

19 March 2026

Fliway Group Limited

c/- [REDACTED]

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

## **Commerce Act 1986: Warning from the Commerce Commission for cartel conduct**

1. The Commerce Commission (the **Commission**) has completed its investigation into Fliway Group Limited (**Fliway**) for potential breaches of the Commerce Act 1986 (the **Commerce Act**).
2. The investigation considered allegations of anti-competitive conduct involving a contract, arrangement and/or understandings between Fliway and a carrier in the courier services market which had the purpose, effect, or likely effect, of price fixing and/or market allocating in relation to the supply of courier services,<sup>1</sup> in breach of section 27, via former section 30, and current section 30 of the Commerce Act.
3. After fully considering the relevant information received, the Commission considers that Fliway has likely breached section 27, via former section 30, and current section 30 of the Commerce Act. The Commission notes that only a court can determine whether there has been a contravention of the Commerce Act.
4. In this instance, the Commission has decided the appropriate enforcement response is to issue Fliway with a warning.
5. The purpose of this warning is to inform you of the Commission's views on why it considers there has been a likely breach of the Commerce Act and to encourage

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<sup>1</sup> 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, from businesses to their customers, or from one individual to another.

future compliance. Legal action remains available to the Commission in future if the conduct continues or is repeated.

6. The Commission notes that Fliway has ceased the conduct and that it intends to run additional compliance training for its staff to ensure future compliance with the Commerce Act.
7. While the Commission does not intend to take any further action against Fliway, the Commission has brought and concluded civil proceedings against Aramex and GoSweetSpot for similar conduct in the New Zealand courier market.
8. Aramex admitted to entering into and giving effect to a contractual arrangement that allocated customers and fixed prices between itself and another competitor in the courier services market. Separately, GoSweetSpot admitted to entering into and giving effect to contractual arrangements that allocated customers between itself and another competitor in the courier services market. These separate proceedings were resolved with admissions by the defendants that the conduct breached the Commerce Act and the imposition of jointly recommended penalties – \$700,000 for Aramex and \$525,000 for GoSweetSpot.<sup>2</sup>
9. The Commission is also issuing warnings to eight courier providers for conduct that formed part of the same investigation.

#### **Details of the Commission’s investigation**

10. The Commission investigated an allegation that Fliway entered into and gave effect to an arrangement with a carrier not to compete to provide courier services to each other’s customers.
11. During the investigation, the Commission obtained and considered the following information:
  - 11.1 information and documents supplied to the Commission by Fliway on 17 May 2024;
  - 11.2 information and documents supplied to the Commission by Fliway on a voluntary basis on 1 August 2024 and 23 August 2024;
  - 11.3 information supplied to the Commission by a Fliway representative, during a voluntary interview on 1 August 2024;
  - 11.4 information provided to the Commission by Fliway on 6 September 2024 regarding further information that Fliway considered may be relevant to the Commission’s enforcement decision; and
  - 11.5 information and documents provided to the Commission by another party.

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<sup>2</sup> <https://www.comcom.govt.nz/news-and-media/news-and-events/2026/couriers-ordered-to-pay-1-225-million-after-investigation-into-cartel-conduct/>.

### Details of the relevant law

12. The Commerce Act aims to promote competition in markets within New Zealand for the long-term benefit of consumers. The Commerce Act has been amended over the course of the conduct. The relevant provisions are:
  - 12.1 the former price fixing prohibition, in section 27 via former section 30 of the Commerce Act:
    - 12.1.1 section 27 of the Commerce Act prohibits entry into a contract, arrangement or understanding containing a provision that has the purpose, effect or likely effect of substantially lessening competition in a market, and also prohibits giving effect to such a provision in an agreement;
    - 12.1.2 until amended by the Commerce (Cartel and Other Matters) Amendment Act 2017, former section 30 deemed a provision in an agreement between competitors that has the purpose, effect, or likely effect of fixing, controlling, or maintaining prices or components of prices (price fixing) to substantially lessen competition in a market for the purposes of section 27 of the Commerce Act; and
  - 12.2 the current cartel prohibition, which is in section 30 as amended by the Commerce (Cartels and Other Matters) Amendment Act 2017 for any conduct that occurred after those amendments took effect.<sup>3</sup> Section 30 prohibits competitors (including potential competitors) from entering into and/or giving effect to a contract, arrangement or understanding that contains a cartel provision. A cartel is where two or more businesses agree not to compete with each other, and this includes agreements relating to prices or components of prices (price fixing), restricting output, and market allocating (customer sharing).
13. The Commerce Act also provides for exceptions to the cartel prohibitions in certain circumstances, including:
  - 13.1 former section 31, which provided an exemption to the former price fixing prohibition for joint ventures;
  - 13.2 two exceptions that apply in respect of the current cartel prohibition:
    - 13.2.1 current section 31, in relation to collaborative activities; and
    - 13.2.2 current section 32, in relation to vertical supply contracts.

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<sup>3</sup> The Commerce (Cartels and Other Matters) Amendment Act 2017 came into force on 15 August 2017, with a nine-month transitional period for pre-existing contracts, arrangements or understandings.

### **The Commission's view**

14. The Commission's view is that there is sufficient evidence to establish that Fliway likely breached section 27, via the former section 30, and the current section 30 of the Commerce Act. The reasons for the Commission's view are set out below.
15. The Commission considers that:
  - 15.1 Fliway and the carrier are likely in competition with one another to supply retail courier services to customers in New Zealand; and
  - 15.2 there is evidence which demonstrates that Fliway entered into an agreement with the carrier on or around 2 November 2015 that contained a provision that Fliway was not to compete for the carrier's customers (without prior notification and permission being given by the carrier).
16. The Commission considers that the parties reached a consensus through signing the agreement. The agreement included a provision which involved:
  - 16.1 a commitment by Fliway to discuss with the carrier before submitting pricing to the carrier's customers;
  - 16.2 a commitment by the carrier to request that prices are not submitted or grant authorisation for Fliway to submit prices; and
  - 16.3 a clause that if a customer requested a "Lead Logistics Provider" Fliway was able to submit pricing against the carrier, provided prior notification was given by Fliway to the carrier.
17. The agreement was negotiated in the context of a supply arrangement between the parties.
18. The Commission considers that the 2015 agreement was a contract or formed the basis of an arrangement that:
  - 18.1 had the purpose, effect or likely effect of fixing, controlling or maintaining the price of courier services that Fliway and the carrier offered to their customers in competition with each other (under section 27 via the former section 30); and
  - 18.2 allocated customers between Fliway and the carrier and likely contained a cartel provision under section 30A(4) of the Commerce Act (and thereby breached current section 30).

### *Exceptions*

19. Only a court is able to determine whether the former joint venture exception or either of the current vertical supply or collaborative activity exceptions apply to Fliway's arrangement detailed above. However, in the Commission's view:
  - 19.1 regarding the joint venture exception:

19.1.1 Fliway and the carrier were not offering the 'joint supply' of services, as their arrangements did not:

- (a) create a significant new enterprise or productive capacity in the market; or
- (b) involve substantial integration of production operations, rather, Fliway was purchasing an input, in order to compete with other providers of logistics and courier service operations;

19.2 regarding the collaborative activity exception:

19.2.1 Fliway and the carrier were not carrying on their activities in cooperation, rather they reached an agreement as to how to run their separate businesses; and

19.2.2 the relevant contractual provision was not reasonably necessary to any collaborative activity as there were less restrictive alternative clauses available;

19.3 regarding the vertical supply exception:

19.3.1 the relevant provisions do not 'relate' to the carrier's supply of wholesale courier services to Fliway, but rather constrain how Fliway could supply retail services; and

19.3.2 it is difficult to see how a provision which inhibited a party from approaching the customers of its competitor would not have the dominant purpose of lessening competition between them.

20. The Commission therefore considers that none of the above exceptions apply.

### **Response from Fliway**

21. During our investigation, Fliway responded to the Commission by saying that:

21.1 they did not consider Fliway and the carrier to be competitors;

21.2 the carrier prepared the initial agreement;

21.3 they were not aware of any instances where Fliway had notified the carrier prior to submitting a proposal to one of the carrier's customers;

21.4 they were not aware of the provision referenced above at paragraph 16 having been referred to or enforced by either party since the agreement was entered into in 2015; and

21.5 the agreement ended in or around 2018.

22. The Commission's letter dated 14 November 2025 also provided Fliway with a final opportunity to comment on the Commission's intention to issue a warning and to

provide any additional relevant information or identify incorrect information. The Commission received a response from Fliway raising several points regarding the contents of the proposed warning, including that they considered that from approximately 2018 onwards the 2015 agreement ceased to govern the relationship between the parties. In particular, Fliway considers that the that the alleged anti-competitive conduct occurred prior to Fliway being acquired by New Zealand Post on 1 March 2022.

23. Having considered the responses, the Commission's final view remains that there is sufficient evidence to establish that Fliway has likely breached section 27, via former section 30, and current section 30 of the Commerce Act.

#### **Enforcement action for breaching the Commerce Act**

24. Where the Commission considers that a person or business has likely breached the Commerce Act, there are a range of potential enforcement responses available.
25. The Commission reiterates that its view is based on the information collected during the investigation, and that only a court can determine whether there has been a breach of the Act. A court can impose penalties where it finds the law has been broken. If a court finds a breach of Part 2 of the Commerce Act, it can impose pecuniary penalties on a company of up to \$10 million, three times the commercial gain or 10% of turnover, whichever is the greater, for each breach.
26. In deciding on the appropriate enforcement response in this case, the Commission has considered the extent of the harm, the seriousness of the conduct, and the public interest. The Commission has also considered:
  - 26.1 the historical nature of the conduct;
  - 26.2 Fliway's size; and
  - 26.3 Fliway's cooperation with the investigation.
27. Further detail on the Commission's approach to making enforcement decisions is contained in the Commission's 'Enforcement Response Guidelines', available on the Commission website ([www.comcom.govt.nz](http://www.comcom.govt.nz)).

#### **Consequences of this warning**

28. This warning represents the Commission's view that the conduct in which Fliway has engaged is likely to have breached the Commerce Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
29. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Fliway.
30. The Commission may also take this warning into account in the event of continued or repeated similar conduct by Fliway.

## Publication

31. This warning is public information and will be published on the case register on the Commission website. The Commission may decide to redact some details from the published version, such as personal information.
32. The Commission may also make public comment about our investigation and conclusions.<sup>4</sup> However, the Commission does not intend to issue any further media releases related to this warning.

## Further information

33. The Commission encourages you to regularly review your compliance procedures and policies and seek legal advice about the application of the Commerce Act to your business.
34. The Commission has published a series of fact sheets and other resources to help businesses comply with the legislation we enforce. These are available on the Commission website at [www.comcom.govt.nz](http://www.comcom.govt.nz). The Commission encourages you to visit the Commission website to better understand your obligations and the Commission's role in enforcing the Commerce Act.
35. You can also view the Commerce Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

## Review of our decision

36. You are entitled to request a review of our decision to issue this warning only if you identify relevant material that was not considered as part of our decision. You must request a review within one month of this warning being issued. Any review will be handled in accordance with the Commissions complaints process. Please submit any review request to [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz).

Yours sincerely



Grant Chamberlain  
Head of Cartels

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<sup>4</sup> The media release issued by the Commission on 4 March 2026 referred to this warning but did not name Fliway. We may also make comment to media or publicise the outcome on our social media forums.