevant supporting documents

10. Please refer to Confidential Annexure D - where relevant documents have been attached and cross-referenced in this application, including any documents requested by the Commission.

² See the Commission's Authorisation Guidelines (December 2020) (**Authorisation Guidelines**) at [44].

³ See the Authorisation Guidelines at [47].

⁴ See the Authorisation Guidelines at [44].

⁵ To HP's knowledge, this is the first time that the Commission has been asked to consider a Resale Price Maintenance authorisation application.

Copies of any documents (including planning documents, due diligence reports, strategy documents, minutes of meetings, customer research, pricing studies, reports, presentations, surveys, analyses, industry/market reports and recommendations) in the Applicant's possession which:

10.1 have been prepared for, seen or considered by senior management and/or any member of the board of directors (or equivalent body) (whether prepared internally or by external consultants), and

10.2 either:

10.2.1 set out the rationale for the agreement,

10.2.2 assess or analyse the agreement with respect to competitive conditions, competitors (actual and potential), market conditions, market shares, or

10.2.3 within the last two years, set out the competitive conditions, market conditions, market shares, competitors, or the Applicant's business plans in relation to the relevant product(s) or service(s) as identified in response to question 7 above.

Confidentiality

11. In the confidential version of the application any information for which confidentiality is sought is highlighted in bold where possible and contained in **[square brackets]**. In the public version of the application, the confidential information has been removed from within the square brackets, with the brackets remaining as [].

The Applicant seeks confidentiality until it confirms in writing to the Commission that the particular information is no longer confidential.

This request is made because the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it would be likely to unreasonably prejudice the commercial position of the participants. Confidentiality is requested under section 100 of the *Commerce Act 1986* and under section 9(2)(b) of the *Official Information Act 1982*.

The Applicant requests that it be notified of any request made to the Commission under the *Official Information Act 1982* for release of confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time a response to such a request is being considered.

The above also applies in respect of any additional information provided, whether orally or in written form, to the Commission where it has been expressed to be confidential or it is implicit by the nature of that information.

Declaration

I, MIKE JAMIESON, have prepared, or supervised the preparation of, this notice seeking authorisation.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the Applicant that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the *Commerce Act* to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of HP New Zealand and am duly authorised to submit this notice.

Name and title of person authorised to sign:

MIKE JAMIESON SALES DIRECTOR

Sign: M.A. Jamieson

Date: 12/3/21

2. Annexure A - Submission in support of authorisation application for resale price maintenance

Executive Summary

(a) Need for authorisation

HP New Zealand (**HP**) is seeking authorisation from the Commission for its proposed model for its HP online stores which includes:

- (i) current and prospective public and private HP online stores (**HP Online Store**); and
- (ii) prospective HP online marketplace stores (**HP Online Marketplace Stores**)

(referred to collectively as '**HP Stores**'/the **Proposed Conduct**.)

The Proposed Conduct may technically be considered to amount to HP entering into an agreement for the supply of goods to another person, where one of the terms is that the other person will not sell the goods at a price less than a price specified by HP. HP therefore seeks legal protection by way of authorisation for resale price maintenance.

It is relevant to note that, HP's control of retail pricing is integral to and inseparable from the Proposed Conduct. Without the ability to control the "four Ps", namely product, promotion, place and pricing of HP Products on the HP Stores, HP will not be proceeding with the Proposed Conduct.

In the absence of the Proposed Conduct:

- (i) For the **HP Online Store**, HP would need to wait for a number of years for changes to its company strategy to launch a new e-commerce platform that is integrated into HP's ERP system, and customers will not be in a position to benefit from the availability of, and choice of, HP products on an HP operated store.
- (ii) For the **HP Online Marketplace Stores**, it is unlikely that HP will consider 'rolling out' HP Online Marketplace Stores for the foreseeable future.

In any event, HP will not resume its previous arrangements for the HP Online Store (which has recently ceased to operate). Under this model, HP fully outsourced all aspects of the store management to ACQUIRE.CO.NZ LTD (**Acquire**), which set all the prices for the HP Products that it offers (the limitations of this model is explored in further detail in section 3.3 (ii) of this application) (Going forward in this application, this model will be referred to as the **Previous Model**, Acquire will be referred to as the **Previous Partner**).

(b) Rationale of the Proposed Conduct

The \$4 billion e-commerce market in NZ is an established and sophisticated market, experiencing accelerating growth as businesses seek to address the needs of an increasingly

large e-commerce consumer demographic.⁶ The ultimate aim of the Proposed Conduct is to expand HP's business in the South Pacific region through transforming its e-commerce channels. HP considers that the Proposed Conduct is its 'most likely route to success' by offering New Zealand consumers greater choice and avenues to procure HP products, via its globally established online User Experience designs in the least costly and most efficient manner. It has previously tried and considered various alternatives, including a completely outsourced model for the HP Online Store without commercial success.

(c) Operation of the Proposed Conduct

Under the Proposed Conduct, HP proposes to partner with third parties with specialist expertise and adopt the latest e-commerce technology. In particular, HP will:

- adopt HP's globally approved e-commerce platform built on third-party technology;
- outsource warehousing, order fulfilment and delivery functions. HP will also have direct access to the selected T1 Distributor's stock holding; and
- integrate its approved e-commerce platform (including its payment gateway), into the selected T1 Distributor's Enterprise Resource Planning (**ERP**) system. From a customer's perspective, following their purchases, their product payment will flow into the selected T1 Distributor's bank account, effectively making the partner the seller and merchant of record.

Apart from the above, HP proposes to control all other aspects of the HP Stores, including product and marketing strategies, and in particular, the setting of retail prices for HP Products that appear on the HP Stores.

It is important to note that the Proposed Conduct **only** applies to:

- HP's selected T1 Distributor for the HP Online Store; and
- where, but for the Proposed Conduct, HP would be the third-party (**3P**) seller on the relevant online marketplace, i.e. HP operating an HP Store on an online marketplace (such as Amazon) rather than the online marketplace operator being the seller of the product. HP is **not** proposing to control either the pricing of, or the product promotional strategies for, HP products where the operator of the online market place is the first party seller (**1P**) in its own right (i.e. where the online market place is selling direct to consumers).

(d) Public benefits

HP submits that there are numerous public benefits resulting from its omnichannel strategy envisioned for the HP Stores as a part of the Proposed Conduct, including:

⁶ See J.P Morgan 2019 Global Payments Trends Report - New Zealand Country Insights - <https://www.jpmorgan.com/europe/merchant-services/insights/reports/new-zealand>.

(i) improved user experiences for customers of the HP Stores, and in particular, the HP Online Store

HP will implement continuous site improvements to HP Stores through its dedicated performance optimisation teams. Day-to-day, the team will be responsible for establishing and executing the growth strategy driving awareness/promotional campaigns, product and pricing strategy, and all relevant aspects of the HP Stores (apart from the third party online marketplaces that continue to be operated by the relevant marketplace operator). With the support of the HP team, customers will also have access to pre and post-sales support via dedicated call centres newly established for the HP Online Store and in the future, HP Online Marketplace Stores.

The Proposed Conduct will also allow HP to grow its online brand awareness and reach new target audiences with dedicated product offerings and pricing. These include: private HP Online Stores, which, at this stage, are proposed to include an HP Corporate Employee store, HP Employees store and an HP Students store (additional detail below).

In addition, customers will also:

- be able to purchase HP products at more competitive prices through leveraging the pricing promotional offers included in HP's frequent and ongoing promotional campaigns for the HP Stores;
- be able to access the breadth of HP products in one location. HP will forecast a range of consumer and commercial PC and printer devices and have that inventory located in its selected T1 Distributor's warehouse; and
- access a wider range of payment options.

(ii) faster delivery times and wider range of delivery options for customers of HP Stores

Through HP's ability to leverage the logistics and fulfillment expertise of its selected T1 Distributor as a part of the Proposed Conduct, HP will look to offer customers of the HP Stores faster delivery times and a wider range of delivery options, which will significantly improve the overall customer experience.

(e) Lack of public detriments

HP submits that there are no public detriments associated with the Proposed Conduct, including no material anticompetitive effects. This is due to the fact that there will be:

- (i) limited supply chain impacts** - The total sales of HP Products from the HP Online Store that existed account for a very small proportion of sales of HP Products (let alone the total Information Technology (IT) product sales in NZ). HP anticipates significantly greater levels of sales will occur through the proposed HP Stores. Nevertheless, these are likely to amount to small proportion of sales of HP products;

- (ii) **all of HP's distributors and resellers will remain unaffected by the Proposed Conduct** - all participants in HP's Distribution Network (including its selected T1 Distributor in respect of HP products on non HP Stores channels) will continue to sell and price the relevant HP Products with total independence and discretion;
- (iii) **cessation of HP's online presence in NZ** - the counterfactual is the cessation of any direct online presence by HP in NZ and the loss of competition and choice for New Zealand consumers, at least for a considerable period; and
- (iv) **significant and numerous competitors remain in the market** - HP is only one of a large number of IT products/brands available for sale to NZ customers, including Apple, Microsoft, Dell, Lenovo, Acer, Canon, Epson, Brother, Kyocera and Xerox.

In addition to the above, HP will also utilise its experience and expertise in setting retail prices for HP Products in NZ, both generally and for promotional programs, as it does in other countries.

3. Background

3.1 HP

HP's ultimate parent company is HP Inc., a manufacturer of HP-branded technology products (**HP Products**) including desktop computers, notebooks, printers, and related accessories and supplies (ink cartridges and toners etc.).

HP imports, distributes and supplies HP Products in NZ through its network of authorised distributors, retail channel partners and resellers for resupply to consumers and businesses.

3.2 HP Distribution Network

The distribution of HP Products primarily involves a network of HP partners (**HP Distribution Network**). HP currently does not sell direct to individual/home consumers in NZ.⁷ Approximately [] of sales of HP Products, whether to large corporate or government customers, small-to-medium businesses or consumers, are undertaken through the HP Distribution Network.⁸ The remaining [] of HP's product sales is supplied by HP direct to mainly large corporate or government customers with significant volume requirements.⁹

HP's partners in the HP Distribution Network can be categorised into the following four groups:

(a) T1 Distributors

HP sells large volumes of HP Products to distributors who have experience in supply chain management, warehousing and logistics services (known as Tier 1 or T1 Distributors).

⁷ As is set out in 3.3 below, the HP Online Store that operated until recently involved sales being made by HP's Previous Partner.

⁸ Attachment 1 in Confidential Annexure D. Please note that we have combined corporate reseller, retail direct (where HP is selling direct to retailers who then on sell HP products to consumers) and attribute it to the distribution network as resellers and retailers are a part of this network.

⁹ Attachment 1 in Confidential Annexure D, please note that we have used data from 2018Q4 to 2019Q3 (as closest reflection to HP's 2018/19 financial year from 30 October 2018 to 1 November 2019). Please note revenue data is reported in USD.

There are [] T1 Distributors to whom HP sells to including Ingram Micro, Exeed, Sektor and Dove Electronics. These T1 Distributors on-sell HP Products to the T1 Resellers, T2 Resellers and T1 Retailers (although the major retailers predominantly purchase direct from HP, and receive shipments direct from HP's factories) across NZ. HP's T1 Distributors are not retailers - they instead sell to HP Resellers under their agreements with HP. Accordingly, the selected T1 Distributor will be changing its existing business model as part of supporting the HP Online Stores (and in the future, the HP Online Marketplace Stores), whereby the T1 Distributor will act as the merchant and seller of record in receiving sales from HP's end-consumers, in addition to warehousing order fulfilment and delivery functions.

HP provides the Commission with additional data for the current sales volumes between HP and the T1 Distributors from Q1 2018 to Q3 2020 across its printer products and personal computing products categories.¹⁰ There have been some relatively consistent trends over this relevant period, including:

- (i) commercial printing products - total quarterly revenue ranges from [](USD); and
- (ii) commercial computing products - total quarterly revenue ranges from [] (USD).

As will be discussed further in section 4.4 of this application, the impact of the Proposed Conduct on the HP Distribution Network, including on T1 Distributors, is likely to have little or no effect, and possibly induce competitive responses.[

]

Notwithstanding the above, the introduction of higher quality service offerings on the HP Online Store under the Proposed Conduct is likely to encourage other market participants to similarly improve their service offerings. If this occurs, consumers will be the ultimate beneficiaries of this competitive response.

(b) T1 Resellers

There are [] T1 Resellers that purchase HP Products from the T1 Distributors. In limited cases, HP may also sell direct to T1 Resellers if volume criteria can be met. T1 Resellers only supply HP Products to large corporate and government end-users. These T1 Resellers include Fujitsu, Acquire, Datacom and Spark Digital.

(c) T2 Resellers

There are over [] T2 Resellers who purchase HP Products from T1 Distributors and sell to a broad range of end-users, including government, large corporates, small-to-medium businesses and to a lesser extent, home consumers. These resellers include Code Blue, Lexel and the Instillery Group.

¹⁰ Attachment 1 of Confidential Annexure D. Please note that we have excluded Q4 2020 data from our analysis as this is not a full reflection of Q4 data as Q4 has not concluded for 2020 and therefore the relevant data is incomplete.

(d) T1 Retailers

T1 Retailers are large retailers that purchase HP Products from T1 Distributors or may also purchase direct from HP's factories (overseas) as part of their standard T1 Reseller contracts, if volume requirements are met. There are [] direct T1 Retailers including Warehouse Stationary, Noel Leeming, The Warehouse, Harvey Norman and JB Hi-Fi, who sell direct to end-users, primarily home consumers and small-to-medium businesses.

3.3 HP Online Store

Until recently in NZ, end-users such as home consumers, students and small businesses, have had the option of purchasing a limited set of HP Products online via a public HP branded website and call centre fully managed and operated by HP's Previous Partner (collectively referred to as the '**HP Online Store**').

The HP Online Store was until recently a functional online store at www.hpshopping.co.nz (URL used for marketing purposes and for the convenience of customers).

This URL automatically redirects customers to 'https://www.hpshopping.co.nz/acquire/default.asp?', where customers are given the option to choose a reseller.

The target audience of the HP Online Store is consumers, students and small to medium businesses.

Sales that were made through the HP Online Store, which recently ceased to operate, made up a very small portion of HP's total sales in NZ. For each category of product sold on the HP Online Store, the revenue from the HP Online Store as a percentage of HP's total revenue in NZ for the 2018-19 financial year is set out in Schedule 1.¹¹ Overall, at the peak of the Previous Partner's operations, being 2017/18, its total sales were []. HP has set business objectives to achieve [] in revenue for the first year of the proposed HP Online Store's operation, which is only [] of HP's FY19 revenue which totalled more than [] in NZ.¹²

(i) HP's model for the HP Online Store to date

Until recently, under the Previous Model, HP's partner:

- created, hosted and managed the HP Store on its e-commerce platform and network;
- purchased a limited range of HP Products from HP's T1 Distributors, only after an order was received on the HP store;
- decided on the product range to appear on the HP Online Store;
- set the prices for the HP Products listed on the HP Online Store;
- accepted payment for all sales made through the HP Online Store;

¹¹ HP's financial year is from 1 November to 31 October of each year - referred to in this application as HP FY.

¹² See Attachment 1 and 'Business Objectives' section in Attachment 2 of Confidential Annexure D.

- undertook order fulfilment through its own independent distribution and logistics network; and
- offered limited call centre support due to the limited traffic volume and marketing activity being undertaken.

HP had minimal involvement in the operation and sale of HP products on the HP Online Store since its inception in 2012. The Previous Model operated between 2012 and early 2020, where HP's partner managed almost all aspects of the HP Online Store, as part of a five year outsourcing agreement between the parties (which expired in 2017, although the store was shut down in March 2020).

(ii) Limitations of The Previous Model for the HP Online Store

Under the recently ceased model for the HP Online Store, HP's ability to "own" and enhance the quality and end-to-end experience for its customers was limited due to the following reasons:¹³

- The Previous Partner managed and operated the HP Online Store, including the e-commerce platform for the store. Accordingly, HP was not in a position to "own" the customer experience both online and via the call centres, for the benefit of NZ customers. For example, the HP Online Store did not adopt the same look and user experience to that in other jurisdictions, in addition HP was not in a position to be directly responsive to customer feedback and needs. This resulted in a lack of e-commerce platform uniformity between the HP Online Store in NZ and other HP Online Stores around the globe as updates and improvements were made to the other websites.

[

¹³ Refer to Attachment 2 of Confidential Annexure D for HP internal consideration of the various reasons why the Previous Model was not commercially successful.

]

(iii) HP's proposed model for the HP Online Store

In order to address the above limitations and those referred to in section 5 below, HP proposes to implement the same model as that implemented in Australia by a related company, HP PPS Australia Pty Ltd. The proposed model has just commenced operating in Australia following ACCC approval. The proposed model involves the following:

- **HP hosting, operating and maintaining HP's new global e-commerce platform built on the latest e-commerce technology.** HP has established a number of teams, both locally and across Asia, which will be responsible for implementing, managing and optimising the e-commerce platform for NZ (and Australia).[
-]
- **HP entirely outsourcing the warehousing, fulfilment and logistics function to its selected T1 Distributor.**

[

]

- Similar to the operations of the recently ceased HP Online Store, the selected T1 Distributor will order products from HP for sale on the HP Online Store. However, under the proposed model, HP will supply the selected T1 Distributor with PC and print products' forecasts to assist the T1 Distributor in determining its appropriate HP products inventory and more importantly, to define the full product strategy for the HP Online Store. The selected T1 Distributor will then warehouse the relevant products in its NZ distribution centre. For the first time in NZ, these products will include both commercial and consumer PC, print, monitors and accessories products.
- The selected T1 Distributor will work with HP to integrate the new e-commerce platform into the selected T1 Distributor's ERP system, specifically the order management and payment gateway systems. This includes orders placed by customers over the phone, through online chat or online marketplaces.
- Therefore, the selected T1 Distributor will be the merchant and seller of record. When a customer makes a purchase, the payment will go directly into the selected T1 Distributor's nominated bank account. The selected T1 Distributor will invoice the customer and title will flow from the selected T1 Distributor to the customer.
- From a financial and back-end perspective, the selected T1 Distributor will manage all product returns and refund payments in accordance with the consumer law provisions of the *Consumer Guarantees Act* for products purchased on the HP Online Store, under indemnification from HP. However, from the customer's perspective, they will deal exclusively with HP's first tier customer support team on all aspects of their orders. HP's customer support team will then coordinate with the selected T1 Distributor on returns and refunds.
- **HP will be the operator of the HP Stores**, maintaining control over all other aspects of its operation and the 4Ps.
- **HP will have a dedicated team of e-commerce professionals responsible for developing and executing a full 4Ps marketing strategy** focusing on product, price, distribution and promotions (as is set out in more detail in 5.2 below). This will ensure that HP's NZ customers can avail themselves of the full benefits of HP's improved service and product offerings on the HP Online Store.

Private stores:

Under the Proposed Conduct, HP will, in addition to a "public" store, be looking to introduce new "private stores" to different audiences including:

- (a) HP Corporate Employee store (employees of HP's largest enterprise accounts will get access to the store);
- (b) HP Employee store;

- (c) HP Student store (targeting secondary and tertiary students); and
- (d) related call centres and online chat teams to support all HP Online Stores, which will deliver significant improvement on its previous outsourced HP store offering.

In relation to the call centres, it is common for e-commerce stores to have multiple avenues by which customers can learn and research about HP's products and place orders. The HP Online Store will be no different. Customers of the public and the future private HP Online Stores have and will have the option speaking to a HP trained call centre agent when researching or purchasing HP products, including in respect to specifications and pricing, and then contacting the HP call centre.

Please note that:

- using the proposed e-commerce platform, HP will be able to adopt different URLs for the public and private stores, with or without relying on webpage redirections.
- HP may, in the future, offer additional or different public or private stores (for example, based on customer segment, industry or product type), beyond the public and proposed private stores identified (the latter on a confidential basis) in the authorisation application.

3.4 Proposed HP Online Marketplace Stores arrangements

At present, HP does not sell products through online marketplace stores in NZ.

However, following the establishment of the proposed model for the HP Online Store in NZ, as part of HP NZ's direct to end-user strategy, if and when marketplace opportunities arise in the NZ market, HP will consider establishing HP (branded) Online Marketplace Stores.

Similar to the position in Australia, HP is not in a position to proceed to offer HP Online Marketplaces Stores without the assistance of partners, such as its selected T1 Distributor. Regardless of whether the store is a HP Online Store or a HP Online Marketplace Store, the store will require the same order processing and delivery requirements from HP's selected T1 Distributor.

The primary reason that HP needs to adopt the proposed model with the selected T1 Distributor in relation to any prospective HP Online Marketplace Stores is that [

]

Accordingly, any future HP Online Marketplace Stores in NZ will involve:

- HP's e-commerce platform interfacing with the relevant online marketplace's order management system and, as part of its integration into the selected T1 Distributor's ERP system, and subsequent order management system and automatically facilitate customer orders; and
- the fulfilment of HP Products will take place as set out in 3.3 above. That is, HP operating an HP Store on an online marketplace (such as Amazon) rather than the online marketplace operator being the seller of the product. HP is not proposing to control either the pricing of, or the product promotional strategies for, HP products where the operator of the relevant online market place is the first party seller (1P) in its own right (i.e. where the operator of the relevant online market place is selling direct to consumers).

4. Market Definition

The HP Products available on the HP Stores can be broadly categorised as Personal Computers (**PC**) or Print products.

The PC category includes desktops, workstations, displays, notebooks and accessories and the Print category includes printers and print supplies such as ink and toner.

In both the PC and Print categories, the HP Products sold on the HP Stores are primarily focused for two main target audiences:

- (i) **commercial** - small to medium sized businesses consisting of approximately 1-99 employees; and
- (ii) **consumer** - at home users or students.

The HP Products on the HP Stores can be purchased and supplied to customers throughout all of NZ.

HP considers that the relevant markets that may be impacted by the Proposed Conduct are likely to be markets for the retail supply of:

1	PC , which may arguably be further broken down into "sub-markets" or market segments as follows	(i) Consumer desktops. (ii) Consumer notebooks. (iii) Commercial desktops. (iv) Commercial notebooks. (v) PC accessories (monitors, mouse, keyboard etc).
2	Print , which again may be further broken down into:	(i) Home printers. (ii) Office printers. (iii) Home print supplies. (iv) Office print supplies.

Further details about the types of products included in the above markets/market segments are included in Schedule 2. The "market" shares of HP and its key competitors in each of the product markets identified above is set out in Schedule 3.

If HP was to engage in the Proposed Conduct under the new model for the HP Stores, it would be constrained from increasing retail prices given that in each of the relevant product markets/market segments, there are a large number of alternative brands of products, as well as suppliers, against which HP faces strong competition. Prices of HP Products are largely determined by market forces and increasing retail prices on the HP Stores would make HP Products sold through that avenue uncompetitive with other retailers and brands.

[
Rather, HP expects that the HP Stores, like any retail outlet offering to sell HP products, will be subject to significant competition from other retail outlets/sites as well as the large number of competing brands.

5. Proposed Conduct

5.1 Description of the Proposed Conduct

Under the proposed model for the HP Stores, HP will retain all responsibilities with respect to product, place and promotional strategies and in particular, will set the retail prices for HP Products that appear on the HP Stores (**Proposed Conduct**).

It is important to note that the Proposed Conduct **only** applies to:

- HP's selected T1 Distributor supporting the HP Online Store; and
- where, but for the Proposed Conduct, HP would be the third-party (**3P**) seller on the relevant online marketplace, i.e. where HP is operating an HP Store on an online marketplace (such as Amazon) rather than the online marketplace operator being the seller of the product itself. HP is **not** proposing to control either the pricing of, or the product promotional strategies for, HP products where the operator of the relevant online market place is the first party seller (**1P**) in its own right (i.e. where the operator of the relevant online market place is selling direct to consumers).

As the proposed model will technically involve the supply of HP Products from HP to its selected T1 Distributor who on-sells direct to customers, the Proposed Conduct may be considered to amount to HP entering into an agreement for the supply of goods to the selected T1 Distributor where one of the terms is that the selected T1 Distributor will not sell the goods at a price less than a price specified by HP. HP therefore seeks legal protection by way of an authorisation for resale price maintenance to engage in the Proposed Conduct.

5.2 Rationale of the Proposed Conduct

HP's primary purpose in implementing the Proposed Conduct, is to seek to improve the experience of, and service offerings to, customers that source HP Products from the HP Stores in the most efficient and cost-effective way.[]

]

To achieve this goal, HP is proposing to launch a new HP Online Store (and possibly in the future, HP Online Marketplace Stores) built on HP's []. HP's e-commerce store will be integrated into its selected T1 Distributor's ERP system in order to create an improved experience for customers of the HP Stores, [

]

HP will be the owner and manager of the HP Store and retain all management and operational functions for which it is best placed to optimise, in order to achieve its purpose of improving the experience of customers on the HP Stores.

[

]

- (i) Logistics and Warehousing: outsourcing the order fulfilment functions to its experienced and sophisticated selected T1 Distributor:

[

]

- (ii) E-commerce: Implementing and operating a HP managed e-commerce platform [

]

More specifically, in relation to the prospective HP Online Marketplace Stores model, HP's rationale is as follows:

- (i) The proposed e-commerce platform will allow for orders from prospective HP Online Marketplace stores such as on Trademe.co.nz, eBay, and in the future, Amazon, should it launch in NZ, to be more easily integrated into the selected T1 Distributor's order management system.

[

]

- (iii) By streamlining the order management process and leveraging the warehousing and logistics expertise of the selected T1 Distributor, HP can facilitate faster delivery times, a wider range of delivery and tracking options and faster refunds and returns processes for HP customers.

HP considers that the Proposed Conduct (HP maintaining control over retail prices on the HP Stores) is essential to the proposed model for operating the HP Stores for the following reasons:

- The selected T1 Distributor's core business is the distribution of technology products to resellers (not end users) including providing warehousing and logistics services. It is not in the business of, nor has any experience with, or the appropriate resources for, developing retail price, promotion and product placement strategies for the over [] SKUs HP initially intends selling through the HP Online Store in NZ. Globally, HP's T1 Distributors do not and cannot sell to end customers. Under this proposed agreement HP will be giving its partner an exemption to support the HP Store only.
- Conversely, HP is in the business of, and has expertise and experience in, retailing HP Products including developing and implementing effective online 4Ps strategies that meet the needs of customers and develop the HP brand. Further details about the complexity of these strategies and HP's internal resources that are required to develop and implement them, are set out in the confidential section below.

HP's pricing strategies and resources for the HP Stores

[

]

These resources are responsible for executing over [] promotional campaigns per year in Australia. At any one time, HP has over [] different prices across the sub-businesses and all product ranges in Australia.

[

]

In addition to the complexity of pricing outlined above, pricing on the HP Stores (in Australia) is a dynamic process that involves:

[

]

5.3 Time period relevant to the Proposed Conduct

The Proposed Conduct will commence if and when the Commission approves this authorisation application and will thereafter be ongoing.

5.4 Persons impacted by the Proposed Conduct

The parties or classes of persons that will be impacted by the Proposed Conduct are:

- (i) Customers - purchasers of HP Products from the HP Online Store;
- (ii) The selected T1 Distributor that HP intends to partner with for the proposed model for the HP Stores;
- (iii) The HP Distribution Network, including HP's Previous Partner (to a very limited extent); and in the future
- (iv) Operators of online marketplaces.

(i) Customers

Under the proposed model for the HP Stores, HP intends to implement pricing strategies that are appropriate and in line with the competitive landscape currently present in NZ. This means that customers of the HP Stores will be able to avail themselves to a broader range of HP Products and to price points and promotions that will be made available on the HP Stores.

From a customer experience perspective, the only difference under the proposed model for the HP Stores will be that they will benefit from an enhanced customer experience and service offerings, including a broader product selection, wider range of payment and delivery options and efficient delivery and returns processes, customer friendly purchasing terms including price match, free delivery as set out in section 7 below.

HP intends to clearly communicate with customers about the identity of the organisation with whom they are contracting with when purchasing HP Products from the HP Stores.

As is the case currently, customers have numerous alternative online and "bricks and mortar" retailers from which to purchase HP Products or competing brands. The proposed HP Stores model does not seek to limit the availability or the retail pricing of these alternatives in any way.

(ii) Selected T1 Distributor

HP suggest that the selected T1 Distributor with whom HP intends to partner for the proposed model will in no way be impacted by the Proposed Conduct, as today it does not and cannot sell to end customers. Rather, as a T1 Distributor it only sells HP product to HP resellers, whom then on sell to end customers. As stated above, the selected T1 Distributor has very significant expertise in warehousing and logistics (it already supplies HP Products to resellers) which benefit HP, and reseller partners. However, it does not have the experience, expertise or resources to set end-customer retail prices for an initial product range of almost approximately [] SKUs and will build over time.

Under the proposed model, the selected T1 Distributor will benefit from being able to obtain a new revenue stream in light of the new services being provided to HP.

[

]

In addition to what has been discussed above regarding the operation of the proposed arrangements between HP and [] as part of the Proposed Conduct, we further note the following:

1. the direct access that HP will have to [] stock holding, warehouse and delivery services

[

]

2. the degree of independence [] will maintain to supply third party resellers and retailers

Under the Proposed Conduct, there will be no changes to [] complete independence to supply HP products to third party resellers and retailers in its capacity as a T1 Distributor.

3. how [] would still have autonomy in making pricing and other decisions in relation to third-party resellers and retailers that are served from the same warehouse

[

]

(iii) HP Distribution Network

There will be little or no impact of the Proposed Conduct on the HP Distribution Network. The HP Online Store is one of a number of retail outlets that sells HP products, and will be one of a large number of retail outlets that sells other IT products that HP competes with.

There will be no direct impact of the Proposed Conduct on the HP Distribution Network as HP's Distributors, Resellers and Retailers remain free to price how they want save for HP's selected T1 Distributor, and only in relation to the HP Stores.

Similarly, HP anticipates that the Proposed Conduct will have a negligible effect on the operators of online marketplaces in NZ as HP, when it commence to operate the HP Online Marketplace Stores, will be one of a large number of sellers of a variety of goods and services on such online marketplaces.

The Proposed Conduct will not have any direct impact on the supply chains of competing brands save that it may result in these competitors similarly improving their online and/or "bricks and mortar" service offerings. As HP's arrangements with its Previous Partner in respect of the HP Online Store have concluded and the store is currently not operational, any commercial impact on HP's Previous Partner was minimal and already felt.

Notwithstanding the above, the introduction of higher quality service offerings on the HP Stores under the proposed model is likely to encourage competitive responses from other retailers of HP Products to similarly improve their service offerings.

(iv) The operators of the relevant online marketplaces

Each of Amazon and eBay provide an online marketplace to third-party sellers who sell direct to customers (Third Party Sellers – 3P). Amazon is also an online retailer in its own right where it also sells direct to customers (Amazon Retail - 1P).

As such, the Proposed Conduct is likely to impact both the Third Party Sellers and Amazon Retail in due course only for the reason that customers who may ordinarily purchase from these respective stores may ultimately decide to purchase from the HP Online Marketplace Stores.

However, as discussed in section 5.1, the Proposed Conduct does not fetter the ability for 3P sellers and operators of the relevant online marketplaces to sell HP products direct to customers. The presence of HP Online Marketplace Stores is merely an addition to the already competitive online landscape for HP products, broadening product availability and price choices for customers. It is ultimately the customer's choice to determine if, in what, at what price point and from where, they will purchase HP products.

6. Counterfactual

In assessing the likely benefits and detriments to the public from the Proposed Conduct, HP considers that the Commission should take into account the likely state of affairs if the authorisation application is not approved.

If authorisation in respect of the Proposed Conduct is not provided, HP will not recommence the Previous Model, either with its Previous Partner or a similar arrangement with any other third party.[

]

Accordingly, in the event that authorisation is not granted, HP will be unlikely to have a direct-to-consumer online presence in NZ for the near-medium term and at best, may operate the HP Stores itself at some time in the future, however there are no such plans to do so.

Therefore, customers of the HP Online Store will not be able to buy direct from HP and avail themselves (at least for a long period) of the enhanced customer and brand experience that are expected on an ongoing basis under the Proposed Conduct, nor have the opportunity to make purchases through any prospective HP Online Marketplace Stores.

(i) Lack of commercial alternatives

In order to address the limitations of the existing HP Online Store in light of the unique timing and operational factors that HP is currently facing (as identified on a confidential basis in sections 3.3 and 5.2), and the limitations on implementing HP Online Marketplace Stores referred to in section 3.4, the proposed model for the HP Stores is presently the only reasonable way forward in terms of commercial viability and HP being in a position to offer an HP branded owned and managed online service and experience to its customers.

As the ACCC aptly acknowledged, the Proposed Conduct is likely to realise various efficiencies by allowing HP to manage pricing and promotional strategies of the HP Stores in Australia which it is best placed to do, including having regard to the fact that alternative commercial arrangements such as an agency agreement "*is likely to introduce additional complexities*" to HP's distribution processes.¹⁴

For the benefit of the Commission, HP identifies below some alternative models for the HP Stores that HP considered and decided not to proceed with, and the reasons why these alternatives are presently unviable for HP and not in the best interests of HP customers:

1. HP proceeding with the new model for the HP Stores in the absence of the Proposed Conduct (i.e. a situation where the selected T1 Distributor sets retail prices rather than HP).

For the reasons outlined in this submission, HP considers that the Proposed Conduct cannot be considered in isolation to the other elements of the proposed model for the HP Stores.

- HP has already tried an outsourced model where a partner sets retail prices for the HP Online Store, and the model has not been successful to date. HP's Previous Partner made [] on the HP Online Store at the height of its operation in 2017/18 as compared to the [] of sales made on the Australian HP Online Store in the 2018-19 financial year.¹⁵
- HP has highly experienced, dedicated teams that specialise in setting 4Ps strategies for the HP Stores. As identified in section 5.2, HP's pricing strategies for the HP Stores (in Australia) are both complex and dynamic and cannot be separated from the other product-related strategies that HP employs.

¹⁴ See Annexures B and C respectively, including paragraphs [40] - [43] of the ACCC's 'Statement of Reasons' for proposed resale price maintenance conduct for HP products sold through HP Online Stores (10 October 2019) (**ACCC's HP Online Stores decision**); Paragraphs [44] and [46] of the ACCC's 'Statement of Reasons' for proposed resale price maintenance conduct for HP products sold through HP Online Marketplace Stores (2 October 2020) (**ACCC's HP Online Marketplace Stores decision**).

¹⁵ See Attachments 2 and 16 of Confidential Annexure D.

- HP has decided that its optimal partner is one with expertise in, and whose primary business is warehousing and logistics aimed at providing fulfilment services to customers (such as its selected T1 Distributor). However, such partners do not have the necessary expertise, experience or insights into HP's business to set prices in a way that balances the interests of HP customers and participants in the broader HP Distribution Network.

2. HP using the third-party e-commerce platform and appointing the selected T1 Distributor under an agency model.

- Appointing a T1 Distributor as an agent of HP to sell the products on the HP Stores while HP remains as the merchant and seller of record (to avoid engaging in resale price maintenance) would therefore involve the selected T1 Distributor holding significant amounts of stock on consignment, in addition to its holding of stock in its own right as a distributor
- []due to complexities from a financial and accounting perspective for both HP and the selected T1 Distributor since the inventory would remain on HP's "books" without being in its effective control, while the selected T1 Distributor bears the responsibility of managing two sets of inventory.

3. HP using the third-party e-commerce platform in the absence of the enhanced cooperation of the selected T1 Distributor.

[

]

- Therefore, due to the inextricable linkage between these two limbs of the proposed model for the HP Stores, this is not a viable option in light of the customer benefit objectives that underpin HP's decision to implement the proposed model. In particular, the new payment gateway systems and delivery options that can be facilitated through the new e-commerce platform will be directly integrated in the selected T1 Distributor's systems.

7. Public benefits

The main beneficiaries of the Proposed Conduct will be customers of the HP Stores who will benefit from the enhanced customer experience, service offerings including a broader product range, frequent promotional activities, HP's pre and post call centre support, desktop and mobile responsive user experience associated with the proposed model for the HP Online Store, and in the future, HP online Marketplace Stores.

Having regard to HP's rationale for implementing the proposed model for the HP Stores (see section 5.2), in addition to the unique operational and timing factors that HP currently faces (as identified on a confidential basis), the Proposed Conduct is inextricably linked to the proposed model for the Stores. In particular, all of the public benefits that arise as a direct result of HP being able to achieve synergies from leveraging its pricing and promotional expertise utilising the logistics and fulfilment expertise of an experienced T1 Distributor and an the latest e-commerce platform technology.

While HP will set out the likely public benefits in more detail below, it is important to note that the ACCC has recently accepted that:

- improved customer experiences, including greater website functionality, better delivery options and times arising from the Proposed Conduct constitutes relevant public benefits;¹⁶ and
- such public benefits are likely to have broader flow on effects in facilitating competitive markets, including in promoting intra-brand and inter-brand competition, at least to some degree.¹⁷

(i) Improved user experience for customers of the HP Stores, and in particular, the HP Online Store.

As mentioned above, HP has dedicated performance optimisation teams that will be focused on delivering the best in class performance of the HP Stores, thus ensuring customers are afforded the best possible user experience. [

]

HP expects its additional investment of dedicated resources will significantly improve users' experience on the HP Online Store (on both the desktop and mobile sites) through

¹⁶ See Annexures B and C respectively, including paragraph [42] of the ACCC's HP Online Stores decision and paragraph [45] of the ACCC's HP Online Marketplace Stores decision.

¹⁷ Same as above.

improvements to page load times, on site search capabilities and ease of navigation based on HP's globally directed user experience and design principles.

The enhanced search engine optimisation will also make it easier for customers to find the right information and product whilst searching online. [

]

It is also prudent to note that the above improvements were achieved in the absence of a third party logistics specialist's involvement in the operation of these HP Stores. Accordingly, it is expected that the Proposed Conduct is likely to deliver greater efficiencies and improvements to user experiences.

[

]

HP also expects the close collaborative relationship it has with the selected T1 Distributor will lead to greater insights into the 'pain points' of their experience and identify timely opportunities to streamline these transactional experiences.[

]

In addition to the dedicated resources that HP intends to devote to roll out continuous optimisation measures for the HP Online Store discussed above, such regular discussions between [] and HP regarding customer feedback will mean that HP will have greater visibility and act more responsively to address customer feedback [

]

The improved website functionality and user experience will benefit a wide range of customers, including those who may visit the HP Online Store website for product information and then choose to source HP Products from another retailer in the HP Distribution Network. In addition, HP will be able to offer customised stores for the various interfaces of the HP Online Store, offering different price points, promotions and ranges to these customers.

Customers will also benefit from the addition of new functionality including real-time stock availability, customer reviews, order history logs and one touch re-ordering. The customer review functionality will make HP more accountable to its customers and offers customers an additional means to compare and select suitable products. The addition of order history logs will enhance transparency and convenience and may assist in the deployment of loyalty programs in the future.

(ii) Wider range of payment options that enhances customer choice for customers of the HP Online Store

The recently ceased HP Online Store only provides limited payment options (Visa, MasterCard and American Express). HP's new payment gateway provider, which would connect directly into the e-commerce platform and the selected T1 Distributor's payment and order management systems, will allow over 10 payment options to be introduced on the new HP Online Store including:¹⁸

- Stripe (which includes a whole array of payment options, ranging from debit and credit, mobile payments such as Google Pay and Apple Pay);¹⁹
- Paypal; and
- buy now pay later options are also being investigated;

which offer greater online purchase protection for customers and gives customers greater choice and flexibility in how they pay for products as against the recently ceased HP Online Store model.

(iii) Fast delivery times for customers of the HP Stores

Customers of the HP Stores will benefit from fast delivery times, including fast refund and returns processes. Delivery speed is particularly important for online retailers given that

¹⁸ These payment options are reflected in 2.4 of the Statement of Work incorporated as a part of the Australian HP Online Store Contract - see p36 of Attachment 14 of Confidential Annexure D.

¹⁹ For the full list of Stripe's payment options: <https://stripe.com/en-au/payments/features>.

"bricks and mortar" retailers with whom the HP Online Store competes, offer customers the convenience of having products immediately available on purchase.

[

]

(iv) Wider range of delivery options for customers of the HP Stores

Under the proposed model for the HP Online Store (and in the future the HP Online Marketplace Stores), customers will benefit from a wider range of delivery options that will also make the HP Stores more competitive in the market in terms of service offerings to customers.

[

]

It is envisaged that some of the expanded options will include next business day delivery across the entire product range offered, in addition to real-time tracking capabilities that will give customers greater certainty with respect to delivery times. [

]

Again, these capabilities will be directly connected from the e-commerce platform at the front end, to the selected T1 Distributor's systems at the back end.

Additionally, there is the potential for the selected T1 Distributor to leverage its existing supply chain relationships to offer more convenient delivery options to customers.

In addition to the public benefits discussed above, HP submits that:

- customers purchasing HP Products from alternative retailers in the HP's Distribution Network; and
- customers purchasing products from competing brands,

may also benefit as the introduction of higher quality service offerings on the HP Online Store and may also encourage other websites or "bricks and mortar" stores to similarly improve their service offerings.

8. Public detriments

HP submits that there are no public detriments (including no competitive detriments) associated with the Proposed Conduct. In these circumstances, HP submits that even modest public benefits will justify the authorisation application being allowed to stand.

Although the Proposed Conduct means that the selected T1 Distributor will not be in a position to determine retail prices of HP Products on the HP Stores, this is not a public detriment having regard to the following:

- the counterfactual is the lack of any HP Stores presence in NZ;

- the Proposed Conduct will have no impact on competition in each of the markets for products sold on the HP Stores (other than potential pro-competitive effects) having regard to the following:
 - (i) As the ACCC recognised in its 'Statement of Reasons' for HP's Resale Price Maintenance Notification for HP Online Marketplace Stores, the Proposed Conduct "*will not likely result in customers paying more for HP Products*", particularly having regard to the very limited scope of conduct and the significant competitive dynamics remaining in the market.²⁰
 - (ii) HP is only proposing to control the retail prices of HP Products sold on the HP Stores in its various iterations in its capacity (together with the selected T1 Distributor) as a 3P seller. No other retailer in the HP Distribution Network nor will operators of HP Stores selling HP products directly to customers or other third party sellers operating in online marketplaces is impacted. This is due to the fact that the Proposed Conduct will ensure that the status quo remain, meaning that other retailers of HP Products retain the widest possible freedom to set retail prices as they please. Consequently, as the ACCC has acknowledged, HP is not seeking to impose retail price controls on an existing competitor or a business that would, absent the Proposed Conduct, be a likely future competitor.²¹
 - (iii) The HP Online Store represents a very small part of the HP supply chain. Overall, at the peak of HP's Previous Partner's operation of the HP Online Store in recent years, being 2017/18, its total sales were [] Customers will remain free to purchase HP Products from a large number of alternative online and "bricks and mortar" retailers. Such retailers account for the vast majority of sales of HP Products to consumers and small businesses at present.
 - (iv) HP faces strong competition from the many alternative brands in each product category identified in Schedule 2. Under the Proposed Conduct, customers remain free to purchase PC and Print products from a number of alternative brands who offer similar products. In any event, with or without the Proposed Conduct, retail prices of HP Products are largely influenced by the prices of the many other competing brands.
 - (v) Under the Proposed Conduct, it is also possible that non-price competition in the market may be enhanced as alternative retailers of both HP and non-HP Products may need to similarly offer improved service offerings (such as more convenient payment and delivery options) that will be made available to customers of the HP Stores.

HP submits that in the absence of any public detriments (including competitive detriments), the Proposed Conduct (which in the circumstances described in this submission, cannot be considered in isolation to the other elements of the proposed model for the HP Stores),

²⁰ See Annexure C, including paragraph [36] of ACCC Statement of Reasons - Notification for proposed resale maintenance conduct on HP products sold through HP Online Marketplace Stores (2 October 2020).

²¹ See Annexure C, including paragraph [37] of ACCC Statement of Reasons - Notification for proposed resale maintenance conduct on HP products sold through HP Online Marketplace Stores (2 October 2020).

generates a net benefit to the public which justifies this authorisation application being approved.

Schedule 1 – Relevant HP organisational charts

[

]

Schedule 2 – Product segments and HP Online Store revenue

The table below contains:²²

- the types of products included in each product segment; and
- the revenue generated from the HP Online Store as a percentage of HP total NZ revenue in 2019 financial year for each relevant product segment.

NON-CONFIDENTIAL		[
Category	Product Segment	
PC	Consumer desktop products (including desktops and displays)	
	Consumer notebook products	
	Consumer PC accessories (including power adapters, cables, mouse, bags, keyboards, pens, audio, Office 365)	
	Commercial desktop products (including desktops, displays and workstations)	
	Commercial notebook products (including mobile workstations)	
	Commercial PC accessories (including power adapters, cables, mouse, bags, keyboards, pens, audio, Office 365)	
PC Total		
Print	Home printers	
	Office printers (including printers for home office, small to medium businesses, and large format printers for design or production businesses)	
	Home print supplies (including ink, media and toner)	
	Office print supplies (including ink and toner)	
Print Total		
PC and Print Combined Total]

²² Please refer to Attachment 1 of Confidential Annexure D.

Schedule 3 – Market shares

The table below contains NZ market share data sourced from IDC, based on sales in HP 18-19 FY.²³

NON-CONFIDENTIAL		[
Category	Product Segment	HP Market Share	Market Share of Key Competitors
PC²⁴	Consumer desktop products		
	Consumer notebook products ²⁵		
	Commercial desktop products		
	Commercial notebook products ²⁶		
	PC accessories		
Print²⁷	Home printers		

²³ Please refer to Attachments 20 - 23 of Confidential Annexure D for more details. Where applicable we have used unit share% as basis for calculating market shares of HP and its competitors. Where applicable, we have also sought to focus on 2018Q4 - 2019Q3 data as this is most closely correlated with the HP FY.

²⁴ Please refer to Attachment 21 and in particular, the vendor analysis tab of the Excel spreadsheet.

²⁵ Please note that slate tablet and detachable tablet are also included in consumer notebook products.

²⁶ Please note that slate tablet and detachable tablet are also included in commercial notebook products.

²⁷ Please refer to Attachment 20 for home and office printer analysis (2018Q4 - 2019Q3), Attachment 22 for home print supplies analysis (2018Q4-2019Q3) and Attachment 23 for office print supplies analysis (2019H1 and 2019H2).

NON-CONFIDENTIAL		[
	Office printers		
	Home print supplies (Ink) ²⁸		
	Office print supplies (Toner)]

²⁸ HP only has share of sales data with respect to ink cartridges for use in HP Inkjet printers or toner cartridges for use in HP Laser printers. Inkjet printers are primarily targeted at consumers for home use but may also be used in home offices or smaller offices. Laser printers are primarily targeted for office use, but may also be used at home.

List of non-confidential footnotes in the application

No.	Footnote description	Application reference
1	Please note the numbering in this section corresponds to the authorisation application questions in the Commission's notice for seeking authorisation under section 58 except for question 11 of the Commission's notice (which corresponds to section 10 in this section) - https://comcom.govt.nz/_data/assets/pdf_file/0025/90934/Section-58-Authorisation-application-for-agreements-December-2020.pdf .	Subsection 2.1, p3
2	See the Commission's Authorisation Guidelines (December 2020) (Authorisation Guidelines) at [44].	Subsection 9, p10
3	See the Authorisation Guidelines at [47].	
4	See the Authorisation Guidelines at [44].	
5	To HP's knowledge, this is the first time that the Commission has been asked to consider a Resale Price Maintenance authorisation application.	
6	See J.P Morgan 2019 Global Payments Trends Report - New Zealand Country Insights - https://www.jpmorgan.com/europe/merchant-services/insights/reports/new-zealand .	
7	As is set out in 3.3 below, the HP Online Store that operated until recently involved sales being made by HP's Previous Partner.	3.2, p16
8	Attachment 1 in Confidential Annexure D. Please note that we have combined corporate reseller, retail direct (where HP is selling direct to retailers who then on sell HP products to consumers) and attribute it to the distribution network as resellers and retailers are a part of this network.	
9	Attachment 1 in Confidential Annexure D, please note that we have used data from 2018Q4 to 2019Q3 (as closest reflection to HP's 2018/19 financial year from 30 October 2018 to 1 November 2019). Please note revenue data is reported in USD.	
10	Attachment 1 of Confidential Annexure D. Please note that we have excluded Q4 2020 data from our analysis as this is not a full reflection of Q4 data as Q4 has not concluded for 2020 and therefore the relevant data is incomplete.	3.2(a),p17
11	HP's financial year is from 1 November to 31 October of each year - referred to in this application as HP FY.	3.3.p18
12	See Attachment 1 and 'Business Objectives' section in Attachment 2 of Confidential Annexure D.	
13	Refer to Attachment 2 of Confidential Annexure D for HP internal consideration of the various reasons why the Previous Model was not commercially successful.	3.3(ii), p19
15	See 'vendor agnostic or specific' section in Attachment 4 of Confidential Annexure D.	3.3(ii),p20
16	Refer to Attachment 16 of Confidential Annexure D, which are the Previous Partner's responses to a number of questions that HP put to it following the NZCC's information request dated 20 August 2020. Empty fields indicate non	

	responses by the Previous Partner. Also compare with Attachment 1 of Confidential Annexure D.	
17	Refer to Attachment 16 of Confidential Annexure D.	
18	Refer to Attachments 4-7,16 of Confidential Annexure D.	
19	For more detail regarding the chronology of HP's consideration of the HP Online Store, see Attachments 8-10 of Confidential Annexure D.	3.3(iii),p21
20	See the Previous Partner's proposal for the revamped HP Online Store in Attachment 11 of Confidential Annexure D.	
21	Attachment 8 of Confidential Annexure D.	
22	See Attachment 12 of Confidential Annexure D, which includes an Excel spreadsheet attachment that outlines the responses of the Australia HP Online Store's Request for Quotation (RFQ) candidates.	3.3(iii), p22
23	See Attachment 13 of Confidential Annexure D, including speaker notes to the PowerPoint presentation.	3.4, p23
24	Refer to Attachment 13 of Confidential Annexure D.	5.2(iii),p27
25	For additional information regarding the benefits of HP pursuing a partner direct model as against a HP direct model, please refer to HP Store Partner Direct Analysis PowerPoint presentation (November 2018) included in Confidential Annexure B, in particular pp36-46.	
26	Attachment 14 of Confidential Annexure D.	5.4(ii), p31
27	Attachment 15 of Confidential Annexure D.	
28	See Attachment 14 of Confidential Annexure D, including 1.2(a) (p28), 2.3.1(C)(p35). Please also refer to 1.2(a), 2.3.1(C) of the HP NZ Online Store's Statement of Work in Attachment 24 of Confidential Annexure D.	
29	See in particular, pages 10-14, 30-46 and 959-979 of Attachment 14 of Confidential Annexure D, pages 10-14 of Attachment 24 of Confidential Annexure D	
30	See in particular, pages 959-979 of Attachment 14 of Confidential Annexure D.	
31	See Attachments 14-15 of Confidential Annexure D.	5.4(ii), p32
32	See p12 of Attachment 14 of Confidential Annexure D and 13.1 of HP's Services Agreement in Attachment 24 of Confidential Annexure D.	
33	See p5 of Attachment 15 of Confidential Annexure D.	
34	Refer to Attachment 2 of Confidential Annexure D for a summary of the relevant HP considerations of why the Proposed Conduct would better align with HP's commercial objectives as compared with HP continuing/investing into the Previous Model.	6, p33
35	See Annexures B and C respectively, including paragraphs [40] - [43] of the ACCC's 'Statement of Reasons' for proposed resale price maintenance conduct	6(i), p34

	for HP products sold through HP Online Stores (10 October 2019) (ACCC's HP Online Stores decision); Paragraphs [44] and [46] of the ACCC's 'Statement of Reasons' for proposed resale price maintenance conduct for HP products sold through HP Online Marketplace Stores (2 October 2020) (ACCC's HP Online Marketplace Stores decision)	
36	See Attachments 2 and 16 of Confidential Annexure D.	
37	See Annexures B and C respectively, including paragraph [42] of the ACCC's HP Online Stores decision and paragraph [45] of the ACCC's HP Online Marketplace Stores decision.	7, p36
38	Same as above.	
39	See Attachment 17 of Confidential Annexure D.	7(i), p36
40	See Attachment 18 of Confidential Annexure D.	
41	See Confidential Annexure B, Schedule 3 of the Confidential Version of HP's Notification of resale price maintenance (16 July 2019).	
42	See Attachment 19 of Confidential Annexure D.	7(i) , p37
43	See Attachment 19 of Confidential Annexure D.	
45	Attachment 19 of Confidential Annexure D.	
46	Refer to Attachment 24 of Confidential Annexure D.	7(i), p38
47	These payment options are reflected in 2.4 of the Statement of Work incorporated as a part of the Australian HP Online Store Contract - see p36 of Attachment 14 of Confidential Annexure D.	7(ii), p38
48	For the full list of Stripe's payment options: https://stripe.com/en-au/payments/features .	
49	See Attachment 16 of Confidential Annexure D.	7(iii),p39
50	See Confidential Annexure B, Schedule 3 of the Confidential Version of HP's Notification of resale price maintenance (16 July 2019).	
51	See section 4 of the Statement of Work incorporated as a part of the Australian HP Online Store Contract on p39 of Attachment 14 of Confidential Annexure D for the list of SKUs that are to be made available to the HP Online Store.	
52	See Clause 5.1.1 on p40 in Attachment 14 of Confidential Annexure D.	
53	See, in particular, p40, pp48-902 of Attachment 14 of Confidential Annexure D.	
54	Refer to 2.1.3 subclause B (p30), and 3.0 (p36) of Attachment 14 in Confidential Annexure D, also see 2.1.3(subclause B) and 3.0 of HP NZ Online Store's Statement of Work in Attachment 24 of Confidential Annexure D .	7(iv),p40
55	See Annexure C, including paragraph [36] of ACCC Statement of Reasons - Notification for proposed resale maintenance conduct on HP products sold through HP Online Marketplace Stores (2 October 2020).	8, p41

56	See Annexure C, including paragraph [37] of ACCC Statement of Reasons - Notification for proposed resale maintenance conduct on HP products sold through HP Online Marketplace Stores (2 October 2020).	
57	Please refer to Attachment 1 of Confidential Annexure D.	Schedule 2, p46
58	Please refer to Attachments 20 - 23 of Confidential Annexure D for more details. Where applicable we have used unit share% as basis for calculating market shares of HP and its competitors. Where applicable, we have also sought to focus on 2018Q4 - 2019Q3 data as this is most closely correlated with the HP FY.	Schedule 3, p47
59	Please refer to Attachment 21 and in particular, the vendor analysis tab of the Excel spreadsheet.	
60	Please note that slate tablet and detachable tablet are also included in consumer notebook products.	
61	Please note that slate tablet and detachable tablet are also included in commercial notebook products.	
62	Please refer to Attachment 20 for home and office printer analysis (2018Q4 - 2019Q3), Attachment 22 for home print supplies analysis (2018Q4-2019Q3) and Attachment 23 for office print supplies analysis (2019H1 and 2019H2).	
63	HP only has share of sales data with respect to ink cartridges for use in HP Inkjet printers or toner cartridges for use in HP Laser printers. Inkjet printers are primarily targeted at consumers for home use but may also be used in home offices or smaller offices. Laser printers are primarily targeted for office use, but may also be used at home.	Schedule 3, p48
65	Please note toner data in Attachment 23 of Confidential Annexure D is reported in half years, so we have adopted period 2019H1 -2019H2.	