11 February 2026

Kegstar NZ/Konvoy NZ
Submission by Kegstar NZ on the Statement of Unresolved Issues

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This submission is made in response to the Statement of Unresolved Issues published by the Commerce Commission (**Commission**) on 3 December 2025 (**SOUI**) in relation to the application by Kegstar New Zealand Limited (**Kegstar NZ**) for clearance to acquire kegs, beacons attached to those kegs or held in inventory, and the New Zealand keg records from Konvoy New Zealand Limited (**Konvoy NZ**) pursuant to an asset sale agreement (the **Proposed Transaction**).

1.2 The Commission has not given appropriate weight to the information and evidence Kegstar NZ has produced. When the evidence produced by Kegstar NZ to date is considered in totality it demonstrates that the Proposed Transaction is unlikely to substantially lessen competition, and the Commission should grant clearance.

1.3 In particular:

(a) there is no real chance of either of the two counterfactual scenarios identified by the Commission in the SOUI;

(b) the product market should be defined to include unbundled solutions, which will continue to provide a substantial constraint on the merged entity post-Proposed Transaction;

(c) the Commission's proposal to define three distinct customer markets (small, medium and large brewers with their own pubs, small, medium and large brewers without their own pubs and microbrewers & brewpubs) cannot be sustained as the evidence shows that there is no material distinction between the three groups; and

(d) it is not likely that post-Proposed Transaction Kegstar would be able to price discriminate.

2. SUBMISSIONS AND EVIDENCE NOT ADDRESSED IN THE SOUI

2.1 The clearance process requires the Commission to give appropriate weight to all relevant information and evidence put forward by the applicant and third parties, and to apply appropriate scrutiny to that material. Where the Commission rejects, prefers, or discounts particular evidence or arguments, it must do so on a rational and transparent basis.

2.2 In several material respects, the SOUI demonstrates that the Commission has not given any, or not given appropriate, weight to key information and evidence provided by Kegstar NZ. In particular, there are areas where key information and evidence provided by Kegstar NZ has not been referred to in the SOUI and does not appear to have been engaged with or evaluated at all. In other instances, the SOUI appears to prefer evidence from brewers to the information and evidence provided by Kegstar NZ without explaining why that evidence is to be preferred.

2.3 The following examples illustrate this:

(a) Kegstar NZ explained in response to the SOI that co-ordinating reverse logistics is not a barrier to switching from PPF to keg ownership as it is not materially different to brewers coordinating their forward logistics (which they have to do under both models). This submission goes directly to the Commission's assessment of switching costs and barriers to entry.

The SOUI does not address this important fact. Instead, it cites further statements from some brewers that self-supplying keg logistics would require additional labour and return logistics would only be possible for kegs in their local region.[1] The SOUI does not explain whether, or how, the Commission tested these statements against the fact that all brewers already coordinate forward logistics, and the majority of brewers in every customer group identified by the Commission use unbundled solutions for at least some of their reverse logistics and keg requirements. There is no explanation why brewers' existing forward logistics arrangements could not be adopted by those brewers to accommodate reverse logistics. In the absence of this analysis, it is apparent that the Commission has not given any weight to Kegstar NZ's submission or the commercial reality of keg logistics.

(b) Kegstar NZ submitted that brewers do not need to incur large upfront costs to acquire kegs as they can be financed through asset loans and other standard forms of equipment financing. This submission was supported by the availability of asset financing in New Zealand and the fact that brewers historically acquired kegs before PPF arrangements were introduced.

The SOUI makes no reference to asset loans, keg financing or the historic acquisition of kegs by brewers. Instead, it states as a fact that "*they would not be able to afford the capital cost of acquiring kegs outright"* and that, for many brewers, *"seeking capital to procure kegs does not appear to be a viable option*".[2] The SOUI does not explain why asset financing is not available or viable in this context, nor why the Commission considers this new evidence outweighs or displaces the information provided by Kegstar NZ. It also makes no reference to the fact that the majority of brewers in every customer group identified by the Commission use unbundled solutions for part of their keg requirements which disproves the claim that this is not a viable option.

2.4 There are several other examples where the Commission has failed to give any, or failed to give appropriate, weight to key information and evidence provided by Kegstar NZ, which are discussed further below. These matters underscore the importance of the Commission's assessment being grounded in a full and balanced consideration of all relevant submissions and evidence.

3. THERE IS NO REAL CHANCE OF THE COMMISSION'S COUNTERFACTUAL SCENARIOS

3.1 The SOUI provides that, without the merger, there are two likely counterfactual scenarios:[3]

[ ]

The first counterfactual scenario is not likely as Konvoy NZ is in receivership and liquidation

3.2 The first counterfactual scenario raises matters that are properly within the expertise and knowledge of the Receivers, to whose views the Commission should defer. Kegstar NZ is not in a position to comment on the decisions the Receivers may or may not make in the administration of Konvoy NZ. However, this scenario appears to be irreconcilable with Konvoy NZ's receivership and liquidation status, highly speculative and inconsistent with commercial reality.

[1] New Zealand Commerce Commission *Statement of Unresolved Issues Kegstar New Zealand Limited/Konvoy New Zealand Limited* (3 December 2025) (**SOUI**) at [45.3].

[2] SOUI, at [45.2.2].

[3] SOUI, at [30].

The second counterfactual scenario is not likely because the New Zealand market cannot sustain two PPF providers

3.3 [ ] As Kegstar NZ previously submitted, the New Zealand market cannot sustain two PPF providers. [ ]

3.4 The Commission's conclusion that the second counterfactual scenario is likely assumes the indefinite continued operation of two PPF providers in the New Zealand market without grappling with the economic constraints that determine whether such an outcome is viable. In particular, it does not consider the fundamental role of economies of density in the PPF industry, which mean that, in all but the most populous and densely concentrated markets, only a single provider can achieve a sustainable cost structure. This is not a matter of preference or strategy, but of industry economics.

3.5 The SOUI fails to engage with Kegstar NZ's submissions and supporting evidence which demonstrate the inability of the New Zealand market to sustain two PPF providers. Instead, the Commission concludes that it considers that "*a counterfactual in which two PPF providers remain in the relevant market(s), even with a price increase to a more sustainable and competitive level as the Parties and NERA submit would need to occur, would be more competitive than a scenario in which the market is reduced to only one supplier of PPF services*."[4] This conclusion ignores the data and analysis that Kegstar NZ provided to the Commission regarding regions where MicroStar provides PPF services which demonstrate that two-provider PPF markets are only sustainable where population size and density are sufficient to allow both operators to achieve economies of density.

3.6 The SOUI also fails to place any weight on the data that Kegstar NZ provided the Commission which shows that MicroStar is the sole provider of PPF services in 40 of the 60 jurisdictions in which it operates and almost all jurisdictions in which MicroStar faces competition from another PPF provider have a materially higher population density than New Zealand. By contrast, the New Zealand market is characterised by low population density and geographic dispersion, which prevents two providers from operating viably. Despite the robust data and analysis supporting this conclusion, the SOUI provides no explanation or evidentiary basis to support the Commission's contrary conclusion that the second counterfactual scenario is likely.

3.7 The Commission's second counterfactual is also disconnected from commercial reality because it does not properly consider the [ ] that would be required for two PPF providers to sustainably operate and compete in New Zealand. As demonstrated in the NERA Report if Konvoy NZ were assumed to continue operating, whether operated by the Receivers or following an asset sale [ ].

3.8 In addition, the Commission cannot conclude that two PPF providers remaining in the market "*even with a price increase to a more sustainable and competitive level*"[5] would be more competitive than a single-provider outcome [ ] price increases [ ] would trigger material switching by customers to alternative keg supply and logistics solutions, including self-supply.[6] This switching would undermine the viability of both providers, making the two-provider counterfactual commercially unworkable. The Commission has not engaged in this analysis. Instead, it simply states that determining or estimating a competitive price for PPF services in the absence of the transaction would be "*a speculative and inconclusive exercise*."[7] The counterfactual therefore rests on a critical assumption about pricing outcomes without any accompanying assessment of whether those outcomes are commercially feasible.

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[4] SOUI, at [32].

[5] SOUI, at [32].

[6] The reality of the New Zealand market is that any switching by customers is likely to have material implications, given the small size of the market and the need for economies of density to allow PPF providers to compete against unbundled solutions.

[7] SOUI, at [37].

3.9 [ ] creates an insurmountable problem for the Commission's [ ].

3.10 Accordingly, the evidence demonstrates there is no real chance that Konvoy NZ or its assets would be used to operate a sustainable PPF business in competition with Kegstar NZ. The second counterfactual scenario is therefore unrealistic and should be given no weight in the Commission's assessment.

4. MARKET DEFINITION

The Product Market should be defined to include unbundled solutions

4.1 As explained in section 4 of the NERA report, the Commission's conclusion in the SOUI that self-supply is not a sufficient constraint to include in the product market definition is inconsistent with the evidence.

4.2 The Commission's own survey evidence demonstrates that a significant majority of brewers use a combination of keg supply and logistics services to get their product to venues. 80% of respondents to the Commission's survey advised they self-supply kegs to some degree (either through kegs they own or lease), with only 26% using PPF services exclusively. The data previously provided to the Commission by Kegstar confirmed this[8]. Kegstar has updated its analysis as set out in the NERA Report which shows that only [ ] of brewers use PPF only.

4.3 As discussed in more detail below, Kegstar NZ has applied its market knowledge, and reviewed its sales/and customer data, in order to identify the New Zealand brewers and the services they use. Its analysis is set out in Tables 4.1 and 4.2 of the NERA Report.

4.4 Out of [ ] brewers Kegstar NZ has identified, only [ ] use PPF services for all their requirements. The vast majority use unbundled services for all or some of their requirements. This is the case across all three of the customer segments identified by the Commission, and also for the sub-category of brewers who supply outside their local area.

4.5 Because so many brewers in every customer category already self-supply for all or part of their requirements and so few are exclusively PPF, this is strong evidence that unbundled solutions are substitutable for PPF services. Therefore, a significant increase in price would not be profitable as it would lead to significant customers increasing their use of or moving wholly to unbundled solutions.

4.6 Section 3(1A) of the Commerce Act provides (relevantly) that market means a market in New Zealand for services "**as well as other services that as a matter of fact and commercial common sense are substitutable for them**". The law requires the Commission to include unbundled solutions in the definition of the product market.

4.7 We discuss the constraint imposed by unbundled solutions in more detail further below in this section.

The customer dimension of the market should include all brewers

4.8 The Commission stated in the SOI that it proposed to define three separate customer markets on the basis that "*some customer groups are likely to … have limited supply options outside of PPF services*"[9], and "*the evidence we have received suggests that small, medium and large brewers without their own pubs are the most reliant on PPF solutions, have limited ability to switch from PPF services to self-supply and would find it the most challenging to own or manage their own fleets*"[10].

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[8] See Confidential Annexure 2 to Kegstar NZ's submission in response to the Statement of Issues.

[9] SOI, at [56].

[10] SOI, at [59].

4.9 In the SOUI the Commission proposes to retain the three customer markets, noting that "*the further evidence we have gathered on this point has primarily come from small, medium and large brewers who distribute their kegs further than their local region and do not have a network of their own bars, pubs or restaurants*"[11]. The Commission is of the view that the merged entity would be able to identify these brewers,[12] and it expects these customers to be the most captive to PPF services.[13]

4.10 Kegstar NZ has applied its market knowledge, and reviewed its sales/and customer data, in order to identify the New Zealand brewers that fall within this customer group. Its analysis is set out in Tables 4.1 and 4.2 of the NERA Report. It has identified [ ] brewers in total. This is less that the estimate in the Application (based on a 2022 report from brewers.org.nz) of approximately 200 referred to on footnote 75 of the SOUI, which suggests the number has fallen since 2022.

4.11 Out of [ ] brewers, Kegstar NZ has identified [ ] with no pub, [ ] of whom supply outside their local area. Of the [ ] brewers who supply outside their local area, [ ] use PPF services only; the remainder use unbundled or other solutions (one used plastic kegs) to meet all or part of their requirements.

4.12 The danger of subdividing what is already a small customer market into even smaller customer segments are obvious. On Kegstar's calculations (there are no publicly available statistics), the three markets the Commission proposed would have [ ] customers respectively. Defining markets so narrowly defies commercial common sense.

4.13 However, as the Kegstar NZ data shows, even when analysed in such minute detail, the Commission's conclusions that these small customer groups have limited ability to self-supply is contrary to the facts; the vast majority in each customer segment already do so to a greater or lesser extent. There is accordingly no justification in segmenting what is already a small market into even smaller customer segments.

5. PPF PROVIDERS FACE SIGNIFICANT CONSTRAINT FROM BREWERS' ABILITY TO SWITCH TO UNBUNDLED SOLUTIONS INCLUDING SELF-SUPPLY

5.1 The SOUI states that the Commission remains of the view that self-supply is not a material constraint such that a significant portion of customers in any customer group would constrain the merged entity by switching to self-supply.[14]

5.2 The Commission's analysis suffers from several fundamental flaws:

(a) it applies the SSNIP test from below-competitive prices (committing the "reverse cellophane fallacy");

(b) it accepts brewer statements at face value;

(c) it ignores the survey evidence obtained by the Commission that 80% of responding brewers self-supply kegs to some degree (either via kegs they own or lease);[15]

(d) it ignores the data supplied by Kegstar NZ which is consistent with the Commission's survey result and other evidence provided by Kegstar NZ which demonstrates that brewer's statements about switching are unreliable.

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[11] SOUI at [44].

[12] SOI, at [60].

[13] SOUI, at [44].

[14] SOUI, at [35].

[15] SOI, Attachment A, Figure A7.

5.3 When the evidence is properly assessed, unbundled options (including self-supply) are clearly a material constraint and will continue to be a significant competitive constraint on the merged entity.

The Commission has committed the "reverse cellophane fallacy"

5.4 The SOUI states that additional evidence gathered from brewers "*has not satisfied [the Commission] that a significant portion of customers in any of the defined markets would be able to switch from a PPF provider to self-supplying their own keg and logistics solution if a SSNIP was imposed, **independent of the relative price benchmark used as a starting point** for the SSNIP test*"[16] (emphasis added).

5.5 However, this evidence must be considered in light of the fact that PPF prices are currently below competitive levels and [ ].

5.6 Whether the difficulties that brewers might face in switching from PPF to self-supply are legitimate barriers to switching depends in part on the price differential between PPF prices and self-supply. At current below-competitive PPF prices, self-supply may appear uneconomic. At competitive PPF prices ([ ]) the economics change fundamentally. The critical question is therefore not whether sufficient brewers would switch if PPF prices were to increase from the current below-cost prices, but whether they would switch in response to a SSNIP from competitive price levels.

5.7 The Commission concludes that switching would not occur "*independent of the relative price benchmark used as a starting point for the SSNIP test*".[17] As NERA explained in its report on the SOI, applying a SSNIP from current below competitive PPF prices risks the "*reverse cellophane fallacy*", where products which would be economic substitutes at the competitive level are not captured within the relevant market because they are not economic substitutes at the sub-competitive level.

5.8 The Commission states in the SOUI that determining competitive price levels would be 'speculative' and that such an exercise *"would not get to the core question we are bound to consider which is whether the Proposed Acquisition would substantially lessen competition relative to the counterfactual*".[18] This reasoning is flawed.

5.9 Understanding what competitive price levels would be is central to both the counterfactual analysis (whether two providers could viably operate) and the competitive effects analysis (whether alternative keg supply and logistics solutions would constrain the merged entity). By failing to assess competitive pricing whilst simultaneously basing its market definition on switching evidence gathered at below-competitive prices, the Commission has embedded the reverse cellophane fallacy into its entire analytical framework.

The Commission has placed undue weight on brewers' statements

5.10 In the SOUI and to date, the Commission has placed significant weight on statements made by some brewers who distribute their kegs further than their local region and do not have a network of their own bars, pubs and restaurants regarding the difficulties they say they would face (or inability to) switch from PPF services to alternative keg supply and keg logistics solutions. The Commission appears to have treated these statements as conclusive proof that switching is not possible. This conclusion is not supported by the evidence.

5.11 The Commission's own survey evidence demonstrates that a significant majority of brewers use a combination of keg supply and logistics services to get their product to venues. 80% of respondents to the Commission's survey advised they self-supply kegs to some degree (either through kegs they own or lease), with only 26% using PPF services exclusively. Kegstar NZ's

[16] SOUI, at [39].

[17] SOUI, at [39].

[18] SOUI, at [38].

updated brewer analysis as set out in the NERA Report confirms that only [ ] of brewers use PPF only.

5.12 The more detailed data set out in 4.1 and 4.2 of the NERA Report show that even within this small subset of brewers, the majority use unbundled solutions for all or part of their requirements.

5.13 While a small number of brewers claim switching from PPF services to alternative keg supply and keg logistics solutions may be difficult, these concerns are overstated given that a significant number of brewers in each customer segment identified by the Commission already use unbundled solutions.

The Commission has not placed sufficient weight on Kegstar NZ's evidence which demonstrates barriers to switching are overstated

5.14 The Commission's conclusions regarding self-supply depend primarily on statements from some brewers that they are unable to afford the capital expenditure required to switch from PPF to self-supply. In particular, it appears some brewers who distribute outside their local area have advised the Commission that they cannot afford the capital cost of acquiring kegs outright, they face long lead times for new kegs to arrive, they lack warehouse space for storage, and they cannot afford the ongoing operating costs to manage their keg fleets.[19]

5.15 Kegstar NZ's SOI Submission explained in detail why many of these concerns are overstated. In particular:

(a) **Reverse logistics:** The Commission places weight on comments from brewers that they would face difficulties in coordinating reverse logistics, including statements from some brewers regarding the material cost and time involved. However, all brewers, including brewers who do not currently self-supply kegs to some degree, are required to organise their own forward logistics. This means that all brewers, including the category of brewers identified by the Commission as allegedly being most at risk, must already coordinate with third-party logistics providers to deliver their full kegs of draught beer to venues in locations where they do not manufacture their product. The SOUI does not mention or address this fact. The evidence does not support a conclusion that brewers capable of organising forward logistics cannot coordinate reverse logistics.

(b) **Capital costs and financing:** Kegstar NZ's SOI Submission noted that asset financing is widely available and accessible for brewers who do not have access to the immediate capital to purchase kegs, and that kegs can be purchased incrementally over time. This alleviates the need for brewers to incur large upfront capital costs to acquire kegs. The SOUI simply states that for many brewers "*seeking capital to procure kegs does not appear to be a viable option*",[20] without explaining why standard asset financing options (widely available, accessible and regularly used by small New Zealand businesses) would not be available to brewers. The Commission does not appear to have obtained any evidence of brewers being unsuccessful in obtaining financing. In the absence of such evidence, the Commission must accept that asset financing is a viable option.

(c) **Storage/warehousing costs:** The Commission places weight on statements by some brewers that they do not have existing warehouse space to store a keg fleet and would need to purchase or lease additional warehouse space. However, this is contradicted by the information Kegstar NZ provided to the Commission that there are no specific requirements for storing idle kegs once they are palletised and wrapped, and that kegs

[19] SOUI, at [45.2.3] – [45.2.4], and [45.3].

[20] SOUI, at [45.2.2].

can be stored outside without affecting their life or use, alleviating the need for warehouse space.

(d) **Contract brewing:** The SOUI makes no reference to the fact that brewers can utilise contract brewers and their existing keg fleets to deliver product to market, rather than purchasing additional kegs themselves. Contract brewing is a viable alternative for brewers seeking to avoid capital expenditure on kegs.

(e) **Lead times:** The Commission refers to brewer evidence that lead times for importing kegs are between one to four months. However, Kegstar NZ's experience is that lead times for acquiring new kegs from overseas suppliers is approximately six to eight weeks from the date of purchase. In any event, a lead time of one to four months is not unreasonably long, particularly given that brewers can continue to use PPF services until their additional kegs arrive, allowing them to transition gradually rather than requiring immediate capital investment.

5.16 The SOUI also does not refer to Kegstar NZ’s evidence that prior to the introduction of the first PPF provider in New Zealand, brewers could only use alternative keg supply and logistics services in order to deliver their product to venues. It is self-evident that if it was possible for brewers to deliver their products to venues before the introduction of PPF services, then it remains possible for brewers to do so currently. The fact brewers had to invest in or lease their own keg fleets and manage their own keg logistics, as Kegstar NZ explained in its SOI Submission was not a major constraint to the growth of craft brewing in New Zealand. [21]

5.17 Further, to the extent that some brewers primarily rely on the parties’ PPF services, this reliance is self-imposed and reversible. A brewer’s commercial decision to structure their operations with minimal capital investment in kegs is not an irreversible decision, even if there is some short-term friction in switching given PPF prices are currently below competitive levels.

5.18 The Commission’s failure to place any weight on Kegstar NZ's evidence on key points has produced an unbalanced assessment that ignores the fact that 80% of brewers already self-supply to some degree and overstates the barriers to switching. For all of the reasons explained above and in Kegstar NZ’s previous submissions, the threat of brewers switching to self-supply is and will continue to be a major constraint on Kegstar NZ following the Proposed Transaction.

6. KEGSTAR NZ DOES NOT HAVE THE ABILITY OR INCENTIVE TO PRICE DISCRIMINATE

6.1 The Commission considers that the merged entity would have “*the ability and incentive to price discriminate against customers that are captive to the merged entity (or have fewer viable alternatives) by increasing prices for these customers*”,[22] such that the market should be segmented into separate customer groups. Price discrimination is described in the article referenced by the Commission at footnote 138 of the SOI as charging customers “*different prices depending on their willingness to pay for the products*.” [23]

6.2 The Commission’s conclusion is not supported by the evidence. The evidence demonstrates that a significant proportion of brewers are not 'captive' to PPF services, and that Kegstar NZ has no way to identify which brewers may be more reliant on PPF services (a prerequisite for profitable price discrimination). When the available evidence is appropriately examined, it is clear that Kegstar NZ does not have the ability or the incentive to engage in price discrimination.

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[21] Kegstar New Zealand Limited *Submission by Kegstar NZ on the Statement of Issues* (16 October 2025), at [3.14].

[22] SOUI, at [46].

[23] Jerry A. Hausman, Gregory K. Leonard and Christopher A. Vellturo *Market Definition Under Price Discrimination* (Antitrust Law Journal), (**Hausman Article**).

Significant proportion of brewers are not 'captive' to PPF services

6.3 The Commission continues to take the view that a significant proportion of brewers in each of the different customer groups identified in the SOUI are 'captive' to PPF services such that the merged entity could engage in anti-competitive price discrimination against them. The Commission is therefore not satisfied that a significant portion of brewers can credibly switch to self-supplying their keg supply and logistics needs.

6.4 The basis for this conclusion appears to be evidence from some brewers who identified Kegstar and Konvoy as their "*only viable PPF service options*".[24] The Commission's conclusion that it is a "significant proportion" is contradicted by the survey it conducted, which showed that brewers across all categories identified by the Commission self-supply for some or all of their keg supply and logistic needs, and the data supplied by Kegstar NZ which confirms this.

6.5 Kegstar has identified [ ] brewers that it is aware of currently operating in New Zealand. As shown in Table 4.1 of the NERA Report, [ ] of these brewers fall with the Commission's "SML with no pub" categorisation of which [ ] use PPF exclusively, and [ ] are microbreweries of which [ ] use PPF exclusively. The majority of these brewers use unbundled or other solutions for some or all of their requirements.

6.6 Table 4.2 of the NERA Report sets out the keg solutions of brewers who supply outside their local area; the customer group the Commission expects "*to be most captive to PPF services*"[25]. Kegstar has identified [ ] "SML breweries with no pub" and [ ] microbreweries that supplied outside their local area; only [ ] of the "SML breweries with no pub" and [ ] microbreweries use PPF services exclusively.

6.7 The evidence is clear: the overwhelming majority of "*small, medium and large brewers who distribute their kegs further than their local region and do not have a network of their own bars, pubs or restaurants*" use unbundled or other solutions in part or exclusively, with only a minority using PPF services exclusively. The Commission's expectation that these brewers are likely to be most captive to PPF services is not supported by the evidence.

6.8 The Commission's analysis is distorted by the narrow market segments it has adopted. If there is no segmentation between customer groups the allegedly 'captive' brewers only represent 7.3% of total brewers. Those that use PPF exclusively represent 1.5% of all brewers. However as explained above, even analysing the narrow market segments reveals that a minority of brewers in each of those segments use PPF exclusively.

Kegstar NZ does not have the ability to price discriminate

6.9 To price discriminate profitably, Kegstar NZ would need to identify which customers would not switch to alternative solutions in response to a price increase targeted at them; as the article referenced by the Commission states, price discrimination is only feasible if "*the hypothetical monopolist is able to identify the customers to whom price can be increased [...] if the monopolist cannot identify customers who are willing to pay a price above the competitive level, price discrimination is not technically possible, let alone profitable*".[26] This requires knowledge of each customer's switching constraints, and in particular their financial circumstances as this appears to be the main reason why some brewers have suggested they are not able to switch to self-supply.

6.10 As previously submitted, Kegstar NZ does not have access to the information it would need to implement a price discrimination strategy. The limited information it has which it uses to price its PPF services, such as the number of fills and locations customers send kegs, is insufficient to identify whether a particular customer is more or less able to switch to alternative solutions

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[24] SOUI, at [46.1].

[25] SOUI, at [44]

[26] Hausman Article, at 370.

than other customers. In particular, Kegstar NZ does not have access to its customers' financial information. Without this information, Kegstar cannot engage in a price discrimination strategy.

6.11 The Commission concludes that "*we expect that [small, medium and large brewers who distribute their kegs further than their local region and do not have a network of their own bars, pubs and restaurants] to be the most captive to PPF*."[27] As explained above, that expectation is not supported by the evidence.

6.12 The Commission has given no reasons for rejecting[28] the reasons given by Kegstar to explain why it does not have the ability to identify the subset of its customers the Commission describes as "*captive to the merged entity*".[29] Given the ability to identify target customers is an essential element of price discrimination (the Hausman Article states the importance of this condition is "obvious"), if the Commission remains of the view that the merged entity would have the ability to engage in anti-competitive price discrimination, it must provide a clear explanation for that conclusion supported by objective evidence.

6.13 The Commission considers that "*contrary to Kegstar's view, the cost evidence it provided may nevertheless indicate price discrimination*".[30] It observes that [ ].

6.14 This conclusion is erroneous. There is no basis for the Commission's conclusion [ ]. To the contrary, if any conclusion can be drawn from those two examples it is that unbundling is a constraint on PPF pricing [ ].

Kegstar NZ does not have the incentive to engage in price discrimination

6.15 The SOUI concludes that the merged entity would have the incentive to engage in price discrimination strategies, stating that "*in the presence of price discrimination, the merged entity would be able to tailor its pricing to charge higher prices to at least those customers that are less able to switch to another supplier, without a corresponding decline in sales*".[31]

6.16 The Hausman article recognises that where the supplier cannot perfectly identify captive customers and must guess who might accept a price increase, "*only a small percentage of wrong guesses is required before an attempt at price discrimination becomes unprofitable*".[32]

6.17 The evidence before the Commission establishes that the merged entity would have no incentive to engage in price discrimination. As discussed above, the vast majority of the customer segments the Commission expects to be most captive to PPF services also use unbundled solutions, so those alternatives must be viable for that customer group.

6.18 Moreover, given so few brewers who fall within the alleged captive class use PPF services exclusively (1.5% of total brewers), Kegstar would have no incentive to invest in resources to try and identify which of them would not shift to an unbundled solution in response to a price increase. If the strategy were successful, the economic gain would be marginal at best and therefore it would not be economically rational to engage in it.

[27] SOUI, at [44].

[28] SOUI, at [47].

[29] SOUI, at [46].

[30] SOUI, at [48.2].

[31] SOUI, at [46.2].

[32] Hausman Article, at 373.

6.19 The Commission's view that "*in light of the evidence gathered […] it remains likely that Kegstar would be able to price discriminate*"[33] cannot be reconciled with the evidence before the Commission that:

(a) most of the brewers who fall within the group the Commission expects to be most captive to PPF services already use unbundled options for some or all their requirements;

(b) Kegstar has no way of identifying which of those brewers are "captive" customers (i.e. those who would not switch to unbundled solutions for their requirements, or the rest of their requirements, in response to a price increase);

(c) given the obvious risks of such a strategy applied to customers who already use unbundled solutions for some of their requirements and the very small number of brewers who use PPF services exclusively, Kegstar would have no incentive to invest in resources to try and identify which of them would not shift to an unbundled solution in response to a price increase. The economic gain would be so small if the strategy were successful that it would not be economically rational to engage in it; and

(d) only a small proportion of wrong guesses would render the strategy unprofitable.

7. ANONYMOUS SUBMISSION ON SOUI

7.1 Kegstar welcomes the opportunity in this submission to also respond to an anonymous submission made in response to the SOUI.

Kegstar NZ's keg fleet cannot be moved to other markets

7.2 The Anonymous Submitter alleges that if Transaction proceeds, "*Microstar will decide to move some of [Kegstar's] NZ keg fleet to other overseas markets, making it difficult or impossible for some breweries, especially those like ourselves with no keg supply agreements*"**.**

7.3 This concern is misplaced. International markets use different types of kegs. New Zealand is a D Type market, Australia A Type and the UK S Type. While the US is also a D Type market, they use predominantly half and sixth barrel kegs, not 50L kegs like those used in New Zealand. As Kegstar NZ has previously advised the Commission,[34] while it is possible to convert non-D Type keg fittings to be compatible with New Zealand fittings and vice-versa, it involves high costs. As a matter of fact, New Zealand kegs are not readily movable to other markets.

Kegstar NZ has contractual and commercial incentives to maintain service levels

7.4 The Anonymous Submitter states that if the Proposed Transaction proceeds, "*[t]here will be no incentive to provide good service especially to [Kegstar's] smaller customers*."

7.5 This is not correct.

(a) Kegstar has an incentive to offer the same level of service to new customers as its operational systems are designed to meet its existing service levels, and in any event, it could not afford to reduce its service levels because of the risk of customers switching to unbundled solutions.

(b) The same service levels apply to all customers irrespective of size and Kegstar's operational systems do not distinguish between customers based on size.

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[33] SOUI, at [40].

[34] Kegstar NZ's response to NZCC RFI dated 11 September 2025.

Kegstar NZ's pricing is constrained by existing contractual arrangements

7.6 The Anonymous Submitter claims that they "*can see no reason why Kegstar would not quickly and potentially significantly increase their prices*" so that "*bars and restaurants … would have to endure higher keg prices, and in turn end consumers too*". This is not correct. [ ].

The allegation of anti-competitive conduct is addressed in a Confidential Submission

7.7 The Anonymous Submitter also alleges that "*Kegstar has already proven to be anti-competitive"* while the details of this complaint are redacted. We understand the Anonymous Submitter has not agreed for the details to be shared with Kegstar NZ to enable it to respond.

7.8 Kegstar believes it was inappropriate for the Commission to leave the first sentence of that paragraph unredacted, with the result the claim is public, but Kegstar NZ is unable to refute it in a public submission.

7.9 We have asked our counsel to respond to this allegation as best they can (given they have been unable to discuss the allegation with us) in their Confidential Submission.

8. CONCLUSION

8.1 Kegstar NZ submits that, based on the evidence, the Commission ought to be satisfied that the Proposed Transaction will not substantially lessen competition in any relevant market.

9. CONFIDENTIALITY

9.1 Confidentiality is requested of the information in this submission that is highlighted yellow and contained in square brackets on the basis that disclosure would be likely to unreasonably prejudice the commercial position of Kegstar NZ and/or MicroStar.

9.2 Kegstar NZ requests that it be notified if a request is made to the Commission under the Official Information Act 1982 for release of the information for which confidentiality has been claimed.