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### **Godfrey Hirst/Bremworth – Statement of Unresolved Issues Cross-submission**

1. We refer to the submissions made by Chapman Tripp (for Mohawk/Godfrey Hirst) (**Mohawk submission**) and Bremworth on the Commerce Commission's Statement of Unresolved Issues in relation to the proposed acquisition of Bremworth by Mohawk/Godfrey Hirst (**the Applicant**).

#### **Introduction and summary**

2. This submission is made by the Cowes Bay Group (**CBG**).
3. The Commission must decline clearance. There is no basis on which the Commission could be satisfied that the proposed acquisition will not substantially lessen competition in a market.
4. Despite the assertions by Mohawk and Bremworth, the proposed acquisition raises serious competition issues that will harm retailers and New Zealand consumers through less choice, lower quality, and higher prices.
5. This submission makes three key points:
  - (a) The Commission has adopted a conventional analytical framework consistent with precedent (both court precedent and the Commission's own approach).
  - (b) The Applicant and Bremworth have advanced an array of arguments that cannot be reconciled with key facts presented.
  - (c) The Applicant's core problem is that it disagrees with the Commission's characterisation of the facts under the conventional legal framework. None of the information the Applicant has presented in response to the SoUI is sufficient to address the concerns (and indeed in some instances only emphasises the competition issues) and therefore the Commission must decline clearance for the merger.
6. Mohawk and Bremworth have not addressed the significant and substantive competition issues with the proposed acquisition:
  - (a) Wool carpet is a critical segment of the market, and a must-have product for retailers. Eliminating Godfrey Hirst's only significant (and closest) wool carpet competitor would provide Godfrey Hirst with a near monopoly in that segment.

- (b) The merged entity would be able, and have the incentive, to leverage its wool carpet dominance into wholesale supply dominance, which would substantially lessen competition in the soft flooring market. The merged entity would demonstrably not be sufficiently constrained by imports or other factors.
  - (c) The proposed acquisition will also quash Bremworth's return as a meaningful competitor in relation to synthetic carpet.
  - (d) The likely counterfactual is the sale of Bremworth to another party or recapitalisation, and the revitalisation of Bremworth as a vibrant, capable NZ manufacturer of carpet that is competitive and provides a strong countervailing force against Godfrey Hirst's dominant market position. Measured against that counterfactual, competition will be substantially lessened.
7. The burden lies on the Applicant to satisfy the Commission that the proposed acquisition is not likely to have the effect of substantially lessening competition in a market. If the Commission is not satisfied or is left in doubt, it must decline the merger. The material put forward by the Applicant and Bremworth in response to the SoUI cannot, as a matter of law or fact, properly satisfy the Commission that clearance should be granted.

#### **Flaws in logic undermine Mohawk submission**

8. The commercial justification put forward by the Applicant for its proposed acquisition of Bremworth (ie, needing to get access to Bremworth's manufacturing capacity to bolster Godfrey Hirst's own manufacturing capacity and better enable it to compete against importers) is inconsistent with other aspects of Mohawk's submission.
9. For example, the Mohawk submission claims that Godfrey Hirst has progressively lost market share to importers, which presumably would mean that Godfrey Hirst's own existing manufacturing facilities have developed excess capacity. It is difficult to rationally reconcile a claimed loss of market share/increase in excess manufacturing capacity with a need to undertake an acquisition to access more manufacturing capacity. The Applicant is at pains to point out that Bremworth's manufacturing facilities, in particular the Napier and Papatoetoe plants, are in need of substantial remedial work/repair/replacement.<sup>1</sup> If the rationale for the acquisition is to bolster Godfrey Hirst's manufacturing capacity and better enable it to compete against importers, it does not make sense to acquire what they seem to view as poorly maintained equipment.
10. Further, if wool carpet is in terminal decline as indicated in the submission, it is not clear why Mohawk would be trying to purchase its largest and closest competitor (who only has a self-described nascent/de minimis non-wool business)<sup>2</sup> for more than \$50m. The submission also inconsistently refers to Godfrey Hirst increasing wool carpet output and expanding its wool ranges between January 2025 and March 2026 in response to market demands (paragraph 27), while at the same time trying to argue that wool prices are increasing and demand for wool carpet is and will keep declining (eg, paragraphs 29 and 121).

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<sup>1</sup> For example: Mohawk Submission paragraph 86, and Chapman Tripp on behalf of Godfrey Hirst – comments on SoPI (Coves Bay and Anonymous A-D) 8 December 2025, paragraph 38.

<sup>2</sup> Bremworth Submission on SoUI, paragraph 52.

11. While the rationale for the acquisition is not part of the specific test under the Commerce Act, it can be telling in terms of what the potential competition impacts may be. It is clearly difficult to understand why a company would be willing to pay \$50m+ for what it claims to be a failing company with dire future prospects, without more. In our view, the proposed acquisition will result in the removal of Godfrey Hirst's only meaningful competitor for wool carpet (and a potential meaningful competitor for synthetic carpet). This will substantially lessen the ability for NZ flooring retailers, who need to have a wool carpet range, to resist the actions and strategies of Godfrey Hirst, to the detriment of competition and ultimately NZ consumers.

### Counterfactual

12. A firm cannot be a failing firm if it is likely that there is a credible third party that will acquire the firm and operate it as a going concern.<sup>3</sup>
13. The acquisition of Bremworth by a well-resourced and capable industry participant who does not yet have a significant carpet business in New Zealand would clearly be a more competitive counterfactual than the status quo, and immeasurably more competitive than the factual.
14. The Mohawk submission, at paragraphs 62 to 65, seeks to discredit Kim McKendrick and CBG to support its unfounded assertion that there is not "any proper basis for the prospect of CBG being a prospective alternative rescuer".
15. Making disparaging remarks about Kim McKendrick to try to bolster their arguments is indicative of the weakness of the substantive legal and factual arguments. It is clear that the Applicant's worst-case scenario for the NZ market would be the transformation of an under resourced, underperforming Bremworth into a revitalised, broader product ranged, well resourced, strongly managed business that is able to provide a compelling alternate source of supply to NZ retailers and for the benefit of NZ consumers. We expect the Commission (and the industry more generally) will be able to see the Applicant's comments about Kim McKendrick and CBG for what they are – the agitated response of an under-pressure Applicant that is (and has been) unable to present a coherent, accurate, and logical rebuttal of the Commission's (and industry's) well formed, soundly based concerns about the proposed acquisition.
16. However, we do wish to make the following comments in relation to the unconvincing and far-fetched assertions made in paragraphs 62 to 65 of the Mohawk submission:
- (a) The reason Mohawk paid such a substantial price for the Godfrey Hirst manufacturing and distribution processes in New Zealand and Australia when it acquired the business from the McKendrick family was presumably because Mohawk saw great inherent value in those domestic manufacturing and distribution processes that were established, built and developed by the McKendrick family. Indeed, at the time of purchase, Mohawk publicly praised Kim McKendrick and the business he built.<sup>4</sup> It is patently ridiculous to assert, as the Applicant appears to be doing, that a decision to sell a business somehow invalidates a

<sup>3</sup> See our submission on the Statement of Unresolved Issues dated 22 April 2026.

<sup>4</sup> See, for example, [Mohawk Industries, Inc. Announces Purchase of Godfrey Hirst Group](#), which includes "Godfrey Hirst is the premier flooring manufacturer in Australia and New Zealand as well as the market leader in design and innovation. The company has been owned and operated by the McKendrick family for the last 50 years and will continue to be led by R.G. (Kim) McKendrick, the CEO and Chairman". It further includes a quote from Mohawk's chairman and CEO about Godfrey Hirst's "outstanding management".

person's ability, knowledge, and insight, or that it should disqualify them from re-entering the industry.

- (b) The submission seems to infer that the fact a person has not proceeded with an investment in the past, means that they must be excluded from consideration as a potential purchaser when considering the counterfactual in a future acquisition. This plainly cannot be correct.
- (c) CBG understands the challenges of dealing with Bremworth's strategic and structural issues but is confident that with the appropriate governance, management and access to financial resources, those challenges can be successfully overcome – resulting in Bremworth resuming its position as a vibrant, successful, NZ manufacturing participant in the industry, and being a direct and effective competitor to Godfrey Hirst.
- (d) As noted in our submission on the Statement of Unresolved Issues, CBG would readily and has repeatedly tried to engage with the Board of Bremworth to facilitate a transaction if the Board would engage. [

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- (e) The Scheme Implementation Agreement entered into by the Applicant and Bremworth restricts discussions with a third party that may reasonably be expected to lead to a competing proposal (cl 13.2), and the Bremworth board will be mindful of a claim for breach of contract being made if it does not comply with that clause. Any suggestion that there are not other potential purchasers cannot hold when there is such a restriction in place.
- (f) Mohawk's claim that there is not any proper basis for the prospect of CBG being a prospective purchaser is obviously self-interested. It is abundantly clear that the only two outcomes suggested by Mohawk (acquisition by Mohawk or Bremworth failing and exiting the market, which would be to Godfrey Hirst's advantage) ignore the likely counterfactual. To the contrary, [

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- (g) [

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- (h) From shareholders of Bremworth that we have spoken to, we understand that shareholders do not share the view that Bremworth is a failing firm[

] Similarly, they do not agree with any view (express or implied) emanating out of Bremworth that the only option for the company is sale to Godfrey Hirst and failing that, something more terminal for the Bremworth company.

- (i) Notwithstanding the Applicant's failing firm argument, a shareholder of Bremworth (David Ferrier) has over the past 3 months increased his shareholding (in concert with related parties) to almost 20% of Bremworth. [

] If Bremworth was a failing firm (which we reject), it is difficult to see why a person with detailed knowledge of the industry would build such a significant shareholding interest in the company.

17. The Mohawk submission also relies on analysis that it engaged NERA to undertake relating to investment and amount of revenue spent on plant and equipment. While material on this is redacted in the submission, there is nothing that we can see that takes into account the potential for Bremworth under new ownership to have access to more financial resources to support investment and innovation.<sup>7</sup> Any suggestion of declining competitiveness of Bremworth in the counterfactual cannot be accepted on the basis of the data that appears to have been used in the NERA report. To be compelling, such analysis would also need to acknowledge and assess the ability for a capable industry participant to revitalise Bremworth as a vibrant capable competitor to Godfrey Hirst.
18. The Bremworth submission redacts material relating to the counterfactual, so it is difficult to properly respond to it. Based on what is not redacted, we assume that it is trying to claim that a party other

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<sup>7</sup> Paragraph 10 of the NERA report states "Perhaps cash could be injected by an alternative acquirer under the counterfactual, although we query how attractive this would be given the operating cashflow difficulties of Bremworth and without the sort of synergies the Godfrey Hirst merger would create". However, it does not provide any analysis on this point or assess the potential increasing competitiveness of Bremworth in the counterfactual, and appears to be an opinion without any factual or experiential basis that is outside the scope of NERA's work.

than Mohawk acquiring Bremworth and continuing to run it as a going concern is a remote or speculative possibility, and/or that Bremworth continuing as a going concern would not be economically rational. However, the submission does not address why another party is not a rational counterfactual [

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19. Further, while the Bremworth submission (insofar as we can see it) copies selective quotes from certain cases about the legal approach to the counterfactual, it does not identify how the relevant quotes link to this particular proposed acquisition. For example:
- (a) The first quote (from *Air New Zealand v Commerce Commission (No 6)*) is used to support the statement that a counterfactual cannot be established without the aid of economic analysis. However, what the quote actually states (when read in full in the context of the case) is that predictions of the likely behaviour of firms in a dynamic market at some point in the future typically involve the application of economic theory, and that "*Such predictions have often been referred to as "value judgments" ... They are judgments which **the Commission is especially constituted and qualified to make** and, if open to the Commission on the evidence before it, are findings with which an appellate Court will be slow to interfere*" (emphasis added).
  - (b) The submission cites *Commerce Commission v Bay of Plenty Electricity Ltd* as authority for saying that the counterfactual test requires consideration of the future conduct that a firm would rationally take. While a counterfactual may not be likely if it is not rational, the context of the quote relates to assessing an alleged breach of the previous formulation of section 36 of the Commerce Act (not assessing the likely counterfactual in the context of a merger). Specifically, the case states "*what the [counterfactual] test addresses is the question of whether a firm with dominance and/or a substantial degree of market power would rationally, in the sense that it could and could do so profitably — over a relevant time frame — engage in the impugned conduct if it did not possess that dominance or substantial market power*".
  - (c) The submission relies on the statement of an economist in *ANZCO Foods Waitara Ltd v AFFCO New Zealand Ltd*, that "*Sunk costs are already sunk and rational forward-looking decision making ignores them*", to support its position that determination of the counterfactual involves assessment of what the "rational forward-looking" decision maker would do. However, again it is not clear how directly relevant that quote is in the context of the Commission making an assessment of the likely counterfactual in the context of this specific proposed acquisition.
20. We agree that, as set out in the Commission's Mergers and Acquisitions Guidelines, a pragmatic and commercial assessment of what is likely to occur in the future should be adopted. In doing so, the Commission must clearly include in its consideration a counterfactual of Bremworth continuing as a going concern and competing with Godfrey Hirst, given the clear evidence that [

] This is a counterfactual that has a real chance of occurring, and is not remote or economically irrational.

### **Proposed acquisition will substantially lessen competition**

#### *Imports are not a sufficient constraint*

21. The Commission must be cautious to ensure that it does not accept as fact submissions made by the merger parties that are speculative. For example, the Mohawk submission refers to:
  - (a) "the undisputed fact of ongoing tariff reductions that must result in significant further imports". This statement is simplistic and speculative, and fails to address the core issue of imports not being able to act as sufficient constraint. Domestic manufacturers, as demonstrated by Mohawk's decision to purchase the Godfrey Hirst business for \$650m and Godfrey Hirst's dominant market position, have significant advantages over importers as set out further below.
  - (b) "Importer competitors will continue to, and increasingly, provide the strongest competitive constraint in the wholesale supply of both wool and synthetic carpets", without providing any evidence to support that or addressing the limitations of imports or benefits of domestic manufacturing.
22. The Mohawk submission and accompanying NERA report assert that imports must be constraining the domestic manufacturers based on Godfrey Hirst's wool carpet margins declining since 2021.
23. As the actual information on the margins has been redacted, CBG cannot comment on the specific information. However, the Commission will need to thoroughly test this, as there are a number of factors that would impact wool carpet gross margins, such as:
  - (a) 2021 was impacted by COVID and the global phenomenon of consumers using income support (and time on their hands) to expand their purchases of consumer products. Increased demand and disrupted supply chains resulted in elevated sales, gross profit and gross margins for many companies. It is not clear whether 2021 represents a margin high point for Godfrey Hirst.
  - (b) A decision by Godfrey Hirst to even more vigorously compete with Bremworth when it was impacted by Cyclone Gabrielle in early 2023. Such competition logically would include a level of price competition and margin contraction. The Kāinga Ora tender for carpet in 2025 (won by Godfrey Hirst and Bremworth) demonstrates that there was competition between the parties for the contract, including we assume in relation to price.
  - (c) Overall business performance. For example, the following table shows the Sales, Gross Profit and Gross Margin numbers, as reported to ASIC, for the Australasian Godfrey Hirst business. The numbers show a modest drop off in Australasian sales of 6%. However, significantly and illustratively, there has been a substantial, apparently across the board, drop off in both Gross Profit and Gross Margin across the business over the time period referred to by Godfrey Hirst/NERA:

	31-Dec	31-Dec	31-Dec	31-Dec	Change
A\$000's	2021	2022	2023	2024	21 - '24
Revenue from operations	537,129	560,938	544,202	505,630	-6%
Gross Profit	173,204	167,115	152,989	136,319	-21%
Gross Margin	32.2%	29.8%	28.1%	27.0%	-16%

24. NERA and the Mohawk submission assert that there are no material barriers to expansion by wool carpet importers and there are no differences between the economics of selling imported wool carpets and synthetic carpets. However, the comments made to support this conclusion are based largely on assumptions, without compelling data or information gained from industry knowledge to support the conclusion. To a substantial degree, NERA must rely on its client to provide data and industry knowledge, as NERA is neither a carpet nor flooring industry expert.
25. As the Commission knows from its discussions with industry participants, there are significant limitations on the ability of importers to constrain the merged entity, including matters relating to carpet warehousing, lead times, and costs. The Mohawk submission in fact highlights some of the advantages of being a domestic manufacturer – eg, relating to bespoke orders and minimum production runs (paragraph 35).
26. Data relied on by NERA shows that imports of wool carpet are statistically irrelevant. As set out in our submission of 19 February 2026, information provided by Mohawk indicates that a combined Mohawk/Bremworth would have wool carpet sales more than 7.5 times greater than its next largest competitor, and the remaining importers have even smaller sales volumes and market shares. This is not consistent with the assertions that there are not material barriers to expansion by wool carpet importers or differences between the economics of selling imported wool carpets and synthetic carpet. If barriers were not high, it would not have made sense for Mohawk to have spent \$650m buying Godfrey Hirst or offering to pay \$50m+ for Bremworth's domestic manufacturing.
27. Further, while the Mohawk submission asserts that domestic manufacturers are losing market share to imports and that imports are growing, the data in NERA's report indicates that from 2021 – 2024, the volume of wool carpet imports actually declined, and that the annual value increase (across all suppliers) in wool carpet was \$4m.<sup>8</sup> That \$4m increase and \$18m in total represents a small and effectively irrelevant source of wool carpet supply vs Bremworth and Godfrey Hirst individually, and even more so against a combined Godfrey Hirst/Bremworth.
28. The laundry list of wool carpet manufacturers included in an appendix to the Mohawk submission is not relevant – it is speculative and, even if there was a real prospect that some of the entities would start to import into New Zealand, they would be hampered by the same constraints as the existing limited wool carpet importers. The fact is that wool carpet imports into NZ are modest, ranges are narrow, and are not likely to act as a countervailing force to an aggregated Godfrey Hirst and Bremworth. Neither Godfrey Hirst nor Bremworth have provided any actual, fact based evidence to support an alternate view.

<sup>8</sup> Figures 8 and 9, page 6, NERA report *Project Loop: Report prepared for Chapman Tripp*, 15 October 2025, contained in the public version of the Clearance Application.

*Retailers do not have countervailing power that would constrain merged entity*

29. We refer to and repeat our previous submissions on the lack of countervailing power of retailers. The material put forward by Mohawk and Bremworth does not change our position.
30. We also note that the suggestion in paragraph 159 of the Mohawk submission that flooring retailers have power akin to the power that major supermarkets have against a supplier (eg, to threaten or impose sanctions on the merged entity across its broader product portfolio) is not correct. If Godfrey Hirst and Bremworth combine, the combined entity would be the only place that even large buying groups can obtain wool carpet (which accounts for ~25% of the market) of sufficient volume. Factually and demonstrably, they do not have the capacity to purchase the required volume and diversity of wool carpet from non-Godfrey Hirst/Bremworth sources.

*Dominance in wool carpet will be likely to lead to a substantial lessening of competition*

31. The proposed acquisition would remove Godfrey Hirst's only other significant and closest wool carpet competitor and, if allowed to occur, would provide Godfrey Hirst with a near monopolistic position in this critical market segment. Such a position could logically also be leveraged into other segments of the soft flooring market and other flooring markets. It is illogical to think that if one supplier controls substantially all of the supply of a key market segment, that supply power does not provide them with the ability to constrain buying behaviour and significantly impact the ability of others to compete in the broader market or related markets.
32. The Mohawk submission focuses heavily on trying to persuade the Commission that a lessening of competition in relation to wool carpet would not have a significant impact on the broader market. In doing so, it puts forward opinions on legal principles relating to the substantial lessening of competition test. Similarly, the Bremworth submission spends some time discussing the appropriate approach to assessing a substantial lessening of competition.
33. However, the submissions and accompanying opinions do not address the fundamental issues identified by the Commission – ie, whether a dominant or monopolist supplier of wool carpet (which is a significant section of the market) could, using that position, substantially lessen competition in the market.
34. It is clear, from cases such as *Dandy Power Equipment* and *Port Nelson*, that there can be a substantial lessening of competition in a market as a result of dominance in a segment of a market. For example, *Dandy Power* clearly states "a lessening in a significant section of the market, if a substantial lessening of otherwise active competition may, according to circumstances, be a substantial lessening of competition in a market". *Port Nelson* also notes "Action within a submarket, or market sector, may have repercussions for the pleaded market as a whole". The focus of the Applicant and Bremworth on the approach to the substantial lessening of competition test miss the key points:
  - (a) Wool carpet is clearly an important and significant segment, and the merged Godfrey Hirst/Bremworth entity would achieve virtual dominance in that segment. We understand the wool carpet market represents ~25% of the total NZ soft flooring market (not 15% as claimed by Bremworth). Regardless of the specific percentage, clearly, a significant portion of the demand for carpet remains wool based.

- (b) Reflecting consumer choices, wool carpet is a must have for retailers.
  - (c) As such, the merged entity could leverage its wool carpet dominance into wholesale supply dominance, which would substantially lessen competition in the soft flooring market. The capacity for one supplier to dominate supply in the significant wool segment obviously presents them with the opportunity to compel the buying behaviours of retailers in other areas of the market, and substantially impact the ability of others to compete. As outlined above and in our previous submissions, the merged entity would demonstrably not be sufficiently constrained by imports or other factors.
  - (d) The Applicant asserts (at paragraph 76) that "*consolidation will not mean less product variety (as the SoUI suggests). Rather, the merged entity will offer an enhanced product range that is contemporary, diverse, competitive with imports and sustainable*". However, Godfrey Hirst/Mohawk is already one of the world's leading flooring companies. It has the capacity to produce whatever Bremworth produces. Aggregation does not seem likely to change product range, with the strongest incentive to do so to foreclose the potential for other players to enter, or sustain entry in the market.
  - (e) In assessing the impact on competition, price is not the only relevant factor. A dominant supplier (and proposed monopolistic supplier of wool carpet) has many more "tools" beyond just pricing to shape (if not compel) retailer behaviour. There have been multiple submissions in the Commission's process from retailers confirming this. The ability to withhold supply to retailers who do not agree to certain terms is relevant, as are other measures that could be imposed on retailers by a supplier who is dominant in a key part of the market – such as capping or reducing trade terms, removing or lowering rebates and marketing support, changing supply times or changing supply arrangements to reduce/eliminate perceptions of product exclusivity in specific geographic locations.
  - (f) The proposed acquisition will also remove potential competition from Bremworth in relation to synthetic carpet. The Mohawk submission seeks to quash concerns about the impact of the proposed acquisition on Bremworth's re-entry into synthetic carpet by pointing to Bremworth's financial difficulties limiting innovation and investment. This, however, shows that Bremworth is a significant potential competitor in the likely counterfactual discussed above. Bremworth's re-entry into the synthetic market would lower Bremworth's average costs and improve Bremworth's competitive position (just as Godfrey Hirst obtains significant cross product efficiencies from manufacturing and distributing a broad range of carpet and flooring products).
35. We also urge the Commission to carefully test the data and assumptions provided in the opinions of James Every-Palmer KC and NERA, and Chapman Tripp, provided with the Mohawk submission, given conclusions are being drawn based on data provided to the authors by Godfrey Hirst. For example:
- (a) The opinions assert that imports of both wool and synthetic carpets would constrain the merged entity. However, there are very few wool carpet imports and they will not constrain the dominant merged entity. While the Applicant lists various wool carpet suppliers/importers (eg, in paragraph 84), all of those suppliers are a small portion of Bremworth's wool carpet sales and an even smaller proportion of an aggregated Godfrey Hirst/Bremworth wool carpet

sales. They are narrow/niche providers of product, and do not and cannot act as a countervailing force. Despite the repeated opportunity to dispute the Commission's position with facts, Godfrey Hirst (and Bremworth) have simply failed to do so.

- (b) The James Every-Palmer KC and NERA opinion relies heavily on parts of the Baseline Consultancy report to support its conclusion. However, despite relying heavily on the report to support its conclusion, the opinion expressly calls into question the survey design and sampling approach (see footnote 9 of the opinion). In relation to a key part of the survey that could be relevant when considering what would happen if there was a SSNIP (and therefore the conclusion of the opinion), the authors dismiss the survey. Specifically, the opinion records that the survey found that only 2%/1% of customers would choose a different carpet fibre type as a result of a 10%/5% price increase. This critically calls into question the substitutability of wool and synthetic carpet, and whether there is a separate market for wool carpet rather than a broader soft flooring market, yet the Applicant does not address this point in its submission. Note - The 1% figure for the 5% price increase does not appear in the table on the last page of the Baseline Consultancy report – it is not clear if it has been redacted or not included in the version attached to Applicant's submission. Further comments on issues relating to the Baseline Consultancy report are set out later in this submission.
- (c) Similarly, the Chapman Tripp opinion relies on the Baseline Consultancy report. It asserts that the report "confirms the substitutability between synthetic fibre and wool soft flooring", and uses the claimed substitutability to opine that synthetic and wool carpet acts as a price constraint on wool flooring.
- (d) The Chapman Tripp opinion also states "We are not aware of any posited dynamic that would alter this conclusion [as to whether there would be a substantial lessening of competition in the overall soft flooring market]. This is not a case where there is evidence (for example) that entry into the soft-flooring market would be obstructed by a change in conduct in the wool segment". However, there clearly is a posited dynamic, supported by factual information and data collected by the Commission, that the proposed acquisition would substantially lessen competition in the soft flooring market – as set out in a number of submissions in the NZCC process and this submission. For example, the SoUI states that Godfrey Hirst (as the largest wholesale carpet supplier in New Zealand) has a strong bargaining position with retailers, and that the proposed acquisition would strengthen Godfrey Hirst's importance to, and negotiation position with, flooring retailers. This includes, for example and as set out in the SoUI, that there are concerns that the removal of Bremworth through the proposed acquisition would strengthen Mohawk's already significant bargaining power with retailers and distributors, and limit the ability of alternative suppliers to access retail channels (paragraph 197).
36. Finally, in relation to the role of imports of synthetic carpet as a constraint – paragraph 180 of the Mohawk submission later highlights uncertainties now arising in terms of the production of synthetic carpet given the conflict in the Middle East. CBG urges the Commission not to rely on imports to constrain the merged entity's conduct post-completion.

*Claimed efficiencies are irrelevant*

37. Our submission of 11 November 2025 set out a summary of issues with the claimed efficiencies being overstated and not relevant to the Commission's analysis.
38. In relation to the suggestion in Mohawk's submission that it will be able to distribute Bremworth branded product into Europe and North America, this is irrelevant to the competition assessment and speculative. There is no evidence that Mohawk would be successful in distributing Bremworth branded product in Europe and North America, especially when Godfrey Hirst has not been successful in doing so. Enhancing competition in overseas markets is not directly relevant to the test in section 47 of the Commerce Act.

**Baseline Consultancy report**

39. The Baseline Consultancy report, commissioned by Godfrey Hirst, does not provide sufficient or compelling evidence to support the conclusions drawn by the Applicant (and its advisors) based on the report. In fact, in a key respect, it contradicts their fundamental argument about the substitutability of wool carpet and synthetic carpet. In particular:
- (a) The last two pages report on a survey done relating to price sensitivity, finding that only 2% of customers would choose a different carpet fibre type as a result of a 10% price increase. Based on footnote 9 in the opinion of James Every-Palmer KC and NERA, we understand that the survey also found that only 1% of customers would choose a different carpet fibre type as a result of a 5% price increase, but that figure does not appear in the version of the report attached to the Applicant's submission.
  - (b) If the Applicant's argument is that consumers can be swayed to change their original preference for carpet fibre by a range of variables, 76% of the data sample did not change. That is, the substantial majority of consumers were fixed in their view of carpet fibre they wished to purchase.
  - (c) Of those surveyed (a relatively small sample size of 204 people), 40% of consumers came to a purchase decision wanting to purchase wool carpet. That is a substantially higher share of wool vs non-wool carpet share than claimed by Mohawk and Bremworth. Even when a portion of those consumers who preferred wool changed their minds, according to Baseline, 27% stayed with wool (which is significantly higher than the 15% wool share claimed by Bremworth).

**Concluding remarks**

40. The Mohawk submission states that it provides a "quantitative response" to the Commission's further information requests, asserting that they "comprise a combination of detailed legal analysis, expert economic analysis and public opinion and brand awareness surveys". Oddly, given the onus is on the Applicant to satisfy the Commission that it should grant clearance, the Mohawk submission also states that "No comparable analysis in relation to the Proposed Acquisition has been provided either by the SoUI itself or by other parties making submissions on it".
41. The material referred to by the Applicant was provided after the closing date for submissions on the SoUI (and approximately 7 months after the date of its application), and interested parties have only been given a very short time to review and respond to the (heavily redacted) material.

42. The one-sided material put forward in the Mohawk and Bremworth submissions contains inconsistencies and insufficient data, factual backing or industry input. This means that the Commission cannot be in a position to be satisfied that the test for clearance has been met.

**Confidentiality**

43. Confidentiality from the public is sought for information highlighted and in square brackets in this submission. A public version of this submission will be provided to the Commission.
44. CBG requests that it be notified of any request made under the Official Information Act 1982 for the confidential information included in this submission, and be given the opportunity to be consulted as to whether the information remains confidential at the time that the request is made.
45. We are happy to provide any further information that may assist.

**Yours sincerely**

**Greg Mann**  
**Cowes Bay Group Pty Ltd**