

NZ Post / PBT

NZ Post's submission in response to the Commerce Commission's Statement of Issues

1. NZ Post makes this submission in response to the Commerce Commission's Statement of Issues regarding NZ Post's application for clearance to acquire PBT Group Limited's (PBT) existing contracts with businesses who have signed contracts to use PBT's courier services.¹
2. NZ Post appreciates the important role the Commission plays in ensuring that New Zealanders are protected from business acquisitions that harm competition. NZ Post also appreciates that the Statement of Issues outlines hypotheses for how, in theory, NZ Post's acquisition of the PBT customer contracts could harm competition, and that the Commission has yet to reach any concluded views. NZ Post values the Commission outlining these hypotheses and the opportunity for NZ Post and all interested parties to offer their perspectives.
3. In briefest summary, NZ Post's view remains that the acquisition will not harm competition. New Zealand has some of the lowest courier prices in the world.² That outcome is not by chance but is the result of a highly competitive and dynamic market, with multiple suppliers serving customers with differing offerings.
4. NZ Post's acquisition of PBT's customer contracts would not change that level of competition in any material way. Indeed, the Statement of Issues acknowledges that more than 90% of courier customers would not be negatively affected by the acquisition. For the reasons explained in this submission, NZ Post submits that the Commission can be satisfied the remaining small subset of customers will likewise not be negatively affected.
5. In fact, rather than harming competition, NZ Post believes that all New Zealand courier customers will benefit from the acquisition due to the opportunity the acquisition creates for NZ Post to obtain efficiencies that will put downward pressure on prices over time compared to the situation without the acquisition.
6. This submission is structured as follows:
 - 6.1 Section A summarises NZ Post's submissions on the Statement of Issues;
 - 6.2 Section B explains why NZ Post will have no greater ability to increase prices to PBT customers compared to PBT in the counterfactual;
 - 6.3 Section C explains why the acquisition is likely to put downward pressure on prices for all courier customers;
 - 6.4 Section D outlines why the Statement of Issues underestimates the ability and incentive for "smaller" courier companies to provide services to PBT customers, and why those courier companies can and will expand if a market opportunity exists;
 - 6.5 Section E explains the countervailing power that PBT customers will possess to constrain NZ Post (and other providers); and

¹ Confidential information in this submission is highlighted. Further information identifying the basis for the confidentiality claims is included in the **Schedule of confidential information**.

² Statement of Issues at [124].

- 6.6 Section F outlines why the Statement of Issues overestimates the risk of coordinated conduct in courier markets and overestimates the significance of PBT in curbing any tendency towards coordination.

A. Summary: why the acquisition will not substantially lessen competition

7. The Statement of Issues describes a concern with the potential impact of the acquisition on competition in the market for standard weekday courier deliveries (i.e., the delivery of parcels between urban centres throughout New Zealand other than urgent or next day deliveries). NZ Post refers to this market as the **inter-city economy market** in this submission. To put this market in context, it comprised only **[NZ Post Confidential]** % of NZ Post's total courier volumes in 2023.
8. NZ Post agrees with the Commission that the acquisition will not adversely impact on competition for:
- 8.1 consumer senders (C2C and C2B);
 - 8.2 business senders with parcels delivered within the same urban area; and
 - 8.3 wholesale customers.³
9. NZ Post also agrees with the Commission that the acquisition will not enable NZ Post to increase prices to, or decrease service levels for, non-PBT customers (including NZ Post's intercity economy customers).⁴ Non-PBT customers comprise over 90% of all volume in the inter-city economy market.
10. What is left then is a hypothesis that existing PBT customers sending parcels inter-city (< 10% of that market) will face higher prices or a lower quality of service than would otherwise be the case as a result of the acquisition. However, the evidence before the Commission and described in the Statement of Issues establish that such an outcome is not a likely one. NZ Post makes five submissions in this regard, which are explained in more detail in Sections B to F below.
11. First, in contrast to the suggestion in the Statement of Issues, there is no reason to believe – or evidence to support the proposition – that NZ Post would have a greater ability to profitably increase its prices to PBT customers than PBT currently has. Simply put, if PBT is acting in a profit maximising way now and cannot profitably increase its prices, how could NZ Post?
12. PBT customers are price sensitive and would switch from NZ Post to Post Haste/Castle Parcels or Aramex if NZ Post tried to increase their prices in the same way as they would switch away should PBT try to increase prices. The only situation in which a PBT customer would accept a higher NZ Post price is if, having experienced NZ Post's higher service quality, they believed that the higher price fairly reflected NZ Post's greater service quality. In that situation, the customer would also retain the ability to acquire a lower quality service at a lower price should it wish to. Such an outcome is not properly described as NZ Post increasing prices; rather, it is simply a customer paying a higher price to purchase a better product.
13. Second, far from creating an incentive for NZ Post to charge higher prices to PBT customers as suggested in the Statement of Issues, adding additional volume to the NZ Post network (should the PBT customers' volume be retained), would generate cost efficiencies that would place downward pressure on NZ Post's prices to the benefit of all other NZ Post customers, not only those in the inter-city economy market, as well as courier customers more generally.

³ Statement of Issues at [12]. NZ Post does not address those market segments further in this submission.

⁴ Statement of Issues at [56] and [56.1].

14. Third, as recognised in the Statement of Issues, the existing providers in this market are not limited to NZ Post, Freightways' brands and Aramex. Other providers exist and do not face any barriers to expanding their sales to PBT customers in the event that NZ Post (or any other provider) sought to increase prices to these customers.
15. By way of one example, Team Global Express has experience and credibility as a strong courier operator in Australia, is physically present with depots in all the locations that PBT services, and, NZ Post understands, already has ~90 courier drivers contracted and providing parcel deliveries across New Zealand. There is nothing to prevent Team Global Express from continuing to grow its market position should the commercial opportunity present itself.
16. Fourth, while NZ Post accepts that any one PBT customer is unlikely to have the necessary volume to sponsor entry or expansion, each customer will nonetheless have countervailing power. The benefit of the acquisition to NZ Post is additional volume. PBT customers will be able to leverage their ability to switch or threaten to use alternatives to NZ Post (and other providers) in other segments of the courier market as a way of constraining NZ Post's pricing. The benefit to NZ Post of retaining all of a customer's volume will, therefore, act as a powerful countervailing constraint. Indeed, that is the rationale for the acquisition, and putting volume at risk would undermine that rationale and NZ Post's investment in the contracts.
17. Fifth, in contrast to the suggestion in the Statement of Issues, there is no evidence to suggest that PBT plays a particularly important or unique role in preventing coordinated conduct in this market. Simply put, the Statement of Issues has overestimated the vulnerability of courier markets to coordination, as well as the potential for the acquisition to increase the prospects of coordination evolving.

B. NZ Post will have no greater ability to increase prices than PBT does

Acquisition gives NZ Post no ability to increase prices to non PBT customers

18. NZ Post agrees with the Commission that the acquisition will not enable NZ Post to increase prices to or decrease service levels for non-PBT customers,⁵ which NZ Post estimates to comprise over 90% of volume delivered in this market.
19. Put another way, the Statement of Issues implies that over 90% of the market will not face any prospect of NZ Post increasing prices as a result of the acquisition (i.e., over 90% of the market will not be prone to unilateral effects). Even if NZ Post could unilaterally increase prices to the small subset of PBT customers in this market, it is questionable whether such an outcome would be sufficient to amount to a substantial lessening of competition.⁶ That said, NZ Post submits that the Commission does not need to address that issue given NZ Post would not have the ability to increase prices to these customers in any event.

Acquisition gives NZ Post no ability to increase prices to PBT customers

20. NZ Post disagrees with the preliminary view expressed in the Statement of Issues that NZ Post would have the ability to profitably increase prices in a way that PBT could not in the counterfactual. NZ Post submits it could not do so.
21. Given that the Statement of Issues finds that NZ Post and PBT are not close competitors,⁷ the view that NZ Post could increase prices when PBT could not requires either:
 - 21.1 an assumption that one or both of NZ Post or PBT would not act in a profit maximising way; or

⁵ Statement of Issues at [56.1].

⁶ Merger Guidelines at [2.25].

⁷ [NZ Post Confidential]

- 21.2 an apples with oranges comparison of the prices charged by each of NZ Post and PBT as well as the prices charged by other providers, given headline price does not reflect service quality.
22. Neither is an appropriate way to measure the potential impact of the acquisition.
23. To illustrate, the Statement of Issues refers to PBT being priced below the cost of its closest competitors – Post Haste/Castle Parcels, and Aramex – and comments:
- To retain customers with [perceptions that PBT has a lower service quality], PBT may need to maintain prices below rivals.⁸
24. In other words, PBT has set its prices at a level it believes will make it competitive, on a price-quality basis, with its closest rivals Post Haste/Castle Parcels and Aramex (and Team Global Express).⁹ It can only be assumed that this is PBT acting in a profit maximising way, i.e., increasing prices without any corresponding change in quality will result in PBT's profits decreasing as customers switch to other providers.
25. Notwithstanding that view, and the view that PBT and NZ Post are not close competitors, the Statement of Issues suggests that NZ Post would have the ability to increase its profits by increasing PBT customers' prices above their current level and to just below Post Haste's/Castle Parcels' and Aramex's (PBT's closest competitors) prices. The two reasons cited for why NZ Post may have the ability to do so are because NZ Post may find it profitable to do so,¹⁰ and may need to cover the costs of its investments.¹¹ Both of those reasons beg the question of whether NZ Post would have the ability to increase prices (which NZ Post would not).
26. However, before addressing the logic of the Statement of Issues' approach, NZ Post makes three initial points in relation to the Statement of Issues' preliminary view that PBT is priced below its closest rivals.
- 26.1 First, it is not clear from the Statement of Issues on what evidence the conclusion that PBT is priced below its competitors is based. NZ Post is not aware of the Commission having conducted any empirical analysis to support that conclusion (and NZ Post does not believe such an analysis is necessary given the existing data on market shares and sales reflect revealed consumer preferences). To the extent it is based on feedback from PBT customers, caution is required. Such evidence will be self-selecting in that PBT customers will perceive they receive lower prices. It follows that it is not clear that any broader conclusions about pricing can be drawn from this information.
- 26.2 Second, as the Statement of Issues' explanation of why PBT sets its prices where it does demonstrates, courier services are differentiated by service quality. What matters from a competition policy perspective is the quality adjusted price.¹² Indeed, this is implicit in the Statement of Issues' statement that PBT offers lower prices to offset perceptions of a lower quality service. In other words, courier customers are not willing to pay the same price as they would be for a (perceived) higher quality service. PBT's modest market position does not suggest that its quality adjusted price is below that of other competitors. This becomes relevant when thinking about NZ Post's incentives and its ability to increase prices.

⁸ Statement of Issues, at footnote 47.

⁹ In this context there is no difference between a quality difference which is "real" or "perceived" given it is customer perceptions that will drive their purchasing decisions.

¹⁰ Statement of Issues at [56.1].

¹¹ Statement of Issues at [56.1.3].

¹² See *Brambles New Zealand Limited v Commerce Commission* 2003 TCLR 868 (HC), HC AK CIV2115-03 (24 October 2003) (**Brambles**) at [130] where the High Court held that it is inappropriate to focus solely on price, and the whole "price-product-service package" must be considered.

- 26.3 Third, the view that PBT is lower priced because of its lower service quality implies that its customers are willing to trade a lower quality service for a lower price. In other words, they are likely to be highly price sensitive, which is reflected elsewhere in the Statement of Issues.¹³ Again, this is relevant to NZ Post's ability and incentive to raise prices particularly because, as the Statement of Issues recognises, NZ Post is not a close competitor for PBT customers currently.
27. As already described, the Statement of Issues' implicit logic is that it would not be profitable for PBT to increase its prices because in doing so, it would lose volume to Post Haste/Castle Parcels and Aramex.
28. However, if those customers would switch away from PBT if PBT raised prices (and therefore its quality adjusted prices), why would those same customers not switch away from NZ Post if it sought to increase the price they paid? Put another way, what gives NZ Post the ability to increase prices to these customers without those customers switching away to Post Haste/Castle Parcels and Aramex?
29. The only plausible reason why a customer might be prepared to pay a higher price to NZ Post than to PBT would be if that customer perceives NZ Post to offer a higher quality service that the customer is prepared to pay for. If the customer does not believe a higher price is justified by NZ Post's higher service, then the customer will switch away to another provider (such as Post Haste/Castle Parcels, Aramex, or Team Global Express) in the same way they would if PBT were to seek to increase prices.
30. Importantly, even if the provider a customer would switch to is priced higher than PBT in nominal terms, there is no reason to believe that the quality adjusted price the customer will pay would be any higher than the price the customer would have paid to PBT. If it were, the customer would not switch and other customers would not be purchasing that provider's service.
31. It follows that the Statement of Issues' logic requires either:
- 31.1 an assumption that PBT or NZ Post would not act in a profit maximising fashion by either foregoing a price increase (in the case of PBT), or imposing a price increase (in the case of NZ Post); or
- 31.2 an apples with oranges comparison of PBT and NZ Post products and prices as well as other provider's products and prices.
32. To summarise, if PBT cannot increase (quality adjusted) prices to PBT customers profitably today, then neither could NZ Post impose higher prices on PBT customers if it acquired those contracts.¹⁴ Conversely, if NZ Post could increase (quality adjusted) prices to PBT customers post-acquisition, then PBT would be able to do the same in the counterfactual. Either way, the acquisition would not materially change the prices that would otherwise be charged.

Acquisition does not give other providers any ability to increase prices

33. For completeness, NZ Post disagrees with the suggestion in the Statement of Issues that Aramex and Freightways' Post Haste and Castle Parcels brands would have a greater ability to increase their prices.¹⁵ Such an outcome is not likely.
34. Removing PBT as an independent competitor will not materially relax the competitive constraints these providers face. This is for three reasons.

¹³ Statement of Issues at [56.2].

¹⁴ In fact, the acquisition might increase churn above the level that would prevail in the counterfactual as PBT customers will be changing supplier (at least to NZ Post).

¹⁵ Statement of Issues at [56.2] and [71].

- 34.1 First, competition between these providers would remain unchanged and they would continue to constrain each other in the same way they would in the counterfactual (unless the acquisition increases the prospects of coordination between them, which it would not for the reasons addressed in Section F of this submission).
- 34.2 Second, NZ Post would continue to act as a constraint on these brands if they sought to increase prices to their customers.
- 34.3 Third, these brands face the risk that other providers expand or enter in the same way those providers would if NZ Post sought to increase prices.
35. In short, all providers would continue to need to compete with all other providers to win PBT customer's volume as well as retain their own volume.

C. Adding volume to NZ Post will put downward pressure on price, not increase prices

36. The Statement of Issues refers to NZ Post having a possible incentive to increase prices to PBT customers to recover the costs of its Te Iho network transformation programme.¹⁶ However, in doing so, the Statement of Issues conflates NZ Post's incentives to increase prices with its ability to do so.
37. All businesses have an incentive to try and increase prices. Indeed, the question is not whether they have the incentive to do so; rather, the question is whether they have the ability to do so. For the reasons explained in the Clearance Application and in Section B above, even if NZ Post had an incentive to increase prices to PBT customers, the acquisition will not provide NZ Post with the ability to do so. What is much more likely to happen is the opposite: downward pressure on prices overall.
38. Where firms achieve efficiencies and cost savings, then all else being equal, it will be profit maximising for a firm to pass at least some of these cost savings on to customers in the form of lower prices than would otherwise be the case. That is exactly what the acquisition will deliver.
39. As the Statement of Issues recognises, there are cost efficiency benefits from increasing the volume processed through a courier network.¹⁷ Indeed, achieving these benefits is NZ Post's rationale for the acquisition.
40. As PBT customers' volume is brought onto the NZ Post network (assuming it is retained by NZ Post), NZ Post will benefit from greater cost efficiencies. These cost efficiencies will place downward pressure on NZ Post's profit maximising prices for all its courier services. That is, it is not only PBT customers in the inter-city economy market that would benefit. All of NZ Post's courier customers across all the markets it operates in would benefit directly. Moreover, non NZ Post courier customers will also benefit indirectly as other courier providers are forced to respond to NZ Post's increased efficiency by improving their own offerings.
41. In short, far from providing NZ Post with an incentive to increase its prices, the acquisition will provide NZ Post the ability to reduce its prices not just to current PBT customers but to all NZ Post customers.

D. Statement of Issues underestimates the ability and incentive for smaller couriers to expand

42. There is no suggestion in the Statement of Issues that any of the Freightways brands – NZ Couriers, Post Haste, and Castle Parcels – or Aramex would face any constraints in

¹⁶ Statement of Issues at [56.1.2].

¹⁷ Cf Statement of Issues at [82] which refers to costs per item being a function of volume.

expanding their sales to compete for PBT customers' volumes. Freightways and Aramex ability to take on any such additional volumes will, in and of itself, be sufficient to constrain NZ Post post-acquisition.

43. In addition, the Statement of Issues correctly identifies that there are other participants who already participate in the inter-city economy market beyond NZ Post, Freightways, Aramex, and PBT. These providers include Team Global Express and Urgent Couriers.
44. The Statement of Issues almost entirely dismisses the constraint these providers provide now and their ability to provide a constraint in the future. The basis for the Statement of issues' dismissal of these providers appears to be that:
- 44.1 these providers are smaller than other providers;¹⁸
- 44.2 these providers would face barriers to growing to replicate the current PBT offer;¹⁹ and
- 44.3 at least in the case of Urgent Couriers, it is a "point to point" operator and therefore outside the market defined by the Commission.²⁰
45. In dismissing the constraint from these providers, the Statement of Issues has materially overstated the obstacles these existing participants would face to expand their offering. In summary, the Statement of Issues is wrong to assume a national network is needed to compete and has materially overstated the challenges these providers would face in expanding sales, if they would face any.

There is no requirement for a "national" network

46. Implicit in the Statement of Issues' description of the barriers to entry and expansion facing courier companies is the notion that an operator needs a full national network to compete for a customer's volume. This is not correct.
47. Courier services involve picking up a parcel from one location and delivering it to another. It follows that the fact a courier may not operate between Wellington and Dunedin means nothing for a customer looking to deliver a parcel from Wellington to Auckland. A courier company operating between Wellington and Auckland will be able to compete for that parcel even if they do not operate between Wellington and Dunedin.
48. In saying this, NZ Post accepts that many business customers will be seeking to send parcels to multiple destinations in New Zealand. However, that does not mean that the customer cannot use a courier company with a more limited network or mean that such a courier company cannot compete aggressively to carry parcels that match its own network's geographic scope.
49. Indeed, despite the apparent suggestion from some unknown number of customers that using multiple courier companies is not desirable, NZ Post's experience is that many if not most customers can and do use multiple courier companies. In a business customer survey NZ Post conducted in 2022, [NZ Post Confidential] % of respondents said they had used another courier company in the preceding 3 months, while [NZ Post Confidential] % of respondents indicated they did not want to tell NZ Post the answer (presumably because they had done so). The remaining [NZ Post Confidential] % either had not used an alternative in the previous three months or did not answer the question at all.

¹⁸ Statement of Issues at [25.3].

¹⁹ Statement of Issues at [25.3].

²⁰ Statement of Issues at [96].

50. In any event, differing preferences – and strengths of preferences – and in particular a preference for the status quo are a feature of all markets.²¹ The question is not whether such preferences exist, or whether a person is content with the status quo, but rather what customers would do when faced with a price increase by the merged firm. NZ Post submits that the objective evidence shows using multiple providers is a very viable and already well-used strategy.
51. It follows that it is perfectly possible for a courier company to provide services on only one city pair or on a collection of city pairs in a way that will constrain other providers on that route.²² Such providers can cherry pick routes, and do not need a full national network to win business. Indeed, this is how expansion is likely to occur.
52. Indeed, larger customers can easily configure modern warehouse operations to manage multiple courier providers by route. And for smaller customers – with less business traffic – the process of manually selecting different couriers for different jobs is simple and easy to do. All customers can also use 4PL software, like Zend, EFM and AFS, to assist with a multi-carrier strategy.
53. In this respect, it is relevant that PBT’s volume is concentrated in the major urban centres with [PBT Confidential]% of PBT’s volume flowing between Auckland, Wellington, Christchurch, Tauranga, and Hamilton alone. To the best of NZ Post’s knowledge, Team Global Express and Urgent Couriers already have an existing presence in these locations (in addition to others as discussed further below).
54. As such, it is wrong to discount the constraint providers without a “national” footprint provide.

Statement of Issues overstates barriers to expansion (and entry)

55. The Statement of Issues cites two barriers to expansion: securing sufficient volumes to justify the investments said to be required to expand (or enter), and access to funding. NZ Post submits that the Statement of Issues has overstated the significance of these factors for the ability of suppliers to expand. Indeed, the fact Urgent Couriers was able to expand very quickly to service the HelloFresh opportunity that presented itself demonstrates that entry and expansion barriers are not high.

Existing providers are unlikely to incur significant cost in expanding sales

56. It is not clear from the Statement of Issues what investments would be required for an existing participant to expand the services they currently provide to compete for the relatively small volumes of PBT customers.
57. NZ Post accepts that introducing a new route would require some work in obtaining the necessary linehaul services and having access to a depot or similar facility to handle volumes. However, independent linehaul services are readily available from providers such as Move, Mainstream, Mainfreight, and, post-acquisition, PBT. No capital investment would be required. Similarly, accessing a depot or similar facility would not necessarily require significant capital investment as that facility could be leased. Even to the extent capital investment was required, it is unlikely to be sunk given the ubiquitous uses to which depot and similar facilities can be put.²³

²¹ This was acknowledged by the High Court in *Brambles* (at [132]) who commented that within any market, there will be a variety of individual preferences for different products.

²² If needed, a courier operator could supplement their own services with a wholesale arrangement with another provider on other routes.

²³ As the Commission has recognised in its Merger Guidelines, the lower the sunk costs, the lower the risk faced by the person contemplating expansion and the less likely that any need for such investment will impede expansion. (Merger Guidelines at footnote 62).

Access to funding is not a barrier to expansion (or entry)

58. Access to funding cannot be properly described as a barrier to expansion (or entry). There is no suggestion that capital and finance markets are anything other than competitive and it is not clear from the public version of the Statement of Issues why access to capital or debt funding should be a particular issue for the courier market. There is certainly no evidence that NZ Post is aware of that would suggest that investors or financiers have ruled out investing in courier operations or that these operators would not have access to competitive funding offers.

Team Global Express is an example of a provider that could and would expand if a commercial opportunity arose

59. Even putting aside those in principle comments, the current market position of Team Global Express is instructive. NZ Post submits that the Statement of Issues has understated Team Global Express' position in the market and latent ability to expand to replace the competition PBT currently provides.
60. NZ Post understands Team Global Express already has ~ 90 contracted courier drivers with ~10 in each of Wellington, Hamilton, and Christchurch, 35 in Auckland, and the remainder spread across its other locations. By way of comparison, NZ Post understands PBT currently contracts approximately 155 courier van owner-operators to deliver its services. Even just considering the drivers in only Auckland, Wellington, Christchurch, and Hamilton (which are only ~70% of the drivers NZ Post understands Team Global Express has contracted), Team Global Express can access [PBT Confidential]% of PBT's existing volume.
61. Moreover, Team Global Express is already a significant courier operator in Australia and freight operator in New Zealand. Its Australian courier systems, expertise, and credibility combined with its credibility as a freight operator in New Zealand provide it with a strong launching pad from which to expand its courier services at little to no incremental cost.
62. Currently, on its website Team Global Express describes itself as operating from 28 locations in New Zealand (which is more than PBT) providing:
- ... a comprehensive range of domestic and international delivery options for parcels and cartons including overnight, same day, next day intra-island and off peak.
63. NZ Post understands that Team Global Express operates its parcel operations based around its existing freight assets. Team Global Express has depots everywhere that PBT has depots, plus some locations where PBT is not present.²⁴
64. NZ Post is not aware of any reason why Team Global Express could not use these facilities as a base for its courier operations, or why they would be constrained from doing so. Little or no capital investment should be required.
65. In fact, Team Global Express is actively hiring for new roles across the country,²⁵ including metro van drivers in New Plymouth and an Auckland Business Development manager tasked with "seeking new business opportunities and developing them into revenue streams". In each job description, Team Global Express emphasises it offers "end-to-end transport services ... from Kaitaia to Invercargill" and is hiring due to "continued growth".
66. In short, it is not clear to NZ Post what investments – if any – Team Global Express would need to make to take on additional volume from current PBT customers. At worst, Team

²⁴ Team Global Express' locations include Whangarei, Auckland, Hamilton, Tauranga, Taupo/Rotorua, New Plymouth, Gisborne, Hawkes Bay, Whanganui, Palmerston North, Wellington, Nelson, Blenheim, Greymouth, Christchurch, Timaru, Cromwell, Dunedin, and Invercargill.

²⁵ https://agreenspace.wd3.myworkdayjobs.com/Global_Express_Career_Site?locationCountry=55273a1b49934d97ae15342ef51f6b95

Global Express may need to contract additional drivers. However, there is no suggestion that drivers are unavailable.

Other providers could also expand, at the very least on the routes they currently operate

67. Similar comments apply to other providers such as Urgent Couriers, which the Statement of Issues has discounted.
68. These couriers already provide inter-city economy services today from existing facilities. To the best of NZ Post's knowledge, Urgent Couriers has facilities in:
- 68.1 Auckland
 - 68.2 Hamilton
 - 68.3 Tauranga
 - 68.4 Hawkes Bay
 - 68.5 Palmerston North
 - 68.6 Wellington
 - 68.7 Nelson
 - 68.8 Blenheim
 - 68.9 Christchurch
 - 68.10 Dunedin
 - 68.11 Invercargill.
69. These 11 locations would enable Urgent Couriers to compete for [PBT Confidential]% of PBT's volumes in this market. The Statement of Issues does not explain why Urgent Couriers could not compete for PBT customer volume.
70. Rather, in respect of Urgent Couriers, the Statement of Issues simply states that the Commission does not need to consider the constraint Urgent Couriers imposes because Urgent Couriers is a "point-to-point" courier and so not in the relevant market. Such an approach is an error of law, inconsistent with the Statement of Issues' statement that market definition is merely an analytical "tool", overstates the distinction between the network and point-to-point courier models,²⁶ and completely overlooks that Urgent Couriers competes in this market today.²⁷
71. As explained in the Clearance Application, while the network and point-to-point business models differ to some degree, all "network" and "point to point" couriers refer to themselves as couriers and emphasise to consumers that they will deliver parcels nationwide on time. Moreover, from a business customer's perspective what they are concerned with is to ensure a parcel is delivered safely on time and at a reasonable price.

²⁶ As NZ Post stated in the Clearance Application, the distinction between point to point and network couriers is a broad one, and the distinction is blurry because many courier companies adopt a model that can be said to mix elements of both a "network" model and a "point to point" model. (See Clearance Application at [24]).

²⁷ See *Brambles New Zealand Limited v Commerce Commission* 2003 TCLR 868 (HC), HC AK CIV2115-03 (24 October 2003) at [130] and [132]. If products are technically substitutable and the evidence suggests they are being used for the same purpose, they fall in the same market. This can be the case even if the products are differentiated, as long as they fall within the same "price-product-service-package overall".

Customers do not care how their parcel is delivered – whether by a courier company that uses a depot network or one that delivers point-to-point.²⁸

72. Overall, the Statement of Issues describes no valid reason why Urgent Couriers and other providers could not simply accept additional volume into their existing networks should the opportunity arise. Even if these providers did not want to expand to a new city, these providers already operate in many of the major centres that PBT operates in and customers would have the option to use them.

New entry likely if a commercial opportunity arises

73. As stated in the Clearance Application, NZ Post does not expect new entry to occur given strongly competitive conditions in the market. However, if prices rose above, or service levels fell below, competitive levels, then market entry could be expected, and the Statement of Issues has underestimated the likelihood of this.
74. In particular, the numerous freight operators with existing national linehaul operations and depots could relatively easily tack on a parcel delivery operation to their existing service by hiring drivers, with minimal or no sunk costs.
75. Move, Mainstream, and Mainfreight are examples, with each of them having existing operations in all or nearly all the urban centres PBT currently operates in.

E. PBT customers will have countervailing power

76. Given the Statement of Issues' focus is only on PBT customers sending product inter-city, NZ Post accepts that none of the PBT customers by themselves would be likely to have sufficient volume to support new entry or expansion.
77. However, that does not mean that PBT customers lack countervailing power. In this respect, NZ Post disagrees with the Statement of Issues to the extent that it states that countervailing power requires a customer to have a 'special ability' to substantially influence the prices they are charged. Rather, all that is required is that a customer can leverage its bargaining position to influence the price other than by simply exercising their in-market options by changing providers.
78. This is reflected in the Merger Guidelines which state that a customer may have countervailing power if the customer can:
- 78.1 switch or credibly threaten to switch to suppliers of the same product in other geographic markets where competitive conditions are different; or
- 78.2 switch or credibly threaten to switch to suppliers of other products it acquires from the merged firm.
79. NZ Post's rationale for the acquisition is to increase its volume. Any customer move that puts volume at risk will constrain NZ Post. This means that PBT customers will retain significant countervailing power by being able to switch or credibly threaten to switch their courier volumes in other market segments including:
- 79.1 for deliveries in urban centres, which the Statement of Issues accepts will remain competitive, and which account for approximately [PBT Confidential]% of PBT's volumes;²⁹ and

²⁸ See Clearance Application at [53]-[54].

²⁹ Including any volumes PBT customers currently purchase from NZ Post.

- 79.2 in inter-city areas where the likes of Team Global Express and Urgent Couriers operate, which account for a large proportion (see [62] and [67] above) of the remaining [PBT Confidential]% of PBT's volumes.

F. Statement of Issues overstates the impact of the acquisition on the prospects of coordination

80. The Statement of Issues overestimates both the potential for coordination in the courier market, and the impact of the acquisition on the risk of coordination. Indeed, NZ Post remains of the view that its acquisition of the PBT customer contracts would not make coordination in courier markets more likely because:
- 80.1 the courier market has characteristics that would make coordination very difficult to achieve or sustain; and
- 80.2 PBT is not a competitor which plays a unique role in preventing a coordinated outcome occurring in the courier market.

Statement of Issues overstates the vulnerability of the market to coordination

81. In the Clearance Application, NZ Post cited the Commission's previous finding in FedEx/TNT³⁰ that coordination in international courier markets was unlikely because of:
- 112.1 the highly differentiated nature of the products which would make coordination difficult to achieve;
- 112.2 the lack of price transparency with most customers negotiating prices based on a rate card with significant discounting based on such factors as the volume of business transacted;
- 112.3 asymmetries in the market share and cost structures which would make coordination more difficult; and
- 112.4 the presence of fringe competitors, such as UPS and freight forwarders, which are likely to prevent or disrupt any attempted coordination.
82. The preliminary conclusions expressed in the Statement of Issues are diametrically opposed to the conclusions the Commission has previously reached. While NZ Post acknowledges that the courier markets at issue in this application are domestic, there is nothing to suggest that the nature of these markets differs so widely from international markets as to justify such different conclusions.
- Courier services are not homogenous***
83. It is surprising that the Statement of Issues suggests that courier services are homogenous when discussing coordinated effects. That conclusion is not only in contrast to the conclusion the Commission reached in FedEx/TNT (i.e., courier services are highly differentiated) but also to the Statement of Issues' discussion of unilateral effects.
84. During its discussion of unilateral effects, the Statement of Issues correctly recognises that courier services are differentiated by service quality.³¹ That is, customers make their choices about which courier provider to use based on what they want in a price/product/service offering. This is entirely consistent with the Commission's findings in FedEx/TNT.

³⁰ *FedEx Corporation and TNT Express N.V.* [2015] NZCC 24 (FedEx/TNT).

³¹ See, for example, Statement of Issues at [25], footnote 47, and [75.1].

85. Simply put, courier services are not homogenous. As the Commission has previously recognised, “the highly differentiated nature of the products would make coordination difficult to achieve”.³²

Courier prices are not transparent

86. Domestic courier prices are not transparent in the same way as the Commission found international courier prices are not transparent. Courier companies do publish rate cards; however prices are generally set by individual negotiations with business customers across potentially hundreds of routes. This makes it difficult, if not impossible, for companies to reach a coordinated outcome.³³
87. In saying this, NZ Post acknowledges that courier providers obtain “some information” about each other’s prices when customers share pricing information with them. However, the reason customers do that is to obtain a better price. Customers sharing that information for that purpose is competition at work. Customers certainly do not share that information for the purposes of facilitating courier companies reaching a tacit agreement to harm customers. Moreover, even where that information is shared, it may be difficult for courier providers to verify.
88. More generally, the statement that courier providers have “some information” about each other’s prices, is a statement that is true of any competitive market. Competitors will always have “some information” on their competitors’ pricing and there is nothing to suggest that this level of information is greater in courier markets than other markets.
89. Rather, as the Commission correctly recognises, courier pricing is complex, with prices individually negotiated and not readily observable. This lack of transparency, by itself, means any coordinated outcome is unlikely.

No evidence that providers’ sizes and cost structures are symmetric

90. The Statement of Issues provides no evidence for the assertion that providers are of a similar size and cost structure. In fact, they are not.
91. The market shows asymmetries in market share. NZ Post and Freightways are the closest in size, but there is still a reasonable gap between them. There is then a drop to Aramex, and then the other competitors such as Team Global Express and Urgent Couriers. The Statement of Issues also ignores the differing models of the operators (e.g., Freightways with its wider freight and mail operations, Aramex focussed on courier only under a franchise model).
92. So, while NZ Post agrees with the Commission that all courier providers will have some similar types of fixed costs, this is a feature of all markets in the economy and not an indicator that a market is prone to coordination. What matters for coordinated effects is the degree of symmetry or asymmetry between providers. In this market, quite simply, there is no reason to believe these providers have similar costs given differences in service quality and scale; in fact, they are not likely to.

Commission has overestimated the degree of concentration by discounting other competitors

93. NZ Post has already explained why the Statement of Issues has underestimated the position of providers such as Team Global Express and Urgent Couriers and their ability to grow and expand should an opportunity arise.

³² FedEx/TNT at [112.1]

³³ [NZ Post Confidential]

94. This underestimation is particularly stark where the Statement of Issues discusses coordinated effects. In those sections, the Statement of Issues' theory:
- 94.1 assumes away all constraint or potential constraint from these providers and hence their ability to undermine any coordinated outcome. As the Commission explained in FedEx/TNT the presence of fringe competitors is likely to prevent or disrupt any attempted coordination; and
- 94.2 at the other end of the spectrum, the Statement of Issues also defines away the potential for NZ Post to disrupt the hypothesised coordination between Freightways and Aramex.
95. In doing so, the Statement of Issues exaggerates the degree of concentration in this market, artificially constructing a 3:2 scenario (Freightways, Aramex, PBT to Freightways and Aramex).
96. This is an error. At very worst, the acquisition can only be described as reducing the number of competitors in the market from 4 main participants (NZ Post, Freightways, Aramex, PBT) plus a competitive fringe that includes significant firms like Team Global Express and Urgent Couriers, to 3 (NZ Post, Freightways, Aramex) plus the same competitive fringe. In NZ Post's view, the acquisition could more accurately be described as 7/6:5.

Commission has overestimated the significance of PBT to the competitive process

97. Not only does the market need to be vulnerable to coordination, but the Commission must also ask whether the removal of PBT as an independent competitor materially enhances the prospects of coordination. NZ Post remains of the view that the answer to that question is "no".
98. Current marketplace evidence does not support the proposition that PBT is a destabilising or maverick competitor in the market. NZ Post understands that PBT will make a separate submission to the Commission on this point.
99. From NZ Post's perspective, PBT's relatively constant and small market position, combined with the conclusion that it is not constraining NZ Post suggests it is not a destabilising influence in the market. If it were, then we would have expected to see PBT have had a more significant influence and share of the market over time.
100. Nor is there any evidence to support the proposition that PBT would become a destabilising influence if this acquisition does not proceed. Such a conclusion would be purely speculative. The Commission is required to make its assessments based on as much practical evidence as possible, and those assessments should not be based on theory or speculation alone.³⁴
101. Certainly, there is no evidence to support the proposition that PBT may be "the last remaining competitor with the ability and incentive to disrupt or de-stabilise coordination". The Statement of Issues does not explain why that may be case. What makes PBT different to Aramex, or to other providers such as Team Global Express? There is nothing unique or uncommon about PBT or its model and so no reasons to believe it holds a unique opportunity to disrupt the courier market in ways that other existing competitors or new entrants could not.

G. Concluding comments

102. For the reasons explained in this submission and the Clearance Application, NZ Post submits that the Commission can be satisfied that NZ Post's acquisition of PBT's customer contracts would not substantially lessen competition in any market.

³⁴

See *Commerce Commission v Woolworths* [2008] NZCA 276, at [191].

103. In short, the market is highly competitive, and the acquisition will not change that. Indeed, rather than lessening competition, NZ Post's view is that the acquisition will deliver a pro-competitive outcome to the benefit of all New Zealanders.
104. Therefore, NZ Post requests the Commission grant clearance for the acquisition.

Schedule of confidential information

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

- Information that is confidential to NZ Post as against all parties is highlighted in red (i.e., **[NZ Post Confidential]**) and is listed below.
- Information that is confidential to PBT as against all parties is highlighted in blue (i.e., **[PBT Confidential]**) and is listed below.

NZ Post confidential information

The following information has been removed from the public version of the submission because the information is confidential to NZ Post and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice NZ Post's commercial position (*cf*s 9(2)(b)(i) and (ii) of the Official Information Act):

- The percentage in the last sentence of paragraph [7].
- Footnote 7.
- The three percentages in paragraph 49.
- Footnote 33.

PBT's confidential information

The following information has been removed from the public version of the submission because the information is confidential to PBT and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice PBT's commercial position (*cf* s 9(2)(b)(i) and (ii) of the Official Information Act):

- The percentage in the first sentence of paragraph [53].
- The percentage in the last sentence of paragraph [60].
- The percentage in the first sentence of paragraph [69].
- The percentages paragraphs [79.1] and [79.2].