

## Draft Determination

**Note:** This is a draft determination issued for the purpose of advancing the Commerce Commission’s decision on this matter. The conclusions reached in this draft determination are preliminary and take into account only the information provided to the Commission to date.

This is a draft determination under the Commerce Act 1986 in the matter of an application for authorisation of a restrictive trade practice. The application is made by:

### HP New Zealand

**The Commission:**

Dr John Small  
Dr Derek Johnston  
Rakihia Tau

**Summary of application:**

HP New Zealand has applied for authorisation of certain resale price maintenance arrangements in respect of its HP Online Store and potential HP Online Marketplace Stores. The authorisation would continue the conduct previously authorised by the Commission in *HP New Zealand* [2021] NZCC 14.

**Draft Determination:**

The Commerce Commission’s preliminary decision is that, on the basis of the information provided to date, it should grant authorisation for a period of ten years due to the public benefits that will result, or be likely to result, from the proposed arrangement.

**Date of draft determination:**

9 July 2026

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

## CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>DRAFT DETERMINATION .....</b>	<b>3</b>
<b>NEXT STEPS.....</b>	<b>4</b>
<b>BACKGROUND: THE PROPOSED ARRANGEMENT AND KEY PARTIES .....</b>	<b>4</b>
HPNZ.....	4
<i>HP Distribution Network .....</i>	<i>5</i>
<i>The HP Online Store .....</i>	<i>5</i>
<i>HP's sales in New Zealand through various channels.....</i>	<i>6</i>
THE 2021 AUTHORISATION .....	6
THE APPLICATION .....	7
<b>HOW WE ASSESS RPM AUTHORISATIONS .....</b>	<b>7</b>
<b>JURISDICTION .....</b>	<b>9</b>
<b>RELEVANT MARKETS .....</b>	<b>10</b>
HPNZ'S SUBMISSIONS .....	10
OUR ASSESSMENT .....	10
<b>WITH AND WITHOUT THE ARRANGEMENT .....</b>	<b>11</b>
WITH THE ARRANGEMENT (THE FACTUAL) .....	12
WITHOUT THE ARRANGEMENT (THE COUNTERFACTUAL) .....	12
<i>HP's submissions on the counterfactual .....</i>	<i>12</i>
<i>Our assessment of the counterfactual.....</i>	<i>13</i>
<b>OUR ASSESSMENT OF BENEFITS AND DETRIMENTS .....</b>	<b>14</b>
POTENTIAL BENEFITS AND DETRIMENTS OF THE PROPOSED ARRANGEMENT .....	15
PRICE EFFECTS OF THE PROPOSED ARRANGEMENT .....	17
<i>HPNZ's submissions .....</i>	<i>17</i>
<i>Other submissions.....</i>	<i>18</i>
<i>Our assessment of price effects .....</i>	<i>18</i>
NON-PRICE EFFECTS OF THE PROPOSED ARRANGEMENT .....	20
<i>HPNZ's submissions .....</i>	<i>20</i>
<i>Other submissions.....</i>	<i>21</i>
<i>Our assessment of non-price effects.....</i>	<i>21</i>
INCURRED OR AVOIDED COSTS AS A RESULT OF THE PROPOSED ARRANGEMENT .....	22
<i>Submissions.....</i>	<i>22</i>
<i>Our assessment.....</i>	<i>22</i>
BALANCING THE BENEFITS AND DETRIMENTS.....	23
<b>LENGTH OF THE PROPOSED AUTHORISATION .....</b>	<b>23</b>
<b>DRAFT DETERMINATION .....</b>	<b>25</b>
<b>NEXT STEPS IN OUR ASSESSMENT.....</b>	<b>25</b>
MAKING A SUBMISSION .....	26

## Executive Summary

1. On 4 May 2026, the Commerce Commission (the **Commission**) registered an application from Hewlett-Packard New Zealand Limited (**HPNZ**) under section 58(7) of the Commerce Act 1986 (the Act) for authorisation to engage in resale price maintenance (**RPM**) in relation to its proposed arrangements for its HP online store and prospective HP online marketplace store (collectively, the **HP Stores**) for a period of up to 10 years (the **Proposed Arrangement**) (the **Application**).<sup>1</sup>
2. Hewlett-Packard (**HP**) generally distributes its computers and related equipment in New Zealand via resellers, including major retailers. However, since the Commission granted authorisation for it to engage in RPM in 2021 (**2021 Determination**), it has also sold stock to consumers through an HP-branded online store (**HP Online Store**). The HP Online Store is operated by HPNZ, but for technical and commercial reasons, sales transactions are fulfilled via a selected local third-party distributor (**Partner**), currently [ ], which purchases stock from HPNZ and holds that stock locally until it is used to fill an order. When a customer places an order, [ ] invoices the customer and receives payment. The existing authorisation allows HPNZ to set the price of these consumer-facing transactions, and therefore the price that [ ] charges, which amounts to RPM.
3. In that respect, the RPM conduct in the Proposed Arrangement is very narrow, and is undertaken for a different reason than RPM is commonly implemented.<sup>2</sup> The RPM that is the Proposed Arrangement is to underpin the operation of the HP Online Store in New Zealand.
4. This draft determination proposes to authorise HP to continue that RPM for ten years. Our preliminary view is that, but for the RPM, HP would not be likely to operate the HP Online Store in New Zealand; and the presence of that store results in (unquantifiable, and likely small) public benefits. We also consider that the RPM conduct underpinning the Proposed Arrangement results in no real public detriments, in particular because the RPM conduct affects only a small proportion of HPNZ's sales which, in turn, comprises an exceedingly small share of the market.

## Draft determination

5. The Commission is releasing this draft determination to provide interested parties with an opportunity to comment before the Commission makes its final determination.
6. The Commission's preliminary view is that it is satisfied that the expected public benefits from the Proposed Arrangement would outweigh any detriments. Accordingly, we would authorise the Proposed Arrangement under section 58(7).

---

<sup>1</sup> Application by HP New Zealand for authorisation (1 May 2026) (the Application) at [8] and Annexure A, [2(a)]. A public version of the Application is available on our website at: <https://www.comcom.govt.nz/case-register/case-register-entries/hp-new-zealand-2/>

<sup>2</sup> For example, providing guaranteed margins to resellers to encourage the provision of pre- and post-sales service (amongst other things).

## Next steps

7. The Commission now seeks written submissions on the draft determination. Submissions should be received by the Commission by close of business on **23 July 2026**. The process for making a submission is discussed further below.

## Background: the Proposed Arrangement and key parties

### HPNZ

8. HPNZ is a member of the HP Group. Its US-listed parent company, HP Inc., is a manufacturer of HP-branded technology products (**HP Products**) including desktop computers, notebooks, printers and related accessories and supplies (ink cartridges, toners, etc).
9. HP Products are procured by distributors in NZ directly from HP factories overseas which then on-sell those HP Products to resellers and retailers in NZ. When certain volume criteria are met, HPNZ also sells directly to resellers and retailers through its network of HP partners as well as direct to consumers via the HP Online Store. The proposed RPM would only affect the HP Online Store (currently [ ]% of HPNZ's sales) and prospective HP Online Marketplace Stores (not yet active in New Zealand), which compete directly with the distribution network resellers and retailers that also sell HP Products. A summary of HPNZ's sales channels is set out in **Table 1** and described further below.

**Table 1 – HPNZ's sales channels**

	Entity	Product source	Customer segment
<b>HP Distribution Network:</b> [ ]% of HPNZ's sales	[ ] T1 distributors	Direct from HP overseas.	Onsell to T1 retailers, and T1 and T2 resellers
	[ ] T1 resellers	Bulk buy from HP overseas or T1 distributor	Large corporate/government clients
	[ ] T2 resellers	T1 distributors	Broad range
	[ ] T1 retailers	T1 distributor or bulkbuy from HPNZ	Individual and small business customers
<b>Other sales:</b> [ ]% of HPNZ's sales	HPNZ – [ ]% of sales		Corporate/Government
	HP Online Store – [ ]% of sales where RPM is sought (Currently the online marketplace store model is not operating in NZ)		Individual and small business customers

### *HP Distribution Network*

10. HPNZ imports HP Products into New Zealand and distributes and supplies them through its network of authorised distributors, retailers and resellers for resupply to a variety of customers. Such customers include large corporate and government end-users, small-to-medium businesses and consumers.
11. The distribution of HP Products involves a network of HP partners (**HP Distribution Network**) that are categorised into four groups, namely “T1 Distributors”, “T1 Resellers”, “T2 Resellers” and “T1 Retailers” as set out below.
  - 11.1 T1 Distributors procure large volumes of HP Product direct from HP factories overseas. HPNZ has [ ] T1 Distributors that on-sell HP Products to T1 Resellers, T2 Resellers and T1 Retailers.
  - 11.2 There are [ ] T1 Resellers that purchase HP Products from the T1 distributors, and, where certain volume criteria are met, T1 Resellers may also purchase directly from HPNZ. T1 Resellers tend to supply HP Products to large corporate and government end-users.
  - 11.3 There are over [ ] T2 Resellers that purchase HP Products from T1 Distributors. The T2 Resellers sell to a broad range of end-users, including Government, large corporates, small-to-medium enterprises, and to a lesser extent, home consumers.
  - 11.4 There are [ ] T1 Retailers that purchase HP Products from T1 Distributors, or directly from HPNZ if volume requirements are met, and sell to home consumers and small-to-medium businesses.

### *The HP Online Store*

12. HPNZ also operates the HP Online Store in New Zealand. The target audience of the HP Online Store are small to-medium businesses, individual/home consumers and students.
13. Pursuant to the existing authorisation granted in the 2021 Determination (discussed in paragraphs [17]–[20]), HPNZ does not sell HP Products direct to those consumers in New Zealand through the HP Online Store. Instead, consumers place orders with the HP Online Store and the Partner fills the order and supplies the goods to consumers from its pre-purchased stock.
14. HPNZ currently does not sell HP Products through an online marketplace store in NZ, but if and when marketplace opportunities arise in the NZ market, HP will consider establishing HP (branded) online marketplace stores.<sup>3</sup> The online marketplace stores would operate in a similar way to the current HP Online Store, except that they would be operated by the Partner on behalf of HP, selling as a third party on the

---

<sup>3</sup> The Application, Annexure A at [3.4].

online marketplace platform (**HP Online Marketplace Stores**).<sup>4</sup> Examples of HP online marketplace stores overseas are the HP storefronts on Amazon and eBay.

*HP's sales in New Zealand through various channels*

15. Approximately [ ]% of sales of HP Products, whether to large corporate or government customers, small-to-medium businesses or consumers, are undertaken through the HP Distribution Network.
16. Outside the HP Distribution Network, HPNZ supplies large corporate or government customers with significant volume requirements directly and this amounts to approximately [ ]% of HP Product sales. The remaining [ ]% of HP Product sales are currently through the HP Online Store to individual and small business customers.

**The 2021 authorisation**

17. In 2021, the Commission received an application from HPNZ to engage in RPM conduct in relation to its new public and private online stores and its new HP online marketplace stores it intended to open in NZ.<sup>5</sup> HPNZ intended to operate the new stores with a third-party distributor, with HPNZ setting the retail prices.<sup>6</sup> HPNZ submitted at the time that due to technical and commercial issues, the third-party distributor would need to take ownership of the stock before sale and be the retailer of record.<sup>7</sup> It would also hold stock, process orders and deal with deliveries and returns.
18. Prior to March 2020, HPNZ had sold a limited range of HP Products online through a public HP branded website that was created, hosted and managed by a previous partner of HPNZ's, Acquire Co NZ Limited (**Acquire**).<sup>8</sup> Acquire set retail prices independently, but this model proved to be commercially unsustainable for HPNZ as [ ]<sup>9</sup>.
19. HPNZ submitted that its new public and private online stores and its new HP online marketplace stores could only proceed with RPM conduct, and that this model would provide high quality customer experiences that may add to price competition in the retailing of products they carry.<sup>10</sup> According to HPNZ, authorising the conduct would create a net public benefit, and that there would be no detriments as it was only

---

<sup>4</sup> HPNZ response to RFI dated 26 June 2026 (30 June 2026) at 2.

<sup>5</sup> HP New Zealand Limited [2021] NZCC 14 (the 2021 Determination) at [1]. A public version of the 2021 Determination is available on our website at: [https://www.comcom.govt.nz/assets/pdf\\_file/0025/264418/5B20215D-NZCC-14-HP-New-Zealand-Final-determination-30-August-2021.pdf](https://www.comcom.govt.nz/assets/pdf_file/0025/264418/5B20215D-NZCC-14-HP-New-Zealand-Final-determination-30-August-2021.pdf).

<sup>6</sup> *Ibid.*, at [3].

<sup>7</sup> *Ibid.*, at [4].

<sup>8</sup> *Ibid.*, at [7].

<sup>9</sup> *Ibid.*, at [20].

<sup>10</sup> *Ibid.*, at [9].

seeking to engage in RPM conduct with its selected third-party distributor, and all other distributors and resellers would remain unaffected.<sup>11</sup>

20. The Commission concluded that the new HP online and marketplace stores would likely provide the customer experiences claimed by HPNZ and although it was impractical to quantify the benefits, they would provide many benefits compared with the counterfactual of HPNZ having no direct online presence in NZ such as marginal price competition. Accordingly, in the 2021 Determination, we granted authorisation to HP on 30 August 2021 to engage in the conduct for five years, and it is due to expire on 31 August 2026.<sup>12</sup>

### The application

21. HPNZ seeks authorisation for it to, in effect, continue the arrangement as authorised by the 2021 Determination. It seeks to enter into an agreement between HPNZ and a Partner and through that agreement engage in RPM.<sup>13</sup> The agreement provides that the Partner will not sell the goods at a price less than the price specified by HPNZ and the Partner will sell and receive payments for the HP Products on:<sup>14</sup>

21.1 the current and prospective HP Online Store; and

21.2 prospective HP Online Marketplace Stores,

(collectively, the **HP Stores**).

22. HPNZ intends to control the product and marketing strategies and specify the prices at which the Partner will sell the HP Products on the HP Stores. The RPM conduct will only apply to products sold by the Partner through the HP Stores, which currently only makes up [ ]% of HPNZ's sales. The HP Distribution Network, which consists of various authorised distributors, resellers and retailers of HP Products and non-HP stores will continue without change.

### How we assess RPM authorisations

23. Section 37 of the Act prohibits a supplier from engaging in RPM. A supplier of goods engages in RPM when it enforces, or tries to enforce, a minimum price at which the reseller must on-sell those goods.<sup>15</sup> RPM is *per se* unlawful unless authorised by the Commission.

---

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., at [10-12].

<sup>13</sup> There is currently an agreement (under the existing authorisation) between HP and [ ] containing RPM clauses. However, HP's application covers any agreement between itself and the third-party distributor operating the HP Stores, not just continuation of the existing agreement with [ ] or new agreements with [ ]: The Application, Annexure A at [5.1].

<sup>14</sup> The Application at [8] and Annexure A, [2(a)].

<sup>15</sup> Commerce Act 1986, s 37. See also Commerce Commission, *Resale Price Maintenance Factsheet* (July 2022).

24. The Commission is empowered under sections 58(7) and 61(8) of the Act to authorise RPM conduct that is otherwise subject to the *per se* prohibition in section 37.
25. The Commission undertakes a two-stage assessment when considering an authorisation application submitted under section 58(7) of the Act:
  - 25.1 first, assessing whether the Commission has jurisdiction to assess and authorise the application (the ‘jurisdictional threshold’); and
  - 25.2 second, assessing whether the associated benefits mean that authorisation should be granted (the ‘public benefit test’).
26. To grant authorisation to RPM conduct:
  - 26.1 the Applicant must consider that section 37 of the Act would or might apply to the conduct,<sup>16</sup> and
  - 26.2 as set out in the 2021 Determination, the Commission must be satisfied:<sup>17</sup>
    - 26.2.1 that the conduct amounts to engaging in the practice of RPM;<sup>18</sup> and
    - 26.2.2 that the conduct “will in all the circumstances result, or be likely to result, in such a benefit to the public” that it should be authorised.
27. Unlike authorisations of conduct that might breach sections 27 or 36 of the Act, the Commission is not required in authorising RPM to determine that competition would be lessened by the conduct. However, in determining whether the conduct is likely to result in such a benefit to the public, the Commission is required to assess the detriments associated with the conduct. Accordingly, it is required to perform a qualitative and, to the extent practicable, quantitative assessment of any lessening of competition likely to result from the RPM, with which to compare the associated benefits, noting that:<sup>19</sup>
  - 27.1 any lessening of competition need not be found to be substantial;
  - 27.2 any lessening of competition may be found to be negligible, or even non-existent.

---

<sup>16</sup> Commerce Act 1986, s 58(7).

<sup>17</sup> 2021 Determination, at [27].

<sup>18</sup> The acts that amount to engaging in the practice of RPM are listed in section 37(3) of the Act.

<sup>19</sup> The courts have said it is “implicit” in the benefits assessment that the Commission is required to assess qualitatively, and to the extent practicable quantitatively, any lessening of competition associated with the conduct (see *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA), at 447 and *Air New Zealand and Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347 (HC) (*Air New Zealand*) at [319]).

28. The benefits and detriments must arise from the conduct for which authorisation is sought.<sup>20</sup> To determine whether benefits and detriments are specific to the conduct, we assess:
- 28.1 what is likely to occur in the future with the conduct, ie, the factual;
  - 28.2 what is likely to occur in the future without the conduct, ie, the counterfactual; and
  - 28.3 once identified, we then assess all likely benefits and detriments relevant to our assessment of the conduct. As a general principle, benefits and detriments will be likely if there is a real and substantial risk or real chance that they will happen if the conduct proceeds.<sup>21</sup>
29. When assessing the conduct, we compare what is likely to occur in the future with the conduct with each scenario that is likely to occur in the future without the conduct. By assessing the relative states of competition in each of these scenarios, we determine whether the conduct will in all the circumstances result, or be likely to result, in such a benefit to the public that it should be authorised.

## Jurisdiction

30. The Applicant has applied for authorisation under section 58(7) of the Act, which sets out that a person who wishes to engage in the practice of resale price maintenance, to which that person considers section 37 of the Act would or might apply, may apply to the Commission for an authorisation to do so.
31. The Commission has jurisdiction to grant authorisation under section 61(8) of the Act where the Commission is satisfied that the relevant conduct which amounts to engaging in the practice of RPM, (which is defined in section 37 of the Act as requiring one (or more) of the acts set out in section 37(3) of the Act) will in all the circumstances result or be likely to result in such a benefit to the public that it should be permitted.
32. Here, the Applicant considers that the Proposed Arrangement amounts to the practice of resale price maintenance in potential contravention of section 37(3)(c) of the Act, because:<sup>22</sup>
- The Conduct may technically be considered to amount to HP entering into an agreement for the supply of goods to another person, where one of the terms is that the other person will not sell the goods at a price less than a price specified by HP.
33. We agree with the Applicant that the relevant provisions of the Proposed Arrangement amount to engaging in the practice of RPM. In particular, we consider that the relevant agreement with HP's Partner includes a clause requiring the

---

<sup>20</sup> Commerce Commission, *Authorisation Guidelines* (June 2023) at [43].

<sup>21</sup> *NZME Ltd v Commerce Commission* [2018] 3 NZLR 715 (CA) at [83] and [86(a)].

<sup>22</sup> The Application, at Annexure A [2(a)].

Partner to sell the goods at a price specified by HP.<sup>23</sup> Accordingly, we have jurisdiction to consider this application.

## Relevant markets

34. Usually when we consider an application for authorisation of potentially restrictive trade practices, we assess the competitive effects of the Proposed Arrangement within relevant market(s) in New Zealand.<sup>24</sup>
35. Determining the relevant market requires a judgement as to whether, for example, two products are sufficiently close substitutes (as a matter of fact and commercial common sense) to provide significant competitive constraints on each other. Markets are defined in a way that best isolates the key competition issues that arise from the application.<sup>25</sup>

## HPNZ's submissions

36. In the Application, HP submitted that the relevant markets were likely New Zealand-wide markets for the PC category of products and the Print category of products.<sup>26</sup> It further noted that these products are focused on two main audiences (commercial customers and consumers) and can be broken down further into sub-markets or market segments (for example, separating out consumer desktops and consumer notebooks). HP submitted that there is strong inter- and intra-brand competition in all relevant segments and customer categories as referred to in **Table 1** above.

## Our assessment

37. In the 2021 Determination, we did not find it necessary to conclude on the precise boundaries of the relevant market(s). While noting that the relevant markets were likely to be national, we considered that our assessment would have been the same regardless of how product (or customer) markets were defined.<sup>27</sup>
38. Our view is currently unchanged in this case.
  - 38.1 We consider that any relevant markets are likely to be national because the HP Stores compete with most of the largest suppliers of electronics in New Zealand, which tend to have online stores and national distribution networks.
  - 38.2 Our assessment of price- and non-price-related welfare effects below would be substantially the same regardless of product (or customer) market definition because the HP Stores are (and likely would continue to be)

---

<sup>23</sup> The Application, at Annexure D, [ ].

<sup>24</sup> Section 3(1A) of the Act: "the term market is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them."

<sup>25</sup> For more information on the Commission's approach to market definition, see our *Mergers and Acquisitions Guidelines* (May 2022) at Chapter 3.

<sup>26</sup> The Application at Annexure A, [4].

<sup>27</sup> 2021 Determination at [34]–[36].

relatively small, and constrained by significant intra- and inter-brand competition, even under the narrowest realistic definitions.<sup>28</sup>

- 38.3 Our assessment of HP's and the Partner's costs in operating the HP Stores under alternative models would be independent of market definition because the relevant costs would be setup or overhead costs that would be unaffected by the process or scope of competition.<sup>29</sup>

### **With and without the arrangement**

39. As noted above, to determine whether the benefits and detriments identified by an applicant are specific to the Proposed Arrangement, we assess:
- 39.1 what is likely to occur in the future with the Proposed Arrangement (the factual); and
- 39.2 what is likely to occur in the future without the Proposed Arrangement (the counterfactual).
40. This analysis also allows us to determine both the existence and magnitude of potential benefits and detriments.
41. In this context the Commission is necessarily engaging in a future-focussed assessment. As such, there is scope for a range of potential factual and counterfactual scenarios. The Commission must consider all "likely" factual and counterfactual scenarios to identify all likely benefits and detriments relevant to its authorisation assessment.<sup>30</sup>
42. For the "likely" threshold to be met, Courts have held that there must be a real and substantial chance of the factual or counterfactual arising.<sup>31</sup> It must be more than a mere possibility but it need not be more likely than not.<sup>32</sup> The Courts have observed that, inherently, the factual and counterfactual are "necessarily incapable of accurate assessment".<sup>33</sup> As such, there is no legal burden or evidential standard of proof for the Commission to be satisfied that the factual or counterfactual scenarios and the benefits and detriments arising from them are likely.<sup>34</sup> For the Commission

---

<sup>28</sup> *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85].

<sup>29</sup> We discuss the details under our assessment of transaction and other costs incurred or avoided as a result of the RPM conduct, from paragraph 78 below.

<sup>30</sup> Authorisation Guidelines at [44] and [45].

<sup>31</sup> *NZME Ltd v Commerce Commission* at [86(a)], citing *Port Nelson v Commerce Commission* [1996] 3 NZLR 554 (CA) at 562–563.

<sup>32</sup> *Ibid.*

<sup>33</sup> *NZME Ltd v Commerce Commission* at [85], citing *Woolworths Ltd v Commerce Commission* (2008) 8 NZBLC 102,128 at [113].

<sup>34</sup> *NZME Ltd v Commerce Commission* at [86(c)], citing *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [96] per Elias CJ and [96] per Blanchard, Tipping and McGrath JJ.

to be satisfied, it simply needs to have made up its mind on all of the material before it.<sup>35</sup>

**With the arrangement (the factual)**

43. The proposed conduct is RPM. If the proposed conduct is authorised, HPNZ would:
- 43.1 continue to impose RPM on its local distribution partner that assists in operating the proposed HP Online Stores in New Zealand; and
  - 43.2 if HPNZ chose to open an HP Online Marketplace Store in NZ, impose RPM on the local distribution partner that would assist it in operating that store.

**Without the arrangement (the counterfactual)**

44. The counterfactual is a future without the Proposed Arrangement, ie one in which HPNZ does not continue to impose RPM conduct on its Partner that assists in operating the proposed HP Online Stores and HP Online Marketplace Store in NZ.

*HP's submissions on the counterfactual*

45. HPNZ submits that in the absence of the Proposed Arrangement, it cannot operate the HP Stores in NZ as HP cannot commercially justify a model in NZ that does not align with its regional e-commerce strategy.<sup>36</sup>
46. HPNZ further submits that in the counterfactual:<sup>37</sup>
- 46.1 it would not be able to continue operating the HP Stores in NZ;
  - 46.2 it would not have a direct-to consumer online presence for its NZ customers for the near to medium term; and
  - 46.3 customers of the HP Online Store would not be able to buy direct from HP and avail themselves (at least for a long period) of the enhanced customer and brand experience that is currently offered by the HP Online Store, nor would they have the opportunity to make purchases through any prospective HP Online Marketplace Stores.
47. According to HPNZ, the current model for the HP Stores including the resale price maintenance provisions is the only reasonable way forward in terms of commercial viability and HP being in a position to offer an HP branded owned and managed online service and experience to its customers.<sup>38</sup>

---

<sup>35</sup> *NZME Ltd v Commerce Commission* at [86](c), citing *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [26] per Elias CJ and [96] per Blanchard, Tipping and McGrath JJ.

<sup>36</sup> The Application, at Annexure A [2](a) and [6].

<sup>37</sup> *Ibid.*, at [6].

<sup>38</sup> *Ibid.*, at [6].

*Our assessment of the counterfactual*

48. We currently consider that there is one likely counterfactual: in the absence of RPM HPNZ would not have a direct to customer online presence in New Zealand.
49. At this stage, we consider that, as submitted, HPNZ would not continue with the current model for the HP Stores without RPM. We have, however, also assessed whether there might be alternative likely counterfactuals in which HPNZ could operate the HP Stores without controlling the retail pricing of HP Products in the HP Stores via a Partner.
50. We consider that HPNZ would likely not use a model where it would retain title and appoint a third-party distributor under an agency model.
- 50.1 HPNZ noted that it has considered the feasibility of a model whereby it retains title to the HP Products and a third-party distributor operates as its logistics agent, In practice, such a model would require the parties to adopt a consignment based structure, which HPNZ confirmed that to date, [ ].<sup>39</sup>
- 50.2 HPNZ submitted that under a consignment-based agency model, HP-owned inventory would be held within the third party's distribution network, but would remain on HP's balance sheet until onward sale.<sup>40</sup> This would not only introduce material complexity and cost, but would also increase HP's direct risk and exposure in relation to that inventory.
- 50.3 We understand that an agency model would require HPNZ to [ ].<sup>41</sup> HPNZ submitted, and we accept, that integrating these changes across both HPNZ and a third party distributor's systems would be complex, time-consuming, and costly, with a real risk of disruption to existing operations during implementation and transition.
- 50.4 HPNZ also submitted, and we accept, that an agency model whereby it retains title of the HP Products would leave HPNZ more directly exposed to risks associated with holding inventory than it would under the Proposed Arrangement, including, shrinkage, damage, and other inventory carrying risks. These risks are currently borne by the Partner under the existing model.
51. We also consider that HPNZ would not be likely to take steps to operate the HP Stores itself.
- 51.1 HPNZ has submitted that in order to do so, it would need to [ ].

---

<sup>39</sup> The Application at Annexure A [6]2.

<sup>40</sup> Ibid.

<sup>41</sup> Letter from K&L Gates to Commerce Commission (12 June 2026).

51.2 We provisionally accept that any [ ]<sup>42</sup> The cost of [ ] would be in the range of [ ] (based on internal estimates). This reflects the scale and cost of [ ]. Based on submissions to date we accept that it is unlikely HPNZ would incur these costs.

52. HPNZ has also submitted, and we accept, that due to the size of the NZ market, it is not commercially viable for HPNZ to consider alternative approaches to the HP Stores in NZ only.<sup>43</sup>

52.1 According to HPNZ there is limited business opportunity demonstrated to date to justify [ ]

[ ]

].

52.2 Further, the Australian Competition and Consumer Commission (**ACCC**) has considered similar applications to the Proposed Arrangement (in the form of notifications) in respect of HP Online Stores and HP Online Marketplace Stores in Australia in 2019 and 2020 respectively. In both instances the ACCC did not oppose the notifications, with the effect that legal protection for similar RPM conduct continues indefinitely (unless and until the ACCC decides to revoke the notifications).<sup>44</sup> Accordingly, because HP has approval to engage in similar conduct as to the Proposed Arrangement in Australia, we accept that any alternative model would be limited to NZ, which would not be commercially viable for HP given the size of the NZ market.

### **Our assessment of benefits and detriments**

53. The Commission will grant authorisation if it is satisfied, on the evidence before it, that the proposed conduct will in all the circumstances result, or will be likely to result, in a net benefit to the public. In making this assessment, the Commission considers the quality of the evidence and makes reasonable value judgements about how much weight to give to the evidence.

54. In *Godfrey Hirst* the Court of Appeal observed that the Commission must consider a broad range of benefits and detriments in applications for authorisation. This may include efficiencies and non-economic factors.<sup>45</sup> In particular, the Court of Appeal

<sup>42</sup> The Application, Annexure A at [5.2]iii ; and Letter from K&L Gates to Commerce Commission (12 June 2026) at [1].

<sup>43</sup> The Application, Annexure A at [5.2]iii.

<sup>44</sup> ACCC, *Statement of Reasons: HP PPS Australia Pty Ltd RPN 10000453* (10 October 2019); ACCC, *Statement of Reasons: HP PPS Australia Pty Ltd RPN 10000456* (2 October 2020).

<sup>45</sup> *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZCA 560 (CA) at [24] and [31] (*Godfrey Hirst*).

indicated that the Commission must have regard to efficiencies when weighed together with long-term benefits to consumers, the promotion of competition, and any economic and non-economic public benefits. The Court said that “[w]here possible these elements should be quantified; but the Commission and the courts cannot be compelled to perform quantitative analysis of qualitative variables.”<sup>46</sup>

55. The Commission’s approach is to quantify benefits and detriments to the extent that it is practicable to do so.<sup>47</sup> Regarding the weight that can be given to qualitative factors, the Court of Appeal said in *Godfrey Hirst* that “[q]ualitative factors can be given independent and, where appropriate, decisive weight”.<sup>48</sup>
56. The Court of Appeal in *NZME* confirmed that the Act permits us to apply a ‘modified total welfare’ approach, however the Act does not require it.<sup>49</sup> A modified total welfare approach can take into account the distributional effects of benefits and detriments within a community. In this case, no party has proposed to depart from the total welfare approach and the Commission does not propose to do so of its own motion given that it does not appear that it would affect our decision to grant authorisation.

### Potential benefits and detriments of the Proposed Arrangement

57. In general, although it is a *per se* breach of the Commerce Act, RPM has the potential to cause both benefits and detriments.
58. Firstly, the potential detriments arising from RPM. The imposition of RPM on any resellers of the supplier’s goods (such as wholesalers or retailers) can reduce price competition between sellers of the same product and also between products, which may result in customers paying higher prices, which in turn can decrease output.<sup>50</sup> Also, in certain circumstances, particularly where the conduct is widespread, RPM may increase the risk of both explicit and tacit coordination among competitors at both the downstream (eg, retailers) and upstream (eg, manufacturers) levels. RPM can also assist upstream and downstream firms to gain or maintain market power.
59. On the other hand, RPM can sometimes lead to benefits. RPM can promote competition between competing products by improving resellers’ incentives to invest in promotions and support services by solving the ‘free-rider’ problem.<sup>51</sup> RPM

---

<sup>46</sup> *Godfrey Hirst* at [36].

<sup>47</sup> *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA) (AMPS-A CA) at 447; *Air New Zealand* at [319]; and *Ravensdown Corporation Ltd v Commerce Commission* High Court, Wellington API68/96, 16 December 1996 at [47] to [48].

<sup>48</sup> *Godfrey Hirst* at [38].

<sup>49</sup> *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85].

<sup>50</sup> Impacts depend on how RPM is applied and on how the resellers, and competing suppliers, respond. RPM immediately reduces ‘intra-brand’ competition between the resellers affected, who can no longer compete to discount the supplier’s goods. RPM can also reduce ‘inter-brand’ competition because resellers or rival suppliers may not need to discount rival suppliers’ goods as much to make sales.

<sup>51</sup> For example, suppliers of complex goods may seek to use RPM to create incentives for resellers to invest in ancillary services that can promote non-price competition, such as in-store demonstrations and post-sales support. Without RPM, resellers may lack incentives to make such investments due to the ‘free-

can also increase the number of retailers willing to stock and sell a manufacturer's products (due to guaranteed margins), potentially enhancing inter-brand competition, increasing output and enhancing upstream firms' ability to enter and expand by securing downstream distribution.

60. The mix of benefits and detriments that can result from RPM are reflected in the Commission's published approach to investigating RPM, set out in our *Resale Price Maintenance Factsheet*. In that document we state that we will be more likely to prioritise investigating RPM where:<sup>52</sup>
- 60.1 the RPM occurs across an industry or sector;
  - 60.2 parties to the arrangements have market power, either on their own or collectively;
  - 60.3 there is pressure from resellers on suppliers to impose RPM on others;
  - 60.4 the RPM is used to facilitate collusive conduct (including tacit coordination); and/or
  - 60.5 the conduct is particularly likely to harm competition and/or consumers.
61. In this case, HPNZ emphasises that it only seeks to impose RPM on its Partner in the HP Stores and only in respect of the volumes sold through them (which currently comprises ~[ ]% of HPNZ's sales). HPNZ is not seeking to impose RPM on its Partner's other sales of HP Products (ie, sales not originating from the HP Store), or on any of its other distributors or resellers. Therefore, the RPM for which authorisation is sought is of a particular and limited nature. In turn, this means that many of the traditional benefits and detriments of RPM described above either do not apply, or apply only in a very limited manner.
62. Instead, as set out above, the RPM that HPNZ wishes to impose on its Partner's sales of HP Products is a necessary precondition to the (continued) operation of the HP Stores. Accordingly, our analysis of the benefits and detriments of the Proposed Arrangement takes into account both the direct effects of the RPM, as well as the effects of the continued operation of the HP Stores.
63. In this case, we categorise the potential benefits and detriments as follows:
- 63.1 the effects of the Proposed Arrangement on price outcomes;

---

rider' problem. For example, if providing in-store demonstrations is costly – and if resellers need to pay for extra staff or training by charging higher retailer prices – then with no restrictions on retail pricing some resellers may choose to avoid the costs and charge low retail prices, hoping to make sales from customers that used demonstrations provided by other resellers that did invest in staff and training. But if resellers inclined to invest in demonstrations could predict this they may not invest. Imposing minimum resale prices may remove this free-riding problem and give more resellers incentives to invest.

<sup>52</sup> Commerce Commission, *Resale Price Maintenance Factsheet* (June 2022), at p. 4.

- 63.2 the effects of the Proposed Arrangement on non-price outcomes; and
- 63.3 transaction and other costs incurred or avoided as a result of the Proposed Arrangement.

### Price effects of the Proposed Arrangement

#### *HPNZ's submissions*

- 64. HPNZ submits that the HP Stores would improve price competition in the factual by offering competitive prices and frequent promotions.<sup>53,54</sup>
  - 64.1 For example, to illustrate the potential future benefits of reauthorising RPM, HP notes that in 2025 alone the HP Stores ran more than [ ] promotions, with each one offering discounts on up to [ ] SKUs (stock-keeping units, ie individual products).<sup>55</sup>
- 65. HPNZ also submits that RPM at the HP Stores would cause no detriment to price competition in the factual, primarily due to the fact that the RPM would be limited in scope. HPNZ's key arguments are as follows.<sup>56</sup>
  - 65.1 Intra-brand price competition between resellers<sup>57</sup> of HP Products would not be affected because, under the Proposed Arrangement, no reseller other than HPNZ's Partner would be subject to RPM, and the Partner would only be subject to RPM over the volumes sold at the HP Stores,<sup>58</sup> which HPNZ proposes to price competitively.
    - 65.1.1 Consequently, HP states: "Customers will remain free to purchase HP Products from a large number of alternative online and 'bricks and mortar' retailers [that are not subject to the RPM in the Proposed Arrangement]. Such retailers account for the vast majority of sales of HP Products to consumers and small businesses at present."<sup>59</sup>
    - 65.1.2 Further, while some HP Product SKUs are sold only at the HP Stores, this is only because HPNZ's [ ] in the factual,

<sup>53</sup> The Application at Annexure A [2(d)].

<sup>54</sup> Further to our remarks at paragraph [58] above, HPNZ's proposed (continued) use of RPM to drive more competitive retail pricing is somewhat unusual. Typically, a manufacturer requesting authorisation for RPM may seek to raise retail prices widely to achieve an offsetting efficiency, for example to give all its retailers profit incentives to invest in costly demonstration and support activities without fear of low-price retailers free-riding (see footnote 51 above). However, in this case, HP proposes to continue using RPM narrowly at the HP Stores, where it plans to continue offering regular promotions to sell stock, without reducing intra-brand competition.

<sup>55</sup> The Application at Annexure A [5.2(iii)].

<sup>56</sup> The Application at Annexure A [8(i)-(v)].

<sup>57</sup> As noted in The Application at Annexure A [3], HP uses the terms distributors, resellers and retailers for its various types of downstream channel partners. We use the common term reseller as a catch-all unless otherwise specified.

<sup>58</sup> The Application at Annexure A [5.4(ii)].

<sup>59</sup> The Application at Annexure A [8(iii)].

[ ]. However, collectively, HPNZ's resellers do stock a wide range of comparable SKUs to any SKU that is sold only at the HP Stores and should continue to do so in the factual.<sup>60</sup> Accordingly, intra-brand price competition should not be undermined.

65.2 Inter-brand price constraint on all HP Products – whether they are sold at the HP Stores or elsewhere – is strong, and will remain so in the factual, because HP faces competition from numerous alternative brands in every product category.<sup>61</sup>

#### *Other submissions*

66. We have not, to date, received any submissions from third parties about the price effects of the Proposed Arrangement.

#### *Our assessment of price effects*

67. As discussed above, HPNZ's proposed imposition of RPM on the Partner in this case is unusual in that the RPM is intended only to underpin the commercial model required to ensure the continued presence of the HP Stores in New Zealand. HPNZ does not propose to use the RPM to raise prices in the HP Stores. Rather, it proposes to continue with frequent discounts at the HP Stores and, as discussed below, we consider that it would be unable to affect the prices of the overwhelming majority of HP Products sold in New Zealand due to the limited scope of the RPM and the extent of intra- and inter-brand competition.

68. Accordingly, as we explain further below, the price effects caused by the Proposed Arrangement would flow from the presence of the HP Stores, and their discounts, and which would be enabled by the RPM in the factual.

69. In summary, we consider that the HP Stores are likely to provide a net benefit via price effects in the factual, which would be lost in the counterfactual of no HP Stores.<sup>62</sup>

70. Regarding benefits to price competition in the factual as compared to the counterfactual of no HP Stores, we consider that the HP Stores are likely to add at least marginal price competition and thereby increase allocative efficiency.

70.1 We have assessed the available evidence on pricing and promotions at the HP Stores since RPM was first authorised in 2021, and on HP's plans for the future.<sup>63</sup> We cannot predict how frequently pricing for any given SKU on the

<sup>60</sup> The Application at Annexure A [3.2].

<sup>61</sup> The Application at Annexure A [8(iv)].

<sup>62</sup> We note our current observation that, if the other counterfactuals described above were likely, we consider price-related welfare would be effectively the same as in the factual. In outline, the relevant counterfactual(s) would see the same price-related benefits as the factual due to the continued operation of the HP Stores, but would not feature RPM, which we consider would cause no detriment in the factual. Accordingly, in those other counterfactuals we would treat this as a neutral factor.

<sup>63</sup> Letter from K&L Gates to Commerce Commission (12 June 2026), at [4] and [5].

HP Stores will fall below the average prices of comparable SKUs in the factual. However, based on the evidence we have seen, we consider that HP's pricing to date has been competitive.<sup>64</sup>

- 70.2 We also consider that the constraints of intra- and inter-brand competition on the volumes sold at the HP Stores have been significant and will likely remain so in future.<sup>65</sup>
- 70.3 Accordingly, we consider it likely that the HP Stores would continue to offer promotions of at least marginal value to customers, ie which sometimes may be better than promotions available from competing outlets. Hence, by switching from competing outlets, customers of the HP Stores could gain an unquantifiable total surplus each year – and this allocative efficiency would not be available in the counterfactual of no HP Stores.
- 70.4 We have not attempted to estimate whether, as compared to the counterfactual of no HP Stores, promotions at the HP Stores would also expand output by drawing new customers into the relevant markets to generate a further allocative efficiency, rather than only diverting customers from competing outlets. Neither have we attempted to estimate whether the HP Stores could intensify competition and drive further efficiencies (allocative, productive or dynamic). However, if any such benefits did occur, we consider that they would be limited due to the small size of the HP Stores.
71. Set against this, we consider that there would be no material detriment to price competition in the factual due to HP's continued use of RPM at the HP Stores, as compared to the counterfactual of no HP Stores.
- 71.1 As noted at paragraph 22 above, in this authorisation application HP only proposes to continue applying RPM narrowly at the HP Stores and not more widely among its resellers, who would remain free to set prices independently (except for the Partner, on volumes sold through the HP Stores only). As a result, the Proposed Arrangement could not directly raise the (quality-adjusted) prices of any volumes of HP Products.<sup>66</sup>
- 71.2 We also consider that HP would not be able to raise prices unilaterally at the HP Stores or use them to raise prices in coordination with other retailers. This is because, whichever way product markets may be defined, the HP Stores

---

<sup>64</sup> In its response to our RFI, HP provided further details of the frequent promotions at the HP Stores, many of which featured discounts of [ ]% or more over the last year: Letter from K&L Gates to Commerce Commission (12 June 2026), at [4].

<sup>65</sup> This conclusion was supported by our market enquiries and by the absence of any submissions against the Application (including from the range of industry parties we engaged with directly).

<sup>66</sup> The Application, at Schedule 2, notes that only [ ]% of HP's total revenues were made at the HP Stores in 2025. Even under ambitious growth plans for the HP Stores, most of HP's future sales would continue to be made through unrelated resellers.

would have low shares for the foreseeable future and would remain subject to strong intra- and inter-brand competition in the factual.<sup>67</sup>

71.3 We further consider that during the term of the 2021 Determination any SKUs available on the HP Online Store that did not happen to be taken up by other resellers remained subject to strong intra-brand competition from comparable SKUs that were, and to strong inter-brand competition from many brands available at many outlets.<sup>68</sup> We consider that this would continue to be the case in the factual.

71.4 Therefore, we consider that there would be no price-related detriment in the factual as compared to the counterfactual of no HP Stores.

72. Balancing benefits and detriments due to price effects, in the factual we consider that there would be an unquantifiable but likely small net benefit each year due to allocative efficiency as compared to the counterfactual of no HP Stores.

### **Non-price effects of the Proposed Arrangement**

#### *HPNZ's submissions*

73. HPNZ submits that the HP Stores would benefit non-price competition in the factual by offering the following benefits:<sup>69</sup>

73.1 “best in class” user experience among online stores, for example in terms of page load times, search capabilities and ease of navigation;

73.2 a wide range of payment options;

73.3 a wide range of delivery options, fast delivery times, and fast processes for returns and refunds; and

73.4 further benefits over time, including expanded product range and more services for small-to-medium-sized businesses.

---

<sup>67</sup> *NZME Ltd v Commerce Commission*, above n 8, at [75]; and see Authorisation Guidelines at [85]. As noted at paragraphs [37] and [38] above, we have not concluded on market definition, but even if product markets were defined narrowly the HP Stores’ current revenue shares, and future shares at realistic growth rates, would remain low. We also consider that our view at paragraph [38.2] above, that intra- and inter-brand competition would remain strong in the factual, would hold for any realistic product market definitions.

<sup>68</sup> In its response to the Commission’s RFI, HP confirmed that around [ ]% of the SKUs carried by the HP Stores during the last year were not taken up by its other resellers, and it provided examples of comparable products manufactured by HP and its rivals that were widely available at the same time: Letter from K&L Gates to Commerce Commission (12 June 2026), at [5].

<sup>69</sup> The Application at Annexure A [2(d)] and [7].

74. HPNZ submits that all these benefits would be lost in the counterfactual of no HP Stores.<sup>70</sup> It also submits that the benefits mostly depend as much on the Partner's logistical capabilities as on [ ] and HP's ecommerce expertise.<sup>71</sup>

*Other submissions*

75. We have not, to date, received any submissions from third parties about the non-price effects of the Proposed Arrangement.

*Our assessment of non-price effects*

76. As mentioned above, the imposition of RPM by HPNZ on its Partner in this case is a necessary precondition to the continued presence of the HP Stores in New Zealand. As is the case for price effects, we consider that relevant effects on non-price dimensions of competition would stem from the continued operation of the HP Stores, enabled by the Proposed Arrangement..<sup>72</sup>
77. We consider that the HP Stores are likely to provide an unquantifiable and likely small net benefit via non-price effects in the factual, which would be lost in the counterfactual of no HP Stores.<sup>73</sup>
- 77.1 It has not been practical to quantify how the various non-price-related experiences of the HP Stores have to date compared to (and may continue to compare to) those of competing outlets, to rank the HP Stores' quality explicitly against the average by issue. However, we consider based on the evidence we have received from HP that these experiences have been, and

---

<sup>70</sup> The Application illustrates some of these benefits by comparing the HP Stores' current performance to its historical performance – for example, arguing that the HP Stores have progressively provided a “wider” range of payment options and “faster” delivery times, partly by [ ]. We note that, in the authorisation framework, we will compare: i) what benefits the HP Stores may provide in the factual that may be absent in the counterfactual of no HP Stores; and ii) potentially, what benefits the HP Stores may provide in the factual compared to the benefits that they may provide in any real-chance counterfactuals where the Stores would continue to exist but be operated differently.

<sup>71</sup> For example, HP submits that even the user experience benefits depend not just on [ ] but also on the Partner's skill at managing inventory, so that the HP Stores' offerings can be updated efficiently to reflect aged or sold-out stock. HP submits that benefits related to delivery rely more directly on the Partner's logistical expertise.

<sup>72</sup> We note that one of the traditional economic rationales for RPM is that the increased prices increase margins that are in turn used to pay for and provide non-price benefits to consumers. Here, however, we consider HP will be able to deliver the non-price benefits via established assets and practices without needing extra profits to pay for them; and, indeed, as mentioned above we do not consider HP would likely be able to raise prices at the HP Stores due to strong intra- and inter-brand competition.

<sup>73</sup> As for price effects, we note our current observation that if the other counterfactuals described above were likely, we consider non-price-related welfare would be effectively the same as in the factual. We consider that under the agency or in-house model the HP Stores would be identical in terms of non-price (and price) experiences for customers as compared to the factual, because HP and the Partner would be using the same resources and experience, and the HP Stores would face the same competitive constraints. We consider any changes in costs (covered below) would be unlikely to affect the quality of the HP Online Store. Accordingly, in those other counterfactuals we would treat this as a neutral factor.

would continue to be, at least average and likely better.<sup>74</sup> Hence, by switching from competing outlets, at least some customers of the HP Stores could gain an unquantifiable total surplus each year – and this allocative efficiency would not be available in the counterfactual of no HP Stores.

- 77.2 As with price effects, we have not attempted to estimate whether non-price effects at the HP Stores could also expand output or intensify competition to drive further efficiencies, but we consider that any such benefits would likely be limited given the small size of the HP Stores.

### **Incurred or avoided costs as a result of the Proposed Arrangement**

#### *Submissions*

78. Neither HPNZ nor any third parties made any submissions about costs that may be incurred or avoided as a result of the Proposed Arrangement.

#### *Our assessment*

79. At this stage, based on the single likely counterfactual we identify above, we do not consider there would be any material incurred or avoided costs as a result of the Proposed Arrangement that would amount to benefits or detriments under the public benefit test.
80. However, as discussed above, we are still considering whether there are ‘real chance’ counterfactuals in which HPNZ operates the HP Stores in a manner other than via the Proposed Arrangement. As set out above, these would be either HPNZ running the HP Stores directly, or HPNZ selecting a local Partner but not imposing RPM on that Partner, via an agency model.
81. We consider that, in the factual, the continued use of RPM at the HP Stores would enable HPNZ and the Partner to avoid various costs that would be incurred in those alternative counterfactuals where the HP Stores would be operated under the in-house or agency models. Costs incurred in those counterfactuals could include:
- 81.1 costs incurred resulting in some amount of deadweight loss, because there would be no meaningful increase in output; and/or
- 81.2 offshore elements that would amount to wealth transfers out of New Zealand and so could be counted as detriments under the authorisation framework.<sup>75</sup>
82. We consider those costs would likely be:
- 82.1 For the in-house model, the cost involved in HP [ ] in order to run the HP Stores itself. HPNZ has provided evidence that this would only be done [ ]

<sup>74</sup> This conclusion was supported by the material submitted with the Application, our market enquiries and our assessment of HP’s response to the Commission’s RFI of 26 May 2026: Letter from K&L Gates to Commerce Commission (12 June 2026).

<sup>75</sup> Commerce Commission, *Authorisation Guidelines* (updated June 2023) at [89].

] and would cost approximately [ ], although not all of this cost would be solely attributable to New Zealand.<sup>76</sup> We consider that some element of this cost could amount to a public detriment, whether via deadweight loss or offshore wealth transfer (because [ ]).

82.2 For the agency model, the cost involved in adopting this model on an ongoing basis, including [ ] and [ ] to implement this model.<sup>77</sup> Again, we consider that some element of this cost could amount to a public detriment via deadweight loss.

83. At this stage, however, we do not consider there is a real chance of HP operating the HP Store under these models if we did not grant authorisation. Accordingly, we do not at this stage consider the above amount to public benefits or detriments resulting from the Proposed Arrangement.

### Balancing the benefits and detriments

84. On the basis of the evidence currently available, we consider that authorising the Proposed Arrangement in this case is likely to lead to a net public benefit. We set out in **Table 2** below our assessment of the net benefits in this case.

**Table 2: Balance of benefits and detriments**

Category of benefit or detriment	Our assessment
Price effects	Unquantifiable but likely small annual net public benefit from increased price competition
Non-price effects	Unquantifiable but likely small annual net public benefit from increased non-price competition
Effect on costs	Neutral, given our preliminary conclusion on the likely relevant counterfactual.
<b>Summary</b>	<b>Unquantifiable but likely small net benefit from granting authorisation</b>

### Length of the proposed authorisation

85. The Commission can grant authorisation for such period as it thinks fit.<sup>78</sup>
86. HPNZ requested that we grant authorisation for this conduct for ten years. It referred to the previous authorisation having been granted for five years in the context of the lack of detriments it considered the conduct had.<sup>79</sup> It also noted the

<sup>76</sup> Letter from K&L Gates to Commerce Commission (12 June 2026), at p. 1.

<sup>77</sup> Ibid., at p. 2.

<sup>78</sup> Section 61(2) of the Act.

<sup>79</sup> Application at [5.3].

fact that under proposed legislation, the Commission will have the power to allow RPM notifications for a period of up to ten years.<sup>80</sup>

87. Two interested parties told the Commission that, although they did not oppose the granting of authorisation for the Proposed Arrangement, they both had genuine concerns with the ten-year term and considered a five-year term would be more appropriate.<sup>81</sup> These parties noted that:
- 87.1 a ten-year period is a relatively long time, double the length of the previous authorisation, and there is no certainty about how the relevant markets might develop during that time;
  - 87.2 the effect of the authorisation is to increase vertical integration by OEMs into retail, including control over a consumer-facing platform and the retail-level customer, behavioural and transactional data coming with it. This increased vertical integration might have effects over the next ten years that cannot be easily predicted now, including:
    - 87.2.1 greater control over the customer product ‘ecosystem’, leading to increased customer lock-in via closed platforms and reduction of consumer choice over the longer-term. [ ] indicated it considered this was already occurring in the [ ] category of products;
    - 87.2.2 entrenching customer relationships with OEMs, reducing the role and competitive constraint offered by independent retailers and resellers which might in the long term weaken competition on pricing and quality;
    - 87.2.3 continued development in pricing optimisation tools and algorithmic pricing linked to customer data and purchasing behaviour may further entrench the direct relationship with OEMs and the concerns above;
  - 87.3 although these specific concerns may not eventuate, others might; and the Commission should not assume that market conditions will stay static for the next ten years; and
  - 87.4 a five-year term, like the 2021 Determination, would allow the Commission to reassess the conduct in light of any such developments rather than relying on assumptions.
88. In the 2021 Determination, we authorised the conduct for five years, noting that the benefits and detriments we identified in that Determination may not be realised and

---

<sup>80</sup> Commerce (Promoting Competition and Other Matters) Amendment Bill 237—1, at cl 22 (inserting new sections 65E to 65S) and Sch 2 (inserting new Sch 8).

<sup>81</sup> These parties were [ ] and [ ]: Email from [ ] to Commerce Commission (4 June 2026); Email from [ ] to Commerce Commission (5 June 2026).

that HPNZ reserved the right to undertake certain conduct which could change the balance of benefits and detriments.<sup>82</sup>

89. We provisionally consider it is appropriate to authorise the conduct for ten years.<sup>83</sup> In coming to this view, we have considered the evidence offered by HPNZ as to the benefits and the lack of detriments caused by the conduct under the 2021 Determination, and the comments offered by third parties about the term of the authorisation.
90. We note that in 2021 we authorised the conduct for five years in part to allow for the benefits and detriments of the conduct (at that point only theoretical) to accrue. The evidence suggests that the conduct has had net benefits even if these have been small. As set out above we consider that the Proposed Arrangement is likely to continue to have no real detriments and some (small) benefits, primarily because of the very narrow nature of the RPM being undertaken.
91. We note HPNZ's references to the proposed statutory notification regime. We do not consider this in itself is sufficient reason to grant this authorisation for ten years. We comment that the Bill has not yet passed so it is not appropriate for the Commission to place any weight on this regime. Further, the current drafting of the Bill allows the Commission a discretion to set a protected period short than ten years for RPM conduct.<sup>84</sup>
92. Further, in determining the appropriate duration of the authorisation, the Commission has had regard to the specific facts and circumstances of the Proposed Arrangement. There is no default setting for the duration of authorisations.
93. Accordingly, we consider a ten-year term to be appropriate. We welcome submissions on this draft view, however, in particular in light of the third-party view about uncertainty over market changes.

### Draft determination

94. The Commission's Draft Determination is that the Proposed Arrangement will result, or be likely to result, in such a benefit to the public that it should be permitted, and so the Commission proposes to grant authorisation for the Proposed Arrangement under section 58(7) of the Act for ten years from 31 August 2026.

### Next steps in our assessment

95. The statutory deadline for the Commission to make a decision on whether or not to give authorisation to the Proposed Arrangement is **21 October 2026**.<sup>85</sup>

---

<sup>82</sup> 2021 Determination, at [77]-[78].

<sup>83</sup> Specifically, ten years from the date that the extant authorisation expires, being 31 August 2026.

<sup>84</sup> Commerce (Promoting Competition and Other Matters) Amendment Bill 237—1, at cl 22, inserting new s 65O.

<sup>85</sup> The statutory timeframe to authorise or decline to authorise an agreement or unilateral conduct under the Commerce Act 1986, s 61(1A) is 120 working days.

**Making a submission**

96. If you wish to make a submission on the Draft Determination, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference 'HP RPM authorisation' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **23 July 2026**.
97. If you would like to make a submission but face difficulties in doing so within this timeframe, please ensure that you register your interest with us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.
98. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should resubmit your submission.
99. All parties will have the opportunity to cross-submit on the public versions of submissions received from other parties by the close of business on **30 July 2026**.
100. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information. If your submission contains information which you consider there is good reason to withhold under the OIA, please identify specifically the information which you consider should be withheld and explain the reasons for that position (preferably with reference to the criteria for withholding information under the OIA).

Dated this 9th day of July 2026

Dr John Small  
Chair