ISSN no. 1178-2560
Project no. 11.04/PRJ0048968
Public version

Determination

HP New Zealand [2026] NZCC 38

The Commission:	Dr John Small Dr Derek Johnston Rakihia Tau
Summary of application:	HP New Zealand has applied for authorisation of certain resale price maintenance arrangements in respect of its HP Online Store and potential HP Online Marketplace Stores. The authorisation would continue the conduct previously authorised by the Commission in *HP New Zealand* [2021] NZCC 14.
Determination:	The Commerce Commission's decision is to grant authorisation for a period of ten years as it is satisfied that the proposed arrangements will, in all the circumstances, result or likely result in such a public benefit to the public that the conduct should be permitted.
Date of determination:	18 August 2026

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

CONTENTS

Executive Summary

1. On 4 May 2026, the Commerce Commission (the **Commission**) registered an application from Hewlett-Packard New Zealand Limited (**HPNZ**) under section 58(7) of the Commerce Act 1986 (the Act) for authorisation to engage in resale price maintenance (**RPM**) in relation to its proposed arrangements for its HP online store and prospective HP online marketplace store (collectively, the **HP Stores**) for a period of up to 10 years (the **Proposed Arrangement**) (the **Application**).[1]

2. Hewlett-Packard (**HP**) generally distributes its computers and related equipment in New Zealand via resellers, including major retailers. However, since the Commission granted authorisation for it to engage in RPM in 2021 (**2021 Determination**),[2] it has also sold stock to consumers through an HP-branded online store (**HP Online Store**). The HP Online Store is operated by HPNZ, but for technical and commercial reasons, sales transactions are fulfilled via a selected local third-party distributor (**Partner**), currently [ ], which purchases stock from HPNZ and holds that stock locally until it is used to fill an order. When a customer places an order, [ ] invoices the customer and receives payment. The existing authorisation allows HPNZ to set the price of these consumer-facing transactions within the HP Online Store, and therefore that sets the price that [ ] charges, which amounts to RPM.

3. In that respect, the RPM conduct in the Proposed Arrangement is very narrow, and is undertaken for a different reason than RPM is commonly implemented.[3] The RPM that is the Proposed Arrangement is to underpin the operation of the HP Online Store in New Zealand.

4. As discussed below, we consider that, but for the RPM, HP would not be likely to operate the HP Online Store in New Zealand; and the presence of that store results in (unquantifiable, and likely small) public benefits. We also consider that the RPM conduct underpinning the Proposed Arrangement results in no public detriments, in particular because the RPM conduct affects sales that only go through the HP Stores, which account for a small proportion of HPNZ's total sales. The sales subject to the RPM, therefore, comprise an exceedingly small share of the market.

5. Accordingly, we grant authorisation for the Proposed Arrangement for the 10-year period requested.

---

1 Application by HP New Zealand for authorisation (1 May 2026) (the **Application**) at [8] and Annexure A, [2(a)]. A public version of the Application is available on our website at: https://www.comcom.govt.nz/case-register/case-register-entries/hp-new-zealand-2/

2 HP New Zealand Limited [2021] NZCC 14 (the 2021 Determination) at [12]. A public version of the 2021 Determination is available on our website at: https://www.comcom.govt.nz/assets/pdf_file/0025/264418/5B20215D-NZCC-14-HP-New-Zealand-Final-determination-30-August-2021.pdf.

3 For example, providing guaranteed margins to resellers to encourage the provision of pre- and post-sales service (amongst other things).

Determinations

6. The Commission is satisfied that the expected public benefits from the Proposed Arrangement would outweigh the detriments. Accordingly, we grant authorisation under section 58(7), as discussed below.

Assessment procedure

7. In preparing this Determination, we sought submissions and obtained information from a range of sources. The Commission:

    7.1 reviewed the information and analysis in the Application;

    7.2 considered evidence received from the Applicant and interested parties by way of interview and in response to information requests;

    7.3 considered submissions made by various interested parties in response to the Commission's Statement of Preliminary Issues relating to the Application; and

    7.4 prepared a Draft Determination which explained the Commission's preliminary view that authorisation should be granted and called for submissions on our preliminary view. We did not receive any submissions.

Background: The Proposed Arrangement and Key Parties

HPNZ

8. HPNZ is a member of the HP Group (generally, **HP**). Its US-listed parent company, HP Inc., is a manufacturer of HP-branded technology products (**HP Products**) including desktop computers, notebooks, printers and related accessories and supplies (ink cartridges, toners, etc).

9. HPNZ imports HP Products into NZ directly from HP factories overseas. HPNZ sells those products to distributors which then on-sell those HP Products to resellers and retailers in NZ. When certain volume criteria are met, HPNZ also sells directly to resellers and retailers through its network of HP partners, and to some large corporates and public sector clients, as well as direct to consumers via the HP Online Store. The proposed RPM would only affect the HP Online Store (currently [ ]% of HP sales in NZ) and prospective HP Online Marketplace Stores (not yet active in New Zealand), which compete directly with the distribution network resellers and retailers that also sell HP Products. A summary of HPNZ's sales channels is set out in **Table 1** and described further below.

Table 1 – HPNZ's sales channels

	Entity	Product source	Customer segment
HP Distribution Network: [ ]% of HP sales in NZ	[ ] T1 distributors	Direct from HP overseas.	Onsell to T1 retailers, and T1 and T2 resellers
	[ ] T1 resellers	Bulk buy from HP overseas or T1 distributor	Large corporate/government clients

	[ ] T2 resellers	T1 distributors	Broad range
	[ ] T1 retailers	T1 distributor or bulkbuy from HPNZ	Individual and small business customers
Other sales: [ ]% of HP sales in NZ	HPNZ – [ ]% of HP's sales in NZ		Corporate/Government
	HP Online Store – [ ]% of HP's sales in NZ where RPM is sought (Currently the online marketplace store model is not operating in NZ)		Individual and small business customers

HP Distribution Network

10. HPNZ imports HP Products into New Zealand and, as well as direct sales, distributes and supplies those HP Products through its network of authorised distributors, retailers and resellers for resupply to a variety of customers. Such customers include large corporate and government end-users, small-to-medium businesses and consumers.

11. The distribution of HP Products involves a network of HP partners (**HP Distribution Network**) that are categorised into four groups, namely "T1 Distributors", "T1 Resellers", "T2 Resellers" and "T1 Retailers" as set out below.

    11.1 T1 Distributors procure large volumes of HP Product direct from HP factories overseas. There are [ ] T1 Distributors that on-sell HP Products to T1 Resellers, T2 Resellers and T1 Retailers.

    11.2 There are [ ] T1 Resellers that purchase HP Products from the T1 distributors, and, where certain volume criteria are met, T1 Resellers may also purchase directly from HPNZ. T1 Resellers tend to supply HP Products to large corporate and government end-users.

    11.3 There are over [ ] T2 Resellers that generally purchase HP Products from T1 Distributors. The T2 Resellers sell to a broad range of end-users, including Government, large corporates, small-to-medium enterprises, and to a lesser extent, home consumers.

    11.4 There are [ ] T1 Retailers that purchase HP Products from T1 Distributors, or directly from HPNZ if volume requirements are met, and sell to home consumers and small-to-medium businesses.

The HP Online Store

12. HPNZ also operates the HP Online Store in New Zealand. The target audience of the HP Online Store are small to-medium businesses, individual/home consumers and students.

13. Pursuant to the existing authorisation granted in the 2021 Determination (discussed in paragraphs [17]–[20]), HPNZ does not sell HP Products direct to those consumers in New Zealand through the HP Online Store. Instead, consumers place orders with the HP Online Store and the Partner fills the order and supplies the goods to consumers from its pre-purchased stock.

14. HPNZ currently does not sell HP Products through an online marketplace store in NZ, but if and when marketplace opportunities arise in the NZ market, HP will consider establishing HP (branded) online marketplace stores.[4] The online marketplace stores would operate in a similar way to the current HP Online Store, except that they would be operated by the Partner on behalf of HP, selling as a third party on the online marketplace platform (**HP Online Marketplace Stores**).[5] Examples of HP online marketplace stores overseas are the HP storefronts on Amazon and eBay.

HP's sales in New Zealand through various channels

15. 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.

16. Outside the HP Distribution Network, HPNZ supplies large corporate or government customers with significant volume requirements directly and this amounts to approximately [ ]% of HP Product sales. The remaining [ ]% of HP Product sales are currently through the HP Online Store to individual and small business customers.

The 2021 authorisation

17. This is the second application made by HP for authorisation of these RPM arrangements. In 2021, the Commission received an application from HPNZ to engage in RPM conduct in relation to its new public and private online stores and its new HP online marketplace stores it intended to open in NZ.[6] HPNZ intended to operate the new stores with a third-party distributor, with HPNZ setting the retail prices.[7] HPNZ submitted at the time that due to technical and commercial issues, the third-party distributor would need to take ownership of the stock before sale and be the retailer of record.[8] It would also hold stock, process orders and deal with deliveries and returns.

[4] The Application, Annexure A at [3.4].
[5] HPNZ response to RFI dated 26 June 2026 (30 June 2026) at 2.
[6] The 2021 Determination at [1].
[7] Ibid., at [3].
[8] Ibid., at [4].

18. Prior to March 2020, HPNZ had sold a limited range of HP Products online though a public HP branded website that was created, hosted and managed by a previous partner of HPNZ's, Acquire Co NZ Limited (**Acquire**).[9] Acquire set retail prices independently, but this model proved to be commercially unsustainable for HPNZ as [ ].[10]

19. HPNZ submitted that its new public and private online stores and its new HP online marketplace stores could only proceed with RPM conduct, and that this model would provide high quality customer experiences that may add to price competition in the retailing of products they carry.[11] According to HPNZ, authorising the conduct would create a net public benefit, and that there would be no detriments as it was only seeking to engage in RPM conduct with its selected third-party distributor, and all other distributors and resellers would remain unaffected.[12]

20. The Commission concluded that the new HP online and marketplace stores would likely provide the customer experiences claimed by HPNZ and although it was impractical to quantify the benefits, they would provide many benefits compared with the counterfactual of HPNZ having no direct online presence in NZ such as marginal price competition. We did not identify any detriments. Accordingly, in the 2021 Determination, we granted authorisation to HP on 30 August 2021 to engage in the conduct for five years, and it is due to expire on 31 August 2026. [13]

The application

21. HPNZ seeks authorisation for it to, in effect, continue the arrangement as authorised by the 2021 Determination. It seeks to enter into an agreement between HPNZ and a Partner and through that agreement engage in RPM.[14] The agreement provides that the Partner will not sell the goods at a price less than the price specified by HPNZ and the Partner will sell and receive payments for the HP Products on:[15]

    21.1 the current and prospective HP Online Store; and

    21.2 prospective HP Online Marketplace Stores,

    (collectively, the **HP Stores**).

22. HPNZ intends to control the product and marketing strategies and specify the prices at which the Partner will sell the HP Products on the HP Stores. The RPM conduct will only apply to products sold by the Partner through the HP Stores, which currently

---

9 Ibid., at [7].
10 Ibid., at [20].
11 Ibid., at [9].
12 Ibid.
13 Ibid., at [10-12].
14 There is currently an agreement (under the existing authorisation) between HP and [ ] containing RPM clauses. However, HP's application covers any agreement between itself and the third-party distributor operating the HP Stores, not just continuation of the existing agreement with [ ] or new agreements with [ ]: The Application, Annexure A at [5.1].
15 The Application at [8] and Annexure A, [2(a)].

only makes up [ ]% of HPNZ's sales. The HP Distribution Network, which consists of various authorised distributors, resellers and retailers of HP Products and non-HP stores obtaining HP products (without necessarily buying these from HPNZ) will continue without change.

How we assess RPM authorisations

23. Section 37 of the Act prohibits a supplier from engaging in RPM. A supplier of goods engages in RPM when it enforces, or tries to enforce, a minimum price at which the reseller must on-sell those goods.[16] RPM is *per se* unlawful unless authorised by the Commission.

24. The Commission is empowered under sections 58(7) and 61(8) of the Act to authorise RPM conduct that is otherwise subject to the *per se* prohibition in section 37.

25. Generally, the Commission undertakes a two-stage assessment when considering an authorisation application submitted under section 58(7) of the Act:

    25.1 first, assessing whether the Commission has jurisdiction to assess and authorise the application (the 'jurisdictional threshold'); and

    25.2 second, assessing whether the associated benefits mean that authorisation should be granted (the 'public benefit test').

26. Specifically, to grant authorisation to RPM conduct:

    26.1 in order to apply for authorisation, the Applicant must consider that section 37 of the Act would or might apply to the conduct;[17] and

    26.2 as set out in the 2021 Determination, to grant authorisation for RPM conduct the Commission must be satisfied:[18]

        26.2.1 in order to have jurisdiction to consider the application, that the conduct amounts to engaging in the practice of RPM;[19] and

        26.2.2 that the conduct "will in all the circumstances result, or be likely to result, in such a benefit to the public" that it should be authorised.[20]

27. Unlike authorisations of conduct that might breach sections 27 or 36 of the Act, the Commission is not required in authorising RPM to determine that competition would be lessened by the conduct (as required by applications that fall under s 61(6) of the Act).

---

16 Commerce Act 1986, s 37. See also Commerce Commission, *Resale Price Maintenance Factsheet* (July 2022).

17 Commerce Act 1986, s 58(7).

18 2021 Determination, at [27].

19 The acts that amount to engaging in the practice of RPM are listed in section 37(3) of the Act.

20 Commerce Act 1986, s 61(8).

28. However, in determining whether the conduct is likely to result in such a benefit to the public, the Commission is required to assess the benefits and detriments associated with the conduct. Accordingly, it is required to perform a qualitative and, to the extent practicable, quantitative assessment of any lessening of competition likely to result from the RPM, with which to compare the associated benefits (which requires us to consider the scope of the relevant market(s)), noting that:[21]

    28.1 any lessening of competition need not be found to be substantial;

    28.2 any lessening of competition may be found to be negligible, or even non-existent.

29. The benefits and detriments must arise from the conduct for which authorisation is sought.[22] To determine whether benefits and detriments are specific to the conduct, we assess:

    29.1 what is likely to occur in the future with the conduct, ie, the factual;

    29.2 what is likely to occur in the future without the conduct, ie, the counterfactual; and

    29.3 once identified, we then assess all likely benefits and detriments relevant to our assessment of the conduct. As a general principle, benefits and detriments will be likely if there is a real and substantial risk or real chance that they will happen if the conduct proceeds.[23]

30. When assessing the conduct, we compare what is likely to occur in the future with the conduct with each scenario that is likely to occur in the future without the conduct. By assessing the relative states of competition in each of these scenarios, we determine whether the conduct will in all the circumstances result, or be likely to result, in such a benefit to the public that it should be authorised.

Jurisdiction

31. The Applicant has applied for authorisation under section 58(7) of the Act, which sets out that a person who wishes to engage in the practice of resale price maintenance, to which that person considers section 37 of the Act would or might apply, may apply to the Commission for an authorisation to do so.

32. The Commission has jurisdiction to grant authorisation under section 61(8) of the Act where the Commission is satisfied that the relevant conduct which amounts to engaging in the practice of RPM, (which is defined in section 37 of the Act as

---

21 The courts have said it is "implicit" in the benefits assessment that the Commission is required to assess qualitatively, and to the extent practicable quantitatively, any lessening of competition associated with the conduct (see *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA), at 447 and *Air New Zealand and Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347 (HC) (*Air New Zealand*) at [319]).

22 Commerce Commission, *Authorisation Guidelines* (June 2023) at [43].

23 *NZME Ltd v Commerce Commission* [2018] 3 NZLR 715 (CA) at [83] and [86(a)].

requiring one (or more) of the acts set out in section 37(3) of the Act) will in all the circumstances result or be likely to result in such a benefit to the public that it should be permitted.

33. Here, the Applicant considers that the Proposed Arrangement amounts to the practice of resale price maintenance in potential contravention of section 37(3)(c) of the Act, because:[24]

> The 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.

34. We agree with the Applicant that the relevant provisions of the Proposed Arrangement amount to engaging in the practice of RPM. In particular, we note that the relevant agreement with HP's Partner includes a clause requiring the Partner to sell the goods at a price specified by HP.[25] Accordingly, we have jurisdiction to consider this application.

Relevant markets

35. Usually when we consider an application for authorisation of potentially restrictive trade practices, we assess the competitive effects of the Proposed Arrangement within relevant market(s) in New Zealand.[26] As discussed above at paragraph 28, even where we are not expressly required to consider whether competition would be lessened by conduct we are assessing; it is inherent in the benefits and detriments analysis that we consider the effects of the conduct on competition, which requires some consideration of the relevant market(s).

36. Determining the relevant market requires a judgement as to whether, for example, two products are sufficiently close substitutes (as a matter of fact and commercial common sense) to be considered within the same market. Markets are defined in a way that best isolates the key competition issues that arise from the application.[27]

HPNZ's submissions

37. In the Application, HP submitted that the relevant markets were likely New Zealand-wide markets for the PC category of products and the Print category of products.[28] It further noted that these products are focused on two main audiences (commercial customers and consumers) and can be broken down further into sub-markets or market segments (for example, separating out consumer desktops and consumer notebooks). HP submitted that there is strong inter- and intra-brand competition in all relevant segments and customer categories as referred to in **Table 1** above. This

---

24 The Application, at Annexure A [2(a)].

25 The Application, at Annexure D, [ ].

26 Section 3(1A) of the Act: "the term market is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them."

27 For more information on the Commission's approach to market definition, see our *Mergers and Acquisitions Guidelines* (May 2022) at Chapter 3.

28 The Application at Annexure A, [4].

was supported by NZ market share data provided by HP,[29] which demonstrated the presence of multiple competitors in each product segment, with market shares [

].

Our assessment

38. In the 2021 Determination, we did not find it necessary to conclude on the precise boundaries of the relevant market(s). While noting that the relevant markets were likely to be national, we considered that our assessment would have been the same regardless of how product (or customer) markets were defined.[30]

39. Our view is unchanged in this case.

 39.1 We consider that any relevant markets are likely to be national because the HP Stores compete with most of the largest suppliers of electronics in New Zealand, which tend to have online stores and national distribution networks.

 39.2 Our assessment of price- and non-price-related welfare effects below would be substantially the same regardless of product (or customer) market definition because the HP Stores are (and likely would continue to be) relatively small, and constrained by intra- and inter-brand competition, even under the narrowest realistic definitions.[31]

 39.3 Our assessment of HP's and the Partner's costs in operating the HP Stores under alternative models would be independent of market definition because the relevant costs would be setup or overhead costs that would be unaffected by the process or scope of competition.[32]

With and without the arrangement

40. As noted above, to determine whether the benefits and detriments identified by an applicant are specific to the Proposed Arrangement, we assess:

 40.1 what is likely to occur in the future with the Proposed Arrangement (the factual); and

 40.2 what is likely to occur in the future without the Proposed Arrangement (the counterfactual).

41. This analysis also allows us to determine both the existence and magnitude of potential benefits and detriments.

42. In this context the Commission is necessarily engaging in a future-focussed assessment. As such, there is scope for a range of potential factual and

---

29 The Application at Annexure A, Schedule 3
30 2021 Determination at [34]–[36].
31 *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85].
32 We discuss the details under our assessment of transaction and other costs incurred or avoided as a result of the RPM conduct, from paragraph 81.1 below.

counterfactual scenarios. The Commission must consider all "likely" factual and counterfactual scenarios to identify all likely benefits and detriments relevant to its authorisation assessment.[33]

43. For the "likely" threshold to be met, Courts have held that there must be a real and substantial chance of the factual or counterfactual arising.[34] It must be more than a mere possibility but it need not be more likely than not.[35] The Courts have observed that, inherently, the factual and counterfactual are "necessarily incapable of accurate assessment".[36] As such, there is no legal burden or evidential standard of proof for the Commission to be satisfied that the factual or counterfactual scenarios and the benefits and detriments arising from them are likely.[37] For the Commission to be satisfied, it simply needs to have made up its mind on all of the material before it.[38]

With the arrangement (the factual)

44. The proposed conduct is RPM. If the proposed conduct is authorised, HPNZ would:

44.1 continue to impose RPM on its local distribution partner that assists in operating the proposed HP Online Stores in New Zealand; and

44.2 if HPNZ chose to open an HP Online Marketplace Store in NZ, impose RPM on the local distribution partner that would assist it in operating that store.

Without the arrangement (the counterfactual)

45. The counterfactual is a future without the Proposed Arrangement, ie one in which HPNZ does not continue to impose RPM conduct on its Partner that assists in operating the proposed HP Online Stores and HP Online Marketplace Store in NZ.

HP's submissions on the counterfactual

46. HPNZ submits that in the absence of the Proposed Arrangement, it cannot operate the HP Stores in NZ as HP cannot commercially justify a model in NZ that does not align with its regional e-commerce strategy.[39]

47. HPNZ further submits that in the counterfactual:[40]

47.1 it would not be able to continue operating the HP Stores in NZ; and

---

33 Authorisation Guidelines at [44] and [45].

34 *NZME Ltd v Commerce Commission* at [86(a)], citing Port Nelson v Commerce Commission [1996] 3 NZLR 554 (CA) at 562–563.

35 Ibid.

36 *NZME Ltd v Commerce Commission* at [85], citing Woolworths Ltd v Commerce Commission (2008) 8 NZBLC 102,128 at [113].

37 *NZME Ltd v Commerce Commission* at [86(c)], citing Z v Dental Complaints Assessment Committee [2008] NZSC 55 at [26] per Elias CJ and [96] per Blanchard, Tipping and McGrath JJ.

38 *NZME Ltd v Commerce Commission* at [86](c)], citing Z v Dental Complaints Assessment Committee [2008] NZSC 55 at [26] per Elias CJ and [96] per Blanchard, Tipping and McGrath JJ.

39 The Application, Annexure A at [2](a) and [6].

40 Ibid., at [6].

47.2 In that situation:

47.2.1 HP would lose its direct-to-consumer online presence; and

47.2.2 customers of the HP Online Store would not be able to buy direct from HP and avail themselves (at least for a long period) of the HP-enhanced customer and brand experience currently offered by the HP Online Store, nor would they have the opportunity to make purchases though any prospective HP Online Marketplace Stores.

48. In theory, there are alternative models that are not based on RPM that the HP Stores could adopt, such as agency and in house; but according to HPNZ, the current model for the HP Stores including the resale price maintenance provisions is the only way forward in terms of commercial and technical viability and HP being in a position to offer a HP branded, owned and managed online service and experience to its customers.[41] Therefore, if the Commission does not authorise the Proposed Arrangement, HPNZ submits that the HP Stores would not continue in the counterfactual.

Our assessment of the counterfactual

49. We consider that there is one likely counterfactual: in the absence of RPM, HPNZ would not have a direct to customer online presence in New Zealand.

50. As discussed above, HPNZ's current model for its HP Stores in NZ is based on the RPM conduct the Commission previously approved in the 2021 Determination.

51. We have, however, also assessed whether HPNZ would in fact use an alternative model and therefore whether there might be alternative likely counterfactuals in which HPNZ could operate the HP Stores without controlling the retail pricing of HP Products in the HP Stores via a Partner. Our view is that HPNZ would not use an alternative model and the only counterfactual is one where the HP Online Stores would not continue to operate in NZ. Our assessment of each model is discussed below.

52. We accept that HPNZ would likely not use a model where it would retain title and appoint a third-party distributor under an agency model.

52.1 HPNZ noted that it has considered the feasibility of a model whereby it retains title to the HP Products and a third-party distributor provides logistics only. In practice, such a model would require the parties to adopt a consignment-based structure, and HPNZ confirmed that to date, [ ].[42]

52.2 We understand that an agency model would require HPNZ to [

[41] Ibid., at [6].

[42] The Application at Annexure A [6]2.

].[43] HPNZ submitted, and we accept, that integrating these changes across both HPNZ and a third party distributor's systems would be complex, time-consuming, and costly, with a real risk of disruption to existing operations during implementation and transition.

52.3 HPNZ submitted that under a consignment-based agency model, HP-owned inventory would be held within the third party's distribution network, but would remain on HP's balance sheet until onward sale.[44] HP also submitted, and we accept, that there would be material complexity and cost to implement this model. We also accept HP's submission that an agency model whereby it retains title of the HP Products would leave HPNZ more directly exposed to risks associated with holding inventory than it would under the Proposed Arrangement, including, shrinkage, damage, and other inventory carrying risks. These risks are currently borne by the Partner under the existing model as managing inventory and logistics is a core part of the Partner's business model and expertise.[45]

53. We also consider that HPNZ would not be likely to take steps to operate the HP Stores itself.

53.1 HPNZ has submitted that in order to do so, it would need to [ ].

53.2 We accept HPNZ's submission that any [ ].[46] The cost of [ ] would be in the range of [ ] (based on internal estimates). This reflects the scale and cost of [ ]. Based on submissions received we accept that it is unlikely HPNZ would incur these costs.

54. HPNZ has also submitted, and we accept, that due to the size of the NZ market, it is not commercially viable for HPNZ to consider alternative approaches to the HP Stores in NZ only.[47]

54.1 According to HPNZ there is limited business opportunity demonstrated to date to justify [ ]. [

---

43 Letter from K&L Gates to Commerce Commission (12 June 2026).

44 Ibid.

45 Interview with [ ] (25 June 2026).

46 The Application, Annexure A at [5.2]iii ; and Letter from K&L Gates to Commerce Commission (12 June 2026) at [1].

47 The Application, Annexure A at [5.2]iii.

].

54.2 Further, the Australian Competition and Consumer Commission (**ACCC**) has considered similar applications to the Proposed Arrangement (in the form of notifications) in respect of HP Online Stores and HP Online Marketplace Stores in Australia in 2019 and 2020 respectively. In both instances the ACCC did not oppose the notifications, with the effect that legal protection for similar RPM conduct continues indefinitely (unless and until the ACCC decides to revoke the notifications).[48] Accordingly, because HP has approval to engage in similar conduct as to the Proposed Arrangement in Australia, we accept that any alternative model would be limited to NZ, which would not be commercially viable for HP given the size of the NZ market.

Our assessment of benefits and detriments

55. The Commission will grant authorisation if it is satisfied, on the evidence before it, that the proposed conduct will in all the circumstances result, or will be likely to result, in a net benefit to the public. In making this assessment, the Commission considers the quality of the evidence and makes reasonable value judgements about how much weight to give to the evidence.

56. In *Godfrey Hirst* the Court of Appeal observed that the Commission must consider a broad range of benefits and detriments in applications for authorisation. This may include efficiencies and non-economic factors.[49] In particular, the Court of Appeal indicated that the Commission must have regard to efficiencies when weighed together with long-term benefits to consumers, the promotion of competition, and any economic and non-economic public benefits. The Court said that “[w]here possible these elements should be quantified; but the Commission and the courts cannot be compelled to perform quantitative analysis of qualitative variables.”[50]

57. Accordingly, the Commission’s approach is to quantify benefits and detriments to the extent that it is practicable to do so.[51] Regarding the weight that can be given to qualitative factors, the Court of Appeal said in *Godfrey Hirst* that “[q]ualitative factors can be given independent and, where appropriate, decisive weight”.[52]

58. The Commission assesses benefits and detriments accruing to both producers and consumers and generally does not apply distributional adjustments. However, the Court of Appeal in *NZME* confirmed that the Act permits us to apply a ‘modified total welfare’ approach.[53] A modified total welfare approach can take into account the distributional effects of benefits and detriments within a community. In this case, no

---

48 ACCC, *Statement of Reasons: HP PPS Australia Pty Ltd RPN 10000453* (10 October 2019); ACCC, *Statement of Reasons: HP PPS Australia Pty Ltd RPN 10000456* (2 October 2020).

49 *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZCA 560 (CA) at [24] and [31] (*Godfrey Hirst*).

50 *Godfrey Hirst* at [36].

51 *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA) (AMPS-A CA) at 447; *Air New Zealand* at [319]; and *Ravensdown Corporation Ltd v Commerce Commission* High Court, Wellington API68/96, 16 December 1996 at [47] to [48].

52 *Godfrey Hirst* at [38].

53 *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85].

party has proposed to depart from the total welfare approach and the Commission does not propose to do so of its own motion.

Potential benefits and detriments of the Proposed Arrangement

59. In general, although it is a *per se* breach of the Commerce Act, RPM has the potential to cause both benefits and detriments.

60. First, the potential detriments arising from RPM. A supplier imposing RPM on any resellers of the supplier's goods (such as wholesalers or retailers) can reduce price competition between resellers of the same product (intra-brand competition) and also between resellers of the same product and resellers of other products (inter-brand competition), which may result in customers paying higher prices, which in turn can decrease output.[54] Also, in certain circumstances, particularly where the conduct is widespread, RPM may increase the risk of both explicit and tacit coordination among competitors at both the downstream (eg, retailers) and upstream (eg, manufacturers) levels. RPM can also assist upstream and downstream firms to gain or maintain market power.

61. On the other hand, RPM can sometimes lead to benefits. RPM can promote competition between competing products by improving resellers' incentives to invest in promotions and support services by solving the 'free-rider' problem.[55] RPM can also increase the number of retailers willing to stock and sell a manufacturer's products (due to guaranteed margins), potentially enhancing inter-brand competition, increasing output and enhancing upstream firms' ability to enter and expand by securing downstream distribution.

62. The mix of benefits and detriments that can result from RPM are reflected in the Commission's published approach to investigating RPM, set out in our *Resale Price Maintenance Factsheet*. In that document we state that we will be more likely to prioritise investigating RPM where:[56]

    62.1 the RPM occurs across an industry or sector;

[54] Impacts depend on how RPM is applied and on how the resellers, and competing suppliers, respond. RPM immediately reduces 'intra-brand' competition between the resellers affected, who can no longer compete to discount the supplier's goods. RPM can also reduce 'inter-brand' competition because resellers or rival suppliers may not need to discount rival suppliers' goods as much to make sales.

[55] For example, suppliers of complex goods may seek to use RPM to create incentives for resellers to invest in ancillary services that can promote non-price competition, such as in-store demonstrations and post-sales support. Without RPM, resellers may lack incentives to make such investments due to the 'free-rider' problem. For example, if providing in-store demonstrations is costly – and if resellers need to pay for extra staff or training by charging higher retailer prices – then with no restrictions on retail pricing some resellers may choose to avoid the costs and charge low retail prices, hoping to make sales from customers that used demonstrations provided by other resellers that did invest in staff and training. But if resellers inclined to invest in demonstrations could predict this they may not invest. Imposing minimum resale prices may remove this free-riding problem and give more resellers incentives to invest.

[56] Commerce Commission, *Resale Price Maintenance Factsheet* (June 2022), at p. 4.

62.2 parties to the arrangements have market power, either on their own or collectively;

62.3 there is pressure from resellers on suppliers to impose RPM on others;

62.4 the RPM is used to facilitate collusive conduct (including tacit coordination); and/or

62.5 the conduct is particularly likely to harm competition and/or consumers.

63. In this case, HPNZ emphasises that it only seeks to impose RPM on its Partner in the HP Stores and only in respect of the volumes sold through them (which currently comprises ~[ ]% of HPNZ's sales). HPNZ is not seeking to impose RPM on its Partner's other sales of HP Products (ie, sales not originating from the HP Store), or on any of its other distributors or resellers. Therefore, the RPM for which authorisation is sought is of a particular and limited nature. In turn, this means that many of the traditional benefits and detriments of RPM described above either do not apply, or apply only in a very limited manner.

64. Instead, as set out above, the RPM that HPNZ wishes to impose on its Partner's sales of HP Products is a necessary precondition to the (continued) operation of the HP Stores. Accordingly, our analysis of the benefits and detriments of the Proposed Arrangement takes into account both the direct effects of the RPM, as well as the effects of the continued operation of the HP Stores on the relevant markets.

65. In this case, we categorise the potential benefits and detriments as follows:

65.1 the effects of the Proposed Arrangement on price outcomes;

65.2 the effects of the Proposed Arrangement on non-price outcomes; and

65.3 transaction and other costs incurred or avoided as a result of the Proposed Arrangement.

Price effects of the Proposed Arrangement

HPNZ's submissions

66. HPNZ submits that the HP Stores would improve price competition in the factual by offering competitive prices and frequent promotions.[57,58]

66.1 For example, to illustrate the potential future benefits of reauthorising RPM, HP notes that in 2025 alone the HP Stores ran more than [ ] promotions, with

[57] The Application at Annexure A [2(d)].

[58] Further to our remarks at paragraph [60] above, HPNZ's proposed (continued) use of RPM to drive more competitive retail pricing is somewhat unusual. Typically, a manufacturer requesting authorisation for RPM may seek to raise retail prices widely to achieve an offsetting efficiency, for example to give all its retailers profit incentives to invest in costly demonstration and support activities without fear of low-price retailers free-riding (see footnote 55 above). However, in this case, HP proposes to continue using RPM narrowly at the HP Stores, where it plans to continue offering regular promotions to sell stock, without reducing intra-brand competition.

each one offering discounts on up to [ ] SKUs (stock-keeping units, ie individual products).[59]

67. HPNZ also submits that RPM at the HP Stores would cause no detriment to price competition in the factual, primarily due to the fact that the RPM would be limited in scope. HPNZ's key arguments are as follows.[60]

67.1 Intra-brand price competition between resellers[61] of HP Products would not be affected because, under the Proposed Arrangement, no reseller other than HPNZ's Partner would be subject to RPM, and the Partner would only be subject to RPM over the volumes sold at the HP Stores,[62] which HPNZ proposes to price competitively.

67.1.1 Consequently, HP states: "Customers will remain free to purchase HP Products from a large number of alternative online and 'bricks and mortar' retailers that are not subject to the RPM in the Proposed Arrangement. Such retailers account for the vast majority of sales of HP Products to consumers and small businesses at present." [63]

67.1.2 Further, while some HP Product SKUs are sold only at the HP Stores, this is only because HPNZ's [ ] in the factual, [ ]. However, collectively, HPNZ's resellers do stock a wide range of comparable SKUs to any SKU that is sold only at the HP Stores and should continue to do so in the factual.[64] Accordingly, intra-brand price competition should not be undermined.

67.2 Inter-brand price constraint on all HP Products – whether they are sold at the HP Stores or elsewhere – is strong, and will remain so in the factual, because HP faces competition from numerous alternative brands in every product category.[65]

Other submissions

68. We did not receive any submissions from third parties about the price effects of the Proposed Arrangement.

---

59 The Application at Annexure A [5.2(iii)].
60 The Application at Annexure A [8(i)-(v)].
61 As noted in The Application at Annexure A [3], HP uses the terms distributors, resellers and retailers for its various types of downstream channel partners. We use the common term reseller as a catch-all unless otherwise specified.
62 The Application at Annexure A [5.4(ii)].
63 The Application at Annexure A [8(iii)].
64 The Application at Annexure A [3.2].
65 The Application at Annexure A [8(iv)].

Our assessment of price effects

69. As discussed above, HPNZ's proposed imposition of RPM on the Partner in this case is unusual in that the RPM is intended only to underpin the commercial model required to ensure the continued presence of the HP Stores in New Zealand. HPNZ does not propose to use the RPM to raise prices in the HP Stores. Rather, it proposes to continue with frequent discounts at the HP Stores. Moreover, as discussed below, we consider that it would be unable to affect the prices of the overwhelming majority of HP Products sold in New Zealand due to the limited scope of the RPM and the extent of intra- and inter-brand competition.

70. Accordingly, as we explain further below, the price effects caused by the Proposed Arrangement would flow from the presence of the HP Stores, and their discounts, and which would be enabled by the RPM in the factual.

71. In summary, we consider that the HP Stores are likely to provide a net benefit via price effects in the factual, which would be lost in the counterfactual of no HP Stores.[66]

72. Regarding benefits to price competition in the factual as compared to the counterfactual of no HP Stores, we consider that the HP Stores are likely to add at least marginal price competition and thereby increase allocative efficiency.

    72.1 We have assessed the available evidence on pricing and promotions at the HP Stores since RPM was first authorised in 2021, and on HP's plans for the future.[67] We cannot predict how frequently pricing for any given SKU on the HP Stores will fall below the average prices of comparable SKUs in the factual. However, based on the evidence we have seen, we consider that HP's pricing to date has been competitive.[68]

    72.2 We also consider that the constraints of intra- and inter-brand competition on the volumes sold at the HP Stores have been significant and will likely remain so in future.[69]

    72.3 Accordingly, we consider it likely that the HP Stores would continue to offer promotions of at least marginal value to customers, ie which sometimes may be better than promotions available from competing outlets. Hence, by obtaining lower prices, customers of the HP Stores could expand trade and

---

66 We note our current observation that, if the other counterfactuals described above were likely, we consider price-related welfare would be effectively the same as in the factual. In outline, the relevant counterfactual(s) would see the same price-related benefits as the factual due to the continued operation of the HP Stores, but would not feature RPM, which we consider would cause no detriment in the factual. Accordingly, in those other counterfactuals we would treat this as a neutral factor.

67 Letter from K&L Gates to Commerce Commission (12 June 2026), at [4] and [5].

68 In its response to our RFI, HP provided further details of the frequent promotions at the HP Stores, many of which featured discounts of [ ]% or more over the last year: Letter from K&L Gates to Commerce Commission (12 June 2026), at [4].

69 This conclusion was supported by our market enquiries and by the absence of any submissions against the Application (including from the range of industry parties we engaged with directly).

gain an unquantifiable total surplus each year – and the resulting allocative efficiency would not be available in the counterfactual of no HP Stores.

73. Set against this, we consider that there would be no material detriment to price competition in the factual due to HP's continued use of RPM at the HP Stores, as compared to the counterfactual of no HP Stores.

73.1 As noted at paragraph 22 above, in this authorisation application HP only proposes to continue applying RPM narrowly at the HP Stores and not more widely among its resellers, who would remain free to set prices independently (except for the Partner, on volumes sold through the HP Stores only). As a result, the Proposed Arrangement could not directly raise the (quality-adjusted) prices of any volumes of HP Products.[70]

73.2 We also consider that HP would not be able to raise prices unilaterally at the HP Stores or use them to raise prices in coordination with other retailers. This is because, whichever way product markets may be defined, the HP Stores would have low shares for the foreseeable future and would remain subject to strong intra- and inter-brand competition in the factual.[71]

73.3 We further consider that during the term of the 2021 Determination any SKUs available on the HP Online Store that did not happen to be taken up by other resellers remained subject to strong intra-brand competition from comparable SKUs that were, and to strong inter-brand competition from many brands available at many outlets.[72] We consider that this would continue to be the case in the factual.

73.4 Therefore, we consider that there would be no price-related detriment in the factual as compared to the counterfactual of no HP Stores.

74. Balancing benefits and detriments due to price effects, in the factual we consider that there would be an unquantifiable but likely small net benefit each year due to improved allocative efficiency as compared to the counterfactual of no HP Stores.

---

70 The Application, at Schedule 2, notes that only [ ]% of HP's total revenues were made at the HP Stores in 2025. Even under ambitious growth plans for the HP Stores, most of HP's future sales would continue to be made through unrelated resellers.

71 *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85]. As noted at paragraphs [38] and [39] above, we have not concluded on market definition, but even if product markets were defined narrowly the HP Stores' current revenue shares, and future shares at realistic growth rates, would remain low. We also consider that our view at paragraph [39.2] above, that intra- and inter-brand competition would remain strong in the factual, would hold for any realistic product market definitions.

72 In its response to the Commission's RFI, HP confirmed that around [ ]% of the SKUs carried by the HP Stores during the last year were not taken up by its other resellers, and it provided examples of comparable products manufactured by HP and its rivals that were widely available at the same time: Letter from K&L Gates to Commerce Commission (12 June 2026), at [5].

Non-price effects of the Proposed Arrangement

HPNZ's submissions

75. HPNZ submits that the HP Stores would benefit non-price competition in the factual by offering the following benefits:[73]

  75.1 "best in class" user experience among online stores, for example in terms of page load times, search capabilities and ease of navigation;

  75.2 a wide range of payment options;

  75.3 a wide range of delivery options, fast delivery times, and fast processes for returns and refunds; and

  75.4 further benefits over time, including expanded product range and more services for small-to-medium-sized businesses.

76. HPNZ submits that all these benefits would be lost in the counterfactual of no HP Stores.[74] It also submits that the benefits mostly depend as much on the Partner's logistical capabilities as on [ ] and HP's ecommerce expertise.[75]

Other submissions

77. We did not receive any submissions from third parties about the non-price effects of the Proposed Arrangement.

Our assessment of non-price effects

78. As mentioned above, the imposition of RPM by HPNZ on its Partner in this case is a necessary precondition to the continued presence of the HP Stores in New Zealand. As is the case for price effects, we consider that relevant effects on non-price dimensions of competition would stem from the continued operation of the HP Stores, enabled by the Proposed Arrangement.[76]

---

[73] The Application at Annexure A [2(d)] and [7].

[74] The Application illustrates some of these benefits by comparing the HP Stores' current performance to its historical performance – for example, arguing that the HP Stores have progressively provided a "wider" range of payment options and "faster" delivery times, partly by [ ]. We note that, in the authorisation framework, we will compare: i) what benefits the HP Stores may provide in the factual that may be absent in the counterfactual of no HP Stores; and ii) potentially, what benefits the HP Stores may provide in the factual compared to the benefits that they may provide in any real-chance counterfactuals where the Stores would continue to exist but be operated differently.

[75] For example, HP submits that even the user experience benefits depend not just on [ ] but also on the Partner's skill at managing inventory, so that the HP Stores' offerings can be updated efficiently to reflect aged or sold-out stock. HP submits that benefits related to delivery rely more directly on the Partner's logistical expertise.

[76] We note that one of the traditional economic rationales for RPM is that the increased prices increase margins that are in turn used to pay for and provide non-price benefits to consumers. Here, however, we consider HP will be able to deliver the non-price benefits via established assets and practices without needing extra profits to pay for them; and, indeed, as mentioned above we do not consider HP would likely be able to raise prices at the HP Stores due to strong intra- and inter-brand competition.

79. We consider that the HP Stores are likely to provide an unquantifiable and likely small net benefit via non-price effects in the factual, which would be lost in the counterfactual of no HP Stores.[77]

79.1 It has not been practical to quantify how the various non-price-related experiences of the HP Stores have to date compared to (and may continue to compare to) those of competing outlets, to rank the HP Stores' quality explicitly against the average by issue. However, we consider based on the evidence we have received from HP that these experiences have been, and would continue to be, at least average and could be better.[78]

79.2 As with price effects, we have not attempted to estimate whether non-price effects at the HP Stores could also expand output or intensify competition to drive further efficiencies, but we consider that any such benefits would likely be limited given the small size of the HP Stores.

Incurred or avoided costs as a result of the Proposed Arrangement

80. Based on the single likely counterfactual we identify above, we do not consider there would be any material incurred or avoided costs as a result of the Proposed Arrangement that would amount to benefits or detriments under the public benefit test.

81. During our assessment, as discussed above, we considered whether there were any 'real chance' counterfactuals in which HPNZ would operate the HP Stores in a manner other than via the Proposed Arrangement. As set out above, these would most likely have been either HPNZ running the HP Stores directly, or HPNZ selecting a local Partner but not imposing RPM on that Partner, via an agency model.

81.1 Neither HPNZ nor any third parties made any submissions about costs that may be incurred or avoided as a result of the Proposed Arrangement.

81.2 However, if one of those counterfactuals had been a 'real chance' counterfactual, we consider there could have been costs incurred in those counterfactuals that would not be incurred in the factual, including:

81.2.1 costs incurred resulting in some amount of deadweight loss, because there would be no meaningful increase in output; and/or

---

77 As for price effects, we note our current observation that if the other counterfactuals described above were likely, we consider non-price-related welfare would be effectively the same as in the factual. We consider that under the agency or in-house model the HP Stores would be identical in terms of non-price (and price) experiences for customers as compared to the factual, because HP and the Partner would be using the same resources and experience, and the HP Stores would face the same competitive constraints. We consider any changes in costs (covered below) would be unlikely to affect the quality of the HP Online Store. Accordingly, in those other counterfactuals we would treat this as a neutral factor.

78 This conclusion was supported by the material submitted with the Application, our market enquiries and our assessment of HP's response to the Commission's RFI of 26 May 2026: Letter from K&L Gates to Commerce Commission (12 June 2026).

81.2.2 offshore elements that would amount to wealth transfers out of New Zealand and so could be counted as detriments under the authorisation framework.[79]

81.3 If the in-house model had been a ‘real chance’ counterfactual, the cost involved in HP [ ] in order to run the HP Stores itself could have amounted to a public detriment, whether via deadweight loss or offshore wealth transfer (because [ ]). HPNZ provided evidence that if this were to be done, it would only be done [ ] and would cost approximately [ ], although not all of this cost would be solely attributable to New Zealand.[80]

81.4 If the agency model had been a ‘real chance’ counterfactual, the cost involved in adopting this model on an ongoing basis could have amounted to a public detriment via deadweight loss. This would include [ ] and [ ] to implement this model.[81]

82. However, because we do not consider there is a real chance of HP operating the HP Store under these models if we did not grant authorisation, we do not consider the above amount to public benefits or detriments resulting from the Proposed Arrangement.

Balancing the benefits and detriments

83. We accept that authorising the Proposed Arrangement in this case is likely to lead to a net public benefit. We set out in **Table 2** below our assessment of the net benefits in this case.

---

[79] Commerce Commission, *Authorisation Guidelines* (updated June 2023) at [89].
[80] Letter from K&L Gates to Commerce Commission (12 June 2026), at p. 1.
[81] Ibid., at p. 2.

Table 2: Balance of benefits and detriments

Category of benefit or detriment	Our assessment
Price effects	Unquantifiable but likely small annual net public benefit from increased price competition
Non-price effects	Unquantifiable but likely small annual net public benefit from increased non-price competition
Effect on costs	Neutral, given our conclusion on the likely relevant counterfactual.
Summary	**Unquantifiable but likely small net benefit from granting authorisation**

Length of the proposed authorisation

84. The Commission can grant authorisation for such period as it thinks fit.[82]

85. HPNZ requested that we grant authorisation for this conduct for ten years. It referred to the previous authorisation having been granted for five years in the context of the lack of detriments it considered the conduct had.[83] It also noted the fact that under proposed legislation, the Commission will have the power to allow RPM notifications for a period of up to ten years.[84]

86. Two interested parties told the Commission that, although they did not oppose the granting of authorisation for the Proposed Arrangement, they both had genuine concerns with the ten-year term and considered a five-year term would be more appropriate.[85] These parties noted that:

    86.1 a ten-year period is a relatively long time, double the length of the previous authorisation, and there is no certainty about how the relevant markets might develop during that time;

    86.2 the effect of the authorisation is to increase vertical integration by OEMs into retail, including control over a consumer-facing platform and the retail-level customer, behavioural and transactional data coming with it. This increased vertical integration might have effects over the next ten years that cannot be easily predicted now, including:

        86.2.1 greater control over the customer product 'ecosystem', leading to increased customer lock-in via closed platforms and reduction of consumer choice over the longer-term. [ ] indicated it considered this was already occurring in the [ ] category of products;

82 Section 61(2) of the Act.
83 Application at [5.3].
84 Commerce (Promoting Competition and Other Matters) Amendment Bill 237—1, at cl 22 (inserting new sections 65E to 65S) and Sch 2 (inserting new Sch 8).
85 These parties were [ ] and [ ]: Email from [ ] to Commerce Commission (4 June 2026); Email from [ ] to Commerce Commission (5 June 2026).

86.2.2 entrenching customer relationships with OEMs, reducing the role and competitive constraint offered by independent retailers and resellers which might in the long term weaken competition on pricing and quality;

86.2.3 continued development in pricing optimisation tools and algorithmic pricing linked to customer data and purchasing behaviour may further entrench the direct relationship with OEMs and the concerns above;

86.3 although these specific concerns may not eventuate, others might; and the Commission should not assume that market conditions will stay static for the next ten years; and

86.4 a five-year term, like the 2021 Determination, would allow the Commission to reassess the conduct in light of any such developments rather than relying on assumptions.

87. In the 2021 Determination, we authorised the conduct for five years, noting that the benefits and detriments we identified in that Determination may not be realised and that HPNZ reserved the right to undertake certain conduct which could change the balance of benefits and detriments.[86]

88. We consider it is appropriate to authorise the conduct for ten years.[87] In coming to this view, we have considered the evidence offered by HPNZ as to the benefits and the lack of detriments caused by the conduct under the 2021 Determination, and the comments offered by third parties about the term of the authorisation.

89. We note that in 2021 we authorised the conduct for five years in part to allow for the benefits and detriments of the conduct (at that point only theoretical) to accrue. The evidence suggests that the conduct has had net benefits even if these have been small. As set out above we consider that the Proposed Arrangement is likely to continue to have no real detriments and some (small) benefits, primarily because of the very narrow nature of the RPM being undertaken and the strong inter-brand competition which constrains HPNZ and reduces the risk of the RPM having anticompetitive effects.

90. We note HPNZ's references to the proposed statutory notification regime. We do not consider this in itself is sufficient reason to grant this authorisation for ten years. We comment that the Bill has not yet passed so it is not appropriate for the Commission to place any weight on this regime. Further, the current drafting of the Bill allows the Commission a discretion to set a protected period short than ten years for RPM conduct.[88]

---

86 2021 Determination, at [77]-[78].

87 Specifically, ten years from the date that the extant authorisation expires, being 31 August 2026.

88 Commerce (Promoting Competition and Other Matters) Amendment Bill 237—1, at cl 22, inserting new s 65O.

91. Further, in determining the appropriate duration of the authorisation, the Commission has had regard to the specific facts and circumstances of the Proposed Arrangement. There is no default setting for the duration of authorisations.

92. Accordingly, we consider a ten-year term to be appropriate.

Determination

93. The Commission's determination is that the Proposed Arrangement will result, or be likely to result, in such a benefit to the public that it should be permitted, and so the Commission grants authorisation for the Proposed Arrangement under section 58(7) of the Act for ten years from 31 August 2026.

Dated this 19th day of 2026

____

Dr John Small
Chair