PUBLIC VERSION

BREMWORTH LIMITED

8 MAY 2026

RESPONSE TO STATEMENT OF UNRESOLVED ISSUES DATED 14 APRIL 2026

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This Submission sets out Bremworth Limited's ("**Bremworth**") response to the Commerce Commission's Statement of Unresolved Issues dated 14 April 2026 ("**SOUI**") in relation to Mohawk Industries, Inc's ("**Mohawk**") application for clearance to acquire 100% of the shares of Bremworth (the "**Transaction**").[1]

1.2 The key points in this Submission are as follows:

(a) **The SOUI adopts an incorrect approach to the counterfactual**. New Zealand case law requires the Commission to assess the impact of a transaction against an economically and commercially rational counterfactual, based on evidence and the balance of probabilities, and to dismiss remote or speculative possibilities. [ ].

(b) **The SOUI misapplies the legal test for a "substantial" lessening of competition by focusing narrowly on a wool carpet segment in isolation**. New Zealand law requires assessment of the overall functioning of the competitive process in the relevant market, taking into account substitutable products, alternative suppliers, and the threshold that substantial means material or serious competitive harm. Given the small size of the wool segment, the strong substitutability with synthetic carpets, and the presence of multiple existing and potential suppliers, there is no basis to find a substantial lessening of competition.

(c) **The SOUI adopts inconsistent approaches to evidence**. That includes in relation to future demand for wool carpets, prospects of entry and expansion by third parties, the treatment of Bremworth's SDN re-entry compared to third party entry, and the dismissal of competitive constraints from imports. The Commission's final decision needs to correct for these errors.

(d) **The SOUI overstates the relevance of Bremworth's SDN product**. The evidence shows [ ] and that SDN carpets are already supplied by multiple other wholesalers. Bremworth's SDN offering does not materially increase competitive closeness with Godfrey Hirst or alter the competitive dynamics of the market.

(e) **The SOUI understates the countervailing power of retailers**. Retailers have significant influence over end customer purchasing decisions, strong incentives to promote products that deliver them the highest margins, and the ability to self-supply or sponsor new entry. These factors provide meaningful competitive constraints on wholesale suppliers.

(f) **Bremworth's pricing decisions are driven by [ ]**. The evidence does not support any inference of uniquely close pricing competition between Godfrey Hirst

[1] Mohawk's interconnected bodies corporate in New Zealand include Godfrey Hirst New Zealand ("**Godfrey Hirst**") and Floorscape Limited ("**Floorscape**").

and Bremworth. To the contrary, the cost-based pricing dynamics demonstrate the Transaction's potential for efficiencies to result in lower prices for customers.

1.3 When all relevant evidence is assessed in accordance with the correct legal framework, there is no realistic prospect of a substantial lessening of competition arising from the Transaction. Therefore, clearance must be granted. [ ].

2. THE REQUIRED APPROACH TO THE COUNTERFACTUAL

2.1 In "assess[ing] the impact of the Proposed Acquisition against a counterfactual scenario where Bremworth operates as a going concern independently of Godfrey Hirst (either under its current structure or under new ownership)",[2] the SOUI adopts a legally incorrect approach to the counterfactual.

2.2 The following legal errors in the SOUI need to be corrected:

(a) the Commission must assume an economically rational counterfactual; and

(b) the Commission must dismiss "remote" possibilities in determining the counterfactual.

2.3 Further details on these legal points are as follows.

The Commission must assume an economically rational counterfactual

2.4 The New Zealand courts have made clear that the counterfactual that is adopted must be based on the facts, rigorously applying economic theory to the question of how market participants will react, including what an economically rational person will do in light of those facts. For example:

(a) In *Air New Zealand v Commerce Commission* the High Court stated that the counterfactual cannot be established without the aid of economic analysis to determine the likely future situation:[3]

> Predictions of the likely behaviour of firms in a dynamic market at some point in the future typically involve the application of economic theory, previous experience (in the market or other markets having shared characteristics) and known facts about the structure of the market and the behaviour of competitors and potential competitors.

(b) In *Commerce Commission v Bay of Plenty Electricity Ltd*, the High Court said that the counterfactual test requires a consideration of the future conduct that a firm **would rationally** take.[4]

(c) The Court of Appeal in *ANZCO v AFFCO* accepted evidence from the economic expert witness, economist James Mellsop, that determination of the counterfactual involves assessment of what the "rational forward-looking" decision maker would do.[5]

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[2] SOUI, para [69].

[3] *Air New Zealand v Commerce Commission* (No 6) (2004) 11 TCLR 347 at [117].

[4] *Commerce Commission v Bay of Plenty Electricity Ltd* CIV-2001-485-917 High Court Wellington Registry (12-16, 19-23, 26-28 February, 1, 2, 5-8 March, 13 December 2007) per Clifford J at [317] - [318]. [Emphasis added]

[5] *ANZCO Foods Waitara Ltd v AFFCO New Zealand Ltd* [2006] 3 NZLR 351 at [178].

2.5 This legal precedent is reflected in the Commission's *M&A Guidelines*, which set out that in applying its assessment of what is likely to occur in the future, the Commission will make:[6]

> **a pragmatic and commercial assessment of what is likely to occur in the future** with and without the merger.

2.6 The Commission cannot assume an irrational or non-commercial counterfactual.

The Commission must dismiss "remote" possibilities

2.7 The New Zealand courts have made clear that in determining the counterfactual:

(a) the Commission is required to "**discard possibilities that only have remote prospects of occurring**";[7] and

(b) factual assessments need to be made on the **balance of probabilities**.[8]

2.8 These requirements reflect the courts' caution that the Commission must not "start at shadows" in making clearance decisions (including because "acquisitions can increase efficiency and benefit the public" so it would "be inimical to the public interest" for them to be declined on spurious theories).[9]

Concluding comments on the relevant legal approach to the counterfactual

2.9 Taking the above legal precedent together, the Commission can only adopt a counterfactual as relevant to its decision by determining, on the balance of probabilities, what economically and commercially rational decision makers would do, and in so doing it must dismiss "remote" possibilities (including remote possibilities of irrational or non-commercial decision making).

2.10 Further, the Commission cannot rely on its need to be "satisfied" to avoid making these assessments. As Matthew Dunning KC has previously outlined to the Commission:[10]

> The negative position of not being satisfied that the transaction would not have the detrimental effect (as opposed to the positive position of being satisfied that it would not) is not an unprincipled default position to hide suspicions and unease: the discipline is that the Commission must approach that question and decide on the basis of the evidence and the standard of proof, bearing in mind the positive role it has to further society's interest in efficient mergers.
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> A failure to be satisfied can either be because the applicant simply did not provide enough material…, or because other material on the balance of probabilities contradicted or undermined that put forward. If so, that would need to be capable of identification and coherent reasoning by the Commission.

2.11 [ ]

[6] (May 2022). Commerce Commission, *Mergers and Acquisitions Guidelines* at [2.35]. [Emphasis added]
[7] *Woolworths Ltd v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [122].
[8] *Commerce Commission v Woolworths Limited And Ors* CA55/2008 [1 August 2008] at [97]. [Emphasis added].
[9] *Commerce Commission v Woolworths Limited And Ors* CA55/2008 [1 August 2008] at [76].
[10] (11 July 2023). Matthew Dunning KC opinion on "Microsoft/Activision Blizzard; Statement of Issues".

3. THE REQUIRED APPROACH TO MARKET DEFINITION AND DETERMINING WHETHER THERE IS A "SUBSTANTIAL" LESSENING OF COMPETITION

The required approach in light of the demonstrated substitutability between woollen and synthetic carpets

3.1 In the SOUI the Commission "invite[s] further information and/or submissions on our view that we should define a soft flooring market, which would include both wool carpet and synthetic carpet in the same market".[11]

3.2 In response, Bremworth notes the following:

(a) The SOUI states that the Commission "define[s] markets in the way that we consider best isolates key competition issues that arise from the Proposed Acquisition".[12] However, that is not an approach provided for in the Commerce Act. The definition of a market in s3(1A) of the Commerce Act is "a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them." As the High Court has outlined: "markets are objective facts. They exist, like the weather. **They are not abstract concepts to be tailored**, as to boundaries, so as to facilitate some desired ultimate outcome."[13] **Consideration of substitutability is the requirement, not a "reverse-engineered" approach of seeking to "isolate" competition issues**.

(b) Once the required approach is applied, it is clear:

(i) that wool and synthetic carpets are substitutable for each other; and

(ii) therefore, that the SOUI is correct in its conclusion that, at its narrowest, the relevant market is a national soft flooring market.[14]

(c) To reiterate, the evidence demonstrating this includes the following:

(i) Since 2005 **imports of carpet – predominantly synthetic carpet – have increased substantially, both in volume and as a percentage of total carpet supply, from 19% in 2005 to now representing almost 50% of the total market**.[15]

(ii) In 2014 it was stated that Bremworth "has restructured its business and introduced a synthetic carpet range **as it battles to retain market share against increased competition from cheaper synthetic imports…**".[16]

(iii) In 2017 Bremworth stated that "**[t]en years ago 80% of the carpets sold in New Zealand were wool; now it is only about 15% of carpet sales…** "We would like to have more NZers buy wool carpets but a lot of them have gone to synthetics. It is the consumer and their preferences.

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[11] SOUI, para [62].
[12] SOUI, para [31] and [57].
[13] *Commerce Commission v Port Nelson Limited*. 6 TCLR 406. At [434]. [Emphasis added].
[14] SOUI, para [40].
[15] (15 October 2025). Godfrey Hirst Clearance Application (Public Version) at [99].
[16] (24 October 2014). ShareChat.co.nz, Cavalier Shares Drop 10% After Profit Warning. http://www.sharechat.co.nz/article/def930e6/cavalier-shares-drop-10-after-profit-warning.html. [Emphasis added].

We all prefer wool but people are buying synthetic products. People are importing carpet as well… mostly synthetic carpet."[17]

(iv) In 2023 Wools of NZ stated that **"[m]any strong wool [carpet] manufacturers have switched to synthetic fibres due to falling consumer demand**" and that "[o]ver the past 30 years, the international supply chain for strong wool products has been losing momentum, **with synthetic carpet dominating the market**."[18]

(v) As outlined to the Commission previously, NERA's economic analysis shows quality and pricing for all types of carpet (i.e. wool and synthetic) is consistent with a chain of substitution.[19]

(vi) The SOUI's finding that "many customers will consider a range of fibre types, **and for these customers, wool and various synthetic carpets may be closely substitutable within a given price and colour range**".[20]

(vii) From a supply-side substitutability perspective, there is also the ability to switch between manufacturing woollen carpets and synthetic carpets.[21]

3.3 The above is incontrovertible and long-term evidence of significant substitutability between woollen and synthetic carpets as a matter of fact and commercial commonsense. Any alternative conclusion would be inconsistent with the facts and the required legal test.

The required approach to treating constraints as "inside" or "outside" the relevant market

3.4 The SOUI states that the Commission does "not consider that any final assessment of the Proposed Acquisition would be affected by whether we define a broader soft flooring market or a narrower market (such as one for the supply of wool carpet)" on the basis that "[a]ny final decision on the Proposed Acquisition would take into account constraints from all sources, whether they are ultimately found to be located inside or outside the relevant market".[22] However, that is not an approach provided for by the Commerce Act or the relevant case law. As Matthew Dunning KC has outlined to the Commission:[23]

> It might seem easy to conclude that the result should be the same, whether an alternative is taken into account as a competitive constraint on operation of a narrowly defined market or whether it is included as part of the market. Of those two options, however, it is the latter that is consistent with both the Act and case law, and more likely to avoid distractions that can arise by mis-defining a narrow market in the first instance and then considering competitive constraints through a lens of having already ruled them out of consideration in that initial market definition.

3.5 Accordingly, the Commission is required to apply the appropriate discipline in assessing substitutability to define a market – **it is not correct to exclude a substitutable product**

[17] (5 September 2017). RuralNews, Wool carpet sales hit the floor. https://www.ruralnewsgroup.co.nz/rural-news/rural-general-news/wool-carpet-sales-hit-the-floor. [Emphasis added].
[18] (31 July 2023). Wool Industry Update. https://woolsnz.co.nz/news/wool-industry-update/. [Emphasis added].
[19] (15 October 2025). Godfrey Hirst Clearance Application (Public Version) at [53].
[20] SOUI, para [58.1], [Emphasis added].
[21] (11 February 2026). Bremworth Ltd. Submission on Godfrey Hirst and Bremworth Statement of Issues (Public Version) at [30(c)].
[22] SOUI, at para [61].
[23] (11 July 2023). Matthew Dunning KC opinion on "Microsoft/Activision Blizzard; Statement of Issues".

from the relevant market on the basis that the Commission can still "take it into account" - doing so is an error that creates a risk that the competition analysis is misdirected. This is because a market definition that excludes relevant substitutable products risks overlooking, or at least underestimating, relevant constraints since they will be analysed through a lens of having already been ruled out as substitutes in the initial market definition exercise. If a product is substitutable as a matter of fact and commercial commonsense, then it falls within the market and needs to be treated as such.

The required approach to assessing a "substantial" lessening of competition

3.6 Despite the SOUI defining a single, differentiated, national market for the manufacture or import and wholesale supply of soft flooring products that encompasses both synthetic and wool carpet:[24]

(a) the SOUI says that "if there is an appropriate degree of a lessening in a significant section of a broader market (eg, wool carpet)" there could be a "substantial lessening of competition in the broader soft flooring market".[25] In support of that proposition, the SOUI cites Australian case *Dandy Power v Mercury Marine*;[26] and

(b) much of the analysis in the SOUI focuses on a narrower wool carpet segment "because this appears to be the part of the soft flooring market where the competitive constraints on the merged entity would likely be weakest".[27]

3.7 With respect, these statements reflect a misapplication of:

(a) the Australian case law cited and its reference in New Zealand case law;

(b) how competitive constraints operate; and

(c) how a "substantial" lessening of competition needs to be assessed.

3.8 The Commission has overly focused on the reference to a "significant portion of the market", without referring to the broader and surrounding context from that case and the way in which it has been incorporated into New Zealand case law.

3.9 Demonstrating this, to the extent the Australian case of *Dandy Power v Mercury Marine* has been incorporated into New Zealand case law, it has been quoted and described by the Court of Appeal in the following, more fulsome, terms than that quoted in the SOUI:[28]

> [245] When assessing whether there has been a substantial lessening of competition in a market, **the phrase must obviously be construed as a whole**. Essentially, **this means that the competitive functioning of a relevant market must be assessed with and without the disputed covenant or practice**. In *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238 at pp 259 – 260, Smithers J, in a comment that has been widely accepted in New Zealand, described the process in the following manner:
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> > "To apply the concept of substantially lessening competition in a market, it is necessary to assess the nature and extent of the market, the probable nature and extent of competition which would exist therein but for the conduct in question, the way the market operates and

[24] SOUI, para [32].
[25] SOUI, para [12].
[26] *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,4888.
[27] SOUI, para [60].
[28] *ANZCO Foods Waitara Ltd v AFFCO New Zealand Ltd* 3 NZLR 351 at [245] and [246]. [Emphasis added].

> the nature and extent of the contemplated lessening. To my mind one must look at the relevant significant portion of the market, ask oneself how, and to what extent there would have been competition therein but for the conduct, assess what is left and determine whether what has been lost in relation to what would have been, is seen to be a substantial lessening of competition. I prefer not to substitute other adverbs for 'substantially'. 'Substantially' is a word the meaning of which in the circumstances in which it is applied must, to some extent, be of uncertain incidence and a matter of judgment. There is no precise scale by which to measure what is substantial. I think in the context, particularly the penalty and other remedies for contravention of the Act, and the nature of trade which is the subject of the Act, **the word is used in a sense importing a greater rather than a less degree of lessening**. Accordingly in my opinion competition in a market is substantially lessened if the extent of competition in the market which has been lost, is seen by those competent to judge to be a substantial lessening of competition. **Has competitive trading in the market been substantially interfered with? It is then that the public as such will suffer**."

> [246] I refer also in this regard to French J's comments in *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* (2000) ATPR ¶41-752 on the need to consider the likely state of future competition in the market with and without the impugned conduct. Of the term "substantially lessening" he said at p 40,732 that the concept is evaluative. **Judicial intervention is justified only if there is a purpose, effect or likely effect on competition which is substantial in the sense of meaningful or relevant to the competitive process**. See also the comments of the High Court of Australia in *Rural Press Ltd v Australian Competition and Consumer Commission* (2003) ATPR ¶41-965 at para 41.

3.10 Similarly, in *Port Nelson*, the High Court (with reference to *Dandy Power*) emphasised that a substantial lessening of competition in a properly defined market can only arise from impacts in a "significant section" of that market where as a "question of fact" competition in the overall market is substantially lessened:[29]

> In the present case, the Commerce Commission as a first step must prove the existence of its chosen and pleaded crucial markets: pilotage, and to the extent necessary, tugs. If it cannot do so — if for example the true market is a vessel movement services market — it cannot succeed. If the Commission proves its pilotage services market, the Commission must also prove (s 27) purpose or effect of substantially lessening competition in *that market*, or (s 36) dominance in *that market* and use of dominant position for proscribed purposes in relation to (on the pleadings) *that market*. It is possible, however, as a matter of law, to do so by showing (s 27) an appropriate degree of lessening of competition in a "significant section" of that market; or (s 36) a dominance in a section of that market which levers into the entire pleaded market. **Whether either can be shown will be a question of fact**.

3.11 Accordingly, contrary to the assertion in the SOUI that the Commission can narrowly focus on a "significant portion" of a market in making its assessment, what this case law provides (when read in the broader context) is that:

(a) the appropriate focus here is the **overall functioning of the competitive process in a properly defined market**;

(b) given the appropriately high threshold before competition law intervenes, **"substantial" is taken to mean a greater rather than a lesser degree of competitive harm** and, therefore, competition is only "substantially lessened" if the

[29] *Commerce Commission v Port Nelson Limited*. 6 TCLR 406. At [435]. [Emphasis added].

loss of competition is **material or serious (such that the public would suffer)**, not trivial or technical;

(c) making this assessment requires consideration of **alternative sources of substitutable products in a properly defined market**;

(d) while a loss of competition in a significant section of a market *could* potentially be sufficient, that is only **if the loss itself is so significant (whilst considering the availability of substitutable products), such that overall functioning of the competitive process in the properly defined market would be substantially diminished as a matter of fact**.

3.12 The sum total of the above is that while the Commission is entitled to consider the impacts of the Transaction in a section of a market (for example, the ~15% of the market comprised of wool carpet), it cannot consider that ("as a matter of fact") in isolation of:

(a) **The overall competitive functioning of the market** – including the range of other competitors across that broader market that will ensure the market continues to function competitively (including Carpet Mill, Jacobsen, Belgotex, Robert Malcolm, Victoria Carpets, Beaulieu, Wools of NZ, Armstrong Flooring, EC Carpets, Euroflor, Nodi, Source Mondial, and Prestige Carpets).

(b) **The incontrovertible and long-term evidence of significant substitutability between woollen and synthetic carpets** as a matter of fact and commercial commonsense (see 3.2(c) above), which means that:

(i) suppliers of woollen carpet will continue to be competitively constrained by suppliers of synthetic carpet; and

(ii) if suppliers of woollen carpet sought to increase prices above competitive levels, customers would switch to synthetics (they are in the same market, so by definition they are substitutes).

In other words, suppliers in the much smaller wool section of the market will continue to face significant and vigorous competition from suppliers in the much larger synthetic section of the market that ensures the competitive functioning of the market.

(c) **The SOUI's finding that fibre type is only one of many factors that consumers consider when choosing a carpet** – "with the main factors tending to be price, performance/durability and colour, with substitutability across fibre types (and other features) varying from customer to customer",[30] and that "many customers will consider a range of fibre types, and for these customers, wool and various synthetic carpets may be closely substitutable within a given price and colour range".[31]

(d) **The evidence the Commission received that there are at least seven[32] other existing suppliers of wool carpets in New Zealand**, and the following findings

[30] SOUI, para [49.2].
[31] SOUI, para [58.1].
[32] SOUI, para [Table 6].

and feedback in relation to those other competitors' ability and "appetites to expand their supply of wool carpets":[33]

(i) "Jacobsen and Robert Malcolm… have each recently entered the wholesale supply of wool carpets in New Zealand";[34]

(ii) the "recent entry by Jacobsen and Robert Malcolm into supplying wool carpets… suggests that the conditions of entry into the wholesale supply of carpets in New Zealand (including for the supply of wool carpets) are not overly high";[35]

(iii) "we do not rule out the potential for [ ] to grow its sales in wool carpets";[36]

(iv) "we observe that there may be some scope for expansion by [ ], particularly if the opportunity arose post-merger";[37]

(v) "[ ] advised that it has a goal to expand its current wool offering";[38]

(vi) "a lot of the smaller wool wholesalers all now increasing their wool offering, including us".[39]

(e) **The Commission's finding that the conditions of entry into the wholesale supply of wool carpets "are not overly high"** (referred to at 3.12(d)(ii) above), which is particularly pertinent given the Court of Appeal has said that barriers to entry are the prerequisite to market power (and, therefore, to a substantial lessening of competition):[40]

> **It is only when for some reason it is not rational or possible for new entrants to participate in the market that a firm can have market power**: see *Continental Can* (ECR at 248; CMLR at 227). There must be barriers to entry. As Professor F M Scherer has written, "significant entry barriers are the *sine qua non* of monopoly and oligopoly, for sellers have little or no enduring power over price when entry barriers are nonexistent": Scherer, *Industrial Market Structure and Economic Performance*, 2nd ed. (1980), p 11.

3.13 Furthermore, it is not sufficient for the Commission to say that "there are some end-consumers that are only interested in wool carpet" to define a separate wool carpet market or to state that a merger between two wool carpet suppliers is sufficient to substantially lessen competition in the broader soft flooring market:

(a) Differing preferences – and strengths of preferences – are a feature of all markets. This was acknowledged by the High Court in *Brambles* who noted that within any market, there will be a variety of individual preferences for different products and the fact that such preferences exist does not justify the existence of separate

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[33] SOUI, para [E6].
[34] SOUI, footnote [51].
[35] SOUI, para [173].
[36] SOUI, para [E7].
[37] SOUI, para [E9].
[38] SOUI, para [E11].
[39] SOUI, para [E10].
[40] *Queensland Wire Industries Pty Ltd v The Broken Hill Proprietary Co Ltd and Another* (1989) 83 ALR 577, 583-584. Tipping J accepted this approach in *New Zealand Magic Millions Ltd v Wrightson Bloodstock Ltd* [1990] 1 NZLR 731 at p 755. [Emphasis added].

markets.[41] A person's personal preference does not determine (or limit) the competitive alternatives that objectively exist.

(b) The SOUI itself states that "it is very difficult to accurately estimate [the] proportion of end-customers" that would not switch away from wool carpet,[42] but **the fact that wool carpet only comprises ~15% of the soft flooring market demonstrates that this proportion is somewhere materially below ~15%**. This figure itself (and the significant reduction in wool carpet as a proportion of the overall market over the preceding years) demonstrates that there is a significant cohort of customers that can and do switch between wool carpet and synthetic carpet. In the context of such a market (i.e. a market with such a chain of substitution between differentiated product types), it is not relevant that a proportion of customers may have a preference for wool carpet. Rather, if a sufficient proportion of customers would switch between wool carpet and synthetic carpet, then that switching would constrain the prices of wool carpet and so all those options ought to be considered to be in the same market. It is a long-standing concept in competition law that the marginal customers that would be willing to switch need not be very large or a majority for those options to all be in a same market – just enough to constrain prices. Furthermore, there would be no way for the hypothetical merged entity to identify a group of customers that would not switch between wool carpet (and could not credibly threaten to switch) to synthetic carpet alternatives, such that this group could be identified by the merged entity as such, and price discriminated against in the factual on the basis of that preference.

3.14 Accordingly, we consider, both as a matter of fact and law, that it is not open to the Commission to find a substantial lessening of competition in the soft flooring market due to a narrow focus on simply the wool segment.

4. INCONSISTENCIES IN THE SOUI'S APPROACH TO THE EVIDENCE

4.1 Bremworth considers that the SOUI included a number of inconsistencies (or lack of rigour) in its approach to the evidence. Examples of those inconsistencies (or lack of rigour) include the following:

(a) The SOUI asserts that "wool carpets makes [sic] up a significant section of the soft flooring market"[43] and "increasing demand for wool, and/or forecasting demand for wool carpet to grow"[44] as apparent justification to focus on "particularly acute" concerns in relation to wool carpets.[45] However, in considering the prospect of new entry into the wool segment by third parties the Commission:

(i) cites "flat sales from FY22 to FY24" as a reason why it would not anticipate new expansion in wool carpets by Carpet Mill;[46]

(ii) says that the reason the Commission may not expect the same level of expansion in wool carpet to synthetic carpet is because of there being "more demand for synthetic carpet compared to wool".[47]

[41] *Brambles v Commerce Commission* (2003) 10 TCLR 868 (HC) at [132].
[42] SOUI, para [102].
[43] SOUI, para [11.1].
[44] SOUI, para [11.2].
[45] SOUI, para [11].
[46] SOUI, para [141.3.1].
[47] SOUI, para [175].

This demonstrates a contrasting approach to assessing the future of wool carpet sales when considering Bremworth compared to when considering third parties.

(b) The SOUI treats "Bremworth's re-entry into SDN carpet [as] having the potential to increase the closeness of competition between Godfrey Hirst and Bremworth"[48] (in effect, treating Bremworth's new SDN product as a likely success in assessing Bremworth's position), while:

(i) citing Bremworth's stated difficulties with its new SDN product as a reason to dismiss the prospect of new expansion by third parties[49] (in effect, treating Bremworth's new SDN product as a likely failure in assessing the position of third parties); and

(ii) dismissing the new expansion into wool carpets by Jacobsen and Robert Malcolm as "too early" for the "competitive effects… to be determined" (in effect, treating Bremworth's new expansion into SDN as meaningful, but third parties' new expansion into wool as not meaningful on the basis that they are new).

(c) The SOUI sought to dismiss Victoria Carpet's competitiveness in wool carpets by stating that "some industry participants noted New Zealand end-consumers have tended to favour the colour palettes/styles of Godfrey Hirst and Bremworth over Victoria Carpets' range, which some customers consider is more tailored to Australian consumer preferences".[50] In response to this, Bremworth reiterates the evidence that colour palettes/styles are not a sound or evidence-based reason to dismiss the competitive constraint of imported carpets:

(i) over the last two decades the proportion of the market that imports comprises has grown from 19% in 2005 to now approximately 50%. This self-evidently demonstrates that imported products appeal to New Zealand consumers - and this quantified and observed switching must be accorded more probative weight than an unsubstantiated assertion; and

(ii) Australia is a country with a similar colour palette profile to New Zealand – demonstrating this, Bremworth produces and sells the same range of carpets (both in terms of styles and colours) in Australia and New Zealand.

(d) The SOUI suggests that the need to "form or expand relationships with retailers to stock and sell their products" could be an impediment to entry and expansion.[51] However:

(i) forming or expanding relationships is not a barrier to entry in the economic sense; and

(ii) the Commission should assume that retailers would readily form and expand relationships with additional suppliers if the merged entity sought to increase prices above competitive levels. The Court of Appeal has

[48] SOUI, para [113.4].
[49] SOUI, para [204].
[50] SOUI, at [Table 6].
[51] SOUI, para [174.1].

previously cautioned the Commission for failing to take a forward-looking view of how market participants would react to market opportunities:[52]

> We do not consider that the Commission's decision or its submissions gave sufficient attention to the context in which the height of barriers to expansion must be addressed. **That context is the hypothesis that the merged entity, having the ability, engages in supra-competitive pricing. The Commission's premise that there has been little, if any, expansion or entry into the market in the past ... does not in our view justify the inference that supra-competitive pricing by the merged entity would also be met by little, if any, entry or expansion**.

(e) The SOUI asserts that "the demand for wool carpet is comparatively lower in the countries where these importers have their manufacturing facilities and so their focus tends to be on synthetic carpet".[53] However, as recently as this week the CEO of Wools of NZ has outlined the increasing investment in wool carpet manufacturing in certain overseas countries:[54]

> Most of the production of carpets in Turkey are actually synthetic and **we are seeing a shift towards the manufacturing of wool carpets, even in Turkey**. We have other manufacturers in Turkey we supply as well... [Kalida Hali] are shifting from being dominantly synthetic towards wool. And we have seen that level of investment in Turkey, and there is another manufacturer in Turkey that has actually acquired webbing machinery from New Zealand, which is now operating in Turkey, so it has been closed down in New Zealand, moved to Turkey, and is now manufacturing carpet in Turkey. So the Turks are seriously into wall to wall floor to floor carpet manufacturing.

(f) The SOUI included a highly stylised graphic of the costs of manufacturing woollen carpet in New Zealand compared to overseas as apparent evidence of significantly higher costs of manufacturing overseas without interrogating the veracity of that graphic. In Bremworth's view, that graphic provides no probative evidence. In Bremworth's experience, the cost of labour in certain Asian countries can be ~70% lower than in New Zealand and the cost of power and utilities can be ~50% lower. The proliferation of New Zealand Free Trade Agreements with countries with much lower manufacturing and labour costs reinforces this (with New Zealand's Free Trade Agreements including China,[55] Vietnam, Indonesia, Cambodia,[56] and now India[57] (amongst others)). Therefore, a more accurate stylised comparison of New Zealand manufacturing to overseas manufacturing would be as set out below in Figure [1].

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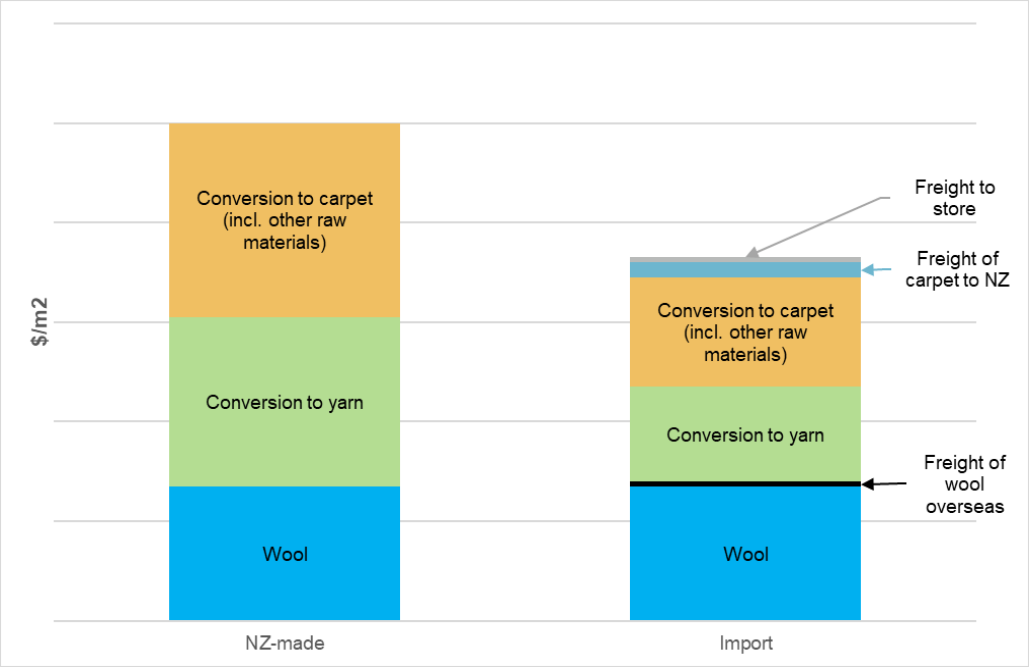
[52] *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [87]. [Emphasis added].
[53] SOUI, para [161].
[54] (5 May 2026). Breakthrough deal set to send Kiwi wool around the world. https://www.newstalkzb.co.nz/on-air/mike-hosking-breakfast/audio/john-mcwhirter-wools-of-new-zealand-ceo-on-the-major-deal-with-turkish-carpet-manufacturer-kalida-hali/ [Emphasis added]
[55] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/nz-china-free-trade-agreement/overview
[56] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/asean-australia-new-zealand-free-trade-agreement-aanzfta/aanzfta-overview
[57] https://www.beehive.govt.nz/release/legal-verification-india-fta-complete-and-date-signing-agreed

Figure [1] – Stylised breakdown of the cost of wool carpet ($/m²) manufactured in New Zealand vs. overseas



4.2 Bremworth trusts that the issues and evidence identified above will be corrected for by the Commission as it makes a final decision.

5. THE SOUI'S FOCUS ON BREMWORTH'S NEW SDN PRODUCT

5.1 The SOUI places emphasis on "Bremworth's re-entry into SDN [as] having the potential to increase the closeness of competition between Godfrey Hirst and Bremworth".[58] That emphasis is misplaced:

(a) Elsewhere the SOUI identifies that "[t]here are also a number of existing importers supplying SDN carpet including Jacobsen, Belgotex, Victoria Carpets and Robert Malcolm".[59] This demonstrates that there is nothing unique about Bremworth also offering SDN carpet in its range.

(b) [ ] See Figure [2] below. [ ]

Figure [2] – [ ]

5.2 Accordingly, Bremworth does not consider it justifiable for the Commission to place emphasis on its nascent SDN product as having the potential to increase the competition between Godfrey Hirst and Bremworth [ ]

[58] SOUI, para [113.4]. See further para [126] and [127].
[59] SOUI, para [155.2].

6. THE SOUI'S APPROACH TO THE COUNTERVAILING POWER OF RETAILERS

6.1 Bremworth regards the SOUI's assessment that "flooring retailers do not appear to have sufficient countervailing power, particularly in respect of the supply of wool carpets, to effectively constrain the merged entity"[60] as flawed.

6.2 In Bremworth's experience carpet retailers hold significant influence and ability to convert customers into purchasing the retailers' product and fibre type preferences – which is reflected both in the significant increases in imports in recent years, and the [ ] In Bremworth's experience:

(a) [ ];

(b) [ ]; and

(c) [ ]

6.3 Bremworth also does not consider that the Commission gave sufficient weight to the ability of retailers to self-supply. In particular, the Commission:

(a) noted that "self-supply and direct importing synthetic carpets does appear to be an option for large retailers",[61] but did not recognise that this ability provides those large retailers with significant countervailing power through their ability to credibly threaten to increase their self-supply and direct importation of products; and

(b) appeared to dismiss the importance of self-supply and sponsoring of entry on the basis that "our investigation indicates that self-supply and sponsoring entry is only likely to be a realistic option for a large retailer group",[62] despite elsewhere noting that there are at least four large retailer groups in New Zealand ("larger retailer groups such as Carpet Court, Flooring Xtra, Harrisons and Flooring Design").[63]

6.4 The ability of at least four larger retailers to self-supply or sponsor new entry demonstrates both:

(a) significant countervailing power on behalf of those retailers; and

(b) significant potential new entry and expansion from at least four large market participants.

6.5 The Commission's final decision needs to reflect these dynamics.

7. REASONS FOR PRICE INCREASES

7.1 The SOUI asks for information on:

(a) "whether price increases by Godfrey Hirst and/or Bremworth are being driven by increased costs";[64] and

[60] SOUI, para [10.4].
[61] SOUI, para [219].
[62] SOUI, para [221].
[63] SOUI, para [28].
[64] SOUI, para [241.3].

(b) the "extent to which Godfrey Hirst's and Bremworth's pricing and/or quality decisions relate to each other's decisions or actions (as opposed to other factors such as changes in input costs".[65]

7.2 In response, for its part, Bremworth notes that:

(a) [ ]

(b) [ ]

7.3 Therefore, Bremworth does not consider that this demonstrates any particular closeness of competition between Bremworth and Godfrey Hirst, and to the contrary demonstrates that the Commission needs to take into account the potential efficiencies - as it is required to do, given section 47 is a "net test" - meaning any potential anticompetitive effects must be weighed against pro-competitive benefits: [66]

> I also accept Mr Dobson's submission that the concern is with the net effect on competition and that it is thus necessary to balance the procompetitive effects (including efficiencies) against the anticompetitive effects in the relevant market.

8. CONCLUDING COMMENTS

8.1 For the reasons outlined above, Bremworth considers that there is no realistic prospect that a substantial lessening of competition could arise in any market as a result of the Transaction. Bremworth considers that preliminary findings indicated in the SOUI were incorrect both as a matter of fact and law.

8.2 Bremworth trusts that the information outlined in this Submission will assist the Commission to satisfy itself of the same, and that there would be no benefits to competition of the Commission declining or delaying clearance - [ ].

[65] SOUI, para [129.1].
[66] *ANZCO Foods Waitara Ltd v AFFCO New Zealand Ltd* [2006] 3 NZLR 351 at [249] per Glazebrook J.