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ARMOURGUARD SUMISSION

on Draft Determination relating to

NZBA APPLICATION FOR ANTI-COMPETITIVE AGREEMENT AUTHORISATION

14 April 2026

CONTENTS

1. INTRODUCTION

1.1 Armourguard Logistics Limited (**Armourguard**) thanks the Commission for the opportunity to comment on the Draft Determination **(Draft)**[1]. Armourguard recognises that the Draft expresses only a preliminary view that: *"… the collective bargaining envisioned under the Proposed Arrangement would likely lead to (**unquantifiable, and possibly small**) benefits relating to both the price and non-price terms of a collectively bargained agreement, **improved operational efficiency, and step-in rights**."*[2]

1.2 We appreciate the work reflected in the Draft. Our detailed comments are set out below (including in the Annex). Here we wish to highlight four key points on the Draft:

a. **Insufficient weight is given to likely costs and uncertainty on Armourguard** (including pressure from the Commission and the customers to "reopen" existing concluded contracts) and the relatively low likelihood of the asserted outcome.[3]

b. We cannot see any **consideration of the monopsony this would create for the next bid** within the term of the authorisation (part of our concern about scope).

c. There seems **insufficient regard to the likely competitive effects of ongoing "collaboration"** in an industry prone to coordination (collaboration would seem allowed even with no bargaining with us), coupled with high faith in conditions.[4]

d. Conclusions often appear to be **based on weak and / or theoretical assumptions** (i.e. not meeting the necessary evidential threshold). (There also appears to be material misunderstandings of step-in rights and their application.[5])

1.3 We are also concerned that aspects of the Draft appear to rely on contested assertions by interested parties as part of the Draft's factual narrative, while treating other established evidence as mere "claims". That is material in circumstances where the Draft describes the asserted benefits as "*unquantifiable, and possibly small*".

1.4 In such circumstances, Armourguard respectfully submits that the Commission must have sufficient confidence not only that the claimed benefits are *likely* to arise, but also that the conduct will *not likely* give rise to material detriments (e.g. coordination risk, contract uncertainty, compliance and transaction costs.

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[1] NZBA-CIT-Authorisation-Draft-Determination-24-March-2026.pdf

[2] NZBA-CIT-Authorisation-Draft-Determination-24-March-2026.pdf X4

[3] There is a ***real chance*** we would be commercially compelled to engage. Contrary to the Draft's optimistism, there's no sound basis to conclude this would likely produce an efficient / stable outcome. Rather, there's substantial risk of prolonged negotiation, pressures to revisit contracts, high (new) cost & uncertainty, with no assurance of a workable result.

[4] The proposal would not just permit a single negotiation but an ongoing framework for coordination including through a period in which contract renewals and alternative entry may again create a buyer-side monopsony dynamic.

[5]

[

]. **They don't need any clearance / authorisation for this**.

1.5 We submit that the Commission cannot presently be satisfied that the Proposed Arrangement *"will, in all the circumstances, result or likely result in such a benefit to the public that the conduct should be permitted."*

2. WHAT ISSUE DOES THE APPLICATION REALLY ADDRESS?

2.1 The application is framed as responding to concerns about the sustainability of wholesale cash-in-transit (**CIT**) services and incentives for investment in essential cash infrastructure. The Draft appears largely to accept that framing, while expressing concern about aspects of Armourguard's recent contractual conduct.

2.2 Armourguard submits that this framing risks mischaracterising both the underlying problem and the appropriate regulatory response. The central issue in this sector has not been the absence of buyer bargaining power or the risk of unchecked monopoly pricing. Rather, it has been persistent sub-economic pricing driven by concentrated buyer power in a declining, high fixed-cost industry, resulting in prolonged losses, instability, and eventual consolidation.

2.3 The Commission accepted that diagnosis in the Evergreen/ACM clearance, where it identified ongoing decline in cash usage, bank branch rationalisation, and inflationary cost pressures as factors making it unlikely that two national wholesale CIT providers could remain viable.

2.4 Against that backdrop, the critical question for this authorisation application is not whether aspects of Armourguard's recent contractual conduct were robust, unusual, or contested. Armourguard addresses those matters below. The critical question is whether authorising ongoing collective bargaining by the major banks is a proportionate and appropriate response, likely to result in net public benefits, having regard to the sector's history, incentives, and the Commission's own findings in the Evergreen/ACM clearance.

2.5 The Draft appears to be materially influenced by concerns regarding certain contractual terms proposed or agreed by Armourguard, described as "unusual", "not ordinarily expected", or as shifting risk to customers. Armourguard does not suggest that such matters should be immune from scrutiny. However, the step from concerns about specific contractual provisions to the conclusion that sustained collective bargaining by the major banks would generate net public benefit requires closer examination.

2.6 More generally, the Applicant's case depends in material part on characterising ordinary commercial negotiations and disputed contractual positions as evidence of monopolistic conduct. Armourguard does not accept that characterisation. The conduct in question consisted of bilateral negotiations with sophisticated, well-resourced counterparties, each of whom retained the ability to negotiate, refuse, disengage, or pursue alternatives.

2.7 It is instructive to contrast the approach taken by the same banks in Australia.

2.8 In Australia, banks recognised that CIT services were financially unsustainable and that, absent intervention, there was a material risk of exit or disruption. On that basis:

a. banks supported financial underwriting of the CIT provider (Armaguard);

b. they sought authorisation to inject funding and stabilise the supplier, rather than to suppress pricing; and

c. the ACCC assessed this as a public-benefit, continuity-of-supply response, subject to conditions designed to limit distortion.

2.9 By contrast, in New Zealand:

a. banks assert sustainability and resilience concerns;

b. but do not propose support, underwriting, or price-uplift mechanisms;

c. instead, they seek collective negotiation power to reduce or tightly control pricing; and

d. rely on the claimed absence of alternatives (post-merger) as a source of leverage.

2.10 The Draft challenges or rejects Armourguard's views on numerous occasions, but does not squarely address whether the application is, in substance, directed primarily toward a reduction in Armourguard's prices and a corresponding transfer of value to the applicant banks. Armourguard submits that this is a significant omission. At a minimum, the Commission should expressly consider whether the practical effect, and real objective, of the Proposed Arrangement is predominantly a redistribution of bargaining outcomes in favour of the banks, rather than the generation of genuine net public benefits.

2.11 If the applicants and / or banks had genuinely been keen to seek the stated solution the NZBA and / or its lawyers could have raised this with us earlier (our first notice was a 'courtesy' email to our lawyer about the time of the Commission's media release). The applicants could have sought a non-price authorisation. They could have signed up with Armourguard, to ensure the ongoing viability they profess to be so concerned about and then sought collective bargaining and / or regulation under Part 4. However, we expect that they know that a Part 4 outcome, would not materially differ.

2.12 Conversely, the independent regulator the Reserve Bank of New Zealand (**RBNZ**), in its public briefing on these developments (**Briefing 6327**), records that Armourguard developed *"a new utility-like pricing structure called 'the Infrastructure Access Fee' (IAF)"* and views the IAF as "*a fair way of ensuring it can cover its costs of operations and necessary investment in infrastructure, as well as generate a fair return."*[6]

2.13 Armourguard supports a utility-like pricing framework for CIT services. If the Commission considers that **the Infrastructure Access Fee (IAF) is not appropriate, then the appropriate response would be consideration of price regulation under Part 4 of the Commerce Act.** Such a framework would enable the Commission to assess, on an ongoing basis, the reasonableness of the economic returns earned by Armourguard.[7]

2.14 The RBNZ has stated that the Proposed Arrangements "*would likely recreate the significant buyer leverage for banks that the merger of the CIT companies addressed*"

[6] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 5-6
[7] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 12

(RBNZ Briefing 6327), reinforcing the risk that authorisation would reintroduce the conditions that previously resulted in sustained sector losses.[8]

2.15 Armourguard submits that, in light of the matters set out above, the Commission should carefully consider whether authorisation would be consistent with the asserted "sustainability" objective, or whether it would instead tend to reproduce the pre-merger dynamics described by the RBNZ as a "*race to the bottom", with "persistent losses … undermining the resilience of the cash system" (RBNZ Briefing 6327)*.[9]

2.16 The Draft records Armourguard's position that pre-merger wholesale CIT prices were below cost and attributes this to bank buyer power: "*Armourguard claims that the prices it charged for wholesale CIT services prior to the merger were below cost and that these loss-making prices were due to the banks exercising their buyer power*."[10] It is unclear why this is characterised as a "claim", given the evidential record available to the Commission from the Evergreen/ACM clearance, which identified sustained losses and pricing outcomes below sustainable levels in the sector. In that context, the characterisation understates the extent to which these matters have already been examined and accepted[11], including in evidence from RBNZ.

2.17 Against this background, the banks' conduct and approach in seeking authorisation appear inconsistent with the stated objective of ensuring that "CIT services continue to operate sustainably, with incentives to innovate and invest in a quality service."[12]

2.18 Critically, the RBNZ briefing expresses reservations directly relevant to "sustainability" and "buyer leverage": "***Historically, the banks were able to negotiate down CIT costs while reducing their public-facing cash services, without quality improvements. The NZBA application would likely recreate the significant buyer leverage for banks that the merger of the CIT companies addressed.***"[13]

2.19 Read together, these public sources support the submission that there is a **fundamental tension** — if not inconsistency — between the NZBA's stated "sustainability / investment incentives" objective (Draft Determination, para 3) and the ***practical effect of the authorisation sought, which, on the RBNZ's view, would "recreate" bank buyer leverage that previously contributed to loss-making pricing and reduced system resilience***.

2.20 Armourguard addresses factual matters in detail below, but notes at this stage that observed conduct is inconsistent with both the application's framing and the asserted "unavoidable trading partner" premise (which Armourguard submits is incorrect), including:

a. customer withdrawal;

b. the pursuit of alternative supply options; and

[8] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 11
[9] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 4
[10] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 17
[11] NZCC-23-Evergreen-and-ACM-merger-clearance-determination-7-October-2024
[12] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 3
[13] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 11

c. fragmentation of demand.

2.21 Further, the Draft Determination's assessment of the "factual" expressly contemplates that participants may do more than merely engage in collective bargaining:

> Participants will have the ability to collectively negotiate, as well as to continue to undertake bilateral negotiations and take any other appropriate action to secure sustainable CIT services.[14]

2.22 This indicates that the Proposed Arrangement is not confined to collective bargaining but would permit parallel and potentially overlapping forms of coordination and negotiation (including for the next bid round). The Draft further contemplates that even parties already under contract "*could … use the new entry operating model*" alongside, or following, the collective process.[15] This reinforces that the Proposed Arrangement is not limited to facilitating a single collective negotiation, but contemplates ongoing and overlapping forms of coordination, including in respect of existing contractual relationships.

2.23 Armourguard submits that these features compound an internal inconsistency.

2.24 If the stated objective were genuinely to secure sustainable investment incentives for essential infrastructure, the coherence of the application requires scrutiny of:

a. whether the authorisation sought is directed to achieving a sustainable return outcome; and

b. whether the banks' pursuit of alternatives and the potential fragmentation of demand (including via withdrawal and disaggregated entry options) is consistent with the asserted "sustainability" objective or instead reinforces a strategy of resisting the return and term structure sought while hedging through alternative supply.

[14] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 93
[15] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 93.1

3. MARKET CONTEXT AND SECTOR HISTORY

3.1 The context to this application, and the factors that led to the ACM / Armourguard merger clearance (including the evidence given in that process, which was framed as an application for authorisation or clearance)[16], are relevant. That context includes the following factors:

a. cash is acknowledged to be useful to consumers, particularly vulnerable consumers. Banks have not had the same incentives to meet those needs, including through branch reductions (distinct from their prudential requirements);

b. banks previously imposed asymmetric and highly unfavourable terms on the two national wholesale / full-service CIT providers, both of whom were making losses;

c. cash collection is a high fixed-cost business, with many sunk costs, operating in a structurally declining ("sunset") industry. Provision of these services requires significant capital investment in circumstances of continued decline in cash usage;

d. those conditions led to the application for clearance / authorisation of the Evergreen/ACM merger[17], resulting in the entity now operating as Armourguard;

e. banks are large, highly profitable institutions with substantial financial capacity, and are recognised as having market power in the Commission's market study. They retain the ability to influence commercial terms; and

f. like any large customer, banks are capable of self-supply or sponsoring new entry. This is not a new development and is observed across multiple industries.

3.2 The Commission's recent clearance decision (Evergreen/ACM) provides relevant context for the CIT sector. Evergreen submitted that the New Zealand CIT services industry is *"in a state of decline", driven by factors that include "the continuing decline in the use of cash as a form of payment",* the COVID-19 pandemic accelerating that decline, and "the rationalisation of branches by banks and other financial institutions".

3.3 The Commission's clearance determination records that *"[t]he Application notes that the relevant CiT businesses … have suffered* ***significant cash flow losses****"* and that *"[a]n ongoing decline in the use of cash as a method of payment and reduced demand for CiT services … coupled with inflationary increases in costs make it difficult for the continued operation by two national wholesale CiT service providers to be financially viable."*[18]

3.4 In its own assessment of the counterfactual, the Commission considered that "*the status quo is not a likely counterfactual"* and that "*in the counterfactual it is unlikely that both Evergreen and ACM would continue to provide services in New Zealand*."[19]

3.5 Those factors are relevant in two respects:

[16] Evergreen NZ Holdings and ACM Holdings (NZ) Limited | Commerce Commission
[17] NZCC-23-Evergreen-and-ACM-merger-clearance-determination-7-October-2024 para 36
[18] NZCC-23-Evergreen-and-ACM-merger-clearance-determination-7-October-2024 para 7
[19] NZCC-23-Evergreen-and-ACM-merger-clearance-determination-7-October-2024 para 39, 40-42, 52-53.

a. first, they reinforce that wholesale CIT operates in a structurally challenged environment, raising the importance of a stable, sustainable framework for maintaining nationwide cash infrastructure; and

b. second, they show that banks' own conduct (including branch rationalisation) is a key driver shaping demand conditions. This is directly relevant to the public benefit assessment: banks are not passive "price takers" in an exogenous demand environment.

3.6 New Zealand's official survey evidence points to a sustained shift away from cash for everyday payments. The Reserve Bank's 2023 Cash Use Survey[20] reports that "[*s]urvey respondents using cash for everyday purposes was 57.2% in 2023, a significant decline from 60.4% in 2021, and 95.8% in 2019."* It also records forward-looking expectations consistent with continued decline: "*Almost half (49.3%) felt concerned about fewer people using cash in the future …".*

3.7 Comparable trends are reported internationally, particularly in other advanced economies, supporting the conclusion that transactional cash demand will continue to decline.

3.8 For example:

a. The Reserve Bank of Australia reports that "the share of consumer payments made in cash had fallen from around 70 per cent by number in 2007 to 13 per cent in 2022"[21];

b. Sweden's Riksbank states that "cash use continues to decline" and that "about one in ten in-store purchases is made with cash"[22]; and

c. UK evidence is similarly forward-looking:

i. UK Finance projects that "*cash use [is] expected to continue to decline to 6% of payments … in 2033"*[23]; and

ii. the Bank of England links declining use to consolidation risk: *"reduction in wholesale processing activity … [has] led to an increased likelihood of market consolidation in the WCD industry."*[24]

3.9 These international forecasts align with the Commission's own sector findings in New Zealand. In the Evergreen/ACM clearance, the Commission recorded that declining demand, rising costs, and reduced viability made continued operation by two national providers unlikely That context is directly relevant to the present authorisation application, which is justified on the basis of ensuring services *"continue to operate sustainably, with incentives to innovate and invest in a quality service."* (Draft Determination, [3]).

[20] 2023 cash use survey summary report
[21] Access to Cash in Australia | Bulletin – January 2025 | RBA
[22] Cash use continues to decline | Sveriges Riksbank
[23] https://www.ukfinance.org.uk/system/files/2024-07/Summary%20UK%20Payment%20Markets%202024.pdf
[24] https://www.bankofengland.co.uk/banknotes/wholesale-cash-supervision/boe-wholesale-cash-distribution-market-oversight-regime-annual-report-2025

3.10 That demand trajectory makes CIT businesses **inherently high-risk**, as their economics depend on throughput while a substantial portion of their cost base is fixed (including networks, depots, fleet, staffing, and compliance).

3.11 As cash usage declines, the unit cost of maintaining nationwide infrastructure increases, market viability becomes more fragile, and consolidation or exit risk increases — particularly where banks' own decisions further reduce demand density.

3.12 This must be considered alongside the Commission's findings in its market study into personal banking services, which identified sustained high profitability and market power among major banks.[25] The Commission's executive summary stated:

> **The NZ banking sector has sustained high levels of profitability.**
>
> The New Zealand banking sector has demonstrated **sustained high levels of profitability relative to international peers**. Between 2010 and 2021, New Zealand's banking sector has, on average, performed in the upper quartile relative to peer nations on three important measures: return on equity, return on assets, and net interest margin. Cross-checks we have undertaken since our draft report was issued produce consistent results and provide us with greater confidence in our findings.
>
> We consider that at least part of the profitability we see is **explained by the market power of the major banks**. We considered non-competition explanations that have been put forward, but they do not explain the profitability we observe.
>
> New Zealand's banking sector is relatively **low risk** because it is more heavily weighted towards traditional (vanilla) banking activities (like home lending) than many peer nations. Because these activities are lower risk, if competition was working well, we would expect the New Zealand banking sector to derive lower returns relative to riskier banking sectors overseas.
>
> The major banks have experienced high average returns on equity relative to smaller New Zealand banks since 2018. This is consistent with the two-tier market we have observed in personal banking, where smaller providers struggle to exert significant competitive pressure on the major banks.

3.13 Consistent with that, the RBNZ's Briefing 6327 characterises the pre-merger period as a "*race to the bottom*", where CIT providers "*were unable to exercise any material bargaining power*", *pricing declined* in real terms, and firms sustained persistent losses, undermining the resilience of the cash system.[26]

3.14 On that basis, the RBNZ states:

> We support a utility-like pricing structure for CIT services and, if **the IAF is not appropriate, our view is that the Commerce Commission should regulate pricing under Part 4** of the Commerce Act.[27]

3.15 Against this background, the banks' conduct in seeking authorisation sits uneasily with the stated objective of ensuring that CIT services "*continue to operate sustainably, with incentives to innovate and invest in a quality service*."

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[25] Market study into personal banking services | Commerce Commission
[26] Executive summary Final report Personal banking services market study Final Report published 20 August 2024.
[27] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 12

3.16 The RBNZ briefing explicitly connects the NZBA application to pricing and return levels, noting that the IAF "*represents a substantive increasing in pricing for the Banks and, perhaps more materially, a significant lock-in period of 10 years*."[28]

3.17 It then states: "*In response, the major banks, via the NZBA, have applied to the Commerce Commission for authorisation to collectively negotiate with ALL on CIT services*."[29]

3.18 Critically, the RBNZ expresses concern that the application would "***recreate the significant buyer leverage for banks that the merger of the CIT companies addressed***."[30]

3.19 Read together, these sources support the submission that there is a fundamental tension between:

a. the NZBA's stated "*sustainability / investment incentives*" objective; and

b. the practical effect of the authorisation sought, which would recreate the buyer dynamics previously associated with loss-making pricing and reduced resilience.

3.20 Armourguard submits that understanding this context is critical to assessing its contractual conduct (addressed further below). However, this does not appear to be fully reflected in the Draft's analysis.

[28] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 6
[29] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 11
[30] RBNZ "Updates on Cash-in-Transit Developments" (Briefing 6327).RBNZ Briefing 6327, para 7

4. BARGAINING DYNAMICS AND HISTORICAL INCENTIVES

4.1 The Draft proceeds, implicitly, on the basis that Armourguard is an unavoidable trading partner and that recent negotiations therefore reflect an imbalance of supplier power. That characterisation is incomplete when assessed against the sector's history and the observed behaviour of the major banks over time.

4.2 Banks have demonstrated both the ability and the willingness to sponsor entry into the cash-in-transit market where that aligns with their commercial interests. In particular:

a. Westpac sponsored ACM's entry into the New Zealand CIT market, providing foundational demand and commercial certainty sufficient to support establishment and scale.

b. Earlier, ASB and ANZ supported the establishment of G4S's cash-in-transit operations in New Zealand, again demonstrating the capacity of major banks to facilitate new entry.

c. [ ] entry as discussed in the Draft reflects a continuation of that pattern and includes offering [ ].

4.3 This history is directly relevant. It demonstrates that banks are not structurally captive purchasers lacking realistic alternatives. Rather, they can shape market structure, sponsor entry, fragment demand, or withdraw altogether, while CIT providers face sunk infrastructure, regulatory obligations, and asymmetric exit risk.

4.4 Consistent with this, the Reserve Bank has characterised the pre-merger period as a "*race to the bottom*", in which banks exercised significant buyer leverage, prices declined in real terms, and CIT providers sustained persistent losses, undermining system resilience. The NZBA application arises in response to the introduction of a pricing framework intended to recover fixed infrastructure costs and support a sustainable return.

Conduct inconsistent with an "unavoidable trading partner" premise

4.5 The Draft records that participation in the bargaining group has itself been fluid: "*The Warehouse Group, SBS Bank and Woolworths New Zealand also joined, but later withdrew from the Proposed Arrangement on 3 December 2025, 15 December 2025, and 6 March 2026 respectively.*"[31] *See also the Commission's published "Amended List of Participants*".[32]

4.6 The Draft also recognises that the "sole provider / unavoidable" characterisation is qualified by the existence (or pursuit) of alternative operating arrangements. It states: "*We understand that [ ] have recently applied for access to RBNZ's Secure Zone in an effort to establish a new entry operating model to provide disaggregated CIT services*."[31]

[31] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 11.2

[32] NZBA Amended List of Participants (9 March 2026) similarly records that *"Woolworths New Zealand ("WWNZ") has withdrawn from the Arrangement."*

4.7 Further, the Draft Determination expressly contemplates that participants may do more than merely bargain collectively: "*Participants will have the ability to collectively negotiate, as well as to continue to undertake bilateral negotiations and take any other appropriate action to secure sustainable CIT services*."[33]

4.8 The Draft further contemplates that even parties already under contract "*could … use the new entry operating model*" **alongside (or after) the collective process**.[34]

4.9 As noted above, we submit that these features compound the internal inconsistency. Rather than being directed to achieving a sustainable return outcome, banks' pursuit of alternatives, and the resulting fragmentation of demand, is inconsistent with their stated objective, instead reflects a strategy of resisting legitimate proposals while hedging through alternative supply.

Conduct and consistency with workable and effective competition

4.10 The Draft suggests that outcomes differ from those expected in a workably competitive market. Armourguard addresses those propositions further below.

4.11 For present purposes, however, observed outcomes are consistent with the operation of workable competition in a structurally declining ("sunset") industry:

a. contracts have been entered into on differing terms across counterparties;

b. shorter-duration contracts are priced higher, reflecting the need to recover fixed (and largely sunk) costs over a shorter period; and

c. certain parties have elected to withdraw or pursue alternative supply arrangements.[35]

4.12 Those features are not consistent with a market in which customers are powerless or captive. They are consistent with sophisticated counterparties making different commercial choices in response to different preferences, incentives, and alternatives.

4.13 In those circumstances, the Applicant's repeated characterisation of Armourguard's conduct as monopolistic or coercive should be treated as advocacy, not fact. The relevant conduct consisted of commercial negotiations with well-resourced counterparties who retained options and, in several cases, exercised them.

[33] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 14
[34] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 93
[35] NZBA CIT Authorisation Draft-Determination 24 March 2026 (Draft) Para 93.1

5. SCOPE OF PROPOSED ARRANGEMENTS STILL NEEDS GREATER SCRUTINY

Introduction

5.1 The Commission provisionally proposes to authorise the [Proposed] Arrangements. As framed, this appears to permit a broad and ongoing framework for dialogue and coordination over an extended period, including among parties that already have binding contractual arrangements with Armourguard.

5.2 Armourguard raised concerns regarding the lack of specificity, breadth, and evidential insufficiency of the NZBA's application at an early stage, including in correspondence from Matthews Law dated 22 September 2025 (treated as an interim submission).[36]

5.3 Armourguard submitted that the application, as framed, was overly broad, vague, and incapable of lawful assessment, including because it failed to identify with sufficient precision the proposed conduct, participants, **scope**, governance arrangements, duration rationale, or claimed public benefits.

5.4 Armourguard further submitted that the application sought authorisation for **ill-defined conduct** over an extended period (approximately 11 years), without providing consultation-ready particulars or evidence capable of supporting the statutory requirement that any public benefits be likely and specific. Absent such specificity, **affected parties cannot comment meaningfully**, nor can the Commission form the views required under sections 58 and 65 of the Commerce Act.

5.5 Armourguard also submitted that the public version of the application lacked sufficient detail to enable proper consultation. Where an application is framed in a manner that is vague or insufficiently particularised, the appropriate course is not to speculate or fill evidential gaps, but to require a narrowed and properly specified application, or to decline to progress the application (or any interim authorisation) as filed.

5.6 These concerns go to threshold issues of jurisdiction, evidential adequacy, and procedural fairness, including whether affected parties are able to understand and test the conduct said to justify authorisation.

5.7 The Commission largely rejected those concerns, indicating that it is for the applicant to define the scope of the authorised conduct, and that any lack of clarity goes to the nature or prospects of authorisation.

5.8 That position is reflected in the Draft. However, the Draft **does not resolve the underlying issues**. Those issues go directly to the Commission's ability to assess the proposal and to ensure procedural fairness. The present approach risks, with respect, papering over material gaps.

5.9 In those circumstances, Armourguard submits that the absence of sufficient specificity is not merely a discretionary concern but a threshold issue. The Commission cannot be satisfied that the statutory test is met where the conduct sought to be authorised is not defined with sufficient precision to enable assessment of its likely effects, including the

[36] Armourguard-Logistics-Interim-Submission-Submissions-on-Application-22-September-2025.pdf

nature and extent of any public benefits and detriments. Authorisation cannot lawfully be granted on the basis of an indeterminate or evolving scope of conduct.

Lack of clarity continues

5.10 Against that background, Armourguard is concerned that aspects of the Draft proceed on the basis of assumptions or characterisations that were not clearly articulated or evidenced in the application as filed.

Draft should consider the scope, real-world impacts, and costs of the "Arrangements"

5.11 The Draft does not explain how the proposed collective bargaining arrangements would operate in practice, including their interaction with existing contractual arrangements. The analysis appears to rely on generalised theoretical models of bargaining dynamics, without sufficient regard to the specific context - including the scale, financial capacity, and commercial sophistication of the participating banks. Analogies to cases involving materially weaker counterparties are not apt.

Aspects of the Proposed Arrangements not addressed

5.12 Even at Draft stage, there remains insufficient detail to enable proper assessment of detriments. In particular:

a. the Draft does not explain how coordination would operate in practice, including the frequency and structure of meetings, the categories and granularity of information exchanged (**including forward-looking operational or volume data**), or the operation of aggregation or third-party mechanisms;

b. there is no clearly defined monitoring, audit, or reporting framework beyond reactive ("on request") oversight. It is therefore unclear how the proposed safeguards would operate in practice; and

c. the interaction with existing binding agreements remains unclear. The Draft appears to contemplate that existing contracts may be revisited or varied, yet does not assess the associated costs, risks, or uncertainty for Armourguard, including the potential for coordinated pressure to reopen agreed terms.

5.13 In those circumstances, Armourguard is still not in a position to make fully informed submissions on the practical scope and likely effects of the proposed authorisation.

Personal Banking Market Study (context for coordination risk)

5.14 The Commission's *Personal Banking Services Market Study* provides relevant context for assessing coordination risk. The Commission found:

> Our view is that New Zealand's four largest banks – ANZ, ASB, BNZ and Westpac (the major banks) – **do not face strong competition** when providing personal banking services.[37]

[37] Executive-summary-Final-report-Personal-banking-services-market-study-20-August-2024.pdf *(Executive Summary,* under the heading *"**The major banks do not face strong competition**").*

5.15 It further recorded: "***There is a stable oligopoly*** *with no maverick provider …*"[38]

5.16 The Commission also identified features consistent with rapid mutual monitoring: "The major banks are aware of, and respond rapidly to, each other's changes … [and] generally ensure their advertised rates are in line with each other."

5.17 It also noted indicators consistent with rapid mutual monitoring:

> The major banks are aware of, and respond rapidly to, each other's changes in interest rates and other credit settings …

and

> They generally ensure their advertised rates are in line with each other.[39]

5.18 While those findings relate to personal banking products, they are directly relevant here.

5.19 They indicate that the major banks operate in an environment conducive to accommodating behaviour. That context increases the risk associated with authorising an ongoing coordination mechanism and raises the evidential burden on the applicant to demonstrate that safeguards will be effective in practice.

Step-in rights

5.20 The Draft places weight on "step-in" concepts as part of the proposed framework, but does not analyse their practical operation, incentive effects, or interaction with the broader coordination authorised.

5.21 As a preliminary point we note there is an existing [

]. This does not require Commission authorisation or clearance.

5.22 **So the stated benefits appear to be based on a factual error.**

5.23 For completeness we comment further below. We suggest that the Commission staff contact us to discuss should they need further clarification.

5.24 Step-in rights must be assessed in the context of the Reserve Bank of New Zealand's outsourcing standard, BS-11, which is directed at ensuring continuity of critical services, including cash distribution infrastructure. Properly framed, step-in rights are a prudential safeguard of last resort, intended to preserve system functionality in stress or failure scenarios.

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[38] Executive-summary-Final-report-Personal-banking-services-market-study-20-August-2024.pdf *(Executive Summary,* under the heading ***"There is a stable oligopoly with no maverick provider"***)

[39] Executive-summary-Final-report-Personal-banking-services-market-study-20-August-2024.pdf *(* Executive Summary, within the discussion under "***We do not observe consistently strong rivalry between the major banks***").

5.25 However, **the step-in mechanisms contemplated in the Proposed Arrangement (and associated contractual structures) go materially beyond that limited prudential function**.

5.26 Among other things, they appear to:

a. reduce the commercial consequences to Participants of supplier under-investment or financial stress;

b. provide Participants with a form of contingent operational control; and

c. interact with coordinated bargaining to alter incentives in price setting and risk allocation.

5.27 When combined with collective bargaining, step-in rights create a material moral hazard. Participants are able to:

a. coordinate to exert downward pressure on pricing and returns; while

b. retaining a fallback position through step-in or alternative operating models if those pricing outcomes undermine supplier viability.

5.28 This materially weakens the normal commercial constraint that would otherwise discipline purchaser behaviour in bilateral negotiations. In a standard market setting, a purchaser faces the risk that unsustainable pricing outcomes may lead to service degradation or supplier exit. Step-in rights, particularly when coupled with coordination, dilute that constraint.

5.29 The Draft does not address this interaction. Nor does it assess whether the presence of step-in rights:

a. increases the likelihood of sub-economic pricing outcomes;

b. shifts risk asymmetrically to the supplier; or

c. undermines incentives for efficient long-term investment in infrastructure.

5.30 This is particularly relevant in the context of wholesale CIT services, which:

a. require significant sunk and fixed investment;

b. depend on scale and network density; and

c. cannot be efficiently replicated or “stepped into” without material cost, complexity, and risk.

5.31 There is therefore a fundamental tension between:

a. the prudential objective of BS-11 (ensuring resilient, well-funded critical service providers); and

b. a coordinated purchasing framework combined with step-in rights, which may facilitate sustained downward pressure on returns while externalising downside risk.

5.32 The Reserve Bank has already expressed concern that the Proposed Arrangements would *"recreate the significant buyer leverage for banks that the merger of the CIT companies addressed."* That concern is amplified, not mitigated, where step-in rights are available as a backstop to coordinated purchasing behaviour.

5.33 In those circumstances, step-in rights do not operate as a neutral safeguard. Rather, in the context of the Proposed Arrangement, they:

a. reinforce coordinated buyer power;

b. distort normal commercial incentives; and

c. increase the risk of inefficient outcomes, including under-investment and reduced system resilience over time.

5.34 The Draft does not engage with these effects. Absent such analysis, it cannot be concluded that the inclusion or availability of step-in mechanisms supports a finding of net public benefit. On the contrary, the interaction between coordination and step-in rights is a further factor weighing against authorisation.

5.35 In those circumstances, the interaction between coordinated purchasing and step-in rights is a material consideration in assessing both incentives and likely outcomes. The Draft does not address this interaction. That omission is significant given the Reserve Bank's prudential framework under BS-11, which is directed at ensuring the continuity and resilience of critical outsourced services through financially sustainable providers.

5.36 A framework that enables coordinated downward pressure on returns, while providing Participants with step-in or substitution options, risks undermining those prudential objectives. The failure to address that tension risks a failure to take into account a relevant consideration. In the absence of that analysis, the Commission cannot be satisfied that the statutory test for authorisation is met.

5.37 This is consistent with the Reserve Bank's assessment of the pre-merger environment as a "race to the bottom", in which buyer leverage contributed to sustained losses and weakened system resilience (see clauses 2.15, 3.13, and 4.4).

Comparative context – this is not a typical collective bargaining authorisation

5.38 This proposed authorisation is materially different from typical collective bargaining cases. It is unusual to grant authorisation for such an extended duration where parties have significant resources and already entered into long-term agreements or are actively pursuing alternative supply arrangements.

5.39 The Draft states that "*authorisations for a period of approximately 10 years are not unusual."* However, we **submit that brief statement omits any reasoning and lacks the necessary contextual analysis**. It does not address whether comparable cases involve similar contractual fragmentation, counterparty sophistication, or parallel pursuit of alternatives.

5.40 The Commission appears to draw comfort from prior authorisations involving extended durations. Armourguard submits that those are not analogous and should be treated with caution. **We submit that is no substitute for a proper considered analysis.** The statement that *"authorisations for a period of approximately 10 years are not unusual"* is clearly not, of itself, evidence sufficient to satisfy the statutory test.

5.41 By way of example (and contrast), in *Waikato-Bay of Plenty Chicken Growers*[40], the Commission recorded that negotiations were effectively paused pending the authorisation decision, in circumstances where **existing contracts had expired**: *"The previous supply contracts between Inghams and the 33 growers have now* ***expired but the parties have agreed that these contracts remain in place while they discuss potential future arrangements.*** *These discussions have, however, been suspended until the Commission makes a determination on the Association's application to collectively bargain with Inghams on behalf of its members."*[41]

5.42 In that case, the authorisation sought (and granted) a **conventional collective bargaining context**: negotiations over supply terms with a counterparty, with an opt out mechanism, in circumstances where the collective process was directed to reaching and implementing future arrangements.

5.43 **The present case is different**. The Draft identifies the Proposed Arrangement as authorising broad conduct, including (relevantly) the ability for *"two or more Participants to: … collectively bargain … engage in discussions and exchange information … enter into a collective agreement and/or separate agreements based on a common contractual framework; and … give effect to any such provisions collectively negotiated".* [42] The proposed term is 11 years, notwithstanding that the beneficiaries — who are not remotely comparable to chicken growers — have either signed contracts or chosen alternative options.

5.44 Significantly, alternative options are not merely theoretical; they can be, and are being, exercised. As noted above, history demonstrates that banks have both the ability and the willingness to sponsor new entry. Those past examples constitute observable market evidence, not conjecture. The Draft does not adequately engage with that history and appears to understate the significance of current entry initiatives.

5.45 That approach is both incomplete and inconsistent with the evidential record. Armourguard has always treated the risk of sponsored entry as real and material, and developed its pricing and contractual framework on that basis. The fact that entry is now occurring confirms that this is not a hypothetical constraint.

5.46 In those circumstances, Armourguard must respond to actual market developments. It is now facing the commercial consequences of entry, including reduced volume and the need to adjust its cost base and investment plans accordingly.

5.47 This dynamic does not appear to have been factored into the "*Bargaining Framework*" (or at least not sufficiently) which is odd given the truism that competition is concerned with both *actual* and *potential* competition.

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[40] 2017-NZCC-37-Waikato-Bay-of-Plenty-Chicken-Growers-Association-Incorporated-Final-determination

[41] 2017-NZCC-37-Waikato-Bay-of-Plenty-Chicken-Growers-Association-Incorporated-Final-determination Para 21

[42] NZBA-CIT-Authorisation-Draft-Determination-24-March-2026.pdf Para 38

5.48 The practical effect of authorisation would be to establish **an ongoing coordination platform** among major competitors, despite divergence in contractual status (including executed long-term agreements, ongoing negotiations, and disengagement scenarios).

5.49 Collective bargaining by major banks **should not be assessed in the same manner as authorisation involving smaller or structurally weaker counterparties**.

5.50 This is consistent with the **ACCC's refusal to authorise collective bargaining by major banks in the Apple Pay** matter, where it found that improved bargaining position did not outweigh competitive detriments.[43]

5.51 The same concern arises here: the Proposed Arrangement is directed at enhancing purchaser bargaining power through coordination, while the Draft identifies only "unquantifiable, and possibly small" benefits.

Duration and proportionality

5.52 Even if wholesale CIT had natural monopoly characteristics, as noted above **Armourguard is not an unavoidable trading partner** in the relevant sense. The Draft expressly contemplates that Participants will "*continue to undertake bilateral negotiations and take any other appropriate action to secure sustainable CIT services*", and that participants who have already signed can "*also use the new entry operating model*" if it is established.[44]

5.53 Armourguard accepts that wholesale CIT may exhibit features often associated with essential infrastructure. However, the Commission's own factual framing recognises that Participants have multiple options beyond collective bargaining, including bilateral negotiation and "any other appropriate action" to secure services, and that some Participants who have already signed agreements "could also use the new entry operating model" were it established.

5.54 That is critical to proportionality. Where a counterparty is truly unavoidable, coordination may be justified as a pragmatic mechanism. Where alternatives exist and are actively pursued, the case for authorising an ongoing coordination platform among major competitors is significantly weaker - particularly where identified benefits are "unquantifiable, and possibly small".

5.55 In those circumstances, the Commission's own characterisation of limited benefits reinforces the need for close tailoring and supports declining authorisation where the scope is broader than necessary and its practical operation remains unclear.

Independent pricing and third-party mechanisms are not part of the conduct

5.56 The Draft relies in part on the prospect of independent, transparent, or quasi-regulatory pricing outcomes. However, these features do not form part of the proposed conduct for which authorisation is sought. The NZBA application seeks authorisation for collective bargaining and associated information exchange only.

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[43] https://www.accc.gov.au/media-release/accc-denies-authorisation-for-banks-to-collectively-bargain-with-apple-and-boycott-apple-pay

[44] NZBA-CIT-Authorisation-Draft-Determination-24-March-2026.pdf Para 93 this

5.57 Aspirational descriptions of how negotiations might occur cannot be relied upon as public benefits unless they are specified and enforceable. To do so would be to assess a hypothetical arrangement rather than the conduct actually proposed.

5.58 The foundation (that Armourguard would only collectively negotiate under those "envisaged" criteria) is wrong as it ignores the commercial and legal / regulatory pressure it would face. With respect that view is commercially unrealistic and naïve.

5.59 Even if that "envisaged" (but not required) approach were followed, again respectfully, it is unrealistic to assume this would be both costless / low cost and / or likely to be successful. Even Part 4 regulatory matters run by the Commission are hotly contested, and subject to judicial review appeals. Here this would be privately run, and all parties could "walk away".

5.60 We submit that this part of the Draft requires considerably greater analysis, and a consideration of real-world behaviour and outcomes.

Competition "for the contract" – collective bargaining and end-state buyer power

5.61 Wholesale CIT contracts are typically long-term and involve material fixed and sunk investment on the supplier side, with corresponding incentives for certainty on the customer side. That is why banks previously required longer-term agreements and why Armourguard has also sought longer terms.

5.62 The Draft does not fully engage with the context or reflect the structural realities of the wholesale CIT sector post-merger. The sector is characterised by high fixed and sunk costs, asset specificity, regulatory constraints, and declining volumes. In those circumstances, competitive discipline operates primarily at discrete tender points, and the prospect of displacement at contract renewal is a material commercial constraint.

5.63 The suggestion that Armourguard has been able to "play to the clock" and secure outcomes without competitive pressure is not borne out by the evidence. Armourguard has, in fact, lost more bank business than it has retained: multiple banks have exited or pursued alternative arrangements, while others have entered into new agreements [ ]. That is not consistent with an absence of buyer power or competitive constraint.

5.64 The Draft is silent on the implications of these bid-market dynamics. In particular, it does not recognise that, at the end of current contract terms, the market will again be reset through a win-or-lose tender process. That is the point at which competitive outcomes are determined, and it is also the point at which authorised coordinated buyer (monopsony) conduct would be most consequential.

5.65 Yet the Draft does not contemplate this monopsony dynamic at contract renewal, or else appears to assume — without identified evidence — that coordinated buyer power at that point would nonetheless permit Armourguard an appropriate return. In effect, that assumes the banks **would not act in their own commercial interests** but would instead adopt something akin to a Part 4 outcome without any regulatory framework requiring them to do so.

5.66 Authorisation would therefore:

a. not only permit coordination among the dominant purchasers of wholesale CIT services over an extended duration; but

b. also allow that coordination to carry through into the next contracting round.

5.67 The Draft does not:

a. contemplate, and therefore does not assess, the end-state implications of that coordination, including the likelihood that it would entrench a buyer-side monopsony dynamic; or

b. consider the inherent risks to a CIT operator in that scenario.

5.68 By definition, it therefore does not assess the costs of that end-of-contract process, in which there would be an authorised collective buyer, nor whether the resulting effects would amount to a net public benefit or detriment.

6. TESTING THE "EVIDENCE"

6.1 The Draft adopts language that risks blurring the distinction between contested submissions and factual findings. In particular, allegations advanced by interested parties appear, in places, to be treated as factual context influencing the Commission's assessment of negotiation dynamics, risk, and uncertainty, without clear identification of the evidential basis or acknowledgement that those matters are disputed.

6.2 Armourguard is concerned that aspects of the Draft rely on, or are materially influenced by, assertions and information that have not been put to Armourguard in a form that enables meaningful response. While the Commission has indicated that engagement on the Draft occurs through the public submissions process, that process can only satisfy natural justice requirements if affected parties have sufficient access to the substance of the material relied upon, and clarity as to how it has been treated.

6.3 Armourguard has received an "Armourguard version" of the Draft Determination in which its own confidential information is unredacted, but information provided by other parties remains redacted. Armourguard accepts that confidentiality constraints may apply. However, where redacted material (or informal communications) appears to inform the Commission's reasoning on matters material to the factual or counterfactual assessment, the submissions process alone does not ensure procedural fairness.

6.4 Armourguard is concerned that:

a. certain aspects of the Draft have not been properly contextualised or tested;

b. some arguments or assertions by bank participants appear to be treated as fact;

c. some of those matters appear to have become embedded in the Draft without having been tested with Armourguard, creating a risk of anchoring; and

d. some conclusions rely on theoretical propositions or are not substantiated by evidence.

6.5 More generally, Armourguard is concerned that the Applicant's characterisations of ordinary commercial negotiation conduct as evidence of monopoly conduct or coercion appear, in some places, to have been reflected in the Draft without sufficient testing.

Treatment of assertions as facts

6.6 A specific example is the reference to an alleged communication that Armourguard "[ ]". Armourguard understands that the substance of this allegation is redacted from it, yet the Draft appears to treat it as part of the factual narrative. This is procedurally unfair. An allegation of that nature is capable of materially influencing the Commission's characterisation of Armourguard's conduct, but Armourguard cannot meaningfully respond to it without disclosure of the substance relied upon.

6.7 Armourguard's understanding is that this relates to the identification, shortly prior to execution, of a clause that was highly unusual and materially adverse. Raising such an issue in those circumstances is not atypical in commercial negotiations.

6.8 More specifically in the final sanity review of the agreement we picked up that the [

] ALL simply sought to align the [ ] with market usual [

]

6.9 More importantly, the central point is not the substance, but that the allegation has not been put to Armourguard and appears to have been treated as fact without testing.

6.10 A similar concern arises in relation to references to "[ ]". The Draft includes several references to allegations of [ ] by [ ]. Those assertions are not substantiated. However, paragraph 24.2 states that "[ ]". This is, an assertion by [ ], not a fact. The distinction is material. The Commission should treat such statements consistently as untested assertions, rather than as factual context influencing its assessment.

6.11 The same point applies to assertions by NZBA and participant banks that Armourguard acted as a monopolist or exercised coercive market power. Those are advocacy positions advanced by interested counterparties in the course of contentious commercial dealings. They are not facts unless properly tested and established.

6.12 The Draft also appears to refer to the possibility of challenges to existing agreements on grounds of [ ] (paragraph 233.2) in the context of uncertainty and contractual durability. However, the proposed authorisation itself introduces potential uncertainty where binding agreements already exist. The Commission should clarify whether, and if so how, the prospect of such challenges has been treated as a relevant consideration in assessing the proposal and the counterfactual.

Consistency in the characterisation of submissions

6.13 Across the Draft, propositions advanced by Armourguard and, in some instances, NZBA are more frequently described using the term "claims", whereas propositions attributed to ANZ, other bank participants, and RBNZ are more often framed using evaluative language such as "considers", even where those propositions are contestable.

6.14 As a matter of ordinary and legal usage, the term "claims" conveys an asserted proposition from which the decision maker is distancing itself, whereas "considers" conveys a reasoned evaluative judgment. Armourguard does not suggest that the Commission intends to prejudge any issue. However, where the Draft summarises submissions, the use of differing terminology risks conveying an unintended difference in the apparent weight or credibility of parties' positions.

6.15 Armourguard submits that the Draft would be strengthened by adopting consistent and neutral language when describing the positions of different parties, reserving evaluative language for the Commission's own analysis and conclusions.

Approach required

6.16 Where the Commission proposes to rely on contested matters in its reasoning, procedural fairness requires either:

a. disclosure of the substance of the material relied upon (including the gist of confidential information where necessary); or

b. clear treatment of those matters as untested assertions, with corresponding restraint in the weight placed on them.

6.17 Armourguard therefore invites the Commission, in moving to a final determination, to ensure that material propositions relied upon are identified with sufficient clarity and evidential transparency to enable meaningful response, and that contested allegations (including in relation to [ ]) are not treated as factual predicates unless properly tested.

Inapt statement of law

6.18 Paragraph 79 states: "*For the Commission to be satisfied, it simply needs to have made up its mind on all the material before it*," citing NZME. The Court of Appeal in fact stated: "*To say that the Commission is 'satisfied' is simply to say that it has made up its mind on all the material before it.*"

6.19 This is a subtle but material reversal. The Court was explaining the meaning of the statutory term "satisfied", not lowering the threshold for its application. The Draft's paraphrasing risks reframing the test as a minimal procedural step rather than the outcome of a reasoned evaluative process.

6.20 The statutory requirement that the Commission be "satisfied" requires a concluded evaluative judgment, based on evidence, as to the likely benefits and detriments and their balance. Framing the test as merely requiring the Commission to "make up its mind" risks misdirecting the inquiry by treating satisfaction as a procedural threshold rather than the culmination of the statutory analysis.

6.21 We submit that this should be clarified.

Certain contractual terms proposed or agreed by Armourguard, described as "unusual", "not ordinarily expected", or as shifting risk to customers

6.22 To the extent the Draft relies on such characterisations, those characterisations must be assessed against the commercial context in which the negotiations occurred. That context includes a history of below-cost pricing, materially asymmetric contractual risk in favour of banks, and the need to restore sustainable cost recovery in a declining, high fixed-cost industry, as recognised in the Evergreen/ACM clearance.

6.23 A specific example is the reference to an alleged communication that Armourguard [ ]". Armourguard understands that the substance of this allegation is redacted, yet the Draft appears to treat it as part of the factual narrative. That is procedurally problematic.

6.24 In substance, this appears to reflect a late-stage identification of a provision that was not aligned with market-standard terms. Armourguard sought to correct that position to bring

the clause into line with customary contractual practice and with other agreements. This was a risk-alignment issue, not a material value change. Armourguard can provide evidence on this point if required.

6.25 The broader point is that commercial negotiation over terms, scope, and risk allocation — including adjustments identified during final review — is not, without more, evidence of monopoly conduct. Still less should disputed or untested accounts of those negotiations be treated as established fact or relied upon as part of the evidential foundation for the Draft's conclusions.

7. FACTUAL VERSUS COUNTERFACTUAL - CHANGES WITH AUTHORISATION

Background

7.1 As explained elsewhere in this process, and reflected in the Draft:

a. the context of historical and ongoing losses, driven in large part by one-sided terms imposed by banks, informed Armourguard's approach to pricing and negotiations;

b. Armourguard therefore adopted and socialised a revised model. Key considerations included:

i. reducing traditional asymmetry of risk, including one-sided termination provisions in banks' favour and excessive exposure to reductions in volume driven by banks' own actions, such as branch closures and encouragement of non-cash options;

ii. ensuring sufficient revenues to cover costs and provide an appropriate return on capital, particularly given the risks of long-term capital investment in a sunset industry;

iii. non-discrimination; and

iv. an orthodox and defensible pricing methodology, subject to peer review by NZIER.

7.2 Armourguard considered that its pricing model and overall approach were commercially justified and sufficiently robust to be adopted by all users. That proved not to be the case.

7.3 With hindsight, that should not be a surprise:

a. banks have significant market power and are accustomed to dictating terms;

b. they compared past pricing and non-price terms with proposed new terms, notwithstanding that the former were loss-making and unsustainable; and

c. while Armourguard accepts that aspects of its approach could have been presented or sequenced differently, that does not require acceptance of demands that are uneconomic or commercially unsustainable.

7.4 Regardless, and as noted elsewhere, there will always be disputes on pricing matters, including asset valuations, cost allocation, the distinction between fixed and variable costs, and the extent to which costs are sunk. That is true even in formal Part 4 processes as noted.

7.5 For completeness:

a. Armourguard still considers that the minimum efficient scale of the market for wholesale CIT services in New Zealand supports only one national provider;

b. that is consistent with the Evergreen/ACM clearance (noting that the matter proceeded as a combined clearance / authorisation application, but the Commission's conclusion was sufficiently clear that clearance was granted); and

c. Armourguard also considered that bank sponsorship of new entry was always a real possibility, and a material risk. Westpac is the clearest example: it sponsored ACM into the market and is now repeating that approach. Other parties have also chosen alternatives. It is therefore incorrect to suggest that these options only arose following the interim authorisation decision.

7.6 The decline of interim authorisation was helpful in giving Armourguard confidence to continue making investments. However, now that the model has not been supported across the customer base, Armourguard has begun to scale back planned investments and will need to reduce costs. That changed commercial position does not appear to have been factored into the Draft.

7.7 The Draft also records that Armourguard made changes to provide more options and to negotiate further where it could. Armourguard does not dispute that. However, it remains the case that Armourguard was not obliged to accept demands that it considered uneconomic or commercially unsustainable.

Current position

7.8 Armourguard will continue to service those clients with whom it has entered contracts. Clients who have terminated and/or disengaged will pursue those other options, and Armourguard does not presently expect further engagement with them in relation to wholesale CIT services.

7.9 Nor can Armourguard operate its business on the basis that it will maintain unaffordable redundancy in the hope that departing parties may later return. Business decisions must be made by reference to commercial realities and real likelihoods.

7.10 Armourguard is not protected against the reduced number of users and the reduced volume on which its original model was predicated. It has made, and will continue to make, reductions to its cost structure to reflect reduced demand and to ensure continuing viability. In short:

a. volumes are declining;

b. Armourguard is resizing its footprint and cost base; and

c. service levels and investment plans will adjust accordingly.

7.11 These developments do not seem to have been factored into the Draft. They should be.

Counterfactuals

7.12 The most obvious, and in Armourguard's view most likely, counterfactual is the status quo, adjusted to reflect reduced scale and reduced demand. In due course, that smaller and potentially less efficient scale may affect pricing. But at present, Armourguard is not protected against volume loss.

7.13 Another possibility as suggested by the RBNZ, would be regulation under Part 4.

7.14 There would not, however, be ongoing bilateral or multilateral negotiations in relation to parties who have already terminated or disengaged, save to the extent some future commercial development caused them to re-engage.

Proposal

7.15 Armourguard does not share Draft's apparent view that authorisation would materially improve the position. In particular:

a. the Draft appears to assume that authorisation could restore or improve relationships, but it records only the banks' stated reasons for distrust and does not engage with the longer factual history, including the background recorded in the prior clearance process;

b. feedback through negotiations was primarily directed to price and duration, notwithstanding that long-term commitments had previously been imposed by banks themselves; and

c. there was no meaningful dialogue directed at a collective "win-win" solution. The focus was overwhelmingly on price.

7.16 Armourguard also notes:

a. parties who have already signed may feel encouraged to reopen and renegotiate concluded contracts, imposing additional cost, uncertainty, and downward pressure on price, with no clear offsetting benefit;

b. parties who have disengaged have made clear, by word and conduct, that they do not presently wish to contract with Armourguard. There is no proper basis to assume otherwise;

c. there is a real prospect that Armourguard would not have the capacity readily to take on additional volume in any event, because its network and cost base are already being resized;

d. there is also a real prospect that Armourguard would be unwilling to engage in any extensive collective process, given the experience to date and the lack of confidence that such a process would lead to any fair or workable outcome; and

e. under the guise of collective bargaining, the banks could still discuss among themselves matters such as future cash volumes and other forward-looking issues, even if there were no realistic prospect of renewed contracting.

7.17 More broadly with [

] and the approach taken in the Draft.

7.18 It is also by no means clear that the proposed safeguards would address these practical concerns, or that the Commission would actively monitor the process in any meaningful way.

7.19 Armourguard has sought to remain open-minded. However, on the basis of events to date, it sees cost and downside rather than practical benefit. In particular:

a. it does not anticipate that parties which have shifted to alternative providers will simply return; and

b. if Armourguard were to engage, there is a real prospect that the result would be additional cost, uncertainty, and coordinated pressure to reduce price.

7.20 Given the cost and footprint adjustments now underway, Armourguard is unlikely, at present, to have the capacity to absorb significant additional volume.

Conclusion on the difference between the factual and counterfactual

7.21 Under both the Commission's stated factual / proposal and the counterfactual (that is, a resized status quo):

a. volumes are declining;

b. Armourguard is resizing its footprint and cost base; and

c. service levels and investment plans adjust accordingly.

7.22 The Draft appears to contemplate bilateral engagement under both scenarios. Armourguard does not consider that realistic in respect of parties that have already disengaged or committed elsewhere. In substance, the main difference introduced by the Proposed Arrangement is not additional service or stability but coordinated buyer conduct.

7.23 The principal differences under the Proposed Arrangement would be that:

a. the factual would introduce coordinated buyer conduct, whether or not that coordination led to new contracts or meaningful negotiations;

b. there would likely be attempts to place systematic downward pressure on Armourguard's pricing, with associated cost, risk, and uncertainty;

c. concluded contracts may be reopened or challenged, introducing a form of contractual instability not present in ordinary bilateral negotiation; and

d. Armourguard would face uncertainty as to the number, frequency, structure, and demands of any collective process, including the level of granularity at which its costs and operations would be examined.

7.24 Significantly, as noted above, it is not clear that Armourguard would be in a position to take on additional volume in any event, given the expected downsize. In particular:

a. given current exits and resizing, Armourguard has no choice but to adjust network footprint;

b. it will not maintain latent capacity for hypothetical re-engagement; and

c. that makes any assumption of easy re-entry or straightforward collective negotiation unrealistic.

7.25 Nor can Armourguard guarantee that any future pricing methodology would be the same as the methodology previously advanced. Parties seeking to re-engage might, for example, be required to pay on a different basis, including a more fully fixed-cost allocation or full absorption of any new asset and investment requirements. Given that Armourguard's original pricing methodology has been challenged and undermined, it may in future adopt a different approach.

8. NET PUBLIC BENEFITS ASSESSMENT

Overview

8.1 This section provides some general comments on the approach in the Introduction.

8.2 It then discusses:

a. Failure to assess competition for the market in this bid-market context;

b. Effects at contract renewal and longer-term dynamic competition; and

c. Consumer pass-through and cash-use incentives.

8.3 It then gives more detailed comments on the assessment of net public benefits, including by comments on the Commission's Table. Further comments are in the Annex.

8.4 We also comment on consumer welfare factors.

8.5 In summary, Armourguard submits that:

a. the assessment does not address competition for the market in a bid-market context, where buyer coordination may have its greatest competitive effect;

b. the dynamic effects at contract renewal and over successive tender cycles are not assessed;

c. suggested consumer pass-through is not supported by analysis of banks' independent incentives regarding cash usage; and

d. the evidential basis for a number of the Draft's conclusions either does not meet the statutory "likely" threshold or proceeds on incorrect premises.

8.6 We request a modified total welfare assessment as we consider that this is, in reality, a wealth transfer, and the initially stated rationale for seeking authorisation is inapplicable. Such an approach may highlight the concerns we raise.

Introduction

8.7 Paragraph 53 of the Draft identifies allocative, productive, and dynamic efficiency as relevant sources of public benefit. Armourguard does not dispute that these categories are capable of constituting public benefits for the purposes of the Commerce Act.

8.8 However, the Act requires the Commission to be **satisfied** that the conduct **will** result, or be **likely** to result, in a **benefit to the public**. While a (potentially modified) total welfare test applies:

"The inclusion of ad hoc wealth transfers, which are not losses to society, would distort the efficiency assessment by assuming additional economic harm to the public of New Zealand. In any event, consumers might well be the ultimate beneficiaries."[45]

8.9 Armourguard notes that paragraph 53 expressly references **consumers** in connection with allocative efficiency, but does not identify the beneficiaries of the productive and dynamic efficiency gains relied upon. By contrast, when addressing broader public benefits and detriments, the Draft correctly notes at [54] that "*the Commission assesses what benefits accrue **to the public** in the circumstances of any given case.*"

8.10 Armourguard does not dispute that productive and dynamic efficiencies may constitute public benefits under a total welfare framework. However, where those efficiencies are unquantified and, on the Draft's own analysis, appear uncertain and small, closer scrutiny is required to determine whether they are in truth public benefits, or instead primarily cost savings or wealth transfers captured by the collective purchasers through enhanced bargaining power.

8.11 In those circumstances, Armourguard accepts the Commission's invitation and respectfully **requests that the Commission apply a modified welfare test**, including examining more directly how, and to whom, any claimed benefits would accrue.

8.12 Armourguard's concern throughout has been that the process is directed predominantly toward a redistribution of bargaining outcomes in favour of the banks (a wealth transfer), rather than the generation of genuine net public benefits. If the applicants' concerns were in substance about system resilience and long-term stability, one possible course would have been to contract on a sustainable basis and then seek further refinement through negotiation (with or without authorisation), or alternatively to support a regulatory solution under Part 4. The Draft does not appear to engage with that possibility. There seems to be absolute acceptance of stated motives.

8.13 As the Commission correctly notes, the Act requires the Commission to be satisfied that the proposed conduct will, or will be likely to, result in such a benefit to the public that it should be permitted. In this context, the Court of Appeal has confirmed that "likely" does not mean a mere possibility, but requires a real and substantial prospect that the relevant benefit will occur. A benefit that may arise, without evidence establishing such a real and substantial prospect, cannot be relied upon for the purposes of authorisation.

Failure to assess competition for the market in this bid-market context

8.14 Cash-in-transit (CIT) services are typically procured through **periodic tenders or contracts of fixed duration**. Once a contract is entered into, there is limited or no competitive discipline during the term of that contract.

8.15 In such markets, competition occurs principally **for the market**, rather than **within the market**, and competitive harm or benefit is therefore most accurately assessed by reference to effects at the **bidding stage**, not during contract performance.

8.16 The Draft focuses on the efficiencies said to arise from collective bargaining, but does not separately assess how joint purchasing by NZBA members affects competitive tension at the tender stage, including whether coordination among purchasers materially

[45] Commerce-Commission-v-NZME-Limited-Fairfax-Media-Limited-and-Stuff-Limited-Court-of-Appeal-Judgment-26-September-2018.PDFF at [51] citing Air New Zealand v Commerce Commission (No 6) at [241]

alters the structure of the bid market by consolidating demand into a single coordinated buyer.

8.17 Armourguard submits that **this is a material omission** in the assessment of both allocative and dynamic efficiency. In bid markets, buyer coordination may suppress competitive outcomes at the tender stage even where no further rivalry remains during contract execution.

8.18 As noted, the other options (and threat of other options) seem insufficiently (or not at all) factored into the bargaining analysis.

Effects at contract renewal and longer-term dynamic competition

8.19 Relatedly, **the Draft does not assess** how authorisation of collective bargaining would affect **competition at the end of the contract term**, when tenders are renewed and competitive conditions are reset.

8.20 In bid markets, dynamic competition occurs predominantly between contract cycles, not during them. The authorisation of coordinated purchasing arrangements therefore risks entrenching a monopsonistic, or near-monopsonistic, structure that persists across successive tenders (with the monopsony having options).

8.21 Armourguard submits that this risk is not adequately addressed in the Draft Determination's dynamic efficiency analysis. In particular, there is no assessment of whether institutionalising buyer coordination may weaken longer-term incentives for investment, entry, or innovation in wholesale CIT services.

Consumer pass-through and cash-use incentives

8.22 The Draft notes that efficiencies arising from collective bargaining **may** flow through to consumers, and places weight on the fact that banks will continue to comply with credential and prudential requirements relating to access to cash.

8.23 Armourguard does not dispute that banks are subject to requirements concerning the maintenance of cash services. However, **compliance with prudential or credential requirements is not equivalent to neutrality as to the use of cash**.

8.24 Banks have independent commercial incentives to reduce cash usage, including through cost reduction and digitisation strategies. Those incentives are separate from, and not eliminated by, prudential requirements. They exist irrespective of the proposed collective bargaining arrangement.

8.25 In that context, **any assumption that productive or bargaining efficiencies are likely to be passed through to cash-using consumers, rather than retained by banks or used to accelerate the migration away from cash, requires supporting analysis**. The Draft does not presently engage with that issue.

8.26 Armourguard submits that, **without such analysis, the suggested consumer benefits remain speculative and should be afforded correspondingly limited weight in the public benefit balancing exercise**.

More detailed comments on the assessment of net public benefits

8.27 For completeness, Armourguard reproduces below the Draft's overall conclusions before commenting on them in the summary table:

> 258. On the basis of the available evidence, our preliminary view is that the benefits of granting the authorisation would outweigh the detriments of doing so, and accordingly we propose to grant the authorisation.
>
> 259. However, as discussed above, the benefits we have identified in this case are not possible for us to quantify; and our best estimate is that they are small. Coming to the provisional view that benefits outweigh detriments in this case has required a qualitative weighting of the relevant benefits and detriments. Further, the operation of the uncertainty in this case regarding the entry of the new entry operating model also affects the net benefits – in our view, the net benefits would be lower, although still positive, in the world with successful entry from the new operating model.
>
> 260. We summarise our position on benefits and detriments in Table 1:

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT

Table 1: Summary of benefits/detriments relative to counterfactual

Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
Price/volume effects (allocative) *[192-194]* *192. …**could** result in some improved allocative efficiencies through **more competitive pricing.** However, we are currently of the view that collective negotiation would not likely result in substantial expansion in CIT service volume or access to cash. **Higher prices in the counterfactual could** frustrate the public objective of ensuring greater access to cash, while more competitive collectively negotiated prices in the factual **could** facilitate this public objective through lowered cost of providing access to cash…* *193…. we also do not consider the pricing framework **envisaged by the Participants** would force*	*Small benefit*	*Smaller benefit, but still positive*	• "*Could*" does not meet the required evidential threshold (likely). • No evidential basis to conclude current pricing is inefficient or counterfactual would be 'more competitive'. • No basis to conclude that the hypothesised pricing negotiation framework would be adopted or work - is theoretical; unlikely and does not meet real world experiences (e.g. Part 4). • It has too many conditions (especially *ifs*). • Interestingly the ***envisaged*** aspects are neither part of the application nor conditions imposed by the Commission. • The para 193 conclusion ignores context leading to ACM / Evergreen merger (a natural experiment). • Critically it does not assess the bargaining power of the

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT **Table 1: Summary of benefits/detriments relative to counterfactual**			
Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
*Armourguard to charge prices that are **too low to operate efficiently**, **especially if** it allows for recovery of costs and a reasonable return. This is **especially if** the pricing mechanism is designed by an independent third party and which Armourguard mutually agrees to. We also consider that if there is no agreement to an alternative pricing mechanism, the fallback position would likely be the **counterfactual scenario.***			**monopsony at the end of contract terms** when they come for renewal and there is again competition "for the market". • The *fallback* is not the same as the counterfactual – banks can continuously negotiate as a group in the meantime; if Armourguard does not negotiate it may be accused of bad faith, etc, so may have to carry considerable costs and uncertainty.
Non-price contract terms (allocative) *207. there is likely to be a low public benefit arising from collective negotiation of non-price contract terms in the factual compared to the counterfactual.* *207.1 In particular, we consider there are likely to be allocative efficiency gains from reduced information asymmetry and more efficient and balanced contractual terms.* *[NB this will need to pick up some of Gavin's critique – presumably in the table text]*	*Small benefit from alignment on non-price terms*	*Smaller benefit from alignment on non-price terms, but still positive*	• This simply accepts conclusions about Armourguard's conduct, alleged asymmetric terms, service levels, etc without considering context or testing with Armourguard. • Some of these allegations are in our view false ([ ]), or misunderstand in the context (such as [ ]) as outlined elsewhere. • Some provisions like force majeure need to be considered in the context of cost reduction and viability of what has been described as an *essential service* – those costs are incurred regardless. • No reason given for concluding banks would not impose asymmetric terms (especially at contract end).
Coordination (productive) *210. …. that acquisition of CIT services seems not to be a source of material*	*Potential small detriment from coordination*	*No material difference*	• Does not consider the direct link between cash and cash collections – demand is derived and banks have the ability and

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT **Table 1: Summary of benefits/detriments relative to counterfactual**			
Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
competitive differentiation between the banks.[274] *We consider that the risk of detriments arising from coordination (and any resulting loss of competition) between the Participants in other markets, such as downstream banking markets is* ***likely to be relatively low****. Our view is also currently that the Proposed Arrangement would likely not materially change the way the Participants would compete in the factual compared to the counterfactual.* *211. … there is some* ***residual risk*** *of information-sharing between the Participants that could result in some increased risk of coordination (explicit or tacit) in respect of other markets in which the Participants supply or acquire services in competition with one another. We consider this risk to be relatively low, but that were it to occur it would be relatively high impact given the nature of the Participants. However, we consider that this risk* ***can be reduced substantially, if not entirely, through proposed condition****s on the authorisation that manage information flows between Participants, outlined below at [266].* *212. Accordingly, we consider the detriments from the risk of information sharing leading to coordination, with the*	***controlled*** *by condition*		incentives to reduce demand. • No basis given for concluding risk is low. • The failure to consider the mechanics and scope of discussion (i.e. plans re cash) materially understate risks in an oligopolistic industry where tacit collusion occurs. • Seems inconsistent with the Banking market study. • Respectfully submit that the confidence in the conditions is optimistic, not lack of real-world experience, also no ongoing monitoring.

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT **Table 1: Summary of benefits/detriments relative to counterfactual**			
Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
information sharing conditions in place, are likely to subsequently be low (and ***may indeed be neutral).***			
Operational efficiencies (productive) [para 221- 231] *223. …the Proposed Arrangement* ***could*** *enhance productive efficiency by enabling coordination and rationalisation of service needs across customers who collectively negotiate with Armourguard…* ***could*** *facilitate alignment of CIT service needs across the customers in ways that resolve the challenges Armourguard has experienced and is likely to experience in the counterfactual, i.e., it will be more likely to overcome individual incentives.*[300] *Sharing information on service needs and delivery increases scope for mutual identification and agreement on operational changes that* ***could*** *be made to improve efficiency across customers.*[301] *This* ***could*** *result in more efficient use of existing CIT capacity and reduced operational costs for Armourguard.*	*Small benefit*	*Smaller benefit, but still positive*	• Not clear these claimed efficiencies exist, let alone if they are material. • Not quantified or evidenced. • Evidential standard not met (*could*). • Theoretical. • No explanation given as to why this discussion could occur without "forced bundle" of pricing (authorisation may not be needed for those discussions or could be done discretely).
Investment (dynamic) *[235 -238]*	*Potentially small detriment, but unlikely to be Authorisation specific: treating as neutral*	*No material difference*	• The interim decline gave Armourguard the ability to make some investments. • But as noted, investments have been lower than expected due to bank contracting decisions, and Armourguard will take further steps to reduce costs.

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT

Table 1: Summary of benefits/detriments relative to counterfactual

Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
			• This will mean reduced capacity.
Transaction costs (productive) *[242-248]* *243. The Participants have* ***not been able to provide us with estimates of the costs that are likely to be incurred*** *with collective negotiation, including those incurred through the setting up of the collective, engaging relevant external advisors, or of the potential savings in comparison to the counterfactual. We have been unable to obtain visibility on these costs …* *244. … Participants have also either concluded bilateral agreements … This means that some, and possibly all, of the Participants have already incurred transaction costs…r. Such transaction costs cannot now be saved …* *246. … there is significant uncertainty around what might happen …making it difficult to ascertain …. whether there would likely be a benefit from a* ***reduction*** *in transaction costs..* *246.2 Another uncertainty relates to whether granting authorisation could lead to increased transaction costs …* *247. … it is* ***possible*** *that collective bargaining could lead to a reduction in transaction costs, … it is also possible that there would be transaction costs incurred in the world with the authorisation t****hat would not***	*Cannot determine whether there is benefit or detriment: treating as neutral*	*Cannot determine whether there is benefit or detriment. If there is a benefit, it is smaller. Treating as neutral*	• This ambiguity and uncertainty **should not be treated as neutral**. • It will be a detriment. • Any authorisation and / or collective bargaining would impose a**dditional transaction costs and risks, given current contracting.** • The Draft does not consider the costs of any negotiation process (experts, negotiation time and costs). • The Commission's Part 4 personnel will have a view on the costs and challenges of such processes.

COMMENTS ON AN AMOURGUARD VERSION OF DRAFT **Table 1: Summary of benefits/detriments relative to counterfactual**			
Benefit / detriment category (type of efficiency)	***Value in world without successful entry***	***Value in world with successful entry (by comparison)***	**Comments**
be incurred in the world without the authorisation, *248 …we do not have sufficient evidence to have the confidence to place much weight on this claimed benefit,* ***nor sufficient evidence to have confidence it could not become a detriment****.*			
Step-in rights (allocative) [253-257] *252. RBNZ also supports parties' collective bargaining on step-in rights but considers these aspects could be decoupled from the issue of CIT fees.*[340]	*Small benefit*	*Smaller benefit, but still positive*	• NZBA submissions heavily redacted so we have limited ability to respond. • Draft wrongly characterises these as only for crisis and again treats pre-merger as 'normal' when those rights were imposed. • Armourguard does not oppose step-in rights and agrees they are essential, but the Draft fails to recognise the moral hazard these can present, and is commercially naive in its characterisation. • There is no basis to think these would not be coordinated under the counterfactual.

Public interest / vulnerable consumers

8.28 The Executive Summary to the Personal Banking Services Market Study states: "*Some consumers are particularly vulnerable to financial exclusion and find it difficult to access personal banking services, like a basic bank account."*

8.29 The Evergreen/ACM clearance determination also identifies the *"rationalisation of branches by banks and other financial institutions"* as among the factors driving decline in cash usage and CIT demand (Evergreen/ACM clearance determination at [36.3]).

8.30 Taken together, those factors support careful scrutiny of any framework that would permit major banks to coordinate in relation to a critical cash-services input in a declining cash environment, where:

a. bank-driven network decisions determine, in material part, the practical availability of cash access points; and

b. financially excluded or otherwise vulnerable consumers may be disproportionately affected by reductions in cash access or service intensity.

8.31 Armourguard accepts that this is an inference drawn from the Commission's findings. However, it is a direct and logical implication of those findings, and one that reinforces the need for caution before treating coordinated purchaser conduct as likely to produce net public benefits in this sector.

9. CONCLUSIONS

9.1 Armourguard appreciates the opportunity to comment on the Draft and recognises the Commission's independent role in assessing the application.

9.2 A key concern is that the current record does not provide a sufficient basis for confidence that the Proposed Arrangement is likely to produce net public benefits of the kind and magnitude required by the statutory test. Armourguard is also concerned that:

a. **The Draft materially understates the costs, uncertainty, and practical consequences of authorisation for Armourguard.** If authorisation were granted, there is a real possibility that Armourguard would feel commercially compelled to engage in a collective process. However, contrary to the Draft's relatively optimistic assumptions, there is no sound basis to conclude that such engagement would be likely to produce an efficient or stable outcome. On the contrary, there is a substantial risk of prolonged negotiation, pressure to revisit concluded contracts, and significant additional cost and uncertainty for Armourguard, with no corresponding assurance of a workable result.

b. **The Draft does not adequately assess the competitive implications of sustained coordination by the major banks, including at contract renewal and in the next round of bids.** The Proposed Arrangement would not merely permit a single negotiation. It would authorise an ongoing framework for coordination among dominant purchasers in a sector already susceptible to accommodating conduct, including through a period in which contract renewals and alternative entry may again create a buyer-side monopsony dynamic.

c. **Many of the Draft's conclusions rest on contested assertions, limited evidence, and assumptions that do not meet the required standard of likelihood**. In particular, the Draft appears in places to adopt the banks' characterisations of ordinary commercial negotiations as factual predicates, without sufficient testing, while also proceeding on assumptions about bargaining outcomes, information-sharing safeguards, and pass-through benefits that are neither established on the evidence nor reflected in the conduct actually proposed.

9.3 Armourguard also submits that the Draft does not sufficiently engage with the sector context accepted in the Evergreen/ACM clearance and reflected in RBNZ's subsequent analysis, including the role of buyer leverage in producing unsustainable outcomes.

9.4 Finally given that the Draft's Executive Summary places great weight on the benefits around step-in rights, we note that this will occur with or without the authorisation, so is not a valid consideration. There is already [ ] in respect of any exercise of step-in rights by an individual bank. This requires [ ].
This does not require Commission clearance or authorisation. Anything more is overreach and accentuates the moral hazard (i.e. not being concerned if we are unprofitable).

9.5 In those circumstances, Armourguard respectfully submits that the Commission cannot presently be satisfied that the Proposed Arrangement will, in all the circumstances, result, or be likely to result, in such a benefit to the public that the conduct should be permitted. We are happy to give additional factual clarification if that would be helpful.

Annex:

NZBA AUTHORISATION APPLICATION: DRAFT DETERMINATION: *ARMOURGUARD'S COMMENTS*

Note: While these comments are detailed, the absence of comments on other parts of the Draft should not necessarily be taken as agreement.

PARA	QUOTE / EXTRACT	COMMENTS
Background		
12	*Armourguard became New Zealand's primary provider of CIT services, and its only provider of wholesale CIT services, after acquiring its sole competitor ACM New Zealand Ltd in 2025.*	Presented without context, that statement is materially incomplete and risks mischaracterising the nature of the current market structure. • The Draft records that Armourguard became New Zealand's primary provider of CIT services, and the only provider of wholesale CIT services, following its acquisition of ACM New Zealand Ltd in 2025. • At the time of the acquisition, both businesses were loss-making and operating under sustained financial pressure. That outcome was driven in material part by contracting practices that imposed asymmetric risk on providers and suppressed cost recovery in a high fixed-cost environment. • The current market structure is therefore the result of consolidation of financially distressed operators in a declining industry, not the exercise of market power by a profitable incumbent. • The Draft's failure to recognise that context leads to analytical error. For example, at paragraph 17, Armourguard's position regarding below-cost pricing and buyer power is characterised as a "claim". That is incorrect. These matters were examined and accepted in the Evergreen/ACM clearance and are supported by the broader evidential record, including Reserve Bank analysis. • It is a basic economic reality that a national CIT network involves substantial fixed and sunk costs that must be recovered by the remaining operator if the network is to remain viable. Analysis that does not start from that premise risks understating both the constraints on the supplier and the consequences of sustained downward pressure on pricing. • In those circumstances, the absence of this context in the Draft undermines the reliability of the subsequent assessment of bargaining dynamics, incentives, and likely outcomes.
Industry Background and Developments **Armourguard's actions post-merger**		
17	*Prior to the merger, Armourguard charged*	The fact that pre-merger wholesale CIT pricing was below cost formed part of the factual and economic basis on which clearance was assessed. It is not a contested assertion advanced after the fact.

PARA	QUOTE / EXTRACT	COMMENTS
	*for services [ ][13] Armourguard **claims** that the prices it charged for wholesale CIT services prior to the merger were below cost and that these loss-making prices were due to the banks exercising their buyer power.[14]*	• That characterisation is inconsistent with the evidential record. The Commission's analysis in the Evergreen/ACM clearance necessarily recognised that the sector was operating under sustained financial pressure, including pricing that did not recover the costs of maintaining a national CIT network. • In those circumstances, describing below-cost pricing as a "claim" mischaracterises the status of that proposition. It is not merely an assertion by Armourguard; it reflects findings and evidence already considered by the Commission, supported by sector conditions and Reserve Bank analysis. • The omission of that context appears to have led to a misinterpretation of subsequent events, including Armourguard's efforts to move pricing toward cost recovery and to rebalance contractual risk. • The Draft also adopts inconsistent formulations when referring to parties' positions. In this instance, Armourguard's position is described as a "claim", whereas elsewhere comparable statements are framed as "ANZ considers" or similar. No explanation is provided for this difference in formulation. The effect is to imply differential weight or credibility without an evidential basis. • If the Commission intends to depart from, qualify, or reinterpret the factual findings underpinning the clearance, it should do so expressly and by reference to evidence. Absent that, the Draft should reflect the below-cost nature of pre-merger pricing as an established factual premise for the purposes of the present assessment.
22	*Prior to the merger, Armourguard charged for services [ ][13] Armourguard **claims** that the prices it charged for wholesale CIT services prior to the merger were below cost and that these loss-making prices were due to the banks exercising their buyer power.[14]*	<u>The Draft records that NZBA has "questioned the validity" of the IAF. That formulation is imprecise and risks mischaracterising the issue.</u> • The IAF is a pricing and cost-allocation mechanism. It is not a legal instrument whose "validity" falls to be determined. The relevant questions are whether the IAF is consistent with the Commerce Act and whether it is commercially reasonable in the context of the sector. Armourguard submits that it is both. Indeed, Armourguard could have adopted a higher IAF and/or higher variable charges. • Framing the issue in terms of "validity" risks overstating NZBA's position and introducing an unnecessary legal characterisation that is not required for the Commission's analysis. • The Draft further records that NZBA's position is supported by material that is heavily redacted. As presented, Armourguard is unable to understand, test, or respond to the substance of those assertions. • That gives rise to a procedural fairness concern. The Commission should not rely on material propositions where the affected party is unable to engage with the underlying reasoning, even at a high level or in summary form. • This concern is particularly acute where the redacted material appears to go to the core of NZBA's critique of the IAF and the proposed contractual framework.

PARA	QUOTE / EXTRACT	COMMENTS

		• In those circumstances, the Commission should either:
		  ○ disclose the substance of the material relied upon (even if in summarised or confidential form); or
		  ○ place no weight on those assertions in its analysis.
		• Absent that, the Draft risks relying on untested and opaque assertions, which is inconsistent with a balanced and evidence-based assessment.

[ ]	***As part of its proposal to*** *re-negotiate its agreements with major customers, Armourguard also* *[* *].* *23.1* *[* *]* *23.2* *[* *]* *23.3* *[*	<u>As presented, Armourguard considers that this summary contractual outcomes arising in the course of Armourguard's engagement with its bank customers is incomplete and, in places, misleading:</u> • First, it is incorrect to imply that these steps reflect the exercise of market power or were in some way inappropriate. The context is critical: (a) for [ ], these contracts were obligations of ACM New Zealand Ltd and were loss-making. The relevant actions were the exercise of express contractual rights of termination; (b) for [ ], it was simply informed that Armourguard Security (the relevant contracting entity, not Armourguard Logistics Limited) did not have the capacity to perform under the existing contract, and that Armourguard Logistics—having no contractual obligation—was unable to assume a contract that was uneconomic. That was factually correct. • Secondly, the events described occurred in the context of contracts that were, in several cases, loss-making and formed part of a broader pattern of asymmetric risk allocation imposed on the service provider. • Thirdly, the steps taken were contractual in nature and arose in the course of commercial negotiations conducted under acute financial pressure. They should not be characterised as evidence of improper conduct. • Fourthly, to the extent counterparties dispute particular actions, those disputes do not convert contested positions into established facts. The Commission should avoid presenting such matters as factual findings without identifying the evidential basis for doing so. • In particular, the Draft's treatment of the [ ] episode is incomplete and unbalanced. • In substance, [ ]. That position was factually correct. The relevant context is as follows:

PARA	QUOTE / EXTRACT	COMMENTS
		(a) [ ]. • That outcome was a negotiated commercial resolution to a distressed contractual position. It does not support any adverse inference as to Armourguard's conduct. • Similar considerations apply to the other matters listed in paragraphs 23.1–23.4. They reflect the exercise of contractual rights and commercial negotiation in circumstances of financial constraint, not evidence of misconduct.
	] and *[*]	

PARA	QUOTE / EXTRACT	COMMENTS
Factual situation when the Application was filed		
[ ]	[*].*	As currently expressed, that formulation risks being read as a factual finding rather than an assertion. It should be made explicit that this is an allegation advanced by [ ], not an established fact, and that it is disputed by Armourguard. • The same issue arises at paragraph 96, where reference is made to correspondence from [ ]'s counsel. That material should likewise be characterised as an allegation or submission, rather than presented in a manner that implies acceptance or evidential status. • If the Commission intends to rely on [ ] as part of its reasoning, it should: (a) clearly identify them as contested assertions; (b) set out the evidential basis for any conclusion reached; and (c) record Armourguard's position that those allegations are rejected. • Absent that, the current drafting risks attributing unwarranted weight or credibility to an untested and disputed allegation.
[ ]	*Each bank's agreement with Armourguard* *[* *]*[42]	The Draft states that each bank's agreement with Armourguard permits (or permitted) [ ]. • It is important to note that these [ ] were, in material respects, asymmetric and operated in favour of the banks. They were not newly introduced by Armourguard, but were features imposed by banks in prior contractual arrangements. • That context is relevant to the assessment of bargaining dynamics. These provisions reflect a historical allocation of risk under which banks retained significant flexibility to exit or transition services, while the service provider bore the corresponding operational and financial exposure.

PARA	QUOTE / EXTRACT	COMMENTS
[ ]	*At the time the Application was filed, at least [ ] were also parties to a step-in rights agreement with Armourguard.43 Step-in rights refer to the rights of the [ ] banks to manage and perform Armourguard's CIT services if a material trigger event occurs, including a critical service failure.44 [ ] agreed to a process by which step-in rights would be exercised. [ ] also had step in arrangements with ACM before it was acquired by Armourguard.*	The Draft states that, at the time the Application was filed, at least [ ] were also parties to a step-in rights agreement with Armourguard. Step-in rights refer to the rights of the [ ] banks to manage and perform Armourguard's CIT services if a material trigger event occurs, including a critical service failure. [ ] agreed to a process by which step-in rights would be exercised. [ ] also had step-in arrangements with ACM before it was acquired by Armourguard. • Armourguard does not dispute that step-in rights are, in principle, a prudential safeguard. However, they are not neutral in their incentive effects. In particular, step-in rights can create a material moral hazard in the context of pricing and risk allocation. • Where banks have the ability to step in and operate services in a downside scenario, the commercial consequences of pushing pricing below sustainable levels are partially externalised. That may weaken the normal constraint that would otherwise apply in bilateral negotiations and may influence incentives in price-setting. • This is directly relevant to the assessment of the Proposed Arrangement. The interaction between coordinated bargaining and the existence of step-in rights increases the risk that pricing outcomes are driven below sustainable levels, with the downside risk mitigated by the availability of step-in mechanisms. • In addition, there is [ ]. • That framework already enables coordinated conduct in relation to step-in scenarios. **It does not require Commerce Commission authorisation**. The existence of that arrangement is relevant to the assessment of both necessity and incremental benefit in relation to the Proposed Arrangement. • See more detailed commentary on this in the main submission above.
Developments following the Interim Determination		
30	*Since the Interim Determination, Participants have taken the following actions:*	The Draft summarises recent contracting outcomes. The characterisation of [ ]'s position requires correction: • The statement that "[ ]" should be clearly identified as a disputed allegation. Armourguard rejects that characterisation.

PARA	QUOTE / EXTRACT	COMMENTS
	30.1 [ ] signed a new [ ] agreement on [ ] with Armourguard.[48] [ ][49] *30.2 [ ] are disengaging, have disengaged, or will be disengaging from Armourguard[50] and [ ] (see paragraphs [32]-[34] below).* *30.3 [ ] has signed a new agreement with Armourguard in early 2026.[51]* *30.4 [ ] has signed a new [ ] agreement with Armourguard in early 2026, which [ ]* *30.5 [ ] is in the process of negotiating with Armourguard to finalise a new contract.[53]*	• The commercial reality is that [ ] sought terms that Armourguard could not accept on a sustainable basis. Armourguard's refusal to agree to uneconomic or unfavourable terms does not constitute [ ]. It reflects ordinary commercial negotiation between sophisticated counterparties. • In this context, the use of the term "[ ]" appears to describe the fact that Armourguard would not continue to provide services on terms that did not recover cost. That is not a proper or legally meaningful application of the concept. • The broader factual record confirms that [ ], including [ ], have and exercise credible alternatives. As reflected in paragraph 30.2, multiple banks have disengaged, or are in the process of disengaging, from Armourguard, including through sponsoring or supporting new entry. • That conduct is inconsistent with any suggestion of [ ] or lack of choice. It demonstrates that sophisticated customers retain bargaining power and are able to pursue alternative supply options where they consider it commercially advantageous. • The Draft does not appear to fully account for the asymmetry in options between supplier and customer. A supplier operating a high fixed-cost, largely sunk national network has materially less flexibility than large bank customers in responding to uneconomic pricing. • Properly understood, the evidence does not support any finding or inference of [ ]. It supports the opposite conclusion: that banks are able to exert commercial pressure and pursue alternatives, and that Armourguard has been required to negotiate within those constraints.

PARA	QUOTE / EXTRACT	COMMENTS
33	*[* *]*	<u>The Draft records that [ ] has notified Armourguard that it also is not renewing its agreement.</u> • That notification reinforces that [ ] retain credible alternatives. The ability to elect not to renew and to pursue alternative supply arrangements is inconsistent with any suggestion of coercion or lack of choice. • A counterparty that can disengage in this manner cannot properly be characterised as having been subject to [ ]. • Properly understood, [ ]'s position is further evidence of customer optionality and bargaining power, rather than supplier leverage.
Proposed arrangement		
40	*NZBA has requested authorisation for a period of 11 years to permit time to negotiate new service contracts, which contracts may need to cover a 10-year period.*	<u>The Draft records that NZBA has requested authorisation for a period of 11 years to permit time to negotiate new service contracts, which contracts may themselves extend for up to 10 years.</u> • That duration is excessive and not justified by the stated objective. The purpose of the authorisation is to enable coordinated negotiation of new service agreements. That objective is inherently time-limited and should not extend beyond the point at which those agreements are concluded. • The fact that any resulting contracts may have terms of up to 10 years does not justify authorisation for the full duration of those contracts. Ongoing performance under bilateral agreements does not require, and should not be supported by, continuing coordinated conduct among competitors. • Authorisation, if granted at all, should be confined to the minimum period reasonably necessary to conclude negotiations. Any proposal for ongoing coordination beyond that point should be subject to separate and specific assessment.
41	*For the avoidance of doubt, we understand from the Application and* ***from subsequent engagement with the Participants*** *that the intention is for the Proposed Arrangement to cover CIT services that the Participants*	<u>The Draft states that the Proposed Arrangement is intended to cover CIT services that Participants currently acquire from Armourguard or previously acquired from Armourguard or ACM. As framed, that scope raises material concerns:</u> • First, it appears to extend beyond future procurement into services already governed by existing contractual arrangements. To the extent the Proposed Arrangement enables coordinated engagement in respect of those services, it risks undermining the integrity of current contracts. • Secondly, such a framework creates incentives for counterparties to challenge, reopen, or avoid existing contractual commitments in reliance on collective negotiation. That introduces uncertainty and commercial risk which the Draft does not appear to assess.

PARA	QUOTE / EXTRACT	COMMENTS
	either currently acquire from Armourguard or previously acquired from Armourguard or ACM.	• Thirdly, there are clear analogies to conduct that would, absent authorisation, risk constituting inducement to breach contract or interference with contractual relations. While authorisation may provide immunity from liability, the underlying effects on contractual certainty and market functioning remain directly relevant to the Commission's assessment. • Fourthly, the Draft does not appear to assess the cost of this uncertainty. In a high fixed-cost industry, revenue certainty underpins continued service delivery, investment, and network resilience. Undermining the stability of existing agreements materially increases risk to those outcomes. • Finally, applying coordinated buyer conduct across both new and existing services risks recreating the conditions that led to sustained losses prior to consolidation. In particular, it may reintroduce pricing pressure disconnected from cost recovery, thereby weakening the sustainability of the national CIT network. • In those circumstances, the scope of the Proposed Arrangement should be strictly confined to future negotiations and should not extend to services already subject to existing contractual arrangements. • Armourguard notes that it has sought clarity on the scope of the Proposed Arrangement from the outset.
60	*The Applicant has not defined or offered a view on relevant markets, but submits that the scope of the proposed conduct includes…*	<u>The Draft records that the Applicant has not defined, or offered a clear view on, the relevant markets. That omission is material.</u> • First, the Application appears to proceed without meaningful analysis of switching behaviour, customer substitution, or volume dynamics, notwithstanding that such factors are central to the Commission's analytical framework. The absence of that analysis limits the Commission's ability to assess the extent of competitive constraint. • Secondly, neither the Application nor the Draft Determination adequately articulates the relevant cash service markets. In particular, there is no clear framework addressing: (a) the functional scope of services (including wholesale CIT, processing, and distribution); (b) the demand drivers for those services; and (c) how those markets are evolving in a structurally declining cash environment. • Without that framework, the competitive effects of coordinated conduct cannot be reliably assessed. • Thirdly, the omission is not merely formal. It obscures a central competitive dynamic: the ability and incentive of banks to influence and reduce cash volumes. • If authorised, the Proposed Arrangement would facilitate coordination among banks not only in procurement, but potentially in the management of demand for cash services. That creates incentives to reduce cash collections,

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		servicing frequency, and network intensity, subject only to prudential constraints which are not uniform across participants. • Fourthly, reductions in volume directly affect the economics of a high fixed-cost network. Lower throughput increases unit costs, placing additional pressure on pricing and on the sustainability of service provision. • The combined effect is that the Proposed Arrangement risks: (a) distorting demand-side behaviour; (b) weakening already fragile network economics; and (c) exacerbating the conditions that previously led to sustained losses in the sector. • In those circumstances, the failure to define relevant markets and to assess these dynamics is a material gap in the Draft's analysis. • More broadly, this "shortcut" approach departs from the Commission's usual analytical framework and risks leading to an incomplete assessment of the markets affected by the proposed conduct.
63	*We have not undertaken a detailed market definition assessment in this case,*	<u>The Draft states that a detailed market definition assessment has not been undertaken.</u> <u>That approach is problematic in this case.</u> • As noted above, the absence of a defined market is not a formal or technical omission. It limits the Commission's ability to assess how the proposed conduct would operate in practice and to evaluate its competitive effects with sufficient rigour. • In particular, without a clear understanding of: (a) the functional scope of the relevant cash services; (b) the interaction between wholesale CIT, processing, and distribution; and (c) demand-side dynamics, including volume reduction and switching behaviour, the Commission cannot reliably assess the effects of coordinated conduct. • This is not an abstract concern. A properly specified market framework would highlight that the Proposed Arrangement has the capacity to influence both price and volume, including by creating incentives for coordinated reductions in cash collections and service intensity. • Similarly, a practical, operational assessment of how the proposal would function across contracting, service delivery, and volume flows would make clear the implications for a high fixed-cost national network. • Absent that analysis, the Draft risks understating: (a) the extent and effect of buyer coordination; (b) the impact on network economics; and

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		(c) the potential for the Proposed Arrangement to distort both pricing and demand. • In those circumstances, the decision not to undertake a market definition assessment materially weakens the robustness of the Commission's analysis and risks leaving material gaps in the assessment of affected markets. • By allowing the Applicants' 'shortcut', the Commission risks 'gaps' in the analysis, which Armourguard submits has occurred here.
Jurisdiction		
71	*Armourguard raised concerns…including that the Application:*[93] *71.1 is overly broad, especially due to its proposed period of 11 years;* *…* *71.3 is not supported with evidence.*	<u>The Draft records that Armourguard raised concerns that the Application is overly broad, including due to its proposed duration, and is not supported by sufficient evidence. Those concerns remain.</u> • First, there remains a lack of clarity as to the precise scope of the Proposed Arrangement. In particular, it is still unclear how the conduct is intended to operate in practice, including its application to existing contractual arrangements, future negotiations, and any ongoing coordination among Participants. • That uncertainty is material. Without a clearly defined scope, it is not possible to properly assess either the competitive effects of the conduct or the extent to which authorisation is necessary. • Secondly, despite these concerns having been raised at an early stage, the Draft does not appear to engage substantively with them or to articulate clear boundaries for the Proposed Arrangement. • That lack of clarity limits the ability of affected parties to test the proposal and undermines the robustness of the Commission's assessment. • Thirdly, the concern that the Application is not supported by sufficient evidence also remains. In the absence of a clearly defined scope, it is not possible to determine whether the evidential material relied upon is relevant, sufficient, or appropriately directed to the conduct for which authorisation is sought. • These issues are not peripheral. They go directly to the Commission's ability to assess necessity, scope, and competitive impact in accordance with the statutory test.
72.	*It is the applicant who chooses for what authorisation is sought.*[94] *The arrangement to which authorisation relates may be specific or it may leave open the possibility of development and*	<u>The Draft correctly notes that it is for the applicant to define the scope of the authorisation sought and to discharge the burden of demonstrating that public benefits outweigh detriments. In this case, that burden has not been met.</u> • First, the Application does not provide sufficient evidence to support the breadth of the Proposed Arrangement. In particular, the scope of the conduct remains unclear, including how it is intended to operate in practice and the extent to which it applies to existing and future contractual arrangements. • Secondly, in the absence of clear evidential support from the applicant, aspects of the Draft appear to rely on extrapolation or inference rather than identified evidence. That is not an adequate substitute for the applicant discharging its burden.

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	evolution. As to whether the application is supported with sufficient evidence, we note that a lack of evidence may create an obstacle for the applicant in discharging its practical burden of persuasion in satisfying the Commission that the expected public benefits from the arrangement would outweigh any detriments.[95]	• Thirdly, the lack of clarity as to both scope and evidential foundation gives rise to a procedural fairness concern. Armourguard is not in a position to meaningfully test or respond to the reasoning where: (a) the boundaries of the conduct are not clearly articulated; and (b) the evidential basis for key conclusions is not disclosed or is insufficiently specified. • Fourthly, while the Draft acknowledges that a lack of evidence may impede the applicant's ability to satisfy the statutory test, it does not appear to carry that principle through into its analysis. • In circumstances where: (a) the scope of the conduct is uncertain; and (b) the evidential basis is incomplete or unclear, the Commission cannot be satisfied that the claimed public benefits outweigh the detriments.
73.	*Further, authorisations for a period of approximately 10 years are not unusual. Whether sufficient evidence has been provided in support of the Application is ultimately a matter for final determination, not jurisdiction. We do not consider Armourguard's arguments raise material concerns about the scope of the Application and the Commission's jurisdiction in this matter.*	<u>The statement that authorisations of approximately 10 years are "not unusual" does not address the specific circumstances of this case.</u> • First, the position here is materially distinguishable. A number of participants have only recently entered into new contractual arrangements. In that context, a long-dated authorisation would not merely facilitate negotiation; it would risk cutting across recently concluded agreements and extending coordinated conduct beyond what is necessary. • Secondly, comparisons to other authorisation contexts are inapt. This is not a market characterised by fragmented or dependent suppliers. The counterparties are large, sophisticated banks with substantial bargaining power and a demonstrated ability to switch providers or sponsor entry. • Thirdly, the Draft does not explain why a 10–11 year period is necessary in these circumstances. That omission is material, given that any authorisation must be no broader in scope or duration than is required to achieve the claimed benefits. • Fourthly, the statement that Armourguard's arguments do not raise material concerns as to scope is not supported by analysis. As set out above, there remains a lack of clarity as to the boundaries of the Proposed Arrangement and its application to existing and future contracts. • The Commission should identify, with precision: (a) the scope of the conduct to be authorised; (b) the period for which coordination is demonstrably required; and

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		(c) the evidential basis for concluding that both are necessary. • Absent that analysis, reliance on general observations regarding other authorisations is insufficient to support the proposed duration or scope.
79	*For the Commission to be satisfied, it simply needs to have made up its mind on all of the material before it.*[101]	<u>The Draft states: "For the Commission to be satisfied, it simply needs to have made up its mind on all of the material before it."</u> • That formulation reverses the Court's statement and, in doing so, risks subtly but materially understating the legal test. The Court said: "To say that the Commission is 'satisfied' is simply to say that it has made up its mind on all the material before it." • The relevant question is not whether the Commission has merely reached a view on the material before it. The question is whether the Commission is satisfied, on the evidence before it, that the statutory test for authorisation is met — namely, that the likely public benefits of the proposed arrangement outweigh its likely detriments. • That distinction matters here. It is not sufficient for the Commission simply to form a view in the abstract, particularly where the scope of the conduct remains unclear and the evidential basis for key conclusions has not been adequately identified, disclosed, or tested. • To the extent the Draft suggests that the applicant need do no more than place material before the Commission for evaluative judgment, that is incorrect. The applicant bears the practical burden of persuading the Commission that the statutory standard is met. • In this case, where substantial uncertainties remain as to scope, operation, and evidential foundation, the Commission cannot lawfully be "satisfied" merely because it has formed a view on the material presently available.
81	*Based on evidence received to date, we consider the following scenarios are both likely to occur in both, and have immaterial differences between, the factual and counterfactual:* *81.1* ***Banks will continue to offer cash to***	<u>The Draft's conclusions at paragraph 81 are not supported by the evidence and reflect an incomplete understanding of how the proposed arrangement would likely operate in practice.</u> **81.1 Cash supply (paragraph 81.1)** • There is no proper evidential basis for the statement that banks "will continue to offer cash to consumers and to purchase CIT services" in both the factual and counterfactual. (a) The evidence before the Commission indicates that banks have both the ability and the incentive to reduce cash volumes, including through reduced servicing frequency, consolidation of locations, and changes to customer access. (b) Those incentives arise directly from the cost of maintaining cash infrastructure, particularly in a declining-volume environment.

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	consumers and to purchase CIT services to meet their banking and prudential obligations. *81.2 Armourguard will continue to provide CIT services to its customers under existing (including newly executed) agreement terms; and 81.3 Participants without current CIT contracts will likely continue to negotiate with Armourguard for the purchase of future CIT services.*	(c) The proposed arrangement, by permitting coordination in the procurement of CIT services, would facilitate alignment of those incentives across banks. (d) That creates a clear pathway for coordinated reduction in cash servicing levels, subject only to prudential requirements, which are not uniform and do not mandate any particular level of service. (e) In those circumstances, it cannot be assumed that cash supply will remain constant across the factual and counterfactual. That is a contested and material issue requiring analysis. **81.2 Failure to assess how the arrangement operates** • The Draft does not adequately explain how the proposed arrangement would function in practice. (a) There is no clear description of the frequency, structure, or scope of coordination between participants (including the number and type of meetings, and the subject matter to be discussed). (b) Without that detail, it is not possible to assess whether coordination would extend beyond pricing into service levels, volumes, and network configuration. (c) Those dimensions are critical in a high fixed-cost network, where reductions in volume directly affect cost recovery and service sustainability. **81.3 Impact on consumer access to cash** • The Draft does not consider how the proposed arrangement may affect consumer access to cash. (a) If banks are able to coordinate on procurement inputs, they are also able, in practice, to align downstream decisions regarding cash availability and servicing levels. (b) That includes decisions affecting frequency of collections, ATM and branch servicing, and geographic coverage. (c) The likely effect is a reduction in service levels over time, particularly in marginal or higher-cost areas. (d) That impact is directly relevant to the Commission's assessment of detriments and cannot be assumed away. [ ] **81.4 Negotiations and counterfactual (paragraph 81.3)** • The statement that participants will continue to negotiate bilaterally in the counterfactual is also incomplete. (a) The evidence shows that banks are already able to and do negotiate individually, including entering into long-term agreements on varied terms. (b) The existence of recent agreements and ongoing negotiations demonstrates that bilateral contracting is functioning.

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		(c) The proposed arrangement would replace or overlay that process with coordinated negotiation, altering bargaining dynamics rather than simply facilitating them.
The Scenario with the Proposed Arrangement (the factual)		
88	*The factual in the assessment of an authorisation application is a future which includes the conduct for which authorisation is sought. In this case, that involves Participants collectively negotiating service contracts with Armourguard, including on price and non-price terms, and giving effect to any collectively negotiated agreement.*	<u>The Draft correctly states that the factual includes the future with the proposed conduct. However, the analysis does not properly follow through on the implications of that framework.</u> • The Draft correctly states that the factual includes the future with the proposed conduct. However, the analysis does not properly follow through on the implications of that framework. • First, the characterisation of the factual is incomplete. It refers to collective negotiation on price and non-price terms but does not address the full scope of coordination that would arise in practice. • In particular, collective negotiation of non-price terms necessarily extends to: (a) service levels, including frequency and geographic coverage; (b) volume commitments and demand management; and (c) network configuration and operational parameters. • These are not ancillary matters. In a high fixed-cost network, they are central to competitive dynamics. • Secondly, the Draft does not explain how this coordination would occur in practice. There is no detail as to: (a) the structure and frequency of coordination between participants; (b) the scope and granularity of information sharing; or (c) whether, and to what extent, alignment would extend beyond contract formation into ongoing conduct. • Absent that detail, the factual scenario is materially underspecified. • Thirdly, once properly characterised, the factual involves not merely collective negotiation, but coordinated buyer conduct across the key dimensions of price, volume, and service. • That has material implications. It: (a) facilitates alignment of incentives to reduce costs, including through reduced cash servicing; (b) alters bargaining dynamics by replacing independent negotiation with coordinated engagement; and (c) creates a real prospect that coordination extends beyond negotiation into implementation. • Fourthly, the Draft does not reconcile this more complete characterisation of the factual with its subsequent conclusions, including the assumption that cash supply and service levels will remain unchanged. • A properly specified factual would require assessment of how coordinated conduct across these dimensions affects: (a) demand for cash services;

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		(b) network economics; and (c) consumer access to cash. • Absent that analysis, the factual scenario is incomplete and the comparison with the counterfactual is unreliable.
89	*... NZBA submitted that a future that involves collective bargaining would support the economic viability of Armourguard's CIT operations*	<u>The Draft records NZBA's submission that a future involving collective bargaining would support the economic viability of Armourguard's CIT operations. That proposition is not supported by the evidence and is, at best, uncertain.</u> • As a matter of observed conduct, banks that have committed to alternative providers have given no indication that they intend to re-engage with Armourguard within any timeframe consistent with Armourguard maintaining capacity. Conversely, authorisation of collective bargaining creates a real prospect that banks which have already entered into agreements with Armourguard may seek to revisit or undermine those arrangements. • There is a material distinction between the outcome said to be sought (supporting viability) and the mechanism proposed (coordinated negotiation across major customers). Collective bargaining does not inherently support viability; its effect depends on how it is exercised in practice. • When properly characterised, the Proposed Arrangement involves coordinated buyer engagement across both price and non-price terms, including service levels and volumes. That gives rise to competing and potentially conflicting incentives. • On the one hand, banks may accept pricing structures that contribute to cost recovery. On the other hand, they retain strong incentives to minimise total cost, including by reducing volumes, service frequency, and network scope. • The Draft does not reconcile these competing dynamics. In particular, it appears to assume that collective bargaining will support viability, while also assuming that service levels and cash availability will remain unchanged. Those assumptions embed an outcome without analysing the mechanism by which it would be achieved. • The counterfactual is also not appropriately specified. Absent authorisation: (a) bilateral negotiations are already occurring and have resulted in executed agreements on varied terms and durations; (b) those outcomes reflect independent commercial incentives rather than coordinated conduct; and (c) any movement toward viability arises through negotiated alignment between individual customers and the supplier. • By contrast, the factual introduces coordinated behaviour across customers, which may:

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		(a) support cost recovery in some dimensions; but also (b) facilitate alignment on cost-minimisation strategies, including reductions in volume and service. • The Draft does not assess which of these effects is more likely, or how they interact in practice. • In those circumstances, it cannot be assumed that collective bargaining will support viability. That is a hypothesis requiring evidential support and explicit analysis within the factual and counterfactual framework.
91	*RBNZ submitted that it had doubts about whether a sustainable and resilient CIT provider with a utility-type pricing model would emerge were authorisation to be granted, given banks' negotiating power.[110] It also raised concerns about whether, in light of the banks' requirements under the RBNZ's Outsourcing Policy BS-11 (BS-11),111 the Proposed Arrangement could put effective outsourcing arrangements for cash services at risk by increasing the fragility of the critical service provider.*	<u>The Draft records the RBNZ's concerns regarding the sustainability of a utility-style pricing model and the potential for the Proposed Arrangement to increase fragility in a critical service provider. It also raised concerns about whether, in light of the banks' requirements under the RBNZ's Outsourcing Policy BS-11 (BS-11), the Proposed Arrangement could put effective outsourcing arrangements for cash services at risk by increasing the fragility of the critical service provider.</u> • Those concerns warrant substantial weight. • First, the RBNZ is the prudential regulator responsible for oversight of financial system stability, including under BS-11. Its perspective is grounded in system resilience, continuity of critical services, and the practical operation of outsourcing arrangements. • Secondly, the RBNZ's submission goes directly to core issues in this assessment: (a) whether a sustainable funding model for national cash infrastructure can be achieved; and (b) whether the Proposed Arrangement may **undermine**, **rather than support**, the resilience of a critical service provider. • Third, the Draft does not appear to accord the RBNZ's views the weight they merit. In particular, there is an inconsistency in the treatment of evidence: (a) the RBNZ's concerns are noted but not substantively integrated into the analysis; whereas (b) elsewhere, statements by individual banks are introduced as matters that those parties "consider", without equivalent scrutiny. • Fourth, the RBNZ's concerns are directly relevant to the factual and counterfactual. They point to a real risk that coordinated buyer conduct, in the presence of strong bank negotiating power, may: (i) undermine cost recovery; (ii) weaken the financial position of the provider; and (iii) increase fragility in a systemically important service. • Those are not peripheral considerations. They go to the core of whether the Proposed Arrangement delivers net public benefit. • The Commission should therefore: (a) explicitly address the substance of the RBNZ's concerns; and (b) explain the weight given to those concerns relative to submissions from individual market participants.

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Our assessment of the likely factual		
93	*Our provisional view is that, with the Proposed Arrangement, Participants will have the ability to collectively negotiate, as well as to continue to undertake bilateral negotiations and take any other appropriate action to secure **sustainable** CIT services.*	<u>The Draft states that the Proposed Arrangement would enable participants to secure "sustainable CIT services". That formulation is unclear and unsupported.</u> • First, it is not specified **for whom** sustainability is being assessed. Sustainability may differ materially depending on whether it is considered from the perspective of: (a) the service provider (financial viability and cost recovery); (b) the banks (procurement cost and flexibility); or (c) end-users (continuity, access, and service levels). • Secondly, the Draft does not explain **what sustainability means in this context**. In a high fixed-cost network, sustainability requires recovery of baseline infrastructure costs over time. That is not addressed. • Thirdly, there is no explanation of **how the Proposed Arrangement delivers sustainability**, particularly given: (a) the acknowledged strength of bank negotiating power; and (b) the ability and incentive of banks to reduce volumes and service levels. • Fourthly, the statement appears to assume that the coexistence of collective and bilateral negotiation will produce a sustainable outcome but does not explain the mechanism by which that occurs or why coordinated conduct would not dominate or distort bilateral engagement. • In the absence of this analysis, the reference to "sustainable CIT services" is conclusory and does not provide a sufficient evidential or analytical basis for the Commission's provisional view.
94	*In previous collective bargaining authorisations, we have considered whether or not the counterparty would collectively negotiate.[112] Prior to the Interim Determination, Armourguard told the Commission that it would continue to negotiate bilaterally with banks, and* *[*	<u>The Draft's approach to Armourguard's negotiating position is problematic.</u> • First, the reference to Armourguard's willingness to engage with [ ] should not be taken as support for the Proposed Arrangement as framed. That position was conditional and directed to managing risk, not endorsing coordinated bargaining. • Secondly, the Draft places weight on the fact that it is "unknown" to what extent Armourguard would change its proposed contract terms in response to collective negotiation. That framing is misplaced. • The relevant issue is not how Armourguard might respond to coordinated buyer conduct. The issue is the nature and effect of the coordination itself. • Thirdly, the uncertainty identified by the Commission arises directly from the lack of clarity in the Application as to: (a) the scope of coordination; (b) the mechanisms by which it would operate; and (c) the extent to which it would influence price, volume, and service levels. That uncertainty should not be attributed to Armourguard.

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	][113] It remains unknown, however, to what extent Armourguard would change its proposed contract terms as a result of negotiations with a collective; we discuss that further below in the 'Benefits and Detriments' section.	• Fourthly, to the extent the Commission considers that the effects of collective negotiation are uncertain, that uncertainty weighs against authorisation. It is not a neutral factor. • Finally, the Draft risks reversing the burden of analysis by focusing on how Armourguard may react, rather than assessing whether the applicant has demonstrated that the proposed coordination delivers net public benefit.
97.	*. The [ ] agreement reached, however, is [ ] more expensive per annum [ ].120 Armourguard also both [ ] and, [* *][121] We consider this suggests Armourguard was exercising a degree of market power during*	<u>The Draft's inference that the observed pricing outcomes "suggest Armourguard was exercising a degree of market power" is not supported by the analysis presented.</u> • First, the comparison between the [ ] agreement and the [ ] is incomplete. (a) Shorter-term contracts in a high fixed-cost industry will, as a matter of basic economics, result in higher annual pricing where fixed costs must be recovered over a shorter duration. (b) The Draft does not engage with this point. (c) Without that analysis, the observed price differential is equally consistent with cost recovery dynamics as it is with any assertion of market power. • Secondly, the Draft's interpretation of pricing adjustments during negotiation is also incomplete. (a) Adjustments to maintain overall contract economics where scope changes (such as removal of [ ]) are standard commercial practice. (b) Rebalancing pricing across service components to preserve total contract value does not, without more, indicate the exercise of market power. (c) Nor does the Draft assess whether the overall contract price remained aligned with cost recovery requirements. • Thirdly, the broader context is not addressed. (a) The contracts in question sit within a high fixed-cost, declining-volume environment. (b) In that context, pricing behaviour must be assessed against the requirement to recover baseline infrastructure costs, not against isolated comparisons of contract structures. • Fourthly, the Draft does not consider alternative explanations that are at least equally plausible: (i) shorter contract duration requiring accelerated cost recovery; (ii) changes in service scope requiring price reallocation; and (iii) negotiation dynamics reflecting risk allocation rather than market power.

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	these negotiations. Similar to the above, we consider there is some prospect that [ ]. We also consider [ ] would still seek to join the collective—particularly for the purposes of [ ].[22]	• Fifthly, the inference of market power is further undermined by the broader factual record, including: (a) the ability of banks to refuse terms; (b) the existence of disengagement and switching; and (c) the active pursuit of alternative providers. • In those circumstances, the evidence cited does not support a conclusion that Armourguard was exercising market power. It is equally, and more plausibly, explained by standard commercial responses to contract duration, scope, and cost recovery requirements. **The significant allegation [ ], is treated as fact without being tested with Armourguard.** There is in fact a valid explanation: [***]*** **Armourguard is happy to provide further details and/or a witness statement to this effect.** • Armourguard is deeply concerned that the Draft again appears to simply accept as fact Participant Bank's say-so on significant points, without engaging with Armourguard to get its perspective. A further concern is that the Commission's views will now remain 'anchored' (to this and other conclusions) a well know heuristic.
101	*[ ] are disengaging or have disengaged from Armourguard. At the time of writing, [ ] operating under disengagement protocols which allow them* *[* *]* *[ ] disengagement period has already commenced. [ ] has very recently* *[*	<u>The Draft's treatment of disengagement is incomplete.</u> • In particular, [ ] disengagement was not neutral or routine. [ ] expressly indicated that it was pursuing an alternative supply model in order to achieve what it characterised as [ ] [ ]. That position is material. • First, it demonstrates that [ ] was not constrained to continue contracting with Armourguard. It made a strategic decision to exit and support alternative supply. • Secondly, that conduct is inconsistent with any suggestion that Armourguard was able to exercise market power over [ ]. A counterparty actively pursuing alternative providers is not subject to coercion. • Thirdly, it reinforces the broader factual position that [ ] have both the ability and the incentive to sponsor or facilitate entry by competing providers.

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	] [ ].[127]	• Fourthly, similar dynamics are reflected in the positions of [ ] and [ ], which are disengaging or elected not to renew. **Taken together, these facts point to the existence of buyer power and credible alternatives. They do not support a narrative of supplier dominance**.
104	*However, if access is not approved or entry is otherwise unsuccessful, we consider [ ] would at some point need to re-engage with Armourguard for discrete services; and in such case it would likely join the collective (or rely on an already negotiated collective agreement).*	<u>The Draft's statement that, absent successful entry or access, parties may "re-engage" with Armourguard and join or rely on a collective agreement raises material concerns.</u> • The Draft's proposed outcome effectively grants participants a unilateral option: (a) to exit existing arrangements and pursue alternative models; (b) to test those models without full commitment; and (c) to re-engage with Armourguard, potentially on collectively negotiated terms, if those alternatives prove unsuccessful. That asymmetry is not neutral. • It places all commercial risk on the incumbent provider, while allowing customers to retain upside from alternative strategies and downside protection through re-entry. • This dynamic is likely to distort behaviour: (a) it incentivises premature or speculative disengagement; (b) it weakens contractual discipline; and (c) it undermines the stability required to support a high fixed-cost national network. • The Draft does not assess the cost of this "option value", nor its impact on: (i) investment incentives; (ii) cost recovery; and (iii) system resilience. • Finally, the suggestion that such parties would "likely join the collective" on re-engagement compounds the issue. It would allow coordinated re-entry on terms shaped by collective bargaining, rather than bilateral negotiation reflecting actual market conditions. • In those circumstances, the Draft effectively creates a one-sided re-bargaining framework which has not been justified and carries material risk.
The Scenario Without the Proposed Arrangement (the Counterfactual)		
112.	*RBNZ **submitted** that it was interested in a sustainable CIT business generating a fair return on investment; it considered this most*	<u>The RBNZ's submission is significant and should be given substantial weight.</u> • First, the RBNZ identifies a clear pathway to sustainability: a utility-like pricing structure that enables the recovery of fixed costs and a fair return on investment, while preserving scope for bilateral optimisation and limited entry at the margins. • Secondly, that model is conceptually distinct from the Proposed Arrangement.

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	likely to arise under a utility-like pricing structure.[139] It considered such a structure would still allow individual banks to find improved reliability and efficiencies bilaterally and would provide space for other CIT firms to deliver smaller-scale or more niche services. It noted that problems with the status quo could still be resolved under this model, including: banks exploring efficiencies through innovation; Armourguard moderating its demands; technology evolution reducing CIT dependency; and banks prioritising addressing duplication and inefficiencies in their own organisations.[140]	(a) A utility-style framework is directed at ensuring stable cost recovery for a critical national infrastructure asset; (b) it assumes a degree of pricing discipline consistent with sustainability; and (c) it contemplates bilateral engagement for service-level efficiencies, rather than coordinated procurement. • Thirdly, the Proposed Arrangement does not implement that model. Instead, it introduces coordinated buyer conduct across major customers, in circumstances where the RBNZ itself has identified concerns regarding bank negotiating power. • Fourthly, the Draft does not reconcile this tension. (a) On the one hand, it records the RBNZ's view that sustainability is most likely to arise under a utility-like pricing structure; (b) on the other, it provisionally supports an arrangement that may undermine that outcome by facilitating coordinated pressure on pricing and terms. • Fifthly, the additional observations made by the RBNZ reinforce this pointThe ability of banks to: (i) pursue efficiencies; (ii) leverage innovation; and (iii) address internal duplication, are all mechanisms available in a bilateral framework. They do not require collective bargaining. • Sixthly, properly understood, the RBNZ's submission supports a model where: (a) baseline infrastructure costs are sustainably funded; and (b) competitive dynamics occur at the margin. • That is **not** the model created by the Proposed Arrangement. • [ ] It should not escape the Commission that no matter what is offered there will be attempts to 'get more' – this is exactly what the Commission sees in submissions in regulated industries where parties claim they want certainty, but they also seek 'more'. This factor is not explored in the Draft.
113.	*As stated above, the possibility of successful entry by an alternative operating model—which has **arisen** since our Interim Determination—*	<u>The Draft states that the possibility of successful entry by an alternative operating model—said to have arisen since the Interim Determination—exists in both the factual and counterfactual scenarios, and that it is therefore unnecessary to construct a separate counterfactual to assess that uncertainty. Armourguard submits that approach is flawed.</u> • First, the possibility of entry is incorrectly characterised as a new development. Banks have always had both the ability and the incentive to sponsor or facilitate entry by alternative providers. That is not conjecture but

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	exists in both the factual and counterfactual scenarios. We do not consider it necessary to construct a separate counterfactual to assess this uncertainty..	established market history. For example, Westpac sponsored ACM's original entry into the New Zealand CIT market, and, prior to that, ASB and ANZ supported the establishment of G4S's operations. This context was before the Commission in the Evergreen/ACM clearance. The fact that entry is now being actively pursued does not make it new; it confirms that it has always been a credible constraint. • Secondly, the fact that entry has only recently been pursued, or has only recently become visible to the Commission, does not mean it was not part of the realistic counterfactual. The timing of observable conduct is not determinative of whether that conduct formed part of the competitive constraint faced by Armourguard. To the extent the Draft treats entry as newly arising, it risks adopting the applicants' characterisation without sufficient scrutiny. • Thirdly, treating entry as equally present in both the factual and counterfactual risks obscuring its competitive significance. The scenarios are not equivalent: • (a) in the counterfactual, entry would occur (if at all) in a setting of independent, bilateral decision-making by banks; • (b) in the factual, entry would occur alongside, and potentially be shaped by, authorised coordinated buyer conduct. • Those differences matter. Coordinated bargaining may: • (a) influence incentives to sponsor or support entry; • (b) affect the viability and scale of new entrants; and • (c) alter the terms on which any re-engagement with Armourguard occurs, including at contract renewal. • Fourthly, these dynamics go directly to the competitive assessment. Entry cannot be treated as an exogenous or neutral factor where the Proposed Arrangement may itself shape both the likelihood and the form of that entry. • In those circumstances, it is not sufficient to assume that entry can be treated identically in both scenarios. A properly specified counterfactual should instead address: • (a) the likelihood and nature of entry absent coordinated conduct; and • (b) how the Proposed Arrangement may alter those dynamics, including through its effects on buyer incentives and market structure.
119	*These Participants have notified Armourguard that they are not*	<u>The Draft's treatment of these Participants raises a material issue as to both *scope* and *necessity*:</u> • First, the identified Participants have **expressly stated that they do not intend to enter into new agreements with Armourguard** and are actively pursuing an alternative operating model.

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	intending to enter a new agreement with Armourguard. [ ] are disengaging or have disengaged from Armourguard and are transitioning or have transitioned into operating under the new entry operating model, as discussed above; and [ ] has notified Armourguard of its intention not to renew its agreement. We consider that in the counterfactual, these Participants will continue to work on this alternative operating model for as long as practicable, in particular due to [ ]. However, if entry is unsuccessful, in the world without authorisation, we ultimately consider it likely that these Participants would need to re-engage bilaterally with Armourguard for at least some CIT services. In such circumstances we consider Armourguard is likely to take a similar	• Secondly, the Draft accepts that, in the counterfactual, those Participants will continue to pursue that model for as long as practicable, and will only re-engage with Armourguard if entry is unsuccessful. • Thirdly, on that basis, there is no current or immediate need for those Participants to engage in coordinated negotiation with Armourguard. • Fourthly, notwithstanding this, the Proposed Arrangement would permit those same Participants to participate in collective bargaining over an extended period (10–11 years). • That creates a clear mismatch between: (a) the asserted need for coordination; and (b) the actual position of those Participants. • Fifthly, the effect is to grant Participants who have elected not to engage with Armourguard the ability to: (i) remain outside bilateral negotiations; (ii) pursue alternative models; and (iii) re-enter the market through coordinated negotiation if and when it suits them. • Sixthly, this introduces the risk of coordinated behaviour without a corresponding, demonstrated benefit. In particular: (a) there is no identified efficiency arising from including Participants who are not currently negotiating; (b) the arrangement creates the potential for coordinated re-entry; and (c) it amplifies the risk of collective leverage being exercised if re-engagement occurs. • Seventhly, this further distinguishes the Proposed Arrangement from typical collective bargaining authorisations, where coordination is directed to an immediate and defined negotiation need. • In those circumstances, the inclusion of these Participants, and the duration of the authorisation, are broader than necessary and not justified by the evidence.

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	approach to bilateral negotiations with these Participants as [ ], including seeking to impose the IAF and demonstrating limited openness to party-specific terms.[144]	
Summary of factual and counterfactual		
121	*Ultimately, the core difference between the factual and counterfactual is that we do, or do not, grant authorisation for the Proposed Arrangement. In the factual, the Participants will have the additional option of collective bargaining, which they would not have in the counterfactual.*	<u>The Draft's characterisation of the difference between the factual and counterfactual is materially incomplete.</u> • It is not sufficient to describe the difference as merely the presence or absence of an "additional option" of collective bargaining. • First, the introduction of collective bargaining is not a neutral option. It changes the structure of the market by enabling coordinated buyer conduct across participants. • Secondly, that coordination affects multiple dimensions simultaneously, including: (a) price; (b) service levels; and (c) volumes and demand for CIT services. Those effects go well beyond the existence of an additional negotiation mechanism. • Thirdly, the factual therefore involves a fundamentally different set of incentives and behaviours: (a) alignment of buyer conduct across major customers; (b) potential coordination on cost minimisation strategies (including reductions in service levels); and (c) altered bargaining dynamics relative to bilateral negotiation. • Fourthly, the counterfactual is not simply the absence of collective bargaining. It is a world in which: (a) negotiations occur bilaterally; (b) participants act independently; and (c) outcomes reflect individual commercial incentives rather than coordinated positions. • Fifthly, the Draft does not assess how these materially different dynamics affect: (i) pricing outcomes; (ii) network sustainability; (iii) entry and exit incentives; and (iv) consumer access to cash.

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		In those circumstances, the difference between the factual and counterfactual is substantive, not incremental. It requires detailed analysis rather than summary characterisation.
122	*In both the factual and counterfactual, there is the possibility of successful entry from a new entry operating model, which would change the underlying conditions of competition and affect the relative benefits and detriments of granting authorisation…*	<u>The Draft states that the possibility of successful entry exists in both the factual and the counterfactual. That is correct at a high level, but incomplete.</u> • The critical issue is not whether entry is possible in both scenarios, but how the proposed conduct affects: (a) the likelihood of entry; (b) the form that entry takes; and (c) the conditions under which entry succeeds or fails. • Those dynamics differ materially between the factual and the counterfactual. • First, in the counterfactual: (a) entry occurs in a setting of independent, bilateral decision-making by banks; (b) individual banks bear the commercial consequences of sponsoring or supporting entry; and (c) outcomes reflect dispersed incentives and heterogeneous strategies. • Secondly, in the factual: (a) coordinated bargaining enables alignment of incentives across major customers; (b) that alignment may influence the viability of entry, including through coordinated procurement terms, volume allocation, and service design; and (c) the same coordination may affect the terms of any re-engagement with the incumbent. • Thirdly, these differences are not neutral. • Coordinated buyer conduct may: (i) facilitate entry in some circumstances (for example, by aggregating demand); but also (ii) undermine entry (for example, by creating uncertainty, compressing margins, or coordinating reversion to the incumbent). • Fourthly, the Draft does not analyse these competing effects. Instead, it treats entry as an exogenous possibility that can be assumed to operate equivalently in both scenarios. That is not correct. • Fifthly, given that entry is identified as potentially changing "the underlying conditions of competition", it is necessary to: (a) specify how entry interacts with the proposed arrangement; and (b) assess whether the Proposed Arrangement enhances or undermines the prospects of sustainable entry. • Absent that analysis, the treatment of entry does not support the conclusions drawn.
Our Assessment of Benefits and Detriments		
142	*Evidence we have received shows there is a degree of mistrust and*	<u>The Draft's assertion that mistrust and information asymmetry may result in "inefficient contracts" is not sufficiently defined, evidenced, or linked to the statutory assessment. [</u>160] • First, the concept of "inefficient contracts" is not explained.

PARA	QUOTE / EXTRACT	COMMENTS
	information asymmetry between Armourguard and the Participants, which could result in a market failure through inefficient contracts. Inefficient contracts create potential for disputes [ ]. For example, we note that there is []	(a) It is unclear whether this refers to pricing outcomes, allocation of risk, service levels, or contract duration. (b) No concrete examples are provided that would allow the point to be tested. (c) As drafted, the statement is conclusory. • Secondly, the evidential basis is not disclosed. (a) The reference to disputes and supporting material is heavily redacted or unspecified. (b) Armourguard is therefore unable to assess or respond to the underlying reasoning. (c) That raises a procedural fairness concern. • Thirdly, the analysis is not linked to any identifiable public detriment. (a) The Draft does not explain how the alleged "inefficiency" translates into harm to New Zealand consumers or the public. (b) Contractual disagreement or renegotiation between sophisticated parties does not, without more, constitute a market failure. • Fourthly, the Draft assumes that collective bargaining would resolve issues of mistrust or asymmetry, but does not explain the mechanism by which that would occur. (a) It is not evident why coordinated negotiation would increase trust between parties. (b) Nor is it clear how it would reduce information asymmetry, particularly where participants retain incentives to withhold or strategically use information. • Fifthly, the analysis does not engage with sustainability. (a) In a high fixed-cost network, contract terms that ensure cost recovery may appear "inefficient" from a buyer perspective but are necessary for system viability. (b) The Draft does not distinguish between inefficiency and cost-reflective pricing required to sustain infrastructure. • Sixthly, the historical context is omitted. (a) Prior contracting arrangements involved asymmetric allocation of risk to the service provider, including terms that contributed to loss-making outcomes. (b) The Draft does not explain why similar dynamics would not re-emerge under coordinated buyer conduct. • In those circumstances, the assertion of "inefficient contracts" is not supported by defined concepts, disclosed evidence, or analysis of public impact. It should not be relied upon.
145.	*It also does not appear NZIER verified Armourguard's costs before endorsing the IAF (in its report, NZIER*	<u>The observation regarding NZIER's treatment of Armourguard's costs is incomplete and risks mischaracterising the purpose of that analysis.</u> • First, NZIER's role was not to undertake a forensic audit of Armourguard's cost base. Its assessment was directed to the economic structure of the proposed pricing model, including whether a utility-style framework and associated return were consistent with comparable infrastructure settings. • Secondly, the fact that NZIER took the cost base as an input does not diminish the relevance of its conclusions.

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	appears to take the costs as given).	(a) Economic benchmarking exercises routinely assess the reasonableness of pricing structures and returns based on provided cost assumptions; (b) they do not require independent verification of every cost line item to be informative. • Thirdly, the relevant question for the Commission is not whether NZIER independently verified each cost component, but whether: (a) the cost categories underpinning the IAF are legitimate for a national CIT network; and (b) the resulting pricing framework is consistent with sustainable cost recovery. • Fourthly, the Draft does not identify any specific error or overstatement in the cost base. Absent that, the observation does not provide a basis to discount NZIER's analysis. • Fifthly, to the extent the Commission considers that further scrutiny of costs is required, that is a matter that can be addressed through: (a) targeted information requests; or (b) ongoing review mechanisms, rather than by dismissing the economic framework.
146	*We understand that Armourguard did not [ ] but focused instead on [ ]*	<u>The Draft's observation regarding Armourguard's pricing approach requires context.</u> • First, the characterisation that Armourguard did not undertake a "bottom-up, line-by-line cost analysis" is not, of itself, indicative of any deficiency. • In high fixed-cost network businesses, pricing is typically set by reference to: (a) aggregate cost recovery requirements; (b) allocation of those costs across services and customers; and (c) overall revenue sufficiency to sustain the network. • Secondly, the use of "aggregate cost buckets" reflects that economic reality. (a) Many costs are shared across the network and cannot be meaningfully attributed to individual services on a granular basis; (b) attempting to do so may produce arbitrary or misleading allocations; (c) pricing must therefore be set at a level that ensures recovery of total system costs. • Thirdly, the Draft does not identify any specific pricing outcome that is inconsistent with cost recovery or indicative of excess pricing. • Absent that, the observation does not support any inference as to market power or inappropriate conduct. • Fourthly, the relevant question is whether the overall pricing framework enables sustainable operation of a national CIT network, not whether each component has been derived through a bottom-up methodology. • Fifthly, the use of aggregate cost-based pricing is consistent with the utility-style model referenced elsewhere in the Draft, where: (a) total cost recovery; and (b) appropriate allocation mechanisms, are central.

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147	*Armourguard's customers are also concerned about the risk of overpaying for services and at least one Participant has unsuccessfully requested greater visibility on the cost-to-serve plus margin at the line-item level.*	<u>The Draft's reference to customer concerns regarding "overpaying" and requests for line-item cost visibility requires context.</u> • First, it is unsurprising that customers seek greater transparency and lower prices. That is a feature of any commercial negotiation, particularly where customers are large and sophisticated counterparties. *A failure to obtain these things is not inconsistent with workable or effective competition, in fact it is more common than not in the real world.* • Secondly, the request for line-item "cost-to-serve plus margin" visibility is not, in itself, a reasonable or necessary benchmark in a high fixed-cost network business. (a) Many costs are shared across the network and cannot be meaningfully attributed to individual services or customers on a granular basis; (b) any attempt to do so would involve arbitrary allocation assumptions; and (c) such allocations are unlikely to provide a reliable basis for assessing economic cost. • Thirdly, the relevant economic question is not whether each line item can be individually costed, but whether the overall pricing framework: (a) enables recovery of total system costs; and (b) delivers a reasonable return consistent with sustainability. • Fourthly, the Draft does not identify any evidence that customers are, in fact, overpaying relative to cost. Nor does it assess pricing against any objective benchmark. • Fifthly, the analysis does not engage with the corresponding risk of under-recovery. (a) In a declining-volume, high fixed-cost environment, the greater risk historically has been under-pricing; (b) that dynamic contributed to loss-making outcomes prior to consolidation; and (c) focusing solely on perceived overpayment risks ignores this context. • Finally, the ability of customers to challenge pricing, seek alternative providers, and disengage—as evidenced elsewhere in the Draft—demonstrates that customers retain bargaining power. • In those circumstances, the concerns cited do not establish any market failure or support an inference of market power. • We repeat again our observation that the (unsubstantiated) confidence stressed in parameters suggested by the applicant and referred to in the Draft (which tellingly are not included in the scope of the Proposed Arrangements, nor do they form part of the Conditions, which seems a notable omission) is not consistent with the Commission's experience and regulated markets. In other words, the conclusion and the Draft is inconsistent with the Commission's experience.
149	*Some evidence suggests that Armourguard's costs and the resulting*	[

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	IAF could be inefficiently high. For example, *[* *]:* *149.1* *[* *].* *149.2* *[* *][177]* *[* *] 149.3 The potentially elevated costs faced by Armourguard as a result appear to be passed on*	

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	to its customers through higher prices. *[* *]*[178] *174 175 See, for example, [ ].* *[* *] 40* *This raises questions about Armourguard's claim that the IAF is "designed to recover the efficient, minimum fixed costs"*[179] *of maintaining a resilient CIT infrastructure, at least in light of* *[* *]*	]

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150	*We have not reviewed Armourguard's full GL-level IAF model and any model(s) used to set service fees for the purposes of assessing the Application.[180] We have also not applied the methodologies used for regulated entities to test if Armourguard's approach is truly consistent with the principles and approach we use for regulated entities as suggested by Armourguard and NZIER.*	<u>The Draft acknowledges that the Commission has not reviewed Armourguard's full GL-level model and has not tested the IAF against regulated utility methodologies. That has significant implications for the analysis.</u> • First, the Commission has not undertaken the analysis necessary to assess whether: (a) the cost base underpinning the IAF is reasonable; (b) the pricing framework enables efficient cost recovery; or (c) the proposed return is consistent with a utility-style model. • Secondly, notwithstanding this, the Draft makes observations regarding: (a) the efficiency of Armourguard's costs; and (b) the appropriateness of the IAF. Those observations are not supported by a completed analytical foundation. • Thirdly, the absence of a GL-level review is material. (a) The IAF is expressly presented as a mechanism to recover aggregate fixed costs; (b) without testing those costs at a system level, the Commission cannot reliably assess claims of inefficiency or over-recovery; (c) nor can it assess whether pricing is aligned with sustainability requirements. • Fourthly, the decision not to apply regulated utility methodologies is also significant. (a) The Draft references a utility-style model as a relevant comparator; (b) however, it has not applied the analytical tools typically used to assess such models (including cost allocation, rate of return, and efficiency benchmarks); (c) this creates an inconsistency between the framework referenced and the analysis undertaken. • Fifthly, this evidential gap cuts both ways, but it has clear consequences for the statutory test. (a) The burden lies on the applicant to demonstrate public benefits; (b) however, where the Commission raises concerns regarding cost efficiency or pricing, those concerns must be grounded in evidence; (c) absent that, such concerns cannot be relied upon as detriments. • Finally, in the absence of a completed cost and pricing analysis, the Commission cannot be satisfied that: (i) the IAF is inefficient; or (ii) the Proposed Arrangement would correct or exacerbate any such inefficiency.
151	*Our review of the NZIER Report also identifies potential issues with*	<u>The Draft's critique of the NZIER Report and the IAF methodology does not establish a basis for adverse conclusions.</u> **(a) Relevance to the statutory test**

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	Armourguard's (and NZIER's) methodology, lack of transparency including on underlying assumptions, and potential that resulting prices and margins could be above competitive levels. *151.1 The comparator group used to justify the IAF may be inappropriate for several reasons including that Armourguard may have substantial market power181 it could exercise at the time of negotiating long-term contracts with the banks.* *151.2 There likely are substantial differences between Armourguard and 'consumer owned' electricity distribution businesses in terms of cost structure and governance structures meaning they may not have the same incentives.* *151.3 We note that experts182 commissioned by some of the Participants to review the NZIER Report*	○ First, the observations regarding "lack of transparency" and "potential issues" are not clearly linked to any identified public detriment. (a) The Draft does not explain how the alleged lack of transparency results in harm to consumers or competition; (b) nor does it demonstrate that collective bargaining would resolve any such issue; (c) the suggestion that greater transparency would improve outcomes is not demonstrated. ○ Secondly, the reference to prices or margins being "above competitive levels" is conclusory. (a) No competitive benchmark is identified; (b) no counterfactual pricing analysis is undertaken; and (c) in a market characterised by a single national network and high fixed costs, "competitive levels" are not self-evident. **(b) Comparator critique** ○ Thirdly, the criticism of comparator groups is incomplete. (a) Comparator analysis is used to assess reasonable returns for infrastructure-like assets; (b) differences in governance or ownership structures do not invalidate the comparison but are factors to be considered in calibration; (c) the Draft does not identify an alternative benchmark or demonstrate that the selected comparators produce an unreasonable outcome. **(c) Market power assumption** ○ Fourthly, the suggestion that Armourguard "may have substantial market power" is not substantiated. (a) The broader factual record demonstrates active disengagement, switching, and sponsorship of entry by major banks; (b) those dynamics are inconsistent with unconstrained supplier power; (c) the Draft does not reconcile this inconsistency. **(d) Third-party expert reports** ○ Fifthly, the reference to "potential issues" identified by experts engaged by Participants is not supported by disclosed analysis. (a) The substance of those critiques is not set out; (b) Armourguard has not been provided with a meaningful opportunity to respond; and (c) it is unclear whether those issues were put to Armourguard or NZIER for comment. ○ Absent disclosure and testing, limited weight should be placed on such assertions. **(e) Asymmetry of risk** ○ Finally, the Draft does not engage with the asymmetry of risk.

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	have identified potential issues with the approach and justifications of the IAF.[183]151.3	(a) The sector has historically experienced under-recovery of costs, resulting in loss-making operations; (b) the primary economic risk is therefore under-recovery, not over-recovery; (c) the Draft focuses on speculative overpricing without assessing the consequences of insufficient cost recovery for system sustainability. • On the Commission's last point, it is to be expected that the participants would procure evidence challenging the model. That is not a substitute for the commission's own analysis. Nor is it evidence of a net public benefit.
154	*Closer examination and verification of costs may be important in instances where there is information asymmetry on costs driving prices (IAF and service fees). As such, we consider that a* ***successful collectively negotiated outcome could reduce the degree of information asymmetry and mistrust*** *between Armourguard and the Participants, thereby helping to reduce contractual uncertainty and potentially improve contracting outcomes in relation to either all the Participants or only those that have not yet concluded contracts. This could provide more stability if mutually beneficial collective negotiations are*	<u>The Draft's conclusion that collective negotiation could reduce information asymmetry, mistrust, and contractual uncertainty is not supported and is inconsistent with commercial experience.</u> • First, the mechanism is unclear. (a) It is not explained how collective bargaining would, in practice, reduce information asymmetry; (b) participants would continue to have incentives to challenge cost inputs and seek greater transparency; (c) coordinated negotiation does not eliminate asymmetry-it aggregates buyer leverage against the supplier. • Secondly, the Draft does not address the impact on bargaining dynamics. (a) Collective negotiation by major banks would represent a coordinated exercise of buyer power; (b) this would risk a reversion to the historical position in which banks dictated terms; (c) that dynamic previously contributed to loss-making outcomes and is not consistent with sustainability. • Thirdly, there is no basis to conclude that such coordination would improve relationships. (a) Aggregating counterparties with aligned incentives to minimise cost is more likely to entrench adversarial dynamics; (b) it does not create alignment of interests or trust; (c) the Draft provides no evidence to the contrary. • Fourthly, the Draft's suggestion that collective negotiation would "*provide more stability*" is inconsistent with its own analysis. (a) The proposal contemplates the potential reopening or renegotiation of existing agreements; (b) that introduces uncertainty as to the durability of recently concluded contracts; (c) it creates incentives for counterparties to defer or revisit bilateral outcomes in favour of coordinated re-engagement. • Fifthly, the Draft acknowledges uncertainty as to whether collective negotiation would address any alleged inefficiencies in existing contracts. (a) That uncertainty is material; (b) it undermines the claimed benefit; and (c) it reinforces that the mechanism is unproven.

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	successful. On the other hand, we are currently uncertain about the potential to reduce or eliminate any inefficiencies that may already be incorporated into contracts already concluded between Armourguard and each of [ ].	• Finally, the analysis does not engage with the asymmetry of risk. (a) Collective bargaining shifts negotiating power toward customers while leaving the supplier with sunk infrastructure and limited alternatives; (b) this increases the risk of under-recovery and network fragility; (c) it does not promote stable or efficient outcomes. • In those circumstances, the proposed benefit is speculative, and the likely effect is increased contractual uncertainty and a re-emergence of the dynamics that previously led to unsustainable outcomes.
Collectively negotiated pricing mechanism: price and volume effects		
157	*NZBA submits that, without collective negotiations, Armourguard has disproportionate leverage in negotiations that would allow it to impose terms and extract monopoly rents.191 The Applicant submits that the Participants currently lack meaningful bargaining power in negotiating with Armourguard.[192] For example: 157.1 Armourguard gave [*	<u>The Applicant's submission that Armourguard has disproportionate leverage and can extract "monopoly rents" is not supported by the evidence cited</u>. **(a) Mischaracterisation of price increases** • First, the references to significant percentage increases (including the alleged [ ] increase for [ ]) are misleading without context. (a) Those comparisons are made against pricing that was, in a number of cases, below cost and not sustainable; (b) increases from a loss-making baseline do not indicate the exercise of market power-they reflect movement toward cost recovery; (c) the Draft does not assess whether the resulting pricing exceeds efficient cost recovery or instead remains within a sustainable range. • Secondly, presenting percentage increases without reference to the underlying cost base or prior pricing structure risks drawing incorrect inferences. **(b) [ ]** • Thirdly, the repeated references to [ ] (a) As set out above, the relevant counterparties are large, sophisticated banks; (b) they have demonstrated the ability to disengage, switch providers, and sponsor entry;

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	][193]	(c) that conduct is inconsistent with any lack of bargaining power. **(c) Contractual steps and renegotiation** • Fourthly, the termination and renegotiation of agreements must be viewed in context. (a) The contracts in question were, in several cases, uneconomic; (b) continuation on those terms was not viable; (c) the steps taken reflect commercial negotiation in a distressed cost environment, not the exercise of unconstrained market power. **(d) Absence of analytical benchmark** • Fifthly, the Draft does not articulate what it considers to be the appropriate negotiating outcome. (a) If below-cost pricing is unsustainable, some level of price increase is necessary; (b) the Draft does not identify what level of pricing would be considered acceptable or "competitive"; (c) nor does it assess whether the proposed terms exceed that level. Absent that, the conclusion that Armourguard is extracting "monopoly rents" is unsupported. **(e) Broader factual inconsistency** • Finally, the broader record contradicts the Applicant's position. (a) Multiple banks have disengaged or are disengaging; (b) alternative providers are being developed or supported; and (c) bilateral negotiations have resulted in varied outcomes across counterparties. • These are not features of a market in which customers lack bargaining power. They are consistent with a market in which sophisticated purchasers retain, and exercise, credible alternatives.
	157.2 *[* *]*[195]	
	157.3 Armourguard ***suddenly*** *[* *]*[196] *and then* *[* *].*[19]	[ ] • [ ] • [ ]

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		• [ ]
158	*The Applicant submits that* *[* *]*[198]	<u>The Applicant's submission that "excessive" prices would lead to reduced demand for CIT services, with downstream impacts on vulnerable consumers, is not supported by the evidence.</u> • First, no evidence is identified that price increases of the type described have, in fact, led to reductions in service levels or consumer access to cash. • Secondly, the historical record points in the opposite direction (which again is evidence on the record from the ACM / Armourguard clearance / authorisation process which we had confirmed to Commission staff they could review). (a) CIT services were previously provided at prices that did not recover cost; (b) during that period, there is no evidence that service levels were materially expanded or that access outcomes for consumers improved as a result of below-cost pricing; (c) nor is there evidence that demand was meaningfully more robust because prices were lower. • Thirdly, the Applicant's argument assumes a direct and immediate relationship between pricing and consumer access. That relationship is not established. (a) Decisions regarding cash access (including ATM networks, branch services, and servicing frequency) are made by banks; (b) those decisions reflect a range of factors, including internal cost management, customer behaviour, and strategic positioning; (c) CIT pricing is one input, but not determinative. • Fourthly, the analysis does not consider the countervailing risk. (a) sustained under-recovery of costs undermines the viability of the CIT network; (b) that, in turn, poses a more direct and systemic risk to the availability of cash services; (c) ensuring sustainable cost recovery is therefore a precondition to maintaining access, including for vulnerable users. • Finally, the submission is framed in terms of "excessive" pricing, but no benchmark is provided to establish what constitutes excess.

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		• In the absence of evidence linking pricing to reduced access, and without a defined benchmark, the asserted detriment is speculative.
161	*The Participants **expect** that the Proposed Arrangement will result in an independent, fair and transparent pricing mechanism, which would reduce disputes, improve accountability and lead to sustainable pricing of CIT services.[205] A collectively negotiated pricing mechanism, expected to be based on principles used in regulation,[206] would allow Armourguard a fair return while minimising scope for monopoly rents and preserving access to cash especially for New Zealanders who rely on cash.[207] An independent third party would determine actual pricing to ensure neutrality.[208]*	<u>The Draft's treatment of these matters is problematic.</u> • First, the statements regarding an "independent, fair and transparent pricing mechanism" and the involvement of an independent third party are presented in a manner that risks treating the Applicant's submissions as established outcomes. • They are not. They are asserted benefits contingent on how the Proposed Arrangement would be implemented in practice. • Secondly, the Draft does not explain: (a) whether these features form part of the Proposed Arrangement as applied for; or (b) whether they are conditions the Commission intends to impose if authorisation is granted. That distinction is critical. • Thirdly, if these elements are not binding conditions: (a) there is no assurance that any pricing mechanism will in fact be independent, transparent, or consistent with regulatory principles; (b) the claimed benefits are therefore speculative; and (c) they cannot be relied upon in the benefits assessment. • Fourthly, if the Commission does intend to rely on these features as part of its reasoning, they should be: (a) clearly specified; (b) enforceable; and (c) incorporated as conditions of any authorisation granted. • Fifthly, the Draft does not assess how such a mechanism would operate in practice, including: (i) the scope of the third party's mandate; (ii) the methodology to be applied; (iii) how disputes would be resolved; and (iv) how the mechanism would interact with bilateral negotiations and existing contracts. • Absent that detail, the proposed mechanism is insufficiently defined to support the claimed benefits. • Finally, the Draft does not reconcile the tension between: (a) a purportedly "independent" pricing mechanism; and (b) collective negotiation by participants with aligned incentives to minimise cost.

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		• In those circumstances, the claimed benefits should either be formalised as conditions or not relied upon. • As noted above the conclusion seems inconsistent with any Commerce Commission regulatory process, where there are ongoing debates about costs, cost allocations, appropriate rates of return and many related factors. • Any collective bargaining would lead to a significant reopening of debate on these issues with banks acting as a monopsony, imposing considerable cost and uncertainty which do not appear to be factored into the Draft.
	Our assessment	
169	*We consider, in line with the framework mentioned above, that Armourguard currently holds significantly more bargaining power than each individual party in the counterfactual. This is due to the following factors:* *169.1 Until/unless entry from the new operating model is successful, the Participants do not have access to a quality offering that could replace Armourguard's wholesale CIT services, whereas Armourguard may be able to offset losses through other customers.* *169.2 Armourguard, having secured some*	<u>The Draft's conclusion that Armourguard holds "significantly more bargaining power" than individual Participants is not supported by the evidence cited.</u> **(a) Availability of alternatives (paragraph 169.1)** • First, the assertion that Participants lack access to alternative supply is inconsistent with the factual record. (a) Multiple banks have disengaged, or are in the process of disengaging, and are actively pursuing alternative operating models; (b) this includes sponsoring or supporting new entry; (c) that conduct demonstrates the existence of credible alternatives, even if those alternatives are evolving. • Secondly, the relevant question is not whether alternatives are identical to Armourguard's offering, but whether customers have options. The evidence shows that they do. **(b) "Run out the clock" (paragraph 169.2)** • Secondly, the suggestion that Armourguard can "run out the clock" on banks is not credible. (It is unfortunate that the Draft has adopted this language.) (a) [ ] have disengaged; (b) [ ] has given notice of non-renewal; (c) these actions are inconsistent with any ability by Armourguard to compel agreement through delay. • Parties that can exit are not subject to temporal leverage. • Further, the assertion that Armourguard can walk away "at minimal loss" ignores the reality of a high fixed-cost network, where under-utilisation directly impacts cost recovery. **(c) Bargaining asymmetry**

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	contracts, can afford to delay or walk away from any agreement in the short term to minimal loss to itself. In contrast, some of the banks in particular must have a wholesale CIT provider providing services to continue to provide access to cash and comply with their banking obligations. ***Hence Armourguard, can (and has done so) run out the clock on banks in negotiations.*** *169.3 Armourguard can take advantage of the information advantages it has to potentially charge higher prices and increase its profits overall. However, it may not be aware of the maximum prices customers are willing to pay before they switch to alternative sources, even if imperfect eg, sponsoring entry/expansion or a new entry operating model.*	• Thirdly, the Draft does not properly account for the asymmetry of incentives. (a) Banks can switch providers, sponsor entry, or reduce volumes; (b) Armourguard, as the operator of a sunk, national infrastructure network, has limited ability to redeploy assets or exit customers without material financial impact; (c) this dynamic constrains, rather than enhances, Armourguard's bargaining position. **(d) Information asymmetry (paragraph 169.3)** • Fourthly, the reference to information advantages is overstated. (a) The Draft does not identify any specific instance where information asymmetry has resulted in excessive pricing; (b) large bank counterparties are sophisticated and well-resourced, and actively test pricing through negotiation and alternative sourcing strategies; (c) the ability to disengage and pursue alternatives further limits any practical ability to exploit information asymmetry. **(e) Overall assessment** • Finally, the evidence cited does not support a finding of disproportionate bargaining power. (a) The ability of multiple banks to disengage, refuse terms, and pursue alternatives is inconsistent with supplier dominance; (b) the Draft does not reconcile this evidence with its conclusion.

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170	*In general, we consider that a successful collectively negotiated pricing mechanism developed via collective bargaining could improve transparency by reducing the information asymmetry prevalent in bilateral negotiations, particularly on costs and pricing. Such a pricing mechanism could potentially lead to more competitive prices.*	<u>The Draft's conclusion that collective bargaining could improve transparency and lead to more competitive prices is not supported.</u> • First, the mechanism is not explained. (a) It is not clear how collective negotiation would reduce information asymmetry on costs and pricing; (b) participants would continue to have incentives to challenge cost inputs and seek disclosure; (c) coordination does not eliminate asymmetry-it aggregates buyer leverage. • Secondly, the assertion that greater transparency would lead to "more competitive prices" is conclusory. (a) No benchmark is provided for what constitutes a "competitive" price in a market characterised by a high fixed-cost national network; (b) the Draft does not assess whether such prices would be consistent with sustainable cost recovery; (c) the implicit assumption that lower prices are preferable is not analysed. • Thirdly, the analysis does not engage with the asymmetry of risk. (a) The sector has historically experienced under-recovery of costs; (b) the primary economic risk is therefore under-pricing, not over-pricing; (c) increased buyer coordination may reinforce pressure toward cost minimisation rather than sustainable pricing. • Fourthly, there is no evidence that bilateral negotiation has failed. (a) Recent agreements have been concluded with multiple counterparties; (b) negotiations are ongoing with others; (c) these outcomes demonstrate that bilateral processes are functioning. • Fifthly, the Draft does not explain why collective negotiation would improve outcomes relative to bilateral negotiation, particularly given the risk that coordinated conduct may: (i) compress margins below sustainable levels; and (ii) align incentives to reduce service levels or volumes. • In those circumstances, the claimed benefit is speculative and not supported by evidence.
171.	*In particular, successful collective negotiation may be more likely if Armourguard and the Participants mutually agreed to an independent third party that could:*	<u>The Draft's suggestion that an independent third party could verify costs and develop a pricing mechanism requires further analysis and clarification.</u> • First, this is presented as a potential benefit, but it is contingent and undefined. (a) There is no detail as to the scope of the third party's mandate; (b) no methodology is specified for determining "efficient costs" or a "competitive return"; and (c) no mechanism is described for how such determinations would be implemented or enforced. • Absent this, the claimed benefit is speculative.

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	171.1 verify Armourguard's costs, ensuring they reflect efficient costs necessary to provide CIT services; and *171.2 develop a more transparent and competitive pricing mechanism that allows Armourguard to make efficient investments and earn a competitive return.*	• Secondly, the concept of "efficient costs" requires careful treatment. (a) In a high fixed-cost, national infrastructure setting, efficiency cannot be assessed solely by reference to marginal or line-item costs; (b) it must account for the cost of maintaining resilience, redundancy, and national coverage; (c) the Draft does not explain how these factors would be incorporated. • Thirdly, there is a risk that such a mechanism would, in practice, operate as: (a) a form of buyer-driven price control; (b) without the safeguards, statutory framework, or incentives present in regulated utility regimes; (c) thereby increasing the risk of under-recovery. • Fourthly, the Draft does not reconcile this proposal with the existing position. (a) The Commission has not undertaken a full cost review or applied regulated methodologies; (b) yet it proposes reliance on a third-party mechanism without specifying equivalent analytical rigor; (c) this creates inconsistency in the approach. • Fifthly, if the Commission intends to rely on this as a material benefit, it should be formalised. (a) The role, scope, and methodology of the third party should be clearly defined; (b) the process should be transparent and subject to appropriate safeguards; and (c) it should be imposed as a condition of any authorisation. • Otherwise, it should not be relied upon. • Finally, the Draft does not address the interaction between such a mechanism and collective bargaining. (a) An "independent" determination of costs and pricing may be difficult to reconcile with coordinated negotiation by participants with aligned incentives; (b) the risk is that the mechanism becomes a tool for coordinated cost minimisation rather than a balanced assessment of sustainability. • Arguably the only context in which the drafts suggestion could occur is regulation under Part 4 of the Commerce Act as noted by RBNZ.
173	*To determine if a successful collectively negotiated pricing mechanism is likely to produce price-related public benefits or detriments compared to bilateral negotiations, we*	<u>The Draft's framing of price-related benefits and detriments is incomplete.</u> • First, paragraph 173.1 assumes that lower prices will lead to greater volumes, service levels, or access to cash. That relationship is not established. (a) The Draft does not identify evidence that reductions in CIT pricing translate into increased service levels or improved access; (b) decisions regarding service provision (including frequency, coverage, and access points) are made by banks based on a range of factors, not solely input pricing; (c) accordingly, lower prices do not necessarily produce greater public benefit.

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	consider below whether the Proposed Arrangement is likely to result in: *173.1* ***greater volumes of services or service levels or access to cash compared to the counterfactual because prices of CIT services would be lower and more competitive*** *(ie, reduced prices leading to public benefits); and/or* *173.2* ***Armourguard supplying inefficiently low levels of CIT services*** *[ ] because prices are set too low, such that* *[ ] This could be detrimental to the public if it occurred.*	• Secondly, the framework is asymmetric. (a) paragraph 173.1 treats lower prices as a likely benefit; (b) paragraph 173.2 acknowledges the risk of prices being set too low, but frames it as a secondary or contingent outcome; (c) the analysis does not properly assess the probability or magnitude of under-recovery. • Thirdly, the sector context is critical. (a) CIT services are characterised by high fixed costs and declining volumes; (b) in that setting, the primary economic risk is under-recovery of costs, not sustained over-recovery; (c) this risk has already materialised historically in the form of loss-making operations. • Fourthly, the Draft does not assess the likelihood that coordinated buyer conduct would result in: (a) prices being compressed toward or below sustainable levels; and (b) corresponding reductions in service levels or network viability. • Fifthly, the correct analytical question is not whether prices are lower, but whether pricing outcomes are: (i) cost-reflective; (ii) sufficient to sustain a resilient national network; and (iii) consistent with maintaining access to cash over time. • Finally, the Draft does not reconcile the interaction between price and volume. (a) banks have the ability and incentive to reduce volumes independently of pricing; (b) coordinated procurement may reinforce those incentives; (c) this may reduce overall demand for CIT services, even if prices are lower. • In those circumstances, the framework should not treat lower prices as inherently beneficial. It should assess whether the Proposed Arrangement is more likely to produce sustainable, cost-reflective outcomes relative to the counterfactual.
177	*As such, our current view is that successful collective negotiation could result in an improvement in allocative efficiency, but*	<u>The Draft's conclusion on allocative efficiency is internally inconsistent and not supported.</u> • First, the Draft accepts that collective negotiation is unlikely to result in: (a) a substantial increase in volumes; or (b) improved access to cash. • That materially undermines any claimed allocative efficiency benefit.

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	we consider this may not be in the form of a substantial increase in the volume of CIT services or access to cash. Instead, we consider that collective negotiation might mitigate limited reductions that could occur in the counterfactual by all Participants (if they benefit from a collectively negotiated pricing mechanism) or only those who currently have not concluded agreements with Armourguard.	• Secondly, allocative efficiency requires that prices move closer to efficient, cost-reflective levels and result in improved output or welfare outcomes. (a) The Draft does not identify any mechanism by which this would occur; (b) nor does it demonstrate that current bilateral outcomes are inefficient; (c) absent an increase in output or improved access, the basis for claiming allocative efficiency is unclear. • Thirdly, the suggestion that collective negotiation may "mitigate limited reductions" is speculative. (a) No evidence is provided that such reductions would occur in the counterfactual; (b) nor is it explained how collective negotiation would prevent them; (c) banks retain the ability and incentive to reduce volumes irrespective of pricing arrangements. • Fourthly, the analysis does not account for the countervailing risk. (a) coordinated negotiation may compress prices toward or below sustainable levels; (b) this would increase the likelihood of reduced service levels or network degradation; (c) that outcome would reduce, not improve, allocative efficiency. • Fifthly, the distinction drawn between Participants who have and have not concluded agreements does not support the conclusion. (a) Existing agreements reflect negotiated outcomes under current conditions; (b) reopening or undermining those agreements introduces uncertainty without clear efficiency gains; (c) the Draft does not explain why different treatment of these groups would improve outcomes overall. • Finally, the conclusion appears to rely on the assumption that coordinated pricing outcomes are inherently more efficient than bilateral negotiation. • That assumption is not established.
192	*We currently consider that the Proposed Arrangement could result in some improved allocative efficiencies through more competitive pricing. However, we are currently of the view that collective negotiation would not likely result in*	<u>The Draft's conclusion is internally inconsistent and not supported by evidence.</u> • First, the Draft states that collective negotiation would not likely result in any substantial expansion in service volume or access to cash. That finding materially undermines the asserted allocative efficiency benefit. • Secondly, the proposition that "higher prices in the counterfactual could frustrate the public objective of ensuring greater access to cash" is not established: (a) the Draft does not identify evidence that CIT pricing increases have resulted, or would result, in reduced access to cash; (b) decisions regarding access (including footprint and servicing frequency) are made by banks, not determined solely by CIT pricing; and

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	substantial expansion in CIT service volume or access to cash. Higher prices in the counterfactual could frustrate the public objective of ensuring greater access to cash, while more competitive collectively negotiated prices in the factual could facilitate this public objective through lowered cost of providing access to cash and lowered risk of customers *[* *].249*	(c) the relationship between pricing and access is asserted, not demonstrated. • Thirdly, the suggestion that "more competitive" collectively negotiated prices would facilitate access is conclusory: (a) no benchmark is provided for what constitutes "competitive" pricing; (b) no analysis is undertaken as to whether such pricing would be consistent with sustainable cost recovery; and (c) lower pricing does not, of itself, ensure improved access outcomes. • Fourthly, the Draft does not address the countervailing risk: (a) coordinated buyer conduct may compress prices toward, or below, sustainable levels; (b) this increases the risk of reduced service levels, network degradation, or exit; and (c) [ ] • Fifthly, the analysis assumes that customers would reduce their footprint or servicing frequency in response to higher prices, but provides no evidential basis for that assumption: (a) banks have independent incentives to optimise their networks, including reducing reliance on cash irrespective of CIT pricing; and (b) coordinated procurement may reinforce, rather than mitigate, those incentives. • Sixthly, the Draft does not address the relevant analytical question: (a) whether pricing outcomes are cost-reflective and sufficient to sustain a resilient national network; and (b) absent such sustainability, access to cash cannot be maintained over time. • Seventhly, the Draft's reliance on formulations such as "could" does not meet the statutory "likely" threshold, which requires a real and substantial prospect of the asserted benefit arising. • Eighthly, there is no evidential basis for concluding that current pricing is inefficient or that the counterfactual would produce "more competitive" outcomes. Nor is there any basis to conclude that the hypothesised collective negotiation framework would be adopted or would function as assumed in practice. The analysis is theoretical and does not reflect observed commercial behaviour or regulatory experience (including under Part 4 frameworks). • Ninthly, the conclusion appears to depend on multiple contingent assumptions, including: (a) that collective negotiation will produce lower prices; (b) that such prices will remain consistent with sustainable cost recovery; and (c) that any resulting cost reductions will be passed through into improved access outcomes.

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		• These assumptions are neither evidenced nor secured by the Proposed Arrangement or any conditions. • Tenthly, the Draft does not engage with the sector context established in the Evergreen/ACM clearance, including the role of buyer power in driving below-cost pricing and sustained losses. That context is directly relevant to assessing whether further coordination would improve or undermine outcomes. • Eleventhly, the Draft does not assess the implications of coordinated buyer power at contract renewal. In a bid-market context, competition occurs "for the market". Authorisation would permit coordination among purchasers at the point of renewal, creating a real risk of monopsonistic outcomes that are not addressed in the analysis. • Twelfthly, the Draft does not properly distinguish between the factual and counterfactual. Under the Proposed Arrangement, banks would be able to coordinate on an ongoing basis, including during and between contracting cycles. That is not equivalent to the counterfactual of independent bilateral negotiation. • Further, even if Armourguard declined to participate in collective negotiations, it would still face the consequences of authorised coordination among its customers, including the risk of being characterised as acting in bad faith. That creates additional cost, uncertainty, and asymmetry which the Draft does not consider. • In those circumstances, the claimed allocative efficiency benefit is speculative, internally inconsistent, and does not satisfy the statutory requirement that benefits be likely.
193.	*At this point, we also do not consider the pricing **framework envisaged by the Participants** would force Armourguard to charge prices that are too low to operate efficiently, especially if it allows for recovery of costs and a reasonable return. This is especially if the pricing mechanism is designed by an independent third party*	<u>The Draft's conclusion is contingent on assumptions that are neither specified nor secured.</u> • First, Armourguard does not reject, in principle, a pricing framework that: (a) enables recovery of efficient, system-wide costs; (b) provides a reasonable, risk-adjusted return; and (c) supports a resilient national CIT network. • However, that is not what is currently before the Commission. • Secondly, the Draft's conclusion relies on features that are not defined or binding. (a) The reference to an "independent third party" lacks detail as to mandate, methodology, and safeguards; (b) there is no clarity as to how "efficient costs" or a "reasonable return" would be determined; (c) there is no assurance that the framework would reflect the full cost of resilience, redundancy, and declining volumes. • Thirdly, the statement that Armourguard would "mutually agree" to such a mechanism is material. (a) Any pricing framework must be genuinely bilateral and not imposed through coordinated buyer conduct;

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	and which Armourguard mutually agrees to. We also consider that if there is no agreement to an alternative pricing mechanism, the fallback position would likely be the counterfactual scenario	(b) absent that, there is a risk the mechanism operates as de facto price control; (c) the Draft does not address this risk. • Fourthly, the Draft assumes that the framework would not result in under-pricing. (a) That assumption is untested; (b) it does not account for the incentives of coordinated participants to minimise cost; (c) nor does it engage with the historical evidence of under-recovery in this sector. • Fifthly, if the Commission intends to rely on the Applicants' proposed framework (as referenced, for example, in paragraph 161), then: (a) those features must be clearly specified; (b) they must be enforceable; and (c) they must form conditions of any authorisation. • Otherwise, they cannot be relied upon in the assessment. • Finally, the fallback to the counterfactual does not mitigate these concerns. (a) The issue is not whether a fallback exists; (b) it is whether the proposed arrangement introduces material risk of under-recovery or distorted pricing outcomes; (c) that risk remains unless the framework is properly defined and constrained.
194	*Accordingly, our current view is that there are likely net public benefits from changes to CIT prices that would result from successful collective bargaining. Although we cannot quantify these, we consider that they may be relatively low in terms of volume effects. We also consider that there may still be such public benefits in a world where the new entry operating*	<u>The Draft's conclusion that there are "likely net public benefits" from price changes arising from collective bargaining is not supported.</u> • First, the claimed benefits are not evidenced. (a) The Draft expressly states that the benefits cannot be quantified; (b) it does not identify a clear causal mechanism linking collective bargaining to improved public outcomes; (c) in particular, it accepts that any volume effects are likely to be low. • Secondly, this materially undermines the conclusion. (a) If there is no meaningful increase in volumes or access to cash, the basis for public benefit is unclear; (b) price changes, in and of themselves, do not constitute a public benefit absent demonstrable effects on output or welfare. • Thirdly, the analysis does not properly weigh countervailing detriments. (a) Coordinated buyer conduct may compress prices below sustainable levels; (b) this increases the risk of reduced service levels, network degradation, or exit; (c) these risks are not quantified or meaningfully assessed. • Fourthly, the Draft's treatment of entry further weakens the conclusion.

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	model successfully enters, although those benefits would be smaller if there is a credible outside option that some customers can rely on at some point in the future during the authorisation period.	(a) It acknowledges that if a credible alternative emerges, the incremental benefit of collective bargaining would be smaller; (b) that is because competitive pressure would already constrain pricing; (c) in those circumstances, the additional benefit of authorisation is limited or redundant. • Fifthly, the conclusion relies on an assumption that lower or "more competitive" prices are beneficial. (a) No benchmark is provided for what constitutes a competitive price; (b) no assessment is made as to whether such pricing would be consistent with sustainable cost recovery; (c) the analysis does not engage with the historical evidence of under-recovery. • Finally, the overall conclusion does not follow from the preceding analysis. (a) The benefits are unquantified, limited in scope, and uncertain; (b) the detriments are material and under-assessed; (c) the presence or potential emergence of alternatives further reduces any incremental benefit. • In those circumstances, the conclusion of "likely net public benefits" is not supported on the evidence presented.
196	*Participants submit that during bilateral negotiations to date:* *196.1 Armourguard has sought to include terms that would* ***not ordinarily be expected in contracts of these types****, including terms considered to be[51].251 These terms have been considered by some to represent [ ];252 and* *196.2 they* ***have encountered material service performance issues*** *[ ] and are concerned about further reductions in service*	<u>The Draft's reliance on these submissions is not supported by sufficient detail or evidential testing.</u> **(a) Contract terms (paragraph 196.1)** • First, the reference to terms "not ordinarily expected" is unclear. (a) The specific terms are not identified (or are heavily redacted), and cannot be meaningfully assessed; (b) no industry benchmark or comparator is provided to establish what is "ordinarily expected" in long-term, infrastructure-based service contracts; (c) in a high fixed-cost, resilience-critical network, it is not unusual for contracts to include terms addressing cost recovery, duration, and risk allocation. • Secondly, the characterisation of such terms as representing [ ] is not substantiated. (a) This appears to reflect the views of counterparties rather than an objective assessment; (b) it is not clear whether these matters were tested with Armourguard or evaluated against commercial norms. **(b) Service performance (paragraph 196.2)** • Thirdly, the references to "material service performance issues" are not particularised. (a) No specific metrics, incidents, or trends are identified; (b) there is no comparison to contractual service levels or historical performance;

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	levels.253 These concerns are heightened by [ ].254	(c) it is therefore not possible to assess whether any issues are systemic, isolated, or within expected operational tolerances. • Fourthly, the asserted concerns about "further reductions in service levels" are speculative. (a) No evidence is provided that such reductions are likely; (b) nor is any causal link established between the Proposed Arrangement and future service outcomes. **(c) Broader context** • Finally, the Draft does not consider the broader operational context. (a) Service delivery is occurring during a period of transition, disengagement, and entry; (b) such conditions may give rise to temporary disruption that is not indicative of underlying capability; (c) the Draft does not distinguish between transitional effects and structural performance issues. • Armourguard's recollection of the relevant service level discussions is as follows: [ ] • These outcomes are not consistent with any suggestion that Armourguard imposed materially inferior or non-standard service levels. Rather, they reflect ordinary commercial negotiation, including instances where counterparties negotiated to retain or align with existing service parameters. • To the extent the Draft suggests that service levels were unilaterally imposed or materially degraded, that characterisation is not supported by the factual record and should be reconsidered.
201	*We consider that bilaterally negotiated agreements in the counterfactual are likely*	<u>The Draft's conclusion regarding risk allocation in bilateral agreements is not supported.</u>

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	to contain terms which [ ]. As Armourguard faces limited competitive constraint, it [ ].	• First, the assertion that bilateral agreements would [ ] is not evidenced. (a) The Draft does not identify specific contractual provisions demonstrating such [ ]; (b) nor does it compare those provisions against standard commercial practice in infrastructure or long-term service agreements; (c) without that analysis, the conclusion is unsubstantiated. • [ ] • Thirdly, the Draft does not address the historical context. (a) The sector has experienced sustained under-recovery of costs; (b) this indicates that [ ]; (c) the proposed contractual structures are, in part, a response to that imbalance. • Fourthly, the suggestion that Armourguard may [ ] is speculative. (a) No specific conduct is identified; (b) no mechanism is explained by which such conduct would occur; (c) the broader factual record—switching, disengagement, and entry—demonstrates that Armourguard is subject to commercial constraint. • Fifthly, the welfare analysis is incomplete. (a) It assumes that [ ] to Participants is detrimental; (b) it does not consider whether such [ ] is necessary to sustain the network; (c) nor does it assess the consequences of failing to [ ] appropriately (including service degradation or exit). • Finally, the Draft does not identify what it considers to be an appropriate [ ] • Absent that benchmark, the conclusion that bilateral agreements are welfare-reducing cannot be sustained.

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202	*202.1 Insulating itself from the risks of [ ] through clauses that give Armourguard [ ].25* *...* *202.2 Operational risks, including the risk of [ ]. For example, we understand Armourguard [ ].260 The resulting need for [ ]* *./...* *202.3 Risks from external events, by including provisions that:* *202.3.1 allow Armourguard to [*	The Draft's treatment of contractual risk allocation in paragraph 202 is incomplete and does not reflect the economics of a high fixed-cost network. It appears to adopt the banks' arguments (our perspective was not sought). It also ignores banks treatment of Armourguard pre-clearance, and how negotiations have reflected Armourguard's well-founded concerns about gaming by large sophisticated well-resourced counterparts who previously were unwilling to renegotiate when Armourguard was loss-making. **(a) Volume risk (paragraph 202.1)** • First, the treatment of volume risk is misconceived. (a) CIT infrastructure involves substantial fixed costs that do not vary with short-term volume; (b) customers control volumes and service frequency; (c) [ ] are standard and necessary to ensure recovery of fixed costs. • Absent such mechanisms, the supplier bears demand risk it cannot control, which is not efficient and has historically resulted in under-recovery. **(b) Operational risk (paragraph 202.2)** • Secondly, the Draft's characterisation of operational adjustments [ ] is incomplete. (a) Such measures are driven by security, insurance, and risk management requirements; (b) they may reduce exposure to theft and systemic loss events; (c) any resulting operational changes reflect trade-offs between risk, cost, and resilience—not opportunistic conduct. • The Draft does not identify any evidence that these measures are inefficient or improperly motivated. **(c) External event risk (paragraph 202.3)** • Thirdly, the allocation of risk for external events is standard commercial practice. (a) Provisions allowing recovery of exceptional costs ensure continuity of service in adverse conditions; (b) force majeure provisions commonly allocate risk where neither party is at fault; (c) continued payment obligations (including fixed charges) reflect the persistence of underlying infrastructure costs, even when services are temporarily disrupted. • [ ] • Fourthly, the suggestion that such provisions "insulate" Armourguard overlooks that the IAF does not fully recover all fixed and risk-adjusted costs.

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	];262 *202.3.2 require* *[*	(a) Armourguard remains exposed to utilisation risk, operational risk, and residual cost variability; (b) the allocation described is partial, not complete. **(d) Efficiency and risk allocation** • Fifthly, the Draft assumes that collective negotiation would produce a more "efficient" allocation of risk. (a) No benchmark for efficient risk allocation is identified; (b) nor is it explained how coordinated buyer negotiation would improve, rather than distort, that allocation; (c) there is a risk that such coordination would systematically shift risk back to the supplier, recreating the conditions of under-recovery. • Finally, the reference to "wealth transfers" does not resolve the issue. (a) The question is not whether risk allocation affects distribution, but whether it supports sustainable and efficient service provision; (b) the Draft does not assess the consequences of allocating risk in a manner inconsistent with cost recovery. • We consider that the primary impact of any collective bargaining would in fact be a wealth transfer and that the Draft both materially understates the risks of a wealth transfer and its relative likely impact to the parties. Again there are analogies with the Commission's performance of its regulatory functions where this asymmetric risk is well recognised and accounted for. While that might be a likely outcome under Part 4, there is no basis for the Commission to conclude a similar outcome would occur under collective bargaining. Indeed history (the natural experiment which led to the ACM Evergreen clearance) and current conduct suggests the opposite.

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	202.3.3 Together, these provisions provide Armourguard with a degree of insulation against external events. While these are external events outside of Armourguard's control, we consider that the allocation of, and compensation for these risks through collectively negotiated CIT pricing and terms could lead to more efficient outcomes, rather than simply transferring risk from Armourguard to customers, as unilaterally determined by Armourguard. *202.4 While some elements of these clauses may reflect mere wealth*	

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	transfers, there is also the prospect of inefficient processes or misallocation of risk leading to loss of productive efficiency in the counterfactual, something that successful collective negotiations could avoid.	
203	*We consider that, in the counterfactual, service quality could deteriorate, corresponding to [ ]. Armourguard also has made changes to bilateral agreements that likely have the cumulative effect of [ ], including:*	The Draft's conclusion that service quality is likely to deteriorate in the counterfactual is not supported by the evidence cited. [• •]

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	203.1 *[* *];26* *5 203.2 Eroding a Participant's right to* *[* *] By way of illustration:* *203.2.1* *[* *].266 203.2.2* *[* *]26* *7 203.3 Armourguard has also reduced* *[*	[• •] **(c) Service quality vs sustainability** • [ ] **(d) Lack of evidence of deterioration** • Finally, no evidence is provided of actual service degradation. (a) The Draft does not identify systemic failures, trends, or breaches under current agreements; (b) it relies on contractual changes rather than observed outcomes; (c) without evidence of performance deterioration, the conclusion is speculative.

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207.	*there is likely to be a low public benefit arising from collective negotiation of non-price contract terms in the factual compared to the counterfactual.* *207.1 In particular, we consider there are likely to be allocative efficiency gains from reduced information asymmetry and more efficient and balanced contractual terms.*	<u>The Draft's conclusion that there is likely to be a (low) public benefit arising from collective negotiation of non-price terms is not supported by the analysis.</u> • The Draft appears to proceed on the basis that collective negotiation would reduce information asymmetry and result in more efficient and balanced contractual terms. That conclusion rests on untested assumptions and an incomplete assessment of the evidence. • First, aspects of the Draft appear to accept allegations regarding Armourguard's conduct, including assertions of asymmetric terms and degraded service levels, without adequate testing or contextual analysis. As set out elsewhere: (a) certain allegations are disputed or incorrect; and (b) others reflect a misunderstanding of the commercial context in which those terms were proposed. • Secondly, a number of the contractual provisions identified as "asymmetric" must be assessed in light of the underlying cost structure and risk profile of the business. In particular: (a) provisions relating to volumes are directed at protecting recovery of fixed and sunk costs in a declining-demand environment; and (b) provisions such as force majeure must be considered in the context of maintaining service continuity where costs are incurred irrespective of volume. • Absent that context, the characterisation of such terms as inefficient or unbalanced is incomplete. • Thirdly, the Draft does not explain why collective negotiation would result in more balanced outcomes. The participating banks are large, sophisticated counterparties with significant bargaining power. There is no evidential basis to conclude that coordination among them would produce more balanced terms, as opposed to reinforcing their ability to impose terms favourable to purchasers. • In particular, the Draft does not address the likelihood that coordinated buyer conduct would: (a) standardise terms in favour of the banks; and (b) reintroduce, or entrench, asymmetric risk allocation, particularly at contract renewal where competition occurs "for the market". • Fourthly, the Draft does not assess how these dynamics would operate at the end of contract terms. In a bid-market context, coordinated purchasing at renewal creates a real risk that banks would collectively impose terms that prioritise cost minimisation over sustainability.

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		• In those circumstances, there is no sufficient basis for concluding that collective negotiation would generate allocative efficiency gains through improved non-price terms. To the extent any benefit is asserted, it is speculative and does not meet the statutory "likely" threshold.
210	*.... that acquisition of CIT services seems not to be a source of material competitive differentiation between the banks.[274] We consider that the risk of detriments arising from coordination (and any resulting loss of competition) between the Participants in other markets, such as downstream banking markets is likely to be relatively low. Our view is also currently that the Proposed Arrangement would likely not materially change the way the Participants would compete in the factual compared to the counterfactual.*	<u>The Draft's conclusion that the risk of detriments arising from coordination between Participants is likely to be low, and that the Proposed Arrangement would not materially change competitive dynamics, is not supported by the analysis.</u> • First, the Draft does not consider the direct relationship between cash demand and CIT services. Demand for CIT is derived from banks' decisions regarding cash distribution, including network footprint, servicing frequency, and customer access points. Banks therefore have both the ability and the incentive to influence demand. • In a declining cash environment, those incentives are aligned toward cost reduction, including reducing volumes, frequency, and geographic coverage. The Proposed Arrangement, by enabling coordination in procurement, creates a mechanism through which those incentives may be aligned across Participants. • Secondly, no sufficient evidential basis is provided for the conclusion that the risk of detriments is low. The Draft does not identify: (a) how coordination would be limited in scope; (b) what information would be exchanged; or (c) how spillover effects into related decisions would be prevented. • Absent that analysis, the conclusion is unsupported. • Thirdly, the Draft does not adequately consider the mechanics and scope of coordination. Collective negotiation of CIT services necessarily involves discussion of forward-looking matters, including volumes, service requirements, and operational planning. Those discussions are capable of extending beyond price into broader strategic alignment. • In an oligopolistic market characterised by a small number of large, sophisticated participants—where the Commission has already identified features consistent with coordinated behaviour—the risk of tacit coordination is not theoretical. Authorising a structured forum for engagement increases the likelihood of alignment across commercially sensitive dimensions. • Fourthly, the Draft does not assess the potential for spillover effects into downstream markets. Coordination on a key input such as cash services may influence: (a) service offerings; (b) customer access decisions; and (c) broader strategic positioning in retail banking markets. • In those circumstances, the conclusion that the Proposed Arrangement would not materially change the way Participants compete in the factual compared to the counterfactual is not supported. A properly specified factual

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		would recognise that the Arrangement introduces a mechanism for ongoing coordination which is absent in the counterfactual, with corresponding implications for competition and consumer outcomes.
211. …	*there is some residual risk of information-sharing between the Participants that* ***could*** *result in some increased risk of coordination (explicit or tacit) in respect of other markets in which the Participants supply or acquire services in competition with one another. We consider this* ***risk to be relatively low****, but that were it to occur it would* ***be relatively high impac****t given the nature of the Participants. However, we consider that this risk* ***can be reduced substantially, if not entirely, through proposed conditions*** *on the authorisation that manage information flows between Participants, outlined below at [266].*	<u>The Draft acknowledges a risk of information sharing giving rise to coordination (explicit or tacit), but concludes that this risk is relatively low and can be substantially mitigated by conditions. That conclusion is not supported.</u> • First, the characterisation of the risk as "relatively low" is not explained. The Participants are a small number of large, sophisticated institutions operating in an oligopolistic market in which the Commission has already identified features consistent with coordinated behaviour. In that context, even limited information exchange can materially increase the risk of alignment. • Secondly, the Draft's confidence in the effectiveness of the proposed conditions is optimistic and not grounded in demonstrated real-world experience. Information-sharing restrictions of the type contemplated are inherently difficult to specify, monitor, and enforce in practice, particularly where coordination may occur through inference, signalling, or repeated interaction rather than explicit exchange. • Thirdly, the Draft does not identify any mechanism for ongoing monitoring, audit, or enforcement of the proposed conditions. Absent active oversight, conditions of this nature rely largely on self-compliance, which is not a sufficient safeguard in a market characterised by concentrated participants and aligned incentives. • Fourthly, even if formal information flows are constrained, the existence of an authorised coordination framework creates repeated opportunities for interaction. That increases the likelihood of tacit coordination through: (a) observation of conduct; (b) alignment of expectations; and (c) indirect signalling across related decisions. • Fifthly, the Draft itself recognises that, were coordination to occur, the impact would be significant. In those circumstances, a low-probability / high-impact risk cannot be dismissed without robust mitigation and demonstrable safeguards. • In those circumstances, it is not sufficient to conclude that the risk can be "substantially, if not entirely" mitigated by conditions. The Draft does not demonstrate that the proposed conditions would be effective in

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		practice, nor that they would adequately address the inherent risks arising from authorising ongoing coordination among major competitors.
212.	*Accordingly, we consider the **detriments** from the risk of information sharing leading to coordination, with the information sharing conditions in place, are likely to subsequently be low (*and may indeed be neutral).	<u>The conclusion that the detriments from information sharing would be "likely to be low (and may indeed be neutral)" is not supported by the analysis.</u> • First, that conclusion depends critically on the assumed effectiveness of the proposed information-sharing conditions. For the reasons set out above, that assumption is not established. The Draft does not demonstrate that the conditions are capable of preventing either explicit or tacit coordination in practice. • Secondly, the assessment understates the structural features of the market. The Participants are a small number of large institutions operating in an environment already conducive to coordinated behaviour. In such a setting, even limited or indirect information exchange can materially increase the likelihood of alignment. • Thirdly, the Draft does not account for the cumulative effect of repeated interaction under an authorised coordination framework. Even in the absence of overt information exchange, ongoing engagement creates opportunities for signalling, inference, and convergence of conduct. • Fourthly, the Draft recognises that any coordination that does arise would have a high impact. In those circumstances, it is not sufficient to characterise the overall detriment as "low" without robust evidence that the probability of such outcomes is genuinely minimal. • In those circumstances, the more appropriate conclusion is that the risk of coordination arising from information sharing cannot be assumed to be low or neutral. At a minimum, it represents a material and inadequately mitigated detriment that should be weighed accordingly in the overall assessment.
223.	*…the Proposed Arrangement **could** enhance productive efficiency by enabling coordination and rationalisation of service needs across customers who collectively*	<u>The Draft's conclusion that the Proposed Arrangement "could" enhance productive efficiency is expressed at too low an evidential threshold. The statutory test requires a real and substantial likelihood of benefit. A formulation based on what "could" occur does not meet that standard.</u> • The analysis is also largely theoretical. It assumes that coordination will lead to rationalisation of service needs and improved operational efficiency, but does not identify concrete examples, evidence, or mechanisms demonstrating that such outcomes are likely to be realised in practice.

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	*negotiate with Armourguard… could facilitate alignment of CIT service needs across the customers in ways that resolve the challenges Armourguard has experienced and is likely to experience in the counterfactual, i.e., it will be more likely to overcome individual incentives.[300] Sharing information on service needs and delivery increases scope for mutual identification and agreement on operational changes that could be made to improve efficiency across customers.[301] This **could** result in more efficient use of existing CIT capacity and reduced operational costs for Armourguard.*	• Armourguard's actual commercial experience points in the opposite direction. Armourguard proposed contractual provisions that would have enabled operational optimisation across the network, including clauses requiring customers to provide reasonable assistance where Armourguard sought to implement efficiency-enhancing changes to service configuration. Those provisions were resisted by the banks and not accepted. That experience indicates that the practical barrier to operational efficiency has not been the absence of a coordination mechanism, but the absence of alignment and willingness by customers to support system-level optimisation. • In that context, the Draft does not explain why any such operational alignment would arise under the Proposed Arrangement when it has not arisen in bilateral negotiations. Nor does it explain why authorisation for collective bargaining on price and non-price terms is necessary to achieve such outcomes. • To the extent there are genuine opportunities to coordinate operational matters (such as service configuration or network optimisation), those discussions could occur through discrete, bilateral or industry processes that do not involve coordinated purchasing or price negotiation. The Proposed Arrangement instead bundles any potential operational coordination with collective negotiation of pricing and contractual terms, without demonstrating that the broader coordination is required. • Further, the assumption that collective alignment would "overcome individual incentives" is not substantiated. Banks retain strong incentives to minimise their own costs and optimise their own networks. Armourguard's experience demonstrates that, even where efficiency-enhancing changes are identified, those incentives have led customers to resist contractual commitments that would facilitate system-wide optimisation. • In the absence of identified mechanisms, supporting evidence, and a clear explanation of necessity—particularly in light of contrary real-world experience—the claimed productive efficiencies remain speculative and should be afforded limited weight in the public benefit assessment.
[235 -238]	Investment (dynamic)	<u>The Draft's conclusions regarding dynamic efficiency and investment are not supported by the evidence and do not reflect actual market developments.</u> • Following the Commission's Interim Determination, Armourguard had sufficient confidence to proceed with certain planned investments in its network and infrastructure. That demonstrates that regulatory certainty—specifically, the absence of coordinated buyer conduct—can support investment incentives.

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		• However, subsequent contracting decisions by major bank customers have materially altered that position. As noted above, a number of banks have disengaged or pursued alternative arrangements, and the expected level of participation underpinning Armourguard's investment model has not materialised. • As a result, investment has been lower than anticipated, and Armourguard is now taking steps to reduce its cost base and resize its network to reflect reduced volumes and uncertainty. • That process will necessarily result in reduced capacity, lower redundancy, and a more constrained ability to support nationwide service levels over time. • These developments are directly relevant to the dynamic efficiency assessment. Rather than enhancing incentives to invest, the current trajectory demonstrates that uncertainty, fragmentation of demand, and coordinated pressure on pricing are likely to weaken those incentives. • Further, in these circumstances, Armourguard would be less likely to engage in any future collective bargaining process. Any re-engagement involving additional volume or expanded services would likely require new investment, and would therefore need to be supported by a pricing structure capable of recovering those incremental costs. • That pricing may differ materially from the model previously proposed. In particular, it may involve a greater allocation of fixed costs, revised capacity charges, or different contractual structures reflecting the risks of reinvestment in a declining and uncertain demand environment. • The Draft does not assess these dynamics. In particular, it does not consider how the Proposed Arrangement—by increasing uncertainty and facilitating coordinated purchaser behaviour—may reduce, rather than enhance, incentives for efficient long-term investment. • In those circumstances, the claimed dynamic efficiency benefits are not only unproven, but are contradicted by observable market outcomes.
No clear impact on Armourguard investment		
237.5	*In light of the above, we consider that these uncertainties about Armourguard's future investment plan are not authorisation-specific and*	<u>The Draft's conclusion that uncertainties regarding Armourguard's future investment plans are not authorisation-specific is incomplete and does not address the relevant question.</u> • While uncertainty may exist in both the factual and counterfactual, the proper inquiry is whether the Proposed Arrangement alters the nature, magnitude, or likelihood of that uncertainty. The Draft does not undertake that analysis. • In particular, the Draft does not assess how collective bargaining would affect investment incentives. Coordinated buyer negotiation introduces a material risk of systematic price compression, increasing the

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	could also exist in the counterfactual (eg, from failure to reach mutually acceptable agreements through bilateral negotiations).	likelihood of under-recovery of fixed and capital costs. That directly weakens the ability and incentive to invest in resilience, redundancy, and network maintenance. • This risk is qualitatively different from the uncertainty inherent in bilateral negotiation. Bilateral negotiations allow for differentiation across counterparties, more flexible allocation of risk, and outcomes that reflect individual customer requirements and willingness to commit. They do not create uniform or system-wide pressure on pricing. • By contrast, the Proposed Arrangement introduces the prospect of coordinated engagement across major customers, which: (a) increases the likelihood of aligned downward pressure on pricing; (b) reduces the scope for differentiated outcomes that support cost recovery; and (c) creates system-wide exposure to a single set of negotiated outcomes. • Further, the Proposed Arrangement itself is a source of additional uncertainty. It introduces the possibility of coordinated renegotiation, creates incentives to revisit recently concluded agreements, and undermines the stability of long-term contractual arrangements on which investment decisions depend. • The suggestion that failure to reach agreement in the counterfactual creates equivalent uncertainty is not sufficient. That is an ordinary feature of commercial negotiation. It does not involve coordinated conduct by multiple counterparties, nor does it give rise to the same systemic risk to network-wide investment. • The Draft also does not engage with the practical consequences. Investment in CIT infrastructure is long-term and capital-intensive, and depends on predictable and sufficient revenue recovery. Any mechanism that facilitates coordinated pressure on pricing materially increases the risk of deferred, reduced, or foregone investment. • In those circumstances, the uncertainties identified are not neutral across the factual and counterfactual. The Proposed Arrangement is more likely to increase, rather than merely replicate, those uncertainties, with corresponding adverse effects on dynamic efficiency.
238.	*Our view is that any potential detriment from deferred investment by Armourguard*	<u>The Draft's conclusion that any deferred investment would be limited to "non-essential" investment, and therefore would not constitute a public detriment, is not supported by the evidence or by the operational realities of the sector.</u> • First, the distinction between "essential" and "non-essential" investment is not defined and is, in this context, artificial. In a resilience-critical, national CIT network, investment in redundancy, capacity, technology, and

PARA	QUOTE / EXTRACT	COMMENTS
	is likely to be limited to non-essential investment. Accordingly, it is not clear to us the extent to which this amounts to a public detriment for the purposes of the authorisation test. Further, given [ ], the Commission considers that these uncertainties are unlikely to be fully resolved through bilateral negotiations, even if authorisation were not granted. For instance, we consider that some level of contractual uncertainty will remain [ ]. Accordingly, we do not currently consider that this can be characterised as a public	business continuity cannot meaningfully be characterised as non-essential. Such investment underpins service reliability, geographic coverage, and contingency capability. • Secondly, the Draft does not identify which investments it considers to be "non-essential," nor does it assess the role those investments play in maintaining current and future service levels. Absent that analysis, the conclusion cannot be sustained. • Thirdly, the Draft adopts an unduly narrow conception of public detriment. Public detriment is not limited to immediate or observable service failure. It includes the increased risk of future service degradation, reduced resilience, and constrained capacity. Deferral of investment in a declining-volume, high fixed-cost network materially increases those risks, even if the effects are not immediate. • Fourthly, the Draft does not assess whether the Proposed Arrangement increases the likelihood of deferred investment. Coordinated buyer conduct introduces a risk of price compression and reduced revenue certainty, which directly affects the ability to fund and justify ongoing capital expenditure. That risk is distinct from, and greater than, the uncertainty inherent in bilateral negotiations. • Fifthly, the conclusion that uncertainty would persist in any event does not resolve the issue. The relevant question is whether the Proposed Arrangement exacerbates that uncertainty. By introducing collective bargaining and the potential for coordinated renegotiation or pressure on pricing frameworks, the Proposed Arrangement increases uncertainty as to future revenue recovery and investment returns. • Finally, the Draft does not engage with the practical consequences. CIT infrastructure requires ongoing capital investment to maintain national coverage and resilience. Reduced or deferred investment is likely to manifest over time in lower service frequency, reduced redundancy, and diminished contingency capability. Those outcomes directly affect access to cash and the stability of the system. • In those circumstances, deferred investment cannot be dismissed as "non-essential," nor can it be excluded from the public detriment assessment. It represents a material and foreseeable risk arising from the Proposed Arrangement that should be weighed accordingly.

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	detriment arising from…	
	*243. The Participants have **not been able to provide us with estimates of the costs** that are likely to be incurred with collective negotiation, including those incurred through the setting up of the collective, engaging relevant external advisors, **or of the potential savings** in comparison to the counterfactual. We have been **unable to obtain visibility on these costs** …* *244. … Participants have also either concluded bilateral agreements … This means that some, and possibly all, of the Participants have already incurred transaction costs…r. **Such transaction costs cannot now be saved*** *…*	<u>The Draft concludes that there is insufficient evidence to place weight on any transaction cost savings, and that such effects may be neutral or uncertain. That conclusion understates the likely effect of the Proposed Arrangement.</u> • First, the absence of quantified evidence from Participants does not support a neutral conclusion. The burden lies with the applicant to demonstrate likely public benefits. Where that burden is not discharged, the appropriate inference is not neutrality, but that the claimed benefit has not been established. • Secondly, the current record already indicates that transaction costs have been, and will continue to be, incurred under the Proposed Arrangement. A number of Participants have already entered into bilateral agreements or progressed negotiations. Those sunk transaction costs cannot be recovered and therefore cannot be counted as a benefit of authorisation. • Thirdly, the Draft does not assess the additional transaction costs that would arise if authorisation were granted. Any collective bargaining process would necessarily involve: (a) the establishment and governance of the collective framework; (b) engagement of external legal, economic, and advisory experts; (c) substantial management time and coordination across multiple institutions; and (d) iterative negotiation processes with associated delay and complexity. • These are not speculative costs. They are inherent in any multi-party negotiation of this scale and complexity, and are likely to be material. • Fourthly, the Proposed Arrangement introduces additional layers of process and uncertainty not present in bilateral negotiations. In circumstances where contracts have already been concluded, or negotiations are well advanced, authorisation is likely to create duplication, re-engagement costs, and potential renegotiation expense. • Fifthly, the Draft does not account for the costs imposed on Armourguard. Participation in any collective process would require significant internal and external resources, including management time, advisory costs, and operational disruption, with no corresponding assurance of outcome. • Sixthly, the suggestion that uncertainty exists as to whether transaction costs may increase or decrease does not justify a neutral weighting. In the absence of evidence of likely savings, and in the presence of

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	*246. .. there is **significant uncertainty** around what might happen …making it difficult to ascertain …. whether there would likely be a benefit from a reduction in transaction costs..* *246.2 Another uncertainty relates to **whether granting authorisation could lead to increased transaction costs*** *…* *247. … it is possible that collective bargaining could lead to a reduction in transaction costs, … it is **also possible that there would be transaction costs incurred in the world with the authorisationt that would not be incurred in the world without the authorisation,*** *248 …we do **not have sufficient evidence to have the confidence***	identifiable and unavoidable additional costs, the more reasonable inference is that transaction costs will increase. • Finally, the Commission's own experience with complex, multi-party pricing and regulatory processes (including under Part 4) demonstrates that such processes are resource-intensive, time-consuming, and uncertain. There is no basis to assume that the proposed collective negotiation framework would avoid those characteristics. • In those circumstances, the likely effect of the Proposed Arrangement is not a reduction in transaction costs, but an increase. This constitutes a material productive inefficiency and should be treated as a detriment in the public benefit assessment.

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	to place much weight on this claimed benefit, nor sufficient evidence to have confidence it could not become a detriment.	
252.	*RBNZ also supports parties' collective bargaining on step-in rights but considers these aspects could be decoupled from the issue of CIT fees.*[340]	<u>The Draft places weight on step-in rights as a potential source of allocative efficiency, but the analysis is incomplete and, in material respects, misconceived.</u> • First, the evidential basis for this conclusion is unclear. Submissions by NZBA and Participants on step-in rights appear to be heavily redacted, limiting Armourguard's ability to understand, test, and respond to the reasoning relied upon. This raises a procedural fairness concern and reduces the weight that can properly be placed on those assertions. • Secondly, the Draft characterises step-in rights primarily as crisis-response mechanisms. While step-in rights are indeed a prudential safeguard, that characterisation is incomplete. Historically, such rights have been imposed by banks as part of contractual arrangements and must be assessed in that broader commercial and structural context, rather than treated as neutral or incidental features. • Armourguard does not oppose step-in rights. Properly framed, they are an essential component of a resilient system and are consistent with prudential expectations. However, the Draft does not engage with the material economic implications of those rights. • In particular, step-in rights give rise to a clear moral hazard. Where customers retain the ability to assume operational control in a downside scenario, they are partially insulated from the consequences of driving pricing or investment outcomes to unsustainable levels. That weakens the normal commercial discipline that would otherwise constrain purchaser behaviour. • This effect is amplified where step-in rights are considered alongside coordinated purchasing. Participants are able to: (a) exert coordinated downward pressure on pricing and returns; while (b) retaining a fallback position through step-in or alternative operating models if those outcomes undermine supplier viability. • The Draft does not assess this interaction. Nor does it consider whether the presence of step-in rights:

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		(a) increases the likelihood of sub-economic pricing outcomes; (b) shifts risk asymmetrically to the supplier; or (c) undermines incentives for efficient long-term investment. • Thirdly, the Draft does not assess the counterfactual correctly. There is no basis to conclude that step-in rights require authorisation or would not exist absent the Proposed Arrangement. To the contrary, step-in frameworks **already exist**. • In particular, there is an [ ] This demonstrates that **coordinated step-in arrangements can and do operate without authorisation**. • In those circumstances, the claimed allocative benefit from authorisation in respect of step-in rights is not established. The relevant mechanisms **already exist and do not depend on the Proposed Arrangement**. • Finally, the Draft's analysis is commercially incomplete. It treats step-in rights as a stabilising feature, without recognising that, in combination with coordinated purchasing, they may instead distort incentives and increase the risk of inefficient outcomes. • In those circumstances, step-in rights do not support a finding of allocative efficiency benefits arising from the Proposed Arrangement. Properly assessed, they are either neutral (as they exist in the counterfactual) or contribute to detriments through the creation of moral hazard and distorted incentives.