

NZ Post / PBT

Supplementary submission on behalf of NZ Post in response to the sensitive/counsel only version of the Commerce Commission's Statement of Issues

1. As counsel for NZ Post, we make this short supplementary submission in response to the information contained in the counsel-only version of the Commerce Commission's Statement of Issues regarding NZ Post's application for clearance to acquire PBT Group Limited's (PBT) (PBT Courier Contracts).
2. We appreciate the Commission making this information available and make three broad observations.

The sample of customers interviewed so far is not (yet) representative of the market

3. We apprehend that at the time of the Statement of Issues, the Commission had spoken to only [NZCC/3P Confidential] customers, [PBT Confidential] including [NZCC/3P Confidential].
4. While we have no doubt that the Commission will speak to a wider and more representative range of customers, and/or will use sales data to understand market preferences, we note for the record that the customers the Commission has spoken to so far are unlikely to represent a sufficiently large or diverse enough sample to reflect the views or dynamics of the wider market.

The evidence [NZCC/3P Confidential] is consistent with a highly competitive market

5. A key element of NZ Post's purported incentives to increase prices as described in the Statement of Issues is the suggestion that NZ Post would face a low risk of competitive responses from Aramex and Freightways' Post Haste and Castle Parcels brands. This is based, at least in part, on evidence that [NZCC/3P Confidential].¹
6. However, rather than [NZCC/3P Confidential] because of this, we consider the better interpretation of [NZCC/3P Confidential] is that it is consistent with NZ Post's submission that the courier market is a highly competitive one.
7. Similarly, confidential footnote 43 observes that [PBT Confidential].² [PBT Confidential]. Again, this is consistent with a highly competitive market.

Evidence is more consistent with barriers to expansion and entry being low

8. Our view is that the evidence in the counsel only version of the Statement of Issues is more consistent with NZ Post's submission that barriers to expansion and entry are low, particularly for a firm seeking to replicate PBT's current offer, than it is with the Statement of Issues' preliminary view that there are high barriers to entry and expansion. We make four observations in this respect.
9. First, in its assessment of barriers to expansion, the Statement of Issues cites evidence it received from [NZCC/3P Confidential] about the [NZCC/3P Confidential].³ On our reading, these parties appear to say that [NZCC/3P Confidential], not that [NZCC/3P Confidential].

¹ Statement of Issues at [56.1.2] and footnote 46.

² Statement of Issues at confidential footnote 43.

³ Statement of Issues at [82.1] and [84].

In any event, [NZCC/3P Confidential] evidence needs to be treated with caution. These are [NZCC/3P Confidential].

10. Second, the Statement of Issues refers to evidence from [NZCC/3P Confidential] regarding [NZCC/3P Confidential] as evidence of barriers to expansion generally. At the same time, [NZCC/3P Confidential] acknowledges the [NZCC/3P Confidential].⁴ We observe that [NZCC/3P Confidential].⁵ This suggests that [NZCC/3P Confidential] to compete for the vast majority of PBT's current volumes.⁶
11. Third, footnote 70 of the Statement of Issues cites ([NZCC/3P Confidential]) as using local contractors in areas where its current volumes do not warrant it having its own final mile delivery equipment. It is not clear to us what inference is being drawn from that evidence, but we suggest it indicates a [NZCC/3P Confidential].
12. Fourth and finally, the Statement of Issues cites [NZ Post Confidential] as being indicative of high barriers to expansion.⁷ The Statement of Issues describes [NZ Post Confidential]. We disagree that those [NZ Post Confidential]. Rather, they are indicative of [NZ Post Confidential].
13. In any event, [NZ Post Confidential]:

[NZ Post Confidential].⁸
14. Read in full, the statement reflects the reality that [NZ Post Confidential]. However, that is not indicative of a barrier to expansion. It simply reflects the commercial reality that [NZ Post Confidential].

Schedule of confidential information

Confidential information in this submission is highlighted to reflect who the information is confidential to.

- Information that is confidential to NZ Post as against all parties is highlighted in grey (i.e., [NZ Post Confidential]).
- Information that is confidential to PBT as against all parties is highlighted in blue (i.e., [PBT Confidential]).
- Information that is confidential to the Commission or third parties is highlighted in yellow (i.e. [NZCC/3P Confidential]).

⁴ Statement of Issues at [82.1].

⁵ See [NZCC/3P Confidential] of the Clearance Application.

⁶ [NZCC/3P Confidential]

⁷ Statement of Issues at [85.2].

⁸ [NZ Post Confidential]