IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV 2025-404-002912
[2025] NZHC 3806

BETWEEN	TE KOMIHANA TAUHOKOHOKO/ COMMERCE COMMISSION Plaintiff
AND	SWEETSPOT GROUP LIMITED Defendant

Hearing: 27 November 2025

Appearances: F J Cuncannon & E M Denton for the Plaintiff
L C A Farmer & E R Harrison for the Defendant

Judgment: 8 December 2025

JUDGMENT OF TAHANA J

This judgment was delivered by me on 8 December 2025 at 3.00 pm
Pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors/Counsel:
Wynn Williams Auckland
Shortland Chambers, Auckland
F J Cuncannon, Barrister, Auckland

Introduction

[1] Sweetspot Group Ltd, trading as GoSweetSpot (**GSS**) has admitted to contravening ss 27 and 30 of the Commerce Act 1986 (the **Act**). Te Komihana Tauhokohoko/The Commerce Commission (the **Commission**) and GSS propose that the Court impose a pecuniary penalty of $525,000 and make declarations that GSS's conduct contravened ss 27 and 30 of the Act.

[2] I must therefore determine the appropriate pecuniary penalty to be imposed on GSS and the scope of any declarations.

The agreed facts

Courier services

[3] Courier services involve all of the logistical arrangements necessary to collect and deliver parcels in New Zealand whether by road, rail, air or sea. Carriers have operational control over transportation assets that physically handle goods, for pick up or delivery within New Zealand, and also provide courier services to customers. By reason of this control, they have access to identifying information of customers of resellers. 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 customer services support. Resellers do not operate, or have control over, transportation assets that physically handle goods, for pick up and delivery within New Zealand.

Business of GSS

[4] GSS is a reseller of courier services. GSS provides freight and logistics aggregation services utilising proprietary software. GSS offers customers free access to the software but generates profit by applying a margin when reselling courier services it has acquired from carriers at wholesale rates.

[5] GSS also licences its software package to some carriers in exchange for a licensing fee charged per package processed using the software. Those carriers include Freightways Ltd (**Freightways**).

Business of Freightways

[6] Freightways is the parent company of Freightways Express Ltd (**FEL**) which in turn owns several entities that provide packaging and courier services. The relevant subsidiaries are: Post Haste Ltd (**PHL**), Castle Parcels Ltd (**CPL**), NOW Couriers Ltd (**NCL**) (together, known as the Post Haste Group or **PHG**); and New Zealand Couriers Ltd (**NZC**). Each of the subsidiaries operate carriers with different service standards and price points.

[7] On 1 October 2019, FEL purchased a one third interest in GSS.

Background

[8] Between March 2010 and July 2015, Freightways and GSS entered into contractual arrangements for GSS to resell Freightways services through its platform. Those arrangements included non-compete provisions and in March 2014 GSS licensed its software to NZC for use by NZC's customers.

2015 Agreement and 2015 Non-Compete

[9] On or around 6 July 2015, PHL and GSS entered into a written partnering arrangement (the **2015 Agreement**) prepared by Freightways:

(a) for the wholesale supply of courier services by PHG and NZC to GSS for resale through GSS's software platform (PHG and NZC agreed to provide courier services at preferential pricing, subject to annual price increases); and

(b) for the licensing of GSS software to PHG and NZC for use by customers of PHG and NZC.

[10] The 2015 Agreement applied to PHL and its related companies including NZC, NCL and CPL and included a non-compete clause (the **2015 Non-Compete**):

> **6. Customer Restrictions […]**

6.2 No targeting of SGL [Sweetspot Group Ltd] Customers: During the Term PHL must not contact Customers except in accordance with this Agreement and must not solicit or market to such Customers. In the event that a Customer makes a direct approach to PHL the relationship between SGL and PHL must be clearly advised to the Customer and PHL must not quote any rates for Courier Services to that Customer. SGL must be advised of any approach from a Customer promptly and given no less than 48 hours to respond to any Customer issues. If SGL is unable to resolve a Customer issue satisfactorily within that timeframe PHL may follow up directly with the Customer. SGL acknowledges that the restrictions contained in this clause will not apply in relation to Direct PHL Relationships. At the expiry or termination of this agreement PHL agree to continue to provide service to existing SGL customers who are using PHL services for a minimum period of 6 months.

6.3 No Targeting of PHL Customers: During the Term of this Agreement SGL must not solicit PHL and Related Company customers. In the event that a PHL or Related Company customer makes direct contact with SGL the relationship between SGL and PHL must be clearly advised to the customer and no rates for Courier Services quoted to that customer. PHL must be advised of the approach and given 48 hours to respond to the customer concerned. If PHL is unable to resolve the issues satisfactorily with its customer within that 48 hour time period SGL may make further contact with the customer. At the expiry or termination of this agreement SGL agree to leave their existing customers who are using PHL services with PHL for a minimum period of 6 months after which the [sic] customer could opt to change to another SGL provider or stay with PHL.

[11] In practice there were understandings between PHG and GSS, which had evolved from earlier practice, and applied to the 2015 Agreement (the **Understandings**):

(a) The 48-hour timeframe was not strictly applied, PHG and GSS would await a response from the other.

(b) GSS could seek and was sometimes given permission by PHG to pitch for existing PHG work where PHG did only a small amount of work for the customer and GSS was intending to use PHG for all of the work being targeted.

(c) GSS was permitted by PHG to pitch for existing PHG work that had been put out to market by the customer.

[12] A variation to the 2015 Agreement was agreed on or around 4 September 2017, extending by three years (to 2023) the period during which the 2015 Agreement could not be terminated for convenience.

[13] From about 6 July 2015 to 14 May 2018, PHG and NZC provided courier services to GSS in accordance with the 2015 Agreement and gave effect to the 2015 Agreement.

[14] From about 15 May 2018 to about 1 October 2019, PHG and NZC provided courier services to GSS in accordance with the 2015 Agreement and gave effect to the 2015 Agreement and the Understandings.

[15] The 2015 Agreement and the Understandings were given effect during the periods set out at [13] and [14] by:

(a) GSS disseminating the terms of the 2015 Non-Compete internally to its staff and taking steps to require them to comply with those terms.

(b) GSS refraining from approaching PHG/NZC's customers in an attempt to gain business.

(c) GSS withdrawing quotes or offers once it became aware that the target was a PHG/NZC customer.

(d) When approached by PHG/NZC's customers (or suspected customers):

(i) GSS advising that no quote could be provided; and

(ii) GSS notifying PHG/NZC and giving them an opportunity to address the customer's concerns before quoting or offering services to the customer.

(e) GSS receiving notifications from PHG/NZC when its customers approached PHG/NZC (and in some instances communicating with the customer and PHG/NZC in response).

(f) GSS seeking to enforce the 2015 Non-Compete against PHG/NZC.

2019 Agreement and 2019 Non-Compete

[16] On 1 October 2019, FEL acquired a one third interest in GSS. GSS and FEL nonetheless continued to operate as competitors for the provision of courier services.

[17] On that same day, FEL and GSS entered into another written partnering agreement (the **2019 Agreement**) to replace the 2015 Agreement. The 2019 Agreement applied to FEL and its related companies including PHL, NZC, NCL and CPL. Under its terms FEL was to provide courier services to GSS with preferential pricing, and GSS agreed to customise and install a "white-labelled" version of its software for FEL. GSS granted FEL a perpetual licence to utilise that software.

[18] The 2019 Agreement included a non-compete clause (the **2019 Non-Compete**):

> **6. Customer Restrictions […]**
>
> 6.2 No targeting of SGL Customers:
>
> (a) During the Term FEL must not contact SGL Customers except in accordance with this Agreement and must not solicit or market to SGL Customers. With prior permission from SGL, FEL is able to distribute generic service related information to SGL Customers via email where appropriate (for example, network delay notifications, Christmas leave hours).
>
> (b) In the event that a SGL Customer makes a direct approach to FEL the relationship between SGL and FEL must be clearly advised to the SGL Customer and FEL must not quote any rates for Courier Services to that SGL Customer. FEL must advise SGL of any approach from an SGL Customer within 48 hours of being approached by that SGL Customer.
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> (c) SGL will then have 3 Business Days to resolve that SGL Customer's issue. If SGL is unable to resolve a SGL Customer issue satisfactorily within that timeframe FEL may follow up directly with the SGL Customer. SGL acknowledges that the restrictions contained in this clause will not apply in relation to FEL Customers.
>
> 6.3 No Targeting of FEL Customers:
>
> (a) During the Term SGL must not contact FEL Customers and must not solicit or market to FEL Customers.

(b) In the event that a FEL Customer makes direct contact with SGL the relationship between SGL and FEL must be clearly advised to the FEL Customer and SGL must not quote any rates for Courier Services to that FEL Customer. SGL must advise FEL of any approach from a FEL Customer within 48 hours of being approached by that FEL Customer.

(c) FEL will then have 3 Business Days to resolve that FEL Customer's issue. If FEL is unable to resolve a FEL Customer issue satisfactorily within that timeframe SGL may follow up directly with the FEL Customer. FEL acknowledges that the restrictions contained in this clause will not apply in relation to SGL Customers.

[19] The Understandings as set out at [11] above also applied to the 2019 Agreement.

[20] Freightways prepared the 2019 Agreement and arranged for a competition law specialist to review it. Freightways provided GSS with a copy of that legal advice and told GSS that the competition law specialist had confirmed the wording of the 2019 Agreement was compliant with the Act and that no changes were required.

[21] From 1 October 2019 to early 2023, PHG and NZC provided courier services to GSS in accordance with the 2019 Agreement and the Understandings. The parties gave effect to the 2019 Agreement and the Understandings in the same way as set out at [15] and by:

(a) GSS receiving notice form FEL about a customer it wanted to actively target to check if it was an existing GSS customer, and GSS discussing the customer with FEL; and

(b) GSS requesting or engaging with requests from FEL to engage in cover pricing to deter customers from accepting the other party's quote.

[22] GSS has not sought to enforce the 2019 Non-Compete or the Understandings since February 2023.

[23] GSS admits that its conduct contravened ss 27 and 30 of the Act.

Relevant legislative provisions

[24] Sections 27 and 30 are in Part 2 of the Act. During the period of the contravening conduct, there were amendments to s 30 and the penalty provisions in the Act.

[25] Prior to the amendment, s 30 provided that for the purposes of s 27, a provision of a contract, arrangement, or understanding was deemed to substantially lessen competition if it had the purpose or likely effect of fixing, controlling, or maintaining prices for goods or services.

[26] After the amendment, s 30 directly prohibits the entry into, or giving effect to, a "cartel provision" (as defined in s 30A). A cartel provision includes a contractual provision that has the purpose, effect, or likely effect of price fixing, restricting output or market allocation in relation to the supply of goods or services in New Zealand.[1] The 2017 amendment to s 30 included a nine-month transitional period, so the current provisions took effect on 15 May 2018.[2]

[27] It follows that for the period from 6 July 2015 to 14 May 2018, GSS's conduct contravened s 27, via s 30. From 15 May 2018 to February 2023, GSS's conduct contravened s 30.

Approach to penalty

[28] It is for the Court to impose the appropriate pecuniary penalty in respect of any contravention. The Court in *Commerce Commission v New Zealand Milk Corporation Ltd*, confirmed that there is no objection to the parties making submissions and presenting a joint view as to the appropriate penalty, nor to such view being reached as a result of negotiations that represent what could be described as a settlement.[3]

[29] The common approach to setting an appropriate penalty under s 80 is to:[4]

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1 Commerce Act 1986, s 30A(1).
2 Commerce Act 1986, sch 1AA, cl 2.
3 *Commerce Commission v New Zealand Milk Corporation Ltd* [1994] 2 NZLR 730 (HC) at 733.
4 *Commerce Commission v Mondiale Freight Services Ltd* [2022] NZHC 1370 at [31]; *Commerce Commission v Visy Board (NZ) Ltd* [2013] NZHC 2097, [2014] NZCCLR 1 at [35]; and *Commerce Commission v PGG Wrightson Ltd* [2015] NZHC 3360 at [34].

(a) determine the maximum penalty;

(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 discount or increase the penalty on the basis of any considerations specific to the defendant.

[30] I adopt the above approach in considering whether the penalty proposed by the Commerce Commission and GSS should be imposed.

Maximum penalty

[31] Section 80 of the Act provides the pecuniary penalties available for breaches of Part 2 of the Act, including ss 27 and 30. Section 80(2A) requires the Court, on 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.[5]

[32] Under s 80(2B)(b) of the Act, the maximum penalty is the greater of:

(i) $10 million; or

(ii) either,-

(A) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or

(B) if the commercial gain cannot readily be ascertained, 10% of the turnover of the person and all its interconnected bodies corporate (if any) in each accounting period in which the contravention occurred.

[33] Prior to 15 August 2017, the turnover limb did not include "in each accounting period in which the contravention occurred".

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5 Commerce Act 1986, s 80(2A)(b).

[34] In both the current and previous version of the Act,'turnover' is defined as:[6]

> … the total gross revenues (exclusive of any tax required to be collected) received or receivable by a body corporate *in an accounting period* as a result of trading by that body corporate within New Zealand.

[35] Accordingly, under the previous version of the Act turnover was calculated by reference to the total gross revenues of a single accounting period (rather than in each accounting period in which the contravention occurred).

[36] The Commission submits that the commercial gain is not readily ascertainable and so turnover should be used to calculate the maximum penalty. The Commission proposes that turnover be calculated based on the pre 15 August 2017 wording and that GSS's conduct be treated as involving five separate breaches.

[37] The Court in *Commerce Commission v Mondiale Freight Services Ltd* acknowledged the complications in calculating a penalty where changes to s 80(2B) were made during the period of the contravening conduct. The Court accepted that turnover should be calculated based on the older wording (turnover in an accounting period).[7]

[38] GSS's relevant turnover in the 2023 financial year totalled $[Redacted]. Ten per cent is $[Redacted]. The maximum penalty under the older turnover limb for all five breaches is therefore $[Redacted]. That is less than the maximum penalty of five times $10 million under s 80(2B)(b)(ii)(A). The maximum penalty is therefore $50 million.

Determining the appropriate starting point

[39] Wylie J identified the relevant factors in arriving at an appropriate starting point in *Mondiale Freight Services Ltd*, as follows:[8]

(a) the nature and seriousness of the contravening conduct;

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6 Commerce Act 1986, s 2(1) (emphasis added).
7 *Mondiale Freight Services*, above n 4, at [35].
8 At [38].

(b) whether the conduct was deliberate or not;

(c) the role of the defendants in the impugned conduct;

(d) the seniority of the officers involved;

(e) the duration of the contravening conduct;

(f) the extent of any benefit derived from the contravening conduct;

(g) the extent of any loss or damage suffered by other persons as a result of the contravening conduct;

(h) the importance of the market;

(i) the market share and/or degree of market power held by the defendant; and

(j) the size and resources of the defendant.

[40] The Court is to look at the conduct overall and assess the appropriate penalty for the conduct in the round rather than attempting to assess separate penalties for separate breaches.[9]

Nature and seriousness of conduct

[41] The contravening conduct involved the entry into, and giving effect to, the 2015 Agreement, the 2019 Agreement and the Understandings. I accept that GSS had a lesser role than Freightways. Freightways drafted the 2015 Agreement and the 2019 Agreement and provided those agreements to GSS. GSS did not have the same commercial negotiating power as Freightways. GSS also understood that the contravening clauses were industry standard. In 2019, GSS was provided with the legal advice from a competition law specialist confirming that the wording of the 2019

9 At [39].

Agreement was compliant with the Act. GSS acknowledges that it should have sought its own legal advice, but I accept this factor is nevertheless relevant.

Was the conduct deliberate or not?

[42] GSS deliberately entered into and gave effect to the contravening agreements and the Understandings but was not aware that the conduct was illegal.

Seniority of officers

[43] GSS's directors were directly involved in entering into the contravening agreements and giving effect to those agreements.

Duration of conduct

[44] That conduct occurred over a number of years from July 2015 to no later than February 2023.

Commercial gain and harm suffered

[45] I accept that the contravening conduct created the potential for commercial gain to GSS and the potential to harm customers by removing the possibility of direct competition between GSS and FEL, NZC, and PHG. I accept however, that it is difficult to ascertain the extent of the commercial gain and harm from the contravening conduct.

Importance and type of market

[46] The parties agree that courier services are important to consumers and the New Zealand economy. There has been an increase in online shopping, especially since COVID-19. The estimated annual value of the courier services' market in New Zealand for the 2022 financial year was approximately $900 million.

Market share/degree of market power held by GSS

[47] GSS began as a start-up in 2010 and now competes with 17 carriers and 11 resellers. Since 2020, GSS has been one of the larger resellers in New Zealand.

Size and resources of GSS

[48] GSS's annual revenue has grown over the period of contravening conduct. At the time of the 2015 Agreement, its annual revenue was approximately $[Redacted] and for the 2023 financial year it was approximately $[Redacted] per annum. That indicates that over the course of the contravening conduct, GSS was a minor player in the market and has, over time, become larger and more influential.

[49] Taking into account the relevant factors, while GSS's conduct occurred over a lengthy period, GSS played a lesser role and understood the conduct was industry standard and lawful. It was not a significant player in the market, but its revenues did grow over the period of the contravening conduct. To ensure consistency, I now consider how the proposed pecuniary penalty compares with the penalties imposed in comparable cases.

Comparable cases

[50] The parties submitted that the contravening conduct is comparable but less serious than the conduct in *Commerce Commission v Oceanbridge Shipping Ltd*,[10] *Mondiale Freight Services*,[11] and *Commerce Commission v GEA Milfos International Ltd*.[12] In those cases, the agreed starting points ranged from $1.1 million in *GEA Milfos International* to $7.35–7.75 million in *Mondiale Freight Services.*

[51] The Commission also referred to *Commerce Commission v PGG Wrightson Ltd* and *Commerce Commission v Rural Livestock Ltd* as authorities for imposing a lower penalty where a defendant plays a lesser role in the contravening conduct.[13]

[52] In *Mondiale Freight Services,* Mondiale reached separate unlawful arrangements with nine different counterparties and accepted its conduct was a serious transgression. While Mondiale was not the ringleader, the conduct included cover pricing and occurred over a lengthy period. Mondiale was the largest privately owned

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10 *Te Komihana Tauhokohoko/Commerce Commission v Oceanbridge Shipping Ltd* [2022] NZHC 1371.

11 *Mondiale Freight Services*, above n 4.

12 *Commerce Commission v Gea Milfos International Ltd* [2019] NZHC 1426.

13 *Commerce Commission v PGG Wrightson Ltd* [2015] NZHC 3360; and *Commerce Commission v Rural Livestock Ltd* [2015] NZHC 3361.

freight forwarder in New Zealand and had a relatively high degree of influence in the industry. Its revenue was also in the hundreds of millions.

[53] The contravening conduct in *Oceanbridge* involved seven arrangements not to solicit (or supply to) a competitor's customers that were entered into and given effect. The duration of its conduct was less than in *Mondiale*. Oceanbridge was a significant operator and it had a degree of influence.

[54] I agree that the relevant factors are most analogous to the circumstances in *GEA Milfos International Ltd* which also involved an arrangement to not compete that was deliberately entered into and given effect. Milfos was of a similar size to GSS. While the arrangement in *GEA Milfos International Ltd* was for a lesser time (two years), Milfos was an equal partner. Here, the terms of the 2015 Agreement and the 2019 Agreement were proposed to GSS. GSS understood it was industry standard and in 2019 was provided with legal advice. I agree that those factors indicate GSS had a lesser role. Consistent with *PGG Wrightson Ltd*, that supports a lower pecuniary penalty being imposed on GSS than that in *GEA Milfos International Ltd*.

[55] I accept that an appropriate starting point is in the range of $700,000 to $800,000.

Considerations specific to GSS

[56] Having identified the appropriate starting point, it is necessary to adjust that having regard to mitigating factors. In *Reserve Bank of New Zealand v TSB Bank Ltd*, Mallon J undertook a review of discounts given in relation to pecuniary penalties in breach of the Act and observed that:[14]

> … discounts have been in the range of 25 per cent for early admission of responsibility but no active cooperation, between 25 per cent and 30 per cent for early admission and full cooperation, and more where there has been additional assistance by giving evidence in proceedings against others.

[57] The Commission submits that a 30 per cent discount is appropriate in circumstances where GSS has not previously received a warning or been found to have

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[14] *Reserve Bank of New Zealand v TSB Bank Ltd* [2021] NZHC 2241, [2021] NZCCLR 27 at [49] (footnotes omitted).

contravened the Act; GSS cooperated with, and assisted, the Commission; GSS admitted the contraventions; and GSS has invested in compliance measures.

[58] I consider that given the above circumstances, a 30 per cent discount is appropriate and consistent with other cases. Applying a 30 per cent discount to the starting range gives a final range of $490,000 to $560,000. I agree that a final penalty of $525,000 (which falls in the middle of this range) is an appropriate penalty for GSS's contraventions of ss 27 and 30 of the Act and properly reflects the application of the totality principle.

Conclusion

[59] For the reasons above, I make an order declaring that GSS:

(a) contravened s 27 via s 30 of the Act by entering into, and giving effect to, the 2015 Agreement and the Understandings; and

(b) contravened s 30 of the Act by:

(i) giving effect to the 2015 Non-Compete and Understandings; and

(ii) entering into, and giving effect to, the 2019 Agreement.

[60] I approve the penalty agreed between the Commission and GSS and accordingly, I make an order approving a pecuniary penalty in the sum of $525,000.

[61] Costs are to lie where they fall.

Tahana J