

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CIV-2025-404-002904
[2026] NZHC 444**

UNDER the Commerce Act 1986
BETWEEN COMMERCE COMMISSION
Plaintiff
AND ARAMEX NEW ZEALAND HOLDINGS
LIMITED
Defendant

Hearing: 26 February 2026

Appearances: F Cuncannon and E Denton for the Plaintiff
J Hambleton and J Nedeljkov for the Defendant

Judgment: 4 March 2026

JUDGMENT OF WALKER J

*This judgment was delivered by me on 4 March 2026 at 12 pm
pursuant to r 11.5 of the High Court Rules 2016*

Registrar/Deputy Registrar

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Solicitors:
F Cuncannon, Auckland
Minter Ellison Rudd Watts, Auckland

[1] Aramex New Zealand Holdings Limited (Aramex) comes before the Court having admitted contravening s 30 of the Commerce Act 1986 (the Act).

[2] Te Komihana Tauhokoko | The Commerce Commission (Commission) and Aramex jointly recommend to the Court that a penalty of \$700,000 should be imposed in respect of the two contraventions. They agree that this penalty properly achieves the objective of general and specific deterrence; reflects the level of culpability where there was no intention to lessen competition and the circumstances in which the conduct arose.

[3] There is no objection to parties making submissions and presenting a joint view as to the appropriate penalty, nor to their view being reached through negotiation because early resolution serves the public interest.¹ The Court is however charged under the Act with determining the appropriate pecuniary penalty in respect of any contravention of Part 2 of the Act.²

[4] As Aramex has admitted liability, the question is whether the proposed penalty is within the appropriate range, having regard to the objectives of the Act and circumstances of the case. If not, the Court can decline to impose the recommended penalty and instead impose the penalty it considers appropriate. This judgment answers that question.

Background

[5] The imposition of a penalty relies on the statement of facts agreed between the Commission and Aramex. The following summary is taken from that statement which provides context to the market and industry and sets out the circumstances in which Aramex contravened the Act.

¹ *Commerce Commission v New Zealand Milk Corp Ltd* [1994] 2 NZLR 730 (HC) at 733 and *Commerce Commission v Alstom Holdings SA* [2009] NZCCLR 22 (HC).

² Commerce Act 1986, s 80.

The New Zealand courier industry

[6] Courier services involve all aspects of the logistical arrangements necessary to collect and deliver parcels in New Zealand by road, rail, air and/or sea. Courier services are offered for the purpose of transporting parcels from one business to another (B2B), from businesses to their customers (B2C), or from one individual to another (C2C).

[7] Suppliers of courier services operate using different business models, including carriers and resellers. Carriers have operational control over transportation assets that physically handle goods for pick up and/or delivery within New Zealand.

[8] Resellers contract with carriers to provide courier services to customers. Customers contract directly with (and are invoiced by) resellers, who provide the necessary software and/or customer services support, while carriers transport the goods for delivery.

Aramex

[9] Aramex was incorporated in October 2015. It is wholly owned by Aramex International Logistics Private Limited (in Singapore), with its ultimate parent company being Aramex PJSC (in Dubai).

[10] In January 2016, Aramex purchased Fastway Limited and its subsidiaries, Fastway Couriers (NZ) Limited and Fastway Franchise Holdings Limited (together, Fastway). Thereafter:

- (a) In 2019, Fastway's operations were rebranded as Aramex.
- (b) In July 2023, Fastway Limited was renamed Aramex Limited.
- (c) In July 2023, Fastway Franchise Holdings Limited was renamed Aramex Franchise Holdings Limited.
- (d) Fastway Couriers (NZ) Limited's name remains unchanged.

[11] Aramex (then Fastway) first began providing courier services in the Hawkes Bay region. Aramex has since expanded into a holding company, with subsidiaries operating a business providing nationwide courier services in New Zealand, with a significant, but non-exclusive, focus on B2C business.

[12] Aramex operates its business through a franchise model. It has regional franchisors which act as carriers, and/or contract carrier franchisees. In some areas, Aramex operates the regional franchise directly. Aramex also contracts with NZ Post for rural delivery in some areas.

[13] Customers may engage Aramex as a carrier of courier services in a number of ways, including indirectly by contracting with a reseller, which in turn contracts with Aramex for the provision of courier services.

Zappy Limited

[14] Payport Limited (formerly named Gaowoo Management Limited and then Gaowoo Technology Limited) was incorporated in July 2007 (Payport). In May 2024, Payport changed its name to Zappy Limited, trading as Zappy.

[15] Zappy offers small and medium-sized businesses a proprietary software platform that resells B2B and B2C courier services supplied by Zappy's partners. As a reseller, Zappy itself does not transport goods.

[16] The software offers customers a choice of carrier options with pricing and service comparisons, access to both international and domestic services, and consolidated invoicing. Zappy's software also offers customers e-commerce integration to automate the process of generating package labels and tracking numbers.

[17] Zappy resells (retails) courier services it has acquired from various carriers at wholesale rates. Customers contract directly with Zappy. In doing so, Zappy is the principal in its contracts with customers. It is not an agent for carriers.

Competition between Aramex and Zappy

[18] Aramex and Zappy each compete with carriers and with resellers. That is because:

- (a) Arrangements between customers and carriers and resellers are typically non-exclusive, so customers often deal with more than one provider in order to compare rates and services.
- (b) Customers are able to substitute courier services provided by one carrier with those of another carrier, and customers are able to substitute courier services provided directly by carriers with courier services resold by resellers (and vice versa), in response to changes in prices or service levels.

[19] At all material times, Aramex and Zappy supply courier services to customers in competition with each other.

Agreement between Aramex and Zappy

[20] In 2021, Zappy approached Aramex to discuss the wholesale supply of courier services. Aramex considered that Zappy could provide Aramex with better access to small to medium size businesses.

[21] As a result, in November 2021, Aramex (through its subsidiary Fastway Couriers (NZ) Limited) and Zappy (then Payport) entered into a written reseller agreement for the wholesale supply of courier services by Aramex to Zappy, for resale to customers through Zappy's software platform (2021 Agreement). The 2021 Agreement was prepared by Aramex by changing the name and pricing in a template document. It was for an initial 24-month term but could be renewed for a further 12 months upon notice.

[22] Clause H of the 2021 Agreement restricted the targeting of Aramex's customers by Zappy (2021 Non-Compete). Aramex was unaware that the 2021 Non-Compete

amounted to a prohibited cartel provision. By way of summary, the 2021 Non-Compete provided that:

- (a) Zappy would not knowingly target existing Aramex customers.
- (b) If an Aramex customer was approached by it, Zappy agreed to engage with the Aramex account manager for Zappy and, if accepted by Aramex, to apply the existing Aramex rates being offered to that customer.
- (c) If a customer used multiple courier service providers, including Aramex, Zappy could present a business case to Aramex in order for Zappy to approach that customer and secure all courier services under one account.

[23] Between shortly after November 2021 and no later than early October 2024, Aramex provided courier services to Zappy for resale to its customers in accordance with the 2021 Agreement.

[24] On 25 January 2022, the 2021 Non-Compete was given effect to by Aramex when Zappy co-ordinated its response to enquiries from an existing Aramex customer, with Aramex. As Aramex did not actively enforce the 2021 Non-Compete, this was the single occasion on which it was effected.

The breaches

[25] Aramex admits that it contravened s 30 of the Act by entering into and giving effect to the 2021 Agreement, which contained a provision with the purpose, effect, or likely effect of price-fixing and/or allocating the persons or classes of persons to whom Zappy and Aramex supply courier services in competition with each other.

[26] Specifically, Aramex admits that it contravened s 30 by:

- (a) entering into the 2021 Agreement; and

- (b) giving effect to the 2021 Non-Compete on one occasion on 25 January 2022.

[27] That admission was made at the earliest opportunity on the date the statement of claim was filed. Aramex has cooperated fully with the investigation and though it had no intention of contravening the Act, properly accepts that any breach of the Act is a serious matter. Aramex also took prompt steps to ensure that it did not give effect to the 2021 Non-Compete following notification of the Commission's investigation, and has subsequently replaced its reseller agreement with Zappy. It has also apologised and expressed regret for the contravention.

General approach to penalty

[28] Section 80 of the Act provides for the pecuniary penalties available for breaches of Part 2 of the Act, including s 30. Section 80(2A) requires the Court, on the application of the Commission, to determine an appropriate penalty for a breach of any of the provisions of Part 2, subject to the statutory maximum, by having regard to all relevant matters. In the case of a body corporate, the Court must have regard to the nature and extent of any commercial gain.³

[29] As noted, the Court must be satisfied the proposed penalty is within the appropriate range. It is not necessary that each step in the methodology proposed by the parties is accepted by the Court rather, it is the final pecuniary penalty that matters.⁴

[30] The orthodox approach to determine whether the proposed penalty is appropriate is to:⁵

- (a) determine the maximum penalty;

³ Section 80(2A)(b).

⁴ *Commerce Commission v Air New Zealand* [2013] NZHC 1414 at [27].

⁵ *Commerce Commission v Visy Board (NZ) Ltd* [2013] NZHC 2097, [2014] NZCCLR 1 at [35]; *Commerce Commission v PGG Wrightson Ltd* [2015] NZHC 3360 at [34]; *Commerce Commission v Sweetspot Group Limited* [2025] NZHC 3806; *Commerce Commission v Mondiale Freight Services Ltd* [2022] NZHC 1370 at [31]; and *Commerce Commission v Oceanbridge Shipping Ltd* [2022] NZHC 1371 at [28].

- (b) establish an appropriate starting point range for the offending that will achieve the objective of deterrence in light of the relevant factors; and
- (c) adjust the starting point to decrease or increase the penalty on the basis of any considerations specific to the defendant.

The maximum penalty

[31] Under s 80(2B)(b) of the Act, the maximum penalty that can be imposed on Aramex for each contravention of the Act is the greater of:

- (a) \$10 million;
- (b) either:
 - (i) if the commercial gain is readily ascertainable, three times the value of any commercial gain obtained from the contravention; or
 - (ii) if the commercial gain cannot readily be ascertained, 10 per cent of turnover in each accounting period in which the contravention occurred.

[32] It is common ground in this case that while there was potential for commercial gain by Aramex, the commercial gain is not readily ascertainable. Aramex's financial statements filed with the Companies Office show that its total gross revenue during the contravening period was in the tens of millions of dollars. Calculating ten per cent of the relevant turnover for Aramex leads to the conclusion that the maximum penalty for the two contraventions at issue is \$20 million.

Starting point

[33] In addition to the overarching need for deterrence, the relevant factors in determining the starting point include:⁶

- (a) whether the conduct was or was not deliberate;
- (b) the role of Aramex in the impugned conduct;
- (c) the seniority of the employees or officers involved in the contravention;
- (d) the duration of the contravening conduct;
- (e) the extent of any benefit derived from the contravening conduct as well as the extent of any loss or damages suffered by any person as a result of the conduct;
- (f) the importance and type of market;
- (g) the market share or degree of market power held by the defendant; and
- (h) the size and resources of Aramex.

[34] As I see it, these factors all inform the question of the nature and seriousness of the contravening conduct.

[35] The Commission accepts that Aramex was not aware that its conduct in deliberately entering into the 2021 Agreement and giving effect to the 2021 Non-Compete on one occasion was illegal, and that Aramex did not intend to breach the Act. The Commission further accepts that the conduct arose because of a lack of care in using historical template documentation and that the 2021 Non-Compete was not actively enforced by Aramex.

⁶ *Commerce Commission v Mondiale Freight Services Ltd*, above n 5, at [38].

[36] The 2021 Agreement was drafted by Aramex. The 2021 Non-Compete clause only benefitted Aramex as the customer allocation restriction only applied to Zappy. Zappy had no drafting input. The 2021 Agreement was prepared by Aramex's national sales manager by copying and pasting a previous Fastway reseller agreement and changing the party names and pricing.

[37] While a more senior Aramex employee signed the 2021 Agreement on behalf of Aramex, they did not review its contents.

[38] The 2021 Agreement had a term of 24 months, with an option for renewal for an additional 12 months if both parties agreed. Once notified of the Commission's investigation, Aramex ensured that it did not give effect to the 2021 Non-Compete and took steps to enter into a new reseller agreement with Zappy. That new agreement took effect no later than 7 October 2024. It does not contain the 2021 Non-Compete clause.

[39] It is common ground that the contravening conduct created potential for commercial gain to Aramex and potential to harm some customers, because it removed the possibility of direct competition between Aramex and Zappy. However, there is only one known instance of the 2021 Non-Compete being given effect to.

[40] Courier services are important to the New Zealand economy. The increase in online shopping, especially since Covid-19, has meant increased use of courier providers to deliver goods to end markets. The industry is closely related to the freight/logistics industry, which has been the subject of Commission enforcement action in recent years. From the Commission's perspective, the courier industry is susceptible to collusive behaviour and compliance is an ongoing issue. It has concerns that previous penalty decisions have not had the intended educative impact on participants in the market.

[41] Aramex is currently the third largest courier company operating in New Zealand however, its relative market position at the time of the contraventions is not known.

[42] Aramex is run on a franchise model with regional franchisees. In the Aramex network there are around 17 regional franchisees and over 300 courier-franchised territories contracted by the regional franchisees to carry out the pickup and delivery services.

Comparative cases

[43] The parties have jointly referred to penalty judgments in other cases said to have comparative similarities but also differences. This is to achieve consistency of treatment with others involved in similar breaches of the Act. However, the cases offer guidance only (or operate as cross-check). Penalties in every case must be determined based on the specific facts, the inter-relationship between the factors informing culpability and against the background of each case.

[44] The first is *Commerce Commission v Oceanbridge Shipping Limited*.⁷ The starting point in *Oceanbridge* was between \$6.9 million to \$7.3 million.⁸ This reflected the company's size, its substantial financial resources and its position of influence as a significant operator in the New Zealand freight forwarding market. The contravening agreements lasted for a period of years and the overall duration of the unlawful conduct was substantially longer than Aramex's.

[45] I accept the submission that Aramex's offending was less serious than that in *Oceanbridge*. Although involving similar conduct, being formal written agreements distorting competition, *Oceanbridge* entered into seven contravening arrangements to which effect was repeatedly given.⁹ One arrangement was given effect to over a period greater than 10 years,¹⁰ a significantly longer period of time. Both arrangements involved similar potential for harm to customers. However, *Oceanbridge*'s conduct was inherently more deceptive as cover pricing was used in four instances.¹¹ The Court viewed the use of cover pricing as egregious, constituting a serious breach.¹² Aramex's breach only involved one customer and there are no allegations it went any

⁷ *Commerce Commission v Oceanbridge Shipping Limited*, above n 5.

⁸ At [34] and [65].

⁹ At [10] and [40].

¹⁰ At [12] and [49].

¹¹ At [40] and [43].

¹² At [43].

further. There is also a significant difference in the size and resources of Oceanbridge and Aramex. Oceanbridge is a significant operator with substantially greater revenue and faced a maximum penalty in the hundreds of millions of dollars.¹³ I am satisfied these features render Oceanbridge's conduct materially more serious than Aramex. It follows that a starting point well below \$6.9 million to \$7.3 million is appropriate in Aramex's case.

[46] The second case is *Commerce Commission v Sweetspot Group Limited*.¹⁴ The starting point in respect of the contraventions in this case was in the range of \$700,000–\$800,000.¹⁵ Sweetspot entered into agreements involving non-compete clauses. They did not draft the contravening agreements and did not have the same commercial negotiating power as the other party to the arrangements.¹⁶ Aramex played a greater role in its contravening arrangements, drafting the agreements themselves for a one-way benefit. Further, Sweetspot had been provided with legal advice from a competition law specialist confirming that the wording of the agreement was compliant with the Act.¹⁷ Aramex is also a larger and more powerful party than Sweetspot, who was a minor player in the market.¹⁸ Sweetspot entered into two arrangements, which it actively gave effect to for a period of over seven years.¹⁹ Aramex entered into one contravening agreement to which there is only one known occasion of giving effect to it. Despite Sweetspot's conduct being more extensive in terms of number of contravening arrangements and duration, I accept the position advanced that a starting point higher than *Sweetspot* is appropriate to reflect Aramex's greater degree of influence in the market and more substantial role in the relevant arrangements.

[47] The third case referred to by both counsel is *Commerce Commission v GEA Milfos International Limited*.²⁰ The starting point approved by the Court was \$1.1 million.²¹ Milfos entered into a quote calculator agreement, having the effect of

¹³ At [34].

¹⁴ *Commerce Commission v Sweetspot Group Limited*, above n 5.

¹⁵ At [55].

¹⁶ At [41].

¹⁷ At [20], [41] and [54].

¹⁸ At [48].

¹⁹ At [9], [17], [41] and [44].

²⁰ *Commerce Commission v GEA Milfos International Limited* [2019] NZHC 1426.

²¹ At [28].

controlling prices and lessening competition in the market.²² There are the following similarities in the relevant conduct between Aramex and Milfos:

- (a) Both involve a contravening arrangement that was given effect to although the arrangement in *GEA Milfos* was given effect to over a period of almost two years,²³ while that in Aramex was given effect to only on one occasion.
- (b) The contravening conduct was carried out by senior employees.²⁴
- (c) The commercial gain and harm caused by the arrangements in both cases was difficult to quantify however, the agreements created the potential for commercial benefit and equivalent harm to competition and consumers.²⁵

[48] While Aramex was the larger and more powerful party compared to Milfos who was an equal partner in the unlawful understanding,²⁶ Milfos actively enforced and gave effect to their contravening agreement. The parties submit this warrants a marginally lower starting point than in *GEA Milfos*.

[49] The parties also referred to *Commerce Commission v Alstom Holdings SA*.²⁷ There the Court approved a starting point of \$1.25 million to \$1.75 million. Adjusting for inflation, the starting point equates to \$1.89 million to \$2.64 million.²⁸ I do not find this case to be of as much assistance as those referred to above. At the time of the relevant conduct, the Act had a statutory cap of \$5 million which has since been increased.²⁹ Additionally, the conduct in question was both a price-fixing and market-sharing arrangement which the Court considered to be at the most serious end

²² At [8].

²³ At [19].

²⁴ At [22].

²⁵ At [23].

²⁶ At [20].

²⁷ *Commerce Commission v Alstom Holdings*, above n 1.

²⁸ Reserve Bank of New Zealand “Inflation Calculator” <www.rbnz.govt.nz/monetary-policy/about-monetary-policy/inflationcalculator>

²⁹ Commerce Amendment Act 2001, s 17(2) (2001 No 32).

of the spectrum.³⁰ It involved participation in a highly organised and extremely sophisticated global cartel which persisted for 15 years.³¹

[50] Having regard to the comparator cases identified and the relevant factors in determining culpability, I am satisfied that the starting point of \$1 million which both the Commission and Aramex put forward as the appropriate starting point is clearly appropriate.

Mitigation adjustment

[51] The Commission accepts that a 30 per cent credit is appropriate having regard to the following factors:

- (a) Aramex has never received any previous warnings for conduct that the Commission considered may breach the Act nor been found to have contravened the Act.
- (b) Aramex cooperated with and assisted the Commission with its investigation. It provided information and documents on a voluntary basis, and voluntarily made staff available for interview.
- (c) During the investigation, Aramex replaced its reseller agreements and made changes to its contracting processes. Its new reseller agreement does not contain the 2021 Non-Compete.
- (d) Aramex accepted that it had contravened the Act at the earliest possible stage in the proceeding and has agreed to settle the proceeding on terms acceptable to the Commission. Aramex was remorseful, expressed regret and apologised for its conduct.
- (e) Aramex has also made ongoing investment to enhance its culture of compliance with the Act, including by implementing a new

³⁰ *Commerce Commission v Alstom Holdings SA*, above n 1, at [24].

³¹ At [25].

organisation-wide competition law policy and a competition law compliance programme in both New Zealand and Australia.

[52] Following the survey of cases in *Reserve Bank of New Zealand v TSB Bank Ltd*,³² I accept that a 30 per cent deduction from the starting point is justified in all the circumstances to reflect the early admissions, remorse and rehabilitative steps taken by Aramex.

[53] I am satisfied that the pecuniary penalty agreed to between the Commission and Aramex accords with the Act's purpose of promoting competition and the objective in the imposition of penalties.

Result

[54] The pecuniary penalty of \$700,000 is approved.

[55] I make the following declarations:

- (a) A declaration that Aramex contravened s 30 of the Act by entering into the 2021 Agreement.
- (b) A declaration that Aramex contravened s 30 of the Act by giving effect to the 2021 Non-Compete on one occasion.

[56] The parties are agreed that costs should lie where they fall, and I make that order accordingly.

.....
Walker J

³² *Reserve Bank of New Zealand v TSB Bank Ltd* [2021] NZHC 2241 at [49]. See also *Commerce Commission v Objective Corp Ltd* [2022] NZHC 1864 at [20]-[21].