

Mohawk Industries, Inc/Godfrey Hirst New Zealand Limited
and
Bremworth Limited

APPLICATION FOR CLEARANCE

*Cross submission on the Statement of Unresolved Issues
(SOUI)
– on behalf of interested parties*

Public version

27 May 2026

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1. EXECUTIVE SUMMARY

1.1 Our clients thank the Commerce Commission (**Commission**) for the opportunity to provide submissions on the cross submissions.

1.2 Our clients submit:

- a. **Godfrey Hirst and Bremworth are each other's closest and most significant competitive constraints:** They are the two principal domestic suppliers of woollen and synthetic carpets, with strong portfolios, economies of scope in production and distribution, and brands (including Godfrey Hirst, Feltex and Bremworth) that are widely specified and effectively "must-have" for retailers. Competition between them is direct, material, and segment-specific, particularly in wool and higher-end products.
- b. **Bremworth will remain a material competitive constraint absent the acquisition:** Its financial position, management changes, and re-entry into synthetics demonstrate that it is capable of sustaining and strengthening that constraint over the foreseeable future. Bremworth's December 2025 half-year results demonstrate a material and rapid improvement (see further details in Section 6).¹ This is not consistent with a business in structural decline.
- c. **The evidential record does not support any contrary conclusion.**
- d. **The applicants' arguments fail both in law and on the evidence:**
 - i. **The legal test has been misstated:** The parties incorrectly state the law and omit key cases. The burden lies on the applicants to satisfy the Commission that the acquisition will not be likely to result in a substantial lessening of competition (**SLC**). As the Court of Appeal confirmed in *Commerce Commission v Woolworths Ltd (The Warehouse case)*, clearance must be declined where the Commission is not satisfied that there is not a real chance of a more competitive counterfactual. There is no minimum threshold of price increase, no requirement for market-wide effects, and no limitation to price effects.
 - ii. **The evidential burden has not been discharged:** The applicants do not satisfactorily address the Commission's concerns.
 - The record demonstrates that imports are not close substitutes for the parties' portfolios of products (if that were the case, there would be no objections);
 - Bremworth's own experience with imported Indian wool yarn from 2023 to 2025 which produced: (a) very high levels of second-grade carpet; (b) significant colour variations, and (c) was approximately 40% more expensive than yarn from Bremworth's Napier plant, is clear real-world evidence that offshore wool is not an effective competitive constraint (These quality and cost challenges are structural characteristics of non-NZ wool yarn or carpet supply²);
 - Even when offshore manufacturers use NZ wool, the quality and cost challenges of imported wool carpets are also structural. Double-freight

¹ [Bremworth FY26 Half Year Results Announcement](#).

² Australian wool manufacturers offer limited competition and none at the high end of wool yarn and carpet products.

costs, limited viable offshore manufacturers (including risks to quality, colour palettes and higher production costs) and the absence of wool import programmes by NZ retailers confirm that imports cannot discipline the domestic portfolios of Godfrey Hirst and Bremworth (especially at the top end wool carpet ranges);

- There is no credible evidence that offshore (and offshore made) wool carpets are substitutable for (and therefore constrain) New Zealand (made) wool carpets (NZ strong wool is regarded as having unique characteristics);
- The evidence indicates a growing demand for wool, not structural decline; and
- The criteria for a failing firm are plainly not met (nor does the evidence rule out Bremworth's significance as a competitive constraint in the future).

iii. **The supporting economic opinion is unreliable:**

- It rests on curated data (eg selective results from the survey evidence), untested assumptions, and inadequate sensitivity analysis; and
- The critical loss analysis is structurally flawed, treating the market as a single-product setting (adopting the wrong hypothetical monopolist) and ignoring portfolio effects, diversion, and differentiation.

e. **The Baseline Consultancy survey on carpet purchasing is unreliable and should be given no weight:** The survey commissioned by the applicant to demonstrate consumer switching between wool and synthetic carpet is fundamentally flawed:

- **Commissioned advocacy:** The survey was designed to support the applicant's case on substitutability, not to objectively investigate consumer behaviour. No statement of independence is provided.
- **Statistically unreliable:** Headline conclusions are drawn from sub-samples as small as two respondents, with no margins of error disclosed and no tests of statistical significance performed.
- **Internal contradictions:** The survey's own SSNIP questions found that 0% of wool purchasers would switch fibre type on a 5% price increase (the opposite of the selective findings cited by Chapman Tripp and NERA). The applicant's own experts dismiss those results while selectively relying on other answers from the same respondents.
- **Compromised underlying data:** 30% of respondents reported purchasing "*wool-synthetic blend*" carpet which is a product category that barely exists in the New Zealand retail market (suggesting the sample likely includes non-NZ respondents).
- **Methodologically opaque:** The full questionnaire, question order, weighting methodology, response rate and incentive structure are not disclosed.

NZ courts have consistently treated party-commissioned, methodologically opaque and internally inconsistent survey evidence with caution. The Commission should do the same.

- f. **The submissions and opinions omit context and are not independent:**
- i. The applicants omit material factors affecting competition (including input cost volatility, supply chain disruption, and economic cycle effects) and often adopts a backward-looking approach inconsistent with the forward-looking statutory test; and
 - ii. A combined opinion confirms that the economic submissions are advocacy rather than independent economic evidence, such that considerably less (if any) evidential weight should be placed on that advocacy.
- g. **The submissions contain material factual inaccuracies:** Errors that were identified during the process remain and reinforce the need for close scrutiny of the applicants' claims and evidence. For example:
- i. The submissions misrepresent the survey evidence, its reliability (given the errors, omissions and selective use of evidence) and its applicability. It appears inconsistent with the evidential record and entirely ignores the significant and substantial trade and commercial market (approximately 50% of the entire market).
 - ii. The submissions do not correctly differentiate the carpet manufacturing process into "tufting" and "yarn production", conflating the two processes and present an incorrectly low 'manufacturing switching cost' (ignoring the costs and risks associated with upstream yarn production / sourcing which goes beyond just tufting).
 - iii. The submissions make repeated mention of the increase of wool commodity pricing, but do not acknowledge that there is a relative price effect that is critical, namely the relative price of wool vs synthetic raw materials (and that commodity prices can increase, and decrease).
- h. **The competitive landscape should not be ignored:** The Chapman Tripp submission appears to ignore the reality that the merged entity will have financial and operational resources that will be dominant over any potential or perceived competitor (alongside any current or future customers). As at 22 May 2026 Mohawk has a market capitalisation of US\$6 billion, approx. NZ\$10 billion. If Mohawk were listed on the NZX this would make it the sixth largest company on the NZX, larger than Fonterra, and 3x larger than Fletcher Building, currently the largest company in the relevant sector.

1.3 Given the time constraints our clients have not had the opportunity to consult its own experts to carefully consider the extensive redactions throughout the Chapman Tripp submission (with 267 separate instances of the word "REDACTED") and prepare meaningful cross-submissions. If the Commission were minded to accept the redacted evidence, we would recommend it seek independent expert review to test that evidence for robustness. If the evidence was material it would likely have triggered continuous disclosure obligations.

2. EVERY-PALMER & MELLOP (NERA) JOINT OPINION FOR MOHAWK / GODFREY HIRST

Introduction

- 2.1 This opinion calls for the Commission to take a commercially realistic approach, but the analysis that follows remains selective, theoretical, and insufficiently anchored to the evidence. In summary:
- a. The opinion is advocacy, not independent evidence, tainting NERA's submissions.
 - b. The assumed hypothetical monopolist is the wrong one.
 - c. The break-even critical loss analysis is biased (and vulnerable to sensitivity testing).
 - d. The assumed 5% small but significant non-transitory increase in price (**SSNIP**) is incorrectly adopted (and vulnerable to sensitivity testing).
 - e. The linear demand curve assumption is flawed (and vulnerable to sensitivity testing).
 - f. The "*marginal consumer*" fallacy ignores 'inframarginal' harm.
 - g. The Baseline Consultancy survey evidence (**Baseline Survey**) appears self-serving and methodologically flawed (which we discuss in detail in Section 5).

The opinion is advocacy, not independent evidence, tainting NERA's submissions

- 2.2 The opinion³ is co-authored by James Every-Palmer KC (a barrister/advocate) and James Mellsop (NERA economist). It is a single document, signed by both, blending legal argument and economic argument without clear demarcation
- 2.3 Under the NZ High Court Rules 2016, Schedule 4 (Code of Conduct for Expert Witnesses):⁴
- a. Clause 2 provides that "*An expert witness is not an advocate for the party who engages the witness.*"
 - b. Clause 1 provides that "*An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.*"
- 2.4 Neither party is suggesting that their reports should be treated as expert evidence, but it is important that this distinction is recognised. In short:
- a. **Mr Mellsop cannot simultaneously be an independent expert and a co-author of an advocacy piece with counsel.** As a single, jointly authored opinion, it is impossible to determine where any independent economic opinion ends and legal advocacy begins. The Commission should give this limited if any weight as a co-authored inseparable piece of advocacy. This has broader ramifications for all NERA arguments.
 - b. **No compliance statement:** Understandably, and correctly in the circumstances, the opinion does not contain any acknowledgement that Mr Mellsop has read the Code of Conduct and agrees to comply with it, as required by Schedule 4, clause 3(a). While that is not an obligation here, and the Commerce Commission is not a court, the Commission's

³ <https://www.comcom.govt.nz/assets/Documents/timeline/James-Every-Palmer-KC-and-James-Mellsop-NERA-Opinion-provided-with-submission-from-Chapman-Tripp-on-the-Statement-of-Unresolved-Issues-14-May-2026.pdf>

⁴ [High Court Rules 2016 | New Zealand Legislation](#)

Mergers and Acquisitions Guidelines (**MAG**) indicate an expectation that economic evidence will be independent, reliable and objective.⁵ This combined legal/economic submission fundamentally compromises that. The Commission has similarly referred to Mr Mellsop / NERA as an “expert” (for example in the context of confidentiality undertakings). The opinion and the NERA report cannot in the circumstances be treated as “expert evidence” as referred to in the High Court Rules and contemplated in the MAG.⁶ While not suggesting that this is required, it goes to the weight to be applied to what appears to be advocacy (more explicitly in this note). In the circumstances it appears incorrect for Chapman Tripp to refer to the NERA report as “expert evidence”. They are making party-commissioned economic submissions.

- c. **Precedent risk:** If the Commission were to accept combined counsel/economist opinions as independent economic evidence, expert economic analysis would become increasingly difficult to distinguish from advocacy.

The assumed hypothetical monopolist is the wrong one

2.5 Every-Palmer and NERA / Mellsop advocate for an approach “commercially realistic (as opposed to a theoretical possibility)” yet fail to take that approach.⁷ They go on to say: “We approach this question by assuming that the merger would result in a monopolist wholesaler of wool carpets in New Zealand, and seek to test whether this would allow it to exercise market power.”⁸

2.6 The problem is that they **assume** a hypothetical monopolist of wool carpet only. That is not the right hypothetical monopolist for this merger. The merged entity would in reality hold:

- a. A portfolio of both wool and synthetic carpet (Mohawk / Godfrey Hirst is the largest supplier of both);
- b. The advantage of being a domestic supplier with warehousing, credit, logistics and post-sales support;
- c. Strong brands (Godfrey Hirst, Feltex, and Bremworth, merging the two closest domestic brands); and
- d. The ability to recapture sales that switch from wool to synthetic (because the merged entity sells both).

2.7 The last point is partially acknowledged:⁹

Accordingly, if the merged entity attempted to raise the price of wool carpets, it would recapture some of the lost sales as additional sales of synthetic carpets.

2.8 However, they fail to model it. This is a critical omission as the recapture effect is precisely what makes a SSNIP more profitable for a multi-product firm.

⁵ [The Commerce Commission’s Mergers and Acquisitions Guidelines \(May 2022\) \(MAG\)](#) make references ‘experts’ and “independent experts”. For example, Para 6.64 (discussing conferences) notes that “We expect experts to attend as experts in their fields rather than as an advocate for any particular party and to follow the guidance in the High Court’s code of conduct for expert witnesses.”

⁶ MAG, as above fn 3.

⁷ At paragraph 6.

⁸ At paragraph 7.

⁹ At paragraph 23.

- 2.9 As Moresi, Salop & Woodbury (2008) explain,¹⁰ when multi-product firms sell substitute products, the proper hypothetical monopolist test must account for recapture. Failing to do so systematically biases the analysis.
- 2.10 In short, the opinion appears to test the wrong hypothetical. The relevant question is not whether a pure wool carpet monopolist could raise prices, but whether the actual merged entity (with its portfolio of wool, solution dyed nylon (**SDN**), and polyester products, its brand advantages, and its domestic supply advantages and massive global scale) would face sufficient competitive constraint. By testing a narrower and weaker hypothetical monopolist, the analysis biases the result to understate competition concerns.

The break-even critical loss analysis is biased (and vulnerable to sensitivity testing)

- 2.11 The assumptions and footnotes in the opinion require close scrutiny. For example:¹¹

We use the breakeven critical loss approach and a linear demand curve. See Gregory Werden (2005), “Beyond Critical Loss: Tailored Application of the Hypothetical Monopolist Test”, *Competition Law Journal*, 4(1), 69-78.

- 2.12 The break-even critical loss approach asks: ‘What percentage of sales must be lost to make a 5% SSNIP just unprofitable?’ But it does not ask whether a profit-maximising monopolist would impose a different (possibly larger or smaller) price increase.
- 2.13 The seminal critique of this approach is set out in O’Brien & Wickelgren (2003), “A Critical Analysis of Critical Loss Analysis” (FTC Working Paper 254):¹²

Critical loss analysis is often used to argue that firms with large margins have more to lose from a reduction in sales and hence are less likely to increase prices. This argument ignores the implication of economic theory that profit-maximizing competitors that do not coordinate their pricing only have large margins if their customers are not very price sensitive.

- 2.14 So while “experts representing merging parties often use this technique” to argue high margins may imply a small critical loss, they also indicate low actual loss, because if demand were elastic, the firm would not be charging high margins in the first place. O’Brien & Wickelgren note:

A second fundamental error of the standard critical loss analysis is that it **ignores the importance of the degree of substitutability (e.g., the cross elasticities of demand or diversion ratios)** among the products of the firm considering the price increase. The greater the cross elasticities, the more the firm will profit from increasing the price of one product because it will capture a larger percentage of the lost sales through increases in the sales of its other products.

- 2.15 The paper’s abstract also notes:

We show that for a given degree of substitutability between the merging firms’ products, firms with larger pre-merger margins will raise prices more than firms with smaller margins. This reinforces the traditional view that mergers are more likely to harm consumers when the merging firms have greater market power, as measured by their margins.

¹⁰ Serge X Moresi, Steven C Salop & John R Woodbury, Implementing the Hypothetical Monopolist SSNIP Test With Multi-Product Firms (February 2008): [Feb08-Moresietal](#)

¹¹ At footnote 4.

¹² Daniel P O’Brien & Abraham L Wickelgren, A Critical Analysis of Critical Loss Analysis (May 23, 2003): https://www.ftc.gov/sites/default/files/documents/reports/critical-analysis-critical-loss-analysis/wp254_0.pdf

- 2.16 Farrell & Shapiro (2008), *“Improving Critical Loss Analysis”*,¹³ provide further critique and suggested modifications. It notes:

In practice, Critical Loss Analysis typically assumes that the products are **symmetric in price and cost, and studies only a uniform SSNIP imposed on all products**.⁷ The assumption of product symmetry will, of course, **seldom be correct**, and a hypothetical monopolist might well want to raise some prices much more than others.

...

Estimating the Actual Loss requires **evidence about buyer substitution patterns**. The controversy over Critical Loss Analysis concerns where to look for such evidence—specifically, how much can be inferred from premerger margins.

...

maximizing profits in the real world is very complex, often requiring the firm to take into account spillovers to its other (substitute or complement) products, but also involving customer loyalty, reputation, learning-curve effects, network effects, and so on.

...

Real-world firms often do not maximize the direct, readily quantifiable profits from any one product considered in isolation. **When a firm sells competing or complementary products, it will naturally account for spillover effects on profits when setting the price of any one product. Plus, dynamic and intangible considerations, such as customer loyalty, reputation, network effects, and learning curves, commonly arise.**

...

Because market definition is often central in antitrust litigation, **courts and agencies are often confronted with conflicting Critical Loss analyses**. We offer some suggestions for using revealed preference analysis to help confront such conflicting economic evidence.

...

One can undertake Critical Loss Analysis in a seemingly simpler manner, but only by **ignoring key revealed-preference information and stripping the hypothetical monopolist of key business concerns shared by pre- and post-merger actual firms, thus depleting the market definition exercise of both reliability and relevance.**

Even with the new and improved tests developed here and in our companion paper, the whole market definition exercise has some serious drawbacks. We argue in ongoing work that an alternative approach can be used instead of the market definition and market concentration methodology in cases where the primary concern is unilateral anticompetitive effects. We argue that this alternative approach offers a simple and intuitive formulation of unilateral effects that is far more transparent and robust...

- 2.17 Katz & Shapiro (2003) make the same core point: *“high observed margins strongly suggest that the hypothetical monopolist would face a small Actual Loss (i.e., demand would be unresponsive to a price increase)”*.¹⁴ This means that when Every-Palmer/Mellsop calculate a critical loss based on one year (2025) of Godfrey Hirst’s (but not Bremworth’s) redacted % gross margin (which is untested), there is a strong basis to presume that the very margins they rely on reflect inelastic demand. Therefore the actual loss is likely to fall below, not above, the critical loss. (Every-Palmer/Mellsop do not rebut this presumption or offer any coherent alternative explanation.)
- 2.18 The break-even approach to critical loss, applied uncritically as NERA has done, is a well-known tool of applicants’ economists. The authoritative literature supports that this approach internally inconsistent when it assumes both high margins and high actual loss. Any analysis by NERA (and relied on by Every-Palmer/Mellsop) should be treated with caution unless the underlying assumptions and sensitivity testing are fully disclosed.

¹³ Joseph Farrell & Carl Shapiro, *Improving Critical Loss Analysis* (February 2008): [Feb08-FarrellShapiro](#)

¹⁴ Michael L Katz & Carl Shapiro, *Critical Loss: Let’s Tell the Whole Story* (Antitrust magazine, Spring 2003): [Anti-Spring03](#)

The assumed 5% SSNIP is incorrectly adopted (and vulnerable to sensitivity testing)

- 2.19 Every-Palmer/Mellsop state at paragraph 10: *“Following the standard approach, including that noted by the NZCC in its Merger and Acquisitions Guidelines (at [3.18]), we assume a 5% SSNIP.”*
- a. The opinion states it adopts a 5% SSNIP as a standard convention. The SSNIP is an analytical tool for assessing competitive constraints in market definitions; it is not itself evidence of competitive constraint.
 - b. The analysis does not assess whether a 5% increment is appropriate in the prevailing market context, including whether current prices may already be elevated due to Godfrey Hirst’s pre-existing market position. Nor does it test whether a smaller increase would be profitable; an omission that risks embedding the well-recognised ‘**cellophane fallacy**’.
 - c. More fundamentally, the hypothetical monopolist is mis-specified. The opinion tests whether a monopolist supplier of wool carpets could profitably impose a SSNIP, while also acknowledging that the merged entity would supply both wool and synthetic carpets and would *“recapture some of the lost sales”* through substitution into those products.
 - d. That recapture effect is central to the profitability of a price increase for a multi-product firm. By applying the SSNIP to a single-product monopolist while omitting that recapture in the modelling framework, the analysis understates the merged firm’s ability to profitably raise prices and biases the result towards finding broader demand-side substitution.
- 2.20 The Every-Palmer/Mellsop approach assumes a *“standard”* 5% SSNIP without demonstrating that the baseline price is competitive (or otherwise appropriately chosen). Where pre-existing market power is plausible, the SSNIP/critical loss analysis framework risks the cellophane fallacy biasing the analysis toward broader substitution and weaker constraint. Link Economics expressly warned: *“If the SSNIP is applied to a price of domestically produced carpet that is already monopolistic then... the results of the test will not be valid.”*
- 2.21 The opinion does not address that issue. Given that Godfrey Hirst is already the dominant domestic supplier, applying a 5% SSNIP to potentially supra-competitive prices risks the cellophane fallacy.
- 2.22 The MAG does state *“We generally use 5% as the SSNIP.”*¹⁵ But it also states *“in cases where the evidence suggests that future prices (without the merger) are likely to be different from current prices, we would use the likely future prices.”*¹⁶ And further that *“in some markets, suppliers may be able to identify and charge different prices to different customers where those price differences are not related to differences in the costs of serving those customers”*.¹⁷
- 2.23 A 5% SSNIP test on top of already elevated baseline will overstate demand-side substitution and understate the merged entity’s ability to profitably raise prices. The opinion does not address this.

¹⁵ At paragraph 3.18.

¹⁶ At paragraph 3.21.

¹⁷ At paragraph 3.22.

The linear demand curve assumption is vulnerable to sensitivity testing

- 2.24 Footnote 4 of the opinion also states Every-Palmer/Mellsop assume a linear demand curve. This choice is convenient but not neutral.
- 2.25 For high-margin differentiated products, linear demand systematically overstates the actual loss relative to constant elasticity or other plausible demand forms (again biasing the analysis towards finding the SSNIP unprofitable and understating its profitability). This effect occurs because linear demand implies that elasticity rises sharply as price increases, exaggerating the extent of switching following a price increase.
- 2.26 As O’Brien & Wickelgren explain, other demand specifications (including constant elasticity and logit models) imply a smaller increase in elasticity, and therefore lower switching than under linear demand:¹⁸

Linear demand has the property that as the price increases, the own elasticity of demand rises, gradually dampening incentives for further price increases. It is worth pointing out that for many other demand curves used by antitrust economists (constant elasticity, logit, AIDS, semi-log), the elasticity does not rise as sharply with price as it does with linear demand. This means that the critical cross elasticity and diversion ratios are typically smaller under these other demand assumptions than they are for linear demand.

- 2.27 Further, Daljord (2009) demonstrates that the standard critical loss formula is incorrect when products are asymmetric, which they manifestly are in this case (as wool and synthetic are asymmetrically differentiated).¹⁹

A “marginal consumer” fallacy which ignores ‘inframarginal’ harm

- 2.28 The opinion is underpinned by the proposition that *“the key issue is whether there is a sufficiently large body of ‘marginal consumers’”*²⁰ and *“competition for marginal consumers should protect those with more extreme preferences”*.²¹
- 2.29 The proposition that marginal consumers protect ‘inframarginal’ consumers holds only under specific theoretical conditions:
- a. It assumes a single uniform price – but in practice, carpet is sold through differentiated retail channels with varying discounts, rebates and terms.
 - b. It ignores that the merged entity could engage in quality degradation, range reduction, or reduced innovation rather than a simple price increase – all of which harm inframarginal consumers directly without triggering marginal consumer switching.

The survey “evidence” seems self-selected and methodologically flawed

- 2.30 As we discuss in Section 5, the survey evidence is fundamentally flawed and methodologically unsound, statistically unreliable, internally inconsistent, and its conclusions do not withstand scrutiny (including at a level that would be required by a court or regulator). Further, the underlying evidence is fundamentally flawed as the dataset may not be New Zealand specific.

¹⁸ Daniel P O’Brien & Abraham L Wickelgren, A Critical Analysis of Critical Loss Analysis, at p.18.

¹⁹ Øystein Daljord, [An exact arithmetic ssnip test for asymmetric products](https://doi.org/10.1093/joclec/nhp001) Journal of Competition Law & Economics, Volume 5, Issue 3, September 2009, Pages 563–569, <https://doi.org/10.1093/joclec/nhp001>.

²⁰ At paragraph 8.

²¹ See footnote 3.

- a. [
- b.]
- 2.31 This suggests that either the underlying dataset is compromised OR the recollection of a significant portion of consumers is incorrect (the latter seems unlikely).
- 2.32 Despite this, Every-Palmer/Mellsop rely on observed switching in the purchasing process²² to support the existence of marginal consumers and its conclusions that a SSNIP imposed by a hypothetical monopolist (of wool carpets) would not be profitable.
- a. Their preferred reliance on “*real life purchasing decisions*” about switching during the buying process is not a substitute for a SSNIP test – it captures switching that occurs for all sorts of reasons (which the survey acknowledges eg salesperson influence, availability, display) unrelated to a hypothetical 5% price increase.
- b. **Yet critically they reject the findings (that only 1–2% would switch and 0% of wool would switch) of the survey’s own SSNIP questions (Q11 and 12), citing “cognitive bias” and “question misspecification”.**²³ Those questions directly test the critical loss proposition, and the answers (1-2% switching) suggest the SSNIP would be profitable (because actual loss is less than critical loss). That is the opposite of their conclusions. It is inconsistent / selective reliance on data.
- 2.33 This selective reliance on one set of results, while rejecting another is internally inconsistent. It confirms that even if the underlying data was reliable (which it is not) no weight should be placed on the findings. The weakness of the survey evidence therefore indicates a lack of reliable evidence on price-based substitutability – the relevant test for market definition and competitive constraint (See Section 5).
- 2.34 The unreliability of the survey evidence is demonstrated by its inconsistency with real-world market experience. For example, no major New Zealand retailer currently operates a stocking import programme for machine-tufted broadloom wool carpet (a fact inconsistent with the survey’s implied level of substitutability).

²² For example, that approximately 30% of initial wool-preferencing consumers switched to synthetic.

²³ See footnote 9.

3. CHAPMAN TRIPP SUBMISSION FOR MOHAWK / GODFREY HIRST

Introduction

- 3.1 Chapman Tripp’s submission contains a number of internal inconsistencies and evidential gaps. In particular, it argues advances a commercially realistic approach while relying on contestable assumptions and selective evidence, and it does not satisfactorily address the Commission’s concerns about import constraint, closeness of competition, margins, and the significance of Bremworth as a competitive constraint.

Chapman Tripp dismisses anonymous feedback but then relies on ones their own anonymous source

- 3.2 Chapman Tripp at paragraph 61 attacks anonymous submissions opposing the merger as “*Speculative assertions from anonymous sources, which cannot be tested, should be given no weight.*” Yet at paragraph 17 they rely on their own anonymous retailer.

“A well-known Auckland retailer, who wishes to remain anonymous, has observed that approximately 5% to 10% of consumers are switching from carpet to hard flooring.”

Market definition

Demand side considerations

- **the proportion of end-consumers that are willing to substitute a soft flooring product, but particularly a wool carpet proposed for a common living space or a bedroom, for any type of hard flooring product;**

- 3.3 Chapman Tripp’s commentary provides no reliable new evidence.
- 3.4 Paragraphs 16 and 17 state that 12–20% of customers switched from wool to synthetic. If the same figures were accepted, that implies that 80–88% of customers did not switch and remained with their original (wool) preference. This indicates a substantial cohort of consumers with stable preferences for wool carpet, consistent with a distinct demand segment (or strong sub-market), if not a separate market.
- 3.5 Chapman Tripp’s assertion at paragraph 21 that “*price and affordability are significant factors in the actual purchase for many of those switching*” is misleading.
- a. Even using the (flawed) Baseline Survey only 19% of respondents switched from wool to synthetic, “*mainly because of perceived affordability and durability*”.
 - b. The survey also found that “*[a]t an explicit level the salespeople’s recommendation of fibre or the carpet brand were definitely secondary drivers of choice vs value for money (esp. synthetic and blend) durability (synthetic) appearance or comfort underfoot (esp wool buyers)*”.
- 3.6 In other words, the drivers of switching are mixed and multifactorial and Chapman Tripp boils down such findings (ignoring other key factors) to price being is a significant driver of switching from wool.

- **the proportion of end-consumers that are only willing to purchase a particular type of carpet, particularly wool carpet, and would not be prepared to switch to another type of carpet in response to price or other changes; and**

- 3.7 Chapman Tripp’s commentary provides no new reliable evidence.
- 3.8 Chapman Tripp’s statement at paragraph 29 that *“If strong wool prices continue to rise, demand for wool carpet is likely to decline further”* is not supported. It rests on two assumptions that are not established.
- First, it assumes that demand for wool carpet is materially price-elastic, when demand is influenced by a broader set of factors, including housing activity and consumer preferences.
 - Secondly, it assumes that any increase in wool carpet prices occurs in isolation. That is not correct: the price of synthetic carpet and other floor coverings is also subject to upward pressure from increases in input costs (including oil-linked materials).

- **the extent to which end-consumer decisions on whether to buy a synthetic carpet or a wool carpet are impacted by changes in price (for example, if the number of consumers buying wool carpet reduces as the price of wool carpet increases or the relative price of synthetic carpet reduces).**

- 3.9 Chapman Tripp’s commentary provides no new reliable evidence.
- 3.10 Chapman Tripp’s (and NERA’s) position is further undermined by their own survey evidence. The (flawed) Baseline Survey’s SSNIP questions found that 0% of wool carpet purchasers would switch fibre type in response to a 5% price increase (but this is selectively dismissed in favour of other answers of ‘real life’ switching). The survey is a selective curation of evidence to avoid findings that point to highly limited price sensitivity among wool purchasers.
- 3.11 Chapman Tripp’s claim at paragraph 41 that offshore manufacturers benefit from lower energy and labour costs is not substantiated. Australia and Europe have both higher labour and higher energy costs than New Zealand, and South Africa has higher energy costs. Any margin compression for NZ-based producers is largely due to local competition, not overseas effects.

Supply side considerations

- **the costs and/or requirements involved in increasing the volume of yarn/fibre manufacturers/importers use and/or source;**

- 3.12 The Chapman Tripp submission selectively mentions wool prices but provides no context (other costs) or other data.
- 3.13 Further it does not address the un-suitability of offshore wools (cost, quality, tariffs). This is evidenced by Bremworth’s own experience. Even with leading expertise in wool selection, dyeing and yarn development, and its own tufting capability, Bremworth could not establish a viable import programme. Persistent issues included inferior fibre blending, batch dye inconsistency leading to streaking, and material colour variation between samples and delivered product.
- 3.14 **Higher fuel prices outweigh perceived tariff benefits:** Chapman Tripp’s submission places significant weight on future tariff reductions as lowering barriers to imported carpet; however, that analysis ignores the current commercial reality facing importers. In practice, the present

trading environment has materially increased the cost of importing due to sharply higher global fuel prices and freight costs, which materially advantage locally manufactured New Zealand product. Container shipping costs from the Middle East to New Zealand have reportedly tripled since February 2026, substantially increasing landed costs for imported carpet and undermining any theoretical benefit arising from tariff reductions.

- 3.15 **Practical barriers to import:** The Chapman Tripp submission materially understates with no substantiation the practical barriers associated with importing carpet into New Zealand. While the submission suggests importing is straightforward and unconstrained, the commercial reality is significantly more complex, particularly for smaller retailers and wholesalers. Importing requires substantial working capital to fund long lead times, large minimum order quantities (MOQs), warehousing, inventory holding and shipping costs, often many months before any revenue is realised. Importers must also establish reliable offshore supplier relationships, manage quality assurance and logistics risks across extended supply chains, and absorb foreign exchange and freight volatility. These requirements demand both significant capital reserves and a high tolerance for commercial risk that many smaller retailers simply do not possess. In practice, these factors create meaningful barriers to entry and expansion, particularly when compared with the flexibility, lower inventory risk and shorter lead times associated with locally manufactured product.
- 3.16 **Rising wool prices:** The repeated references throughout the Chapman Tripp submission to rising wool prices and increasing global freight costs materially undermine the submission's assertion that imports will provide an effective competitive constraint on the merged entity. If the principal input cost for wool carpet is rising sharply, while container shipping and fuel costs are simultaneously increasing, the economics of importing wool carpet become materially less attractive. Those combined pressures increase landed costs, working capital requirements and inventory risk for importers, particularly given the long lead times associated with offshore supply.
- **the degree to which existing manufacturers of synthetic and/or wool carpets have spare/excess production capacity to start producing or produce additional wool carpets for supply in New Zealand;**
- 3.17 The submission itself notes that Godfrey Hirst expanded its residential and commercial wool carpet ranges by [REDACTED] between January 2025 and March 2026. That is inconsistent with a narrative of declining wool demand and instead points to a market that justifies continued investment in wool carpet.
- 3.18 The submission repeatedly references rising wool prices but without context. It does not address historical price levels or concurrent increases in other input costs affecting all carpet types.
- 3.19 The same wool price increases also apply to offshore wool carpet manufacturers. If rising prices suppress domestic demand as Chapman Tripp contends, they must equally affect imported wool carpet (undermining the very import constraint argument the submission relies on).
- 3.20 Synthetic carpet faces its own significant cost pressures, including oil price volatility and supply chain disruption from geopolitical conflict. The selective focus on wool prices alone ignores the full picture.
- 3.21 The reliance at paragraph 29 on the Baseline Survey to support declining wool demand is misplaced (As discussed in Section 5, the Survey is methodologically flawed and should be given little weight).

- **how manufacturers/importers of wool and synthetic carpet manage their production runs of each product and the extent to which an increase in supply of one type of product (say wool carpet) would impact on their supply of another product (say synthetic carpet);**

3.22 The response at paragraphs 27 to 30 mistakes supply side substitutability (economies of scope). Supply-side substitution requires more than the ability to change one aspect of production (simplifying this down to switching yarn types in a tufting machine ignores the complexity of switching an entire production process at a commercial scale). The submission does not address the upstream constraints with switching to wool and therefore understates the barriers to switching.

- **the likely costs and time involved in switching the yarn used in a tufting production line and whether there are any minimum production volumes/runs that impact on a supplier's incentive and/or willingness to switch production between different yarns;**

3.23 Paragraph 34 states that *"Switching the yarn used in tufting involves very limited time and cost."* This conflates one step in the manufacturing process with the entire process. As Bremworth's own experience shows, sourcing quality wool yarn (especially offshore) is difficult and involves a number of costs and risks which synthetic yarn does not have. Paragraph 34 attempts to trivialise the difficulties with supply-side switching.

- **the extent to which manufacturers have previously changed their product mix (eg, to produce more or less wool or synthetic carpet) in response to relative price changes by competitors;**

3.24 Paragraph 36 concedes the point that Godfrey Hirst's product mix is driven by customer demand, not competitor pricing. This undermines the broad points raised by Chapman Tripp that manufacturers readily adjust between wool and synthetic production based on pricing. Removing Bremworth as a competing source of wool carpet supply will not simply be offset by other manufacturers switching in response to price signals.

- **estimates for how much synthetic carpet can be produced in the same amount of time it takes to make a certain amount of wool carpet (for example, a comparison between how much synthetic carpet or wool carpet can be produced using the same machinery in a one hour period, or how much synthetic carpet could be produced for every square metre of wool carpet produced in the same time period using the same machinery);**

3.25 Paragraphs 37–38 accept that wool carpet is materially more production-intensive than synthetic. That is despite asserting elsewhere that there are no operational barriers to switching between fibre types (requires no more than a *"knife blade change"*). Chapman Tripp therefore concedes that the differences in production process is a capacity constraint (limiting the ability and willingness to expand from synthetic to wool). This confirms the point above, the production process for wool is more complex and costly than synthetic carpet.

- **how the margins earned by manufacturers and/or wholesalers in synthetic carpet compare with those earned by manufacturers and/or wholesalers of wool carpet (and vice versa) and the extent to which margin considerations can, and do, impact on production and/or supply decisions; and**

3.26 Paragraphs 39–40 present margin data only from 2022 to 2025 and therefore an incomplete time series that coincides with post-Cyclone disruption and wider economic impacts. Without a longer baseline or comparative data from other suppliers and product types, the data cannot support the conclusions drawn from it.

- 3.27 The submission attributes margin decline to import competition (correlation is not causation). Margin compression over this period is equally consistent with macroeconomic factors the submission does not control for.
- 3.28 Paragraph 41's assertion that New Zealand manufacturers face "*much higher costs*" than overseas manufacturers in labour and energy is not accurate, as discussed. The only realistic option for comparable quality wool carpet is Australia, which itself has higher labour and energy costs and different customer preferences to New Zealand. In any event, Mohawk / Godfrey Hirst is the largest wool carpet manufacturer in Australia, meaning any Australian import 'constraint' would in practice be supply from within the merged entity's own group (entrenching rather than constraining any market power).
- **in addition to any production considerations, the likely costs and time involved in order for manufacturers/importers to either enter/or expand their sales of wool carpet in New Zealand (such as for product development, branding, marketing and/or distribution relationships).**
- 3.29 No new reliable evidence has been provided. Paragraphs 43–51 assert that importing is "*straightforward*" and brand recognition is no barrier but rely heavily on the same flawed Baseline Survey and Brand Report to support those claims.

Counterfactual – General

- **any further information and/or submissions on our view that we cannot exclude as a likely scenario that Bremworth, absent the Proposed Acquisition, would operate as a going concern independently of Godfrey Hirst (either under its current structure or under new ownership).**
- 3.30 The assertions made in paragraph 53 of the Chapman Tripp submission are misleading and appear designed to overstate Bremworth's financial fragility. "*Going concern*" is a well-understood accounting and legal concept, not something that exists on a "*technical*" basis. Bremworth is a going concern. The suggestion that trading losses were offset by insurance payments is also unremarkable given the payments arose directly from insured losses caused by Cyclone Gabrielle. That is precisely the purpose of business interruption and asset replacement insurance.
- 3.31 Further, Bremworth's cash losses have now substantially ceased and the company's cash position has stabilised at approximately \$31 million on its balance sheet. Bremworth's December 2025 half-year results show operating losses reduced by approximately 90% compared to the prior comparable period. Savings in distribution and administration accounted for only part of this improvement. A substantial portion reflects the replacement of imported Indian yarn with yarn produced at the restored Napier plant. The Napier plant was reinstated within months and at a cost of less than \$6 million, highlighting the inefficiency of the prior import strategy.²⁴
- 3.32 The submission therefore materially overstates the severity of Bremworth's financial position.
- 3.33 The submission's assertion at paragraph 90 that declining the acquisition could "*jeopardise foreign investment in New Zealand*" reverses the actual competitive and economic concern before the Commission. The issue is not whether New Zealand welcomes foreign investment, but whether the proposed transaction would result in the transfer of strategically important New Zealand manufacturing capability, intellectual property and market concentration into the hands of a global conglomerate, with the likely consequence of reduced domestic competition and rationalisation of local manufacturing capacity. Substantial synergies and consolidation

²⁴ [Bremworth FY26 Half Year Results Announcement](#).

benefits are expected from the transaction, which raises a legitimate concern that New Zealand manufacturing operations, jobs and innovation capability may ultimately be reduced rather than enhanced. Far from protecting New Zealand investment, the proposed acquisition risks the loss of home-grown IP, further concentration of market power and the long-term erosion of domestic manufacturing capability in the wool carpet sector.

3.34 As discussed in Section 6, there is no evidence on the public record to depart from the counterfactual where Bremworth will continue as a going concern. Bremworth's new board adopted a turnaround strategy publicly described as having "*turned it around*". Any speculative assertions raised by Chapman Tripp, NERA and/or Bremworth about financial risk²⁵ under confidential submissions (or information provided separately to the Commission) would be material and necessitate disclosure on the public record due to Bremworth's continuous disclosure obligations under the NZX Listing Rules.²⁶ No such disclosures have been made.

Unilateral effects

Closeness of competition between the Parties

- **extent to which Godfrey Hirst's and Bremworth's pricing and/or quality decisions relate to each other's decisions or actions (as opposed to other factors such as changes in input costs);**

3.35 Paragraphs 69–82 conflate Bremworth's current weakened state with a lack of competitive significance. Godfrey Hirst is capturing share from a distressed competitor is precisely the dynamic the merger would make permanent (rather than evidence that the two do not compete closely).

3.36 The statement at paragraph 81.1 that "*most of the output gap was filled by wool carpet imports*" is likely overstated. Bremworth's imported Indian yarn may have been counted in import data and subsequently double-counted as carpet imports. The Commission should carefully test how this figure has been calculated.

- **the extent to which Godfrey Hirst's and Bremworth's pricing decisions relate to other competitors in the soft flooring market (as opposed to each other);**

3.37 See above comments.

- **the extent to which flooring retailers (and end-consumers) switch between the Parties and other competitors in response to price changes. For example, over recent years, we are aware of announcements by some suppliers of proposed wholesale price increases for certain carpet types and we are seeking further information and analysis that shows the specific impact of any subsequent price increases; and**

3.38 Paragraphs 84–90 dismiss the Commission's closeness finding as speculative while simultaneously asking the Commission to disregard Godfrey Hirst's own internal documents acknowledging Bremworth's competitive significance. There is no reason for the Commission to treat clear evidence differently on a "*different forum*" basis.

²⁵ For example, if the parties were to argue a failing firm argument and liquidation was submitted as a possibility then this would require disclosure as it would be "*material information*".

²⁶ [NZX Listing Rules \(January 2025\)](#) at Rule 3.1.1. See also [NZX Continuous Disclosure Guidance Note \(10 December 2020\)](#) at [3.1]. Bremworth also warranted in its Scheme Implementation Agreement (Schedule 2, Part 1, Warranty 7) that it is not in breach of its continuous disclosure obligations under the Companies Act, FMCA and NZX Listing Rules and not relying on the exception in NZX Listing Rule 3.1.2 to withhold any information from public disclosure.

- the extent to which flooring retailers (and end-consumers) switch between the Parties and other competitors in response to non-price changes such as changes in product quality, level of service or supply terms and/or the level of innovation and product development.

3.39 Chapman Tripp suggests that the closeness of competition is low and that the feedback from other industry experts is “*mostly speculative*”.²⁷ Yet Godfrey Hirst’s own internal documents appear to say the opposite (and cited by the Commission in the SOUI to support its findings).²⁸

Existing competition from domestic manufacturers

- the extent to which carpet suppliers have recently lost sales to Carpet Mill, particularly sales of wool carpet;

3.40 Paragraph 95 of the Chapman Tripp submission in fact undermines the argument that Carpet Mill will provide a meaningful competitive constraint on the merged entity. The submission acknowledges that Carpet Mill’s sales have remained relatively stable over a prolonged period, despite Bremworth materially reducing its participation in the synthetic carpet segment.

3.41 If there had truly been a substantial competitive opportunity available following Bremworth’s withdrawal from synthetics, one would reasonably expect Carpet Mill to have materially expanded its revenue, market share or scale over that period. The fact that it did not do so suggests that Carpet Mill lacks either the operational scale, distribution capability, retailer access or financial capacity necessary to materially expand and compete at the level required to constrain the merged entity.

3.42 Stability of revenue in these circumstances is more indicative of a niche participant than a credible large-scale competitive alternative.

- the extent to which flooring retailers have recently lost consumers to Carpet Mill, particularly for sales of wool carpet; and

3.43 As addressed below, Carpet Mill has a modest 4% market share even during a period of Bremworth’s contraction. This confirms it is a minor player, not a competitive constraint capable of offsetting the merger.

- the extent to which Carpet Mill is a close competitor to Godfrey Hist and/or Bremworth.

3.44 Our clients strongly dispute the assertions made at paragraph 104 that “*Carpet Mill in fact is a close and credible competitor of Bremworth at present.*” That assertion overstates Carpet Mill’s competitive significance and conflates brand awareness with competitive constraint. Carpet Mill’s niche model and stated approximately 4% market share indicates a limited competitive presence, such that any level of awareness does not translate into a meaningful constraint on Godfrey Hirst or Bremworth.

Existing competition from carpet importers

- the level of constraint that existing importers, with a limited number of SKUs of wool carpet, currently provided on either Godfrey Hirst or Bremworth, who each offer a large number of SKUs of wool carpet;

3.45 We discuss the “*natural experiment*” in more detail in Section 4.

²⁷ At paragraphs 80 to 84.

²⁸ At paragraphs 88 to 89.

- 3.46 Paragraphs 105–110 rely heavily on the post-cyclone “*natural experiment*” assertion to argue that importers already constrain domestic wool carpet supply. But as addressed earlier, a temporary, involuntary supply shock is not analogous to the permanent removal of a competing domestic manufacturer. The evidence is also internally inconsistent: the submission asserts that imports filled the “*output gap*,” yet it is not clear how this figure was calculated (and may be a miscalculation which includes Bremworth’s imported yarn as part of imports).
- 3.47 Chapman Tripp’s reliance on the “*natural experiment*” at paragraph 81 does not establish that imports constrain pricing behaviour. At most, it demonstrates that imports can replace lost domestic output following a material supply shock. The relevant question is whether alternative suppliers would expand sufficiently and in a timely manner to defeat a SSNIP. Chapman Tripp does not answer that question and instead conflates ex post volume replacement with ex ante price discipline.
- 3.48 In this respect, the evidence is more consistent with the interpretation advanced by Link Economics, namely that the observed increase in imports reflects a response to reduced domestic supply rather than an independent competitive constraint. As Link Economics explained, the increase in imports is “*largely driven by the exit of Bremworth from the synthetic carpets*,” implying that imports “*were not an effective constraint on domestic production, but rather the reverse*.” This interpretation is also consistent with the Commission’s concern that importers may not expand “*to a level that would sufficiently constrain the merged entity*,” particularly in wool. Chapman Tripp does not engage with that issue and instead relies on an inference from observed substitution following a structural supply shock, which does not demonstrate marginal substitution in response to a price increase.
- 3.49 More fundamentally, the “*natural experiment*” is mischaracterised. It is not equivalent to an exercise of market power as there is no evidence of a controlled price increase or of demand responses attributable to changes in relative prices. The relevant evidence instead reflects an exogenous reduction in output and subsequent reallocation of supply. Consistent with this, Link Economics identifies a 12% increase in Godfrey Hirst’s wool carpet prices during a period of reduced competitive pressure following Bremworth’s capacity constraints, which is indicative of diminished competition rather than effective import discipline.²⁹ The evidence relied upon by Chapman Tripp is either neutral or supports the opposite conclusion – namely that imports expand only **after** competitive constraints have weakened, and do not prevent the exercise of market power in the first place.
- 3.50 If wool carpet imports were a viable constraint, import programmes would already have been established when Bremworth’s supply was disrupted following Cyclone Gabrielle. They were not. Our clients have been unable to identify any import option that delivers consistent quality product at a competitive price.
- 3.51 Importers’ response to a temporary shock tells us nothing about their ability to constrain a permanent monopolist, particularly given the logistics, warehousing, credit and brand advantages of domestic supply that the SOUI itself identifies.
- **the reactions and/or responses from Godfrey Hirst and/or Bremworth to the introduction of a new wool carpet product from an existing importer;**
- 3.52 Paragraphs 111–112 are almost entirely redacted, making it impossible to assess the substance of the examples relied upon. To the extent the examples can be discerned, the product referred

²⁹ [Link Economics \(27 November 2025\)](#), at paragraph 35.

to appear to be a niche commercial product and no sales data is provided to support the conclusion that it demonstrates a market-wide competitive response to import entry.

- **the extent to which the merged entity would be constrained in the wholesale supply of both SDN carpet and wool carpet by importers of SDN carpet using their existing product ranges; and**

3.53 Paragraphs 113–120 assume a single non-differentiated market while sidestepping the Commission’s concern about wool, where import constraint is materially weaker. The (flawed) survey’s own SSNIP question found on a 5% SSNIP that 0% of wool buyers would switch on price. Even if the Commission considers that some marginal switching may occur, any switching from wool to SDN is recaptured within the merged entity’s portfolio.

- **the extent to which the merged entity would be constrained in the wholesale supply of both SDN carpet and wool carpet by importers of wool carpet using their existing product ranges.**

3.54 Paragraphs 121–123 repeat the wool price decline narrative (with no further evidence) and mischaracterise the survey results.

3.55 No individual wool importer holds more than a marginal share. This confirms the SOUI’s finding that barriers to expansion at scale in wool remain materially higher than for synthetic.

Potential entry and expansion

- **further information and/or submissions on our view that the current conditions of expansion at scale in wool carpet are higher than for expansion at scale for synthetic carpet;**

3.56 NERA’s own Table 3 concedes that importers face additional uncertainties, narrower ranges, extra costs and longer lead times. Despite years of opportunity, no individual wool importer has achieved more than a marginal market share, which is itself the strongest evidence that barriers to expansion at scale in wool are real and enduring.

- **the extent to which Godfrey Hirst’s existing conduct, including (but not limited to) its existing commercial arrangements with flooring retailers does, or does not, create incentives for a significant proportion of retailers’ sales to be allocated to Godfrey Hirst products;**

3.57 Paragraphs 129–135 characterise Godfrey Hirst’s rebate and loyalty arrangements as voluntary and mutually beneficial, but that misses the point. The Commission’s concern is not whether arrangements are lawful, but whether they create incentives that allocate a disproportionate share of retailer sales to Godfrey Hirst and/or are consistent with (an increase in) market power.

- **the extent to which recent entrants in wool carpet supply (such as Jacobsen and Robert Malcolm) are strongly competing with Godfrey Hirst and Bremworth;**

3.58 Paragraph 136 asserts that Jacobsen and Robert Malcolm “*compete on a day-to-day basis*” but provides no sales data, market share figures or evidence of constraint.

3.59 Paragraph 137.2 is also factually incorrect as Standard Carpets is known to source raw materials for synthetic carpets from Asia, not solely from the Middle East.

- **whether any existing barriers to expansion are significantly different for wool carpet compared to synthetic carpet. For example, whether importers have particular reasons for importing synthetic carpets at scale instead of wool carpet, such as different supply and/or stocking arrangements with flooring retailers for wool carpets compared to synthetic carpets;**

3.60 The statement at paragraph 144 that Bremworth is “cash-strained” is not accurate. Bremworth holds approximately \$31 million in cash as at 31 December 2025 and has zero debt. The assertion that its market position “must continue to deteriorate” is inconsistent with the SOUI’s own finding that Bremworth remains a going concern and is actively re-entering the SDN segment. The most recent financial results, for the six months to December 2025 show that the operating losses had been reduced by approximately 90%.

- **why Godfrey Hirst’s existing conduct and commercial arrangements do not create barriers to expansion in the supply of synthetic carpet and/or wool carpet;**

3.61 Chapman Tripp’s assertion at paragraph 150 that “all those additional products will have equivalent products that are available from other suppliers” is unevicenced and should be rejected unless the applicant can prove it.

3.62 As discussed in Section 6, no importer replicates the merged entity’s combined portfolio of wool, SDN and polyester with domestic manufacturing, warehousing, credit and post-sales support (no individual importer holds more than a marginal share in wool).

- **the impact of the Proposed Acquisition on any existing barriers to expansion including whether, post acquisition, any commercial arrangements between Godfrey Hirst and flooring retailers, would increase the barriers to entry and expansion for importers of synthetic carpet and/or wool carpet; and**

3.63 Paragraphs 147–152 speculate that the merger would not increase barriers, but do not engage with the structural reality that post-acquisition, Godfrey Hirst’s existing rebate and loyalty arrangements would extend across Bremworth’s brands and ranges, eliminating the only domestic alternative retailer. The merged entity’s enlarged portfolio and scale would entrench existing barriers, not maintain them at current levels.

- **the extent, or scale, that new entry or expansion would need to reach for it to provide a meaningful constraint on the merged entity in the supply of wool carpet.**

3.64 Paragraph 153 asserts that imports “already provide meaningful constraint” but does not address the scale required. The Commission’s question asks what level of entry or expansion would be needed to constrain the merged entity (which Chapman Tripp does not answer). Any assertion of “significant” countervailing power is difficult to reconcile with Mohawk’s revenue being approximately 100 times larger than any New Zealand retail group.

Countervailing power

- **evidence and examples of a flooring retailer self supplying its entire wool carpet requirement using an importer or importers;**

3.65 Chapman Tripp’s countervailing power argument (paragraphs 154–165) rests on the same flawed import constraint critiqued in Section 4. The submission assumes retailers can readily switch to imports, but as discussed, no individual wool importer holds more than a marginal share and the LET test is not met for wool.

- 3.66 Chapman Tripp's reliance at paragraph 154 on Decision 562 is misplaced. That decision concerned markets characterised by fungible, internationally traded products subject to transparent pricing with a distinct regulatory framework (DIRA).
- 3.67 The Commission's conclusion was also materially dependent on the presence of highly concentrated downstream purchaser power, with a small number of supermarket chains controlling access to consumers and disciplining suppliers through switching and private-label competition. None of those features is present here. The products in issue are differentiated consumer goods, substitution is mediated by non-price factors, there is no comparable regulatory backdrop, and no purchaser or group of purchasers exercises equivalent market access control. Decision 562 does not support the proposition advanced by Chapman Tripp and its reasoning does not apply to the present context.
- 3.68 In short, simply pointing to another vastly different determination where there was countervailing market power is irrelevant and adds proves nothing.
- 3.69 Chapman Tripp has not provided any evidence sufficient to overturn the Commission's provisional findings on countervailing power. Repetition of import constraints, without new evidence, does not 'address the Commission's concerns of an SLC.

- **evidence and examples of a flooring retailer, currently self supplying any type of synthetic carpets, using this supply to its advantage in pricing negotiations with a domestic manufacturer for any type of carpet;**

- 3.70 Paragraph 166 provides a single redacted example of a retailer using import alternatives in pricing negotiations. One example does not establish a market-wide pattern of effective countervailing power, particularly where the evidence on record shows that retailers' ability to switch to imported wool carpet at scale remains significantly limited.

- **price increases from a domestic carpet manufacturer being passed on, or incorporated into, the final price paid by the end-consumer, particularly in regard to wool carpet; and**

- 3.71 Paragraph 167 acknowledges that Godfrey Hirst is absorbing part of a recent wool price increase rather than passing the full cost through which implies that Bremworth disciplines pricing by Godfrey Hirst (and would be lost post-merger).

- **evidence and examples of a domestic carpet manufacturer revising or withdrawing a proposed price increase to a flooring retailer in response to feedback from the retailer, particularly in regard to wool carpet.**

- 3.72 Paragraph 168 describes standard pricing negotiations but provides no example of Godfrey Hirst actually revising or withdrawing a proposed price increase in response to retailer feedback on wool carpet. The absence of such evidence is itself telling.

Efficiencies

- **the extent to which the price of wool carpet is linked to the cost of production;**

- 3.73 The submission adds nothing new. The relevant question is not whether cost drives price, but whether the merger would create incentives and ability to raise prices above competitive levels. The efficiencies claimed do not address this.

- **whether Godfrey Hirst and/or Bremworth have previously reduced the price of their wool carpets in response to cost reductions;**

3.74 Paragraph 174 concedes that Godfrey Hirst has not had any recent significant cost reductions. The absence of any historical example of price reductions being passed through undermines the submission's broader claim that merger efficiencies would benefit consumers (and that Godfrey Hirst would necessarily pass down such efficiencies).

- **whether price increases by Godfrey Hirst and/or Bremworth are being driven by increased costs;**

3.75 Paragraph 176 simply restates that increased wool costs drive price increases. The submission does not address whether Godfrey Hirst has used cost increases as an opportunity to widen margins (the actual competitive concern).

- **how closely the wholesale pricing decisions for synthetic carpet align with, or are linked, to those for wool carpet; and**

3.76 Paragraphs 177–180 describe standard cost-based pricing differentiation between wool and synthetic. The submission's claim at paragraph 183 that the acquisition would enable "*direct investment from overseas*" and access to innovation does not establish a merger-specific efficiency is speculative.

3.77 Mohawk could easily invest in New Zealand manufacturing, licence IP, or partner with Bremworth without acquiring it and eliminating a competitor.

- **how any constraint from a competing supplier of synthetic carpet would impact on the production and/or pricing decisions of the merged entity in the supply of any type of wool carpet.**

3.78 Paragraphs 181–182 acknowledge that purchasers of wool carpet are "*prepared to switch*" and that this is "*taken into account*" in pricing – this concedes the submission's own market definition argument. Any constraint from synthetic competitors is recaptured within the merged entity's own portfolio (portfolio effects).

Out of market constraints

- **the extent to which end-consumers compare the price of hard and soft flooring when making purchasing decisions;**

3.79 The submission does not offer reliable new evidence.

3.80 Paragraphs 187–194 describe a general trend towards hard flooring but provide no evidence that hard flooring would materially constrain the merged entity's pricing of wool carpet. The Commission has already excluded hard flooring from the relevant market (no evidence is provided to reopen this question).

- **the extent to which decisions on the production of synthetic and/or wool carpet have related to the supply and/or prices of any hard flooring product; and**

3.81 Paragraphs 195–196 concede that hard flooring does not directly affect production decisions for wool or synthetic carpet. That effectively answers the Commission's question (noting the above discussion).

- **the extent to which wholesale pricing decisions in the supply of synthetic and/or wool carpet have related, or responded, to the supply and/or price of any hard flooring products.**

3.82 Paragraph 199 assumes that wool carpet sales will decrease due to rising wool prices takes no account of relative price movements in synthetic carpet (which also faces rising input costs) or other market forces including growing consumer demand for sustainable and natural fibres (see Section 6).

Provisional conclusion – Assessing substantiality in a significant section of a market

- **the proportion of the soft flooring market that wool carpet sales currently account for and any expected changes to this proportion;**

3.83 Paragraph 202 asserts that wool carpet comprises a “*changing proportion*” of the market and implies declining significance. But the applicant’s own Baseline Survey found that 40% of customers preferred wool and 38% purchased it (ie 95% of consumers who wanted wool bought wool). That is not a segment in structural decline but rather a segment with highly stable demand.

- **why the Commission should, or should not, consider that wool carpet makes up a significant section of the soft flooring market; and**

3.84 The submission’s argument that wool carpet should not be considered a “*significant section*” of the soft flooring market is inconsistent with binding law. As confirmed in *Port Nelson (CA)*, it is the degree of lessening that matters, not its proportion to the whole market. The elimination of the closest domestic competitor in a segment representing 20–25% of the market, with expanded demand growth and limited import constraint, meets that threshold.

- **the implication of an assessment of a substantial lessening of competition in a significant section of a market for the Commission’s overall assessment of the Application which is that, in order to grant clearance, we must be satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand**

3.85 The Commission’s task is clear in that it must be satisfied that the acquisition will not result in an SLC. As discussed in Section 6 where we clarify the legal test, *Commerce Commission v Woolworths (CA)* sets out that if the Commission cannot exclude a real chance of an SLC, clearance must be declined. For the reasons set out in this submission, the applicant has not discharged that burden. The evidence confirms that the merger would permanently eliminate the closest domestic competitor in wool carpet supply, in a segment where import constraint is insufficient, barriers to expansion at scale are real, and countervailing power is limited. The Commission should not be satisfied.

Chapman Tripp submission – General internal inconsistencies and gaps

“Commercially realistic” but then theoretical

3.86 The submission opens by advocating a fact-based, commercially realistic approach (paragraph 9: “*the Commission’s determination must be fact-based, and not speculative*”) but then relies on dubious or wrong assumptions and selectively framed evidence.

- a. Relies on an untested critical loss analysis with redacted margins (See Section 2. Every-Palmer/Mellsop opinion);

- b. Relies on assumed linear demand curves (See Section 2); and
- c. Uses unreliable survey evidence that is expressly “*not a direct application of the SSNIP test*” (See Section 5).

Bremworth is simultaneously “failing” and “not a close competitor”

- 3.87 At paragraphs 52–65, Bremworth’s position is described as “*urgent and grave*”, that it “*must continue to deteriorate*”, and that its “*market position must continue to deteriorate.*”
- 3.88 But at paragraph 80 Chapman Tripp says Bremworth’s wool carpet range is being severely constrained by its financial condition and that closeness of competition comes from imports rather than a weakened Bremworth.
- 3.89 The inconsistency: If Bremworth is such a weak competitor, why does Mohawk want to pay to acquire it? And if Bremworth is truly failing, why hasn’t Godfrey Hirst been able to raise prices? (The SOUI at [113] notes they are “*the only two domestic manufacturers and wholesalers (at scale) of wool carpet.*”)
- 3.90 The inconsistency is further highlighted by Bremworth’s brand strength. Bremworth’s 2025 Annual Report records that it has been recognised as Reader’s Digest New Zealand’s Most Trusted Carpet Brand for 12 consecutive years (2014–2025).³⁰ That level of brand strength is not consistent with the self-serving and false narrative that “Bremworth is a declining competitive constraint.
- 3.91 The same question arises from a different angle. The Chapman Tripp submission asserts that barriers to wool carpet manufacturing are minimal, that synthetic manufacturers can readily switch production (requiring little more than a “*knife blade change*”), and that Bremworth’s capability, products and know-how are not materially differentiated. Yet the acquisition is simultaneously justified by reference to the strategic value of combining Bremworth’s manufacturing operations with Godfrey Hirst’s. If Bremworth possesses no meaningful proprietary capability or competitive advantage, and wool carpet manufacturing is as readily replicable as claimed, there is no coherent rationale for the acquisition beyond the removal of a competing domestic wool supplier and the acquisition of its market share.

“No closeness of competition” vs internal documents

- 3.92 As noted at paragraphs 3.39–3.40, Chapman Tripp acknowledges at paragraphs 88–89 that Godfrey Hirst’s own internal documents refer to the competitive advantages of domestic supply, but seeks to recharacterise them as investment promotion material. Internal documents prepared in the ordinary course of business are the strongest evidence of competitive dynamics. The Commission should give them materially greater weight than ex post submissions prepared for the clearance process.

Margins — self-contradictory

- 3.93 As noted at paragraphs 3.26–3.28, Chapman Tripp says Godfrey Hirst’s wool carpet margins fell from [REDACTED] in 2021 to [REDACTED] in 2025, and Bremworth’s wool margins declined from [REDACTED] to [REDACTED] between 2022 and 2025.

³⁰ <https://cdn.shopify.com/s/files/1/0665/9421/0082/files/CAV000000-453884.pdf?v=1759812102> at p.18; See also [Bremworth wins Most Trusted Carpet Brand for the 12th consecutive year – Bremworth Carpets New Zealand](#).

- a. But at paragraph 42 Chapman Tripp states: *“margin considerations do not drive production or supply decisions.”*
 - b. Yet the Every-Palmer/Mellsop opinion then uses Godfrey Hirst’s gross margins as the central input to the CLA. This puts into question, if margins *“do not drive”* decisions, why are they the foundation of the economic analysis?
 - c. For completeness, the decline in Bremworth’s wool margins can be attributed to the higher cost of using Indian yarn. Bremworth is now using NZ yarn and margins are expected to improve (Bremworth’s July – December 2025 financial results support this³¹).
- 3.94 The submissions do not evidence the level of margins, nor contextualise them over a relevant time series.

³¹ See [Bremworth FY26 Half Year Results Announcement](#).

4. NERA REPORT FOR MOHAWK / GODFREY HIRST

Overview

- 4.1 The NERA report should be given limited (if any) weight. It relies heavily on client-provided data, adopts dubious or wrong assumptions, does not disclose sensitivity testing on key inputs, and engages only selectively with contrary material on the record.
- 4.2 Its central themes are that Bremworth is a declining competitive force, that imports provide a strong constraint, and that merger efficiencies would benefit consumers. Each of those themes remains open to substantial challenge on the present material.

Reliance on client-provided data

- 4.3 Throughout the report, NERA relies on data “provided to NERA by Godfrey Hirst” (fn 5 of the Every-Palmer/Mellsop opinion; and throughout Appendix B). This includes:
- a. Godfrey Hirst gross margins (redacted);
 - b. Godfrey Hirst sales data (2019–2024);
 - c. Godfrey Hirst capex/investment data;
 - d. SKU counts; and
 - e. Bremworth data “provided by Bremworth” (per A.4).
- 4.4 NERA does not appear to have independently verified any of this data, and the Commission and third parties cannot meaningfully test it on the public record. An independent expert report would ordinarily state that the data has been verified or at minimum identify the limitations of relying on party-provided data (or provide evidence supporting its assumptions). No such qualification appears. The failure to address the concerns raised at SOI stage in our clients’ cross submission suggests that there is no reasonable explanation underpinning any conclusion in the report.

Rubinovitz authorship issue

- 4.5 The Rubinovitz paper cited at paragraph 31 is authored by Robert Rubinovitz, Vice President, NERA Economic Consulting.
- 4.6 NERA is citing its own economist’s academic paper to support its own analysis. While this does not automatically invalidate the citation, the Commission should note that the authority relied on for the fixed cost savings proposition is not independent of the firm advancing the argument. Rubinovitz himself acknowledges that:³²

Standard economic models demonstrate that a decrease in marginal cost leads to a lower price, whereas a decrease in fixed costs does not necessarily have this effect. Thus, from the Antitrust Agencies’ perspective, in a merger analysis, emphasis should be placed on marginal cost savings

³² [Robert Rubinovitz, “The Role of Fixed Cost Savings in Merger Analysis”, *Journal of Competition Law and Economics*, Vol 5, no 2 \(June 2009\), 233-248.](#)

- 4.7 This is the orthodox position: fixed cost savings are secondary. Rubinovitz’s paper argues they can matter in a dynamic quality context, but NERA presents this as if it overrides the standard approach. Importantly simply asserting these efficiencies will be passed on is insufficient.

Declining competitiveness of Bremworth?

Cash flow analysis

- 4.8 NERA implies that Bremworth’s operating performance is unsustainable:³³

Bremworth’s cash flows from operating activities have in recent years been negative. While they were positive in 2025, this is solely due to a \$42 million Cyclone Gabrielle related insurance income, which is presumably a one-off. (paragraph 8)

Net cash flow from operating activities was \$15.7 million, net cash flow would have been negative \$26.5 million without the \$42 million Cyclone Gabrielle related insurance income.”

- 4.9 That analysis is flawed and should be given little to no weight, for the following reasons:

- a. **Characterisation of insurance income:** NERA dismisses the \$42 million insurance as “*presumably a one-off.*” But Bremworth’s own 2025 Annual Report states:

it is evident that the \$42.2 million final settlement amount is attributable to business interruption costs that are operating, and this is treated as cash from operating activities in the Statement of Cash Flows.

This is not a windfall:

- i. **Expensive Indian yarn:** Bremworth imported Indian yarn was approximately 40% more expensive than yarn produced at Bremworth’s Napier plant and resulted in significant quality failures, including high levels of second-grade carpet and visible colour inconsistencies between samples and delivered product (with compensation required in some instances).³⁴ Extended lead times increased working capital requirements and inventory risk. New board management terminated the programme shortly after appointment.
- ii. **The cyclone:** The settlement compensated Bremworth for lost operating income caused by expensive Indian yarn and the cyclone. Stripping it out to show “*negative operating cash flow*” is analytically misleading as it is a direct substitute for the operating revenue that would have been earned but for the cyclone. The insurance income existed *because* the cyclone destroyed output. To strip the insurance but retain the cyclone’s impact on operations double-counts the harm.
- b. **SOUI position:** In the SOUI the Commission concluded:³⁵

Although there are uncertainties relating to these forecasts, these uncertainties are not significant enough to lead to a material uncertainty relating to the going concern for the foreseeable future given the cost position from the insurance settlement.

NERA’s analysis does not identify any new evidence or reasoning that would warrant the Commission departing from that assessment.

³³ At paragraph 9 and Table 1.

³⁴ Based on Bremworth’s July-Dec 2025 and 2024 financial results.

³⁵ SOUI paragraph 81, quoting Bremworth half-year results.

- c. **NERA does not engage with contrary evidence from Link Economics:** Link Economics identified that Bremworth *“is solvent and has a strong balance sheet, with equity of \$73.294 million... cash/bank assets of \$42.245 million”*.³⁶ NERA’s latest report does not engage with either Link Economics’ analysis or the Commission’s assessment in the SOUI of Bremworth’s balance sheet strength. NERA’s characterisation of Bremworth’s declining position therefore is one-sided and lacks sufficient evidence.

Investment comparison

- 4.10 NERA compares Godfrey Hirst and Bremworth capex and states:³⁷

Recent spike in Bremworth’s investment... driven by reinstatement of the Napier plant following Cyclone Gabrielle damage.

- 4.11 This was an exogenous shock, not a structural indicator of weakness. Dismissing cyclone-related investment as non-organic overlooks the fact that the investment was necessary, funded, and completed, and therefore tends to show capacity to invest when required.

Innovation / SKU analysis

- 4.12 The SOUI records that some parties regard Bremworth as a leader in product innovation.³⁸ NERA does not dispute this. Rather, it concedes Bremworth’s current position and speculates that *“It seems more likely that its ability to innovate would deteriorate.”*³⁹
- 4.13 But NERA provides no evidence for that view and simply asserts a forward-looking decline based on inference from capex trends.
- 4.14 Such a forward-looking business viability assessment goes beyond economic analysis into operational and strategic business forecasting which goes beyond mere inferences from capex trends (ie beyond NERA NZ’s stated expertise as an economic consultancy). The Commission should disregard such inferences.

Constraint from imports

The “natural experiment”

- 4.15 NERA characterises *“the reduction in Bremworth’s wool carpet output following Cyclone Gabrielle”* as *“analogous [to] an exercise of market power”*⁴⁰ and contends that because imports filled *“most of the output gap”* and *“Godfrey Hirst’s margins have [REDACTED] since 2021”*,⁴¹ imports are an effective competitive constraint.
- 4.16 This analysis is fundamentally flawed:
- a. **Mischaracterisation of the experiment:** A cyclone is an exogenous supply shock, not a controlled price experiment. It does not approximate an *“exercise of market power”* because:

³⁶ [Link Economics, Issues to consider in assessing the Godfrey-Hirst/Bremworth merger clearance application \(27 November 2025\)](#), at paragraph 71, citing Bremworth 2025 Annual Report, p. 33.

³⁷ At paragraph 6.

³⁸ SOUI, at [91.2].

³⁹ At paragraph 12.

⁴⁰ At paragraph 18.

⁴¹ At paragraph 19.

- i. There was no deliberate price increase;
 - ii. The shock was publicly known and expected to be temporary; and
 - iii. Importer response to a temporary gap tells us nothing about response to a permanent structural change (merger).
- b. **Link Economics directly contradicts this:** Link Economics observed that *“If the change was largely driven by the exit of Bremworth from synthetic carpets, that would suggest imports faced a barrier to entry... Thus, imports were not an effective constraint on domestic production, but rather the reverse”*.⁴² NERA does not address this. This is directly confirmed by Bremworth’s experience with imported yarn (higher cost, inferior quality, and rapid abandonment). This provides clear real-world evidence that imports do not provide an effective constraint.
- c. **Link also points to opposite price evidence:** During the capacity-constrained period, Link identifies a 12% price increase by Godfrey Hirst on wool carpets.⁴³ That is inconsistent with NERA’s contention that imports constrained pricing and in fact demonstrates the opposite.
- d. **NERA’s own margin evidence is ambiguous:** NERA says Godfrey Hirst’s margins *“have [REDACTED] since 2021”* but Chapman Tripp however attributes margin decline to *“increasing import competition and, more recently, the rising cost of strong wool.”* If decline in margin is materially cost-driven, that does not tell the Commission anything about whether imports constrain pricing power.⁴⁴
- e. **Factual basis unclear:** The Chapman Tripp submission does not explain how Godfrey Hirst has calculated its claim that the *“output gap”* was filled by imports. This finding may be overstated and explained if the analysis was distorted to treat Bremworth’s imported yarn as carpet imports.

4.17 The Commission should place no real weight on NERA’s view that the cyclone was a *“natural experiment”*. The ‘experiment’ is merely a mischaracterisation of a temporary supply disruption that when reviewed more closely (with the current evidential record) demonstrates the absence of an import constraint (and in fact the opposite).

Barriers to expansion

4.18 NERA claims that there are no material barriers to expansion by wool carpet importers and no material differences between the economics of importing wool and synthetic carpets.⁴⁵ Both propositions are contradicted by the SOUI and the evidential record before the Commission.

4.19 Despite such claims, NERA’s Table 3 is revealing in its numerous concessions. NERA accepts that:

- a. Importing introduces *“additional uncertainties and risks”* (responding to SOUI [152.1]);
- b. Importers’ wool ranges are narrower than the merging parties (responding to [156.4]); and

⁴² [Link Economics \(27 November 2025\)](#), at paragraph 53.

⁴³ [Link Economics \(27 November 2025\)](#), at paragraph 35.

⁴⁴ Chapman Tripp SOUI submission, at paragraph 40–41.

⁴⁵ At paragraphs 21–24 and Table 3.

- c. Importers face “*extra costs and longer lead times*” (responding to [160.2]).
- 4.20 In all these concessions NERA asserts (with little evidence) that these accepted barriers can be overcome because synthetic and wool imports have increased, pointing to recent growth and entry by Jacobsen and Robert Malcolm in wholesaling wool carpet. However, this ignores details:⁴⁶
- a. Total wool import volumes in 2024 were still below 2021 levels;
 - b. No individual wool importer held more than a marginal market share;⁴⁷ and
 - c. The value of wool imports remains less than 12% of total soft flooring imports.
- 4.21 Despite a number of years, imports have only created small-scale entry which more naturally supports the evidential record that suggests barriers to expansion (and entry) are real, enduring and structural, not merely a function of insufficient commercial incentive (as opposed NERA’s assertion that material barriers do not exist). The LET test does not ask whether some wool imports exist (which is all NERA demonstrates) but whether imports would expand to a scale sufficient to constrain a hypothetical monopolist. NERA does not attempt that analysis.
- 4.22 Our clients are aware of only three Indian broadloom manufacturers willing to supply New Zealand and Australia: Jagkris, Elanza and Goldshire. Only Jagkris appears to offer a graded product range. None are considered viable alternatives to Bremworth.
- 4.23 NERA also fails to acknowledge the asymmetries between wool and synthetic imports (which the SOUI explains):⁴⁸
- a. Overseas manufacturers prioritise synthetic carpet because wool demand in their home markets is low;
 - b. New Zealand represents a small fraction of their volumes, reducing their incentive to cater to local preferences; and
 - c. Most overseas wool carpet manufacturers use New Zealand wool, bearing the cost of shipping raw fibre overseas and then shipping the finished product back. This double-freight structure creates an enduring cost disadvantage for wool imports with no equivalent in synthetic carpet, where no yarn is produced domestically.
- 4.24 The asymmetries are evidenced by import suppliers only holding marginal market share.
- 4.25 Without squarely addressing SOUI’s findings on barriers to expansion for importers, NERA adds nothing that would warrant the Commission departing from its conclusions.

⁴⁶ SOUI at [156.3].

⁴⁷ See also [Cowes Bay Group submission on SOPI \(11 November 2025\)](#) which states at paragraph 30: “*For example, the claimed market share for imports (based on Stats NZ data) is aggregated and covers a large number of individual suppliers, none of which have the ability to influence prices across the carpet industry anywhere near the extent to which Godfrey Hirst would be able to post acquisition.*”

⁴⁸ SOUI at [161].

Efficiencies

Internal tensions and inconsistencies with MAG

4.26 NERA states there is an “*internal tension*” in the SOUI.⁴⁹

It is difficult to reconcile this finding [that Bremworth’s re-entry to SDN would lower costs] with the SOUI’s cursory rejection of the filed evidence that the merger would lead to pro-competitive efficiencies.

4.27 However, NERA’s claimed “*internal tension*” between [126.2] of the SOUI and [236]–[240] of the SOUI is misconceived. It conflates two distinct analytical enquiries: Bremworth’s position in the counterfactual, and merger-specific efficiencies.

4.28 Paragraph [126.2] of the SOUI addresses the former. It recognises that through SDN re-entry, Bremworth could achieve economies of scale and improve its competitive position as an independent firm. Such a finding does not support the existence of merger efficiencies (rather it undermines it). It directly supports the Commission’s conclusion at [237.1] that the claimed efficiencies are not merger-specific (ie not part of the delta), as they would likely be realised absent the acquisition.

4.29 NERA’s reliance on the MAG is equally misplaced. The Commission does not depart from the principle that cost reductions can create incentives to lower price. The Commission correctly finds that any such pass-through is unlikely to be sufficient to offset the competitive harm identified, particularly given the limited constraints in wool carpet.⁵⁰ That is the correct application of the SLC test. The MAG’s observation about monopolist incentives establishes a theoretical floor for *potential* pass-through, not a presumption that pass-through will be sufficient (or even occur) in all cases. The evidence must satisfy the Commission that this would be the case. NERA (and the applicants) have failed to do so (and have not provided any new evidence to change this view).

4.30 NERA also fails to engage with the Commission’s separate finding at [237.2], that there is insufficient evidence that any efficiencies would be passed through to customers to a degree that would prevent an SLC.

4.31 When the SOUI is interpreted correctly there are no ‘tensions’ and remains internally consistent. Bremworth would improve its position in the counterfactual and the merger does not generate additional, merger-specific efficiencies capable of preventing an SLC.

Fixed cost savings

4.32 NERA states: “*Costs that are fixed in the short-run become variable over time*”⁵¹ and cites Rubinovitz (2009): “*When a decrease in the fixed cost of producing a given level of quality is introduced... consumer welfare increases.*”⁵²

4.33 NERA’s reliance on Rubinovitz is selective. Rubinovitz’s own paper acknowledges the orthodox position that:

⁴⁹ At paragraph 26.

⁵⁰ SOUI at [240.2].

⁵¹ At paragraph 29.

⁵² At paragraph 31, citing [Robert Rubinovitz](#) (2009), above fn 32, at p.3.

emphasis should be placed on marginal cost savings because these efficiencies will create short-run benefits for consumers, in terms of lower price and higher output, and should be given the most weight.

NERA selectively cites the paper's conclusion while omitting its starting premise.

- 4.34 Rubinovitz's theoretical model requires a quality-cost relationship (fixed costs determine quality, and those cost reductions lead to lower quality-adjusted prices). NERA does not demonstrate that this model applies to carpet manufacturing. The merger efficiencies identified are primarily operational (plant consolidation, overhead reduction), not quality-enhancing. There is no explanation by NERA to support displacing the orthodox approach (as reflected in the MAG) in this instance, which focuses on marginal cost savings because they directly affect pricing incentives.
- 4.35 The pass-through mechanism requires competitive pressure. NERA asserts that "*competitive pressure from imports would result in merger-induced cost savings being passed on to retailers.*"⁵³ But this is circular: the entire question before the Commission is whether imports provide sufficient competitive pressure. NERA cannot assume the answer to the question in dispute as a premise for its efficiencies argument.
- 4.36 NERA also states that fixed cost reductions would benefit all market participants, including potential entrants, eventually driving entry and lower prices. But that argument presumes a market with low barriers to entry and expansion (which as discussed, is not what the SOUI has found nor supported by the evidence to date). Absent such conditions, NERA's adopted theoretical fixed cost savings model does not apply.
- 4.37 Obviously it can be said that all fixed costs are variable over the long term. But that is meaningless. Nor does it apply to the Commission's analytical timeframe for assessing competitive effects (generally 2 years).

Appendix A.4: Data sources and assumptions

Import data methodology

- 4.38 Much of NERA's assertions that imports provide a material competitive constraint rests on its updated market share analysis in Appendix A. These calculations inflate import market shares and rest on a series of unverified assumptions, all derived from data supplied by the merging parties themselves. No assumption has been independently tested, and no sensitivity analysis is disclosed. The Commission should therefore treat NERA's market share figures accordingly.
- 4.39 These calculations make a number of assumptions:
- a. **The 40% wholesaler assumption is material and (still) unverified despite this being raised in our clients' cross submissions on the SOI:** NERA assumes 40% of all carpet imports are by wholesalers (the remainder being direct imports by retailers or others). This is a significant assumption that directly affects import market share calculations. A higher or lower percentage would materially change the result. No sensitivity testing on this assumption is disclosed. The failure to address this point suggests there is no valid explanation.
 - b. **The 20% mark-up assumption:** Applying a (still unverified) 20% mark-up to convert CIF import values to wholesale equivalent is a material assumption. Different mark-up rates

⁵³ At paragraph 33.

(which could vary by product type, country of origin, or importer scale) would produce different market shares. Again, the failure to address this point suggests there is no valid explanation.

- c. **HS code limitations.** Stats NZ data uses broad HS codes (5701–5705). As Stats NZ itself notes: *“Aggregated Harmonised System (HS) codes may include confidential 10 digit codes, in which case the summed data will exclude the confidential value(s).”*⁵⁴
 - i. This means import data may understate actual imports (where confidential codes are excluded) or overstate them (where catch-all codes capture non-carpet products).
 - ii. Link Economics expressly flagged this:⁵⁵ *“It was not clear what imports are included under HS code 5705000000 as this seems to be a catch-all code.”*
- d. **Exclusion of manufacturer imports.** NERA says that it excludes imports by Godfrey Hirst / Mohawk and Carpet Mill from the *“other imports”* category. This is appropriate but relies on GH’s own estimates of Carpet Mill’s import values. These estimates are not independently verified.
- e. **Carpet Mill share.** Estimated at ~4% based on GH’s estimates, with *“volume share assumed equal to value share.”* This is a simplifying assumption that may not hold if Carpet Mill’s product mix differs materially from the market average.

Sensitivity testing

- 4.40 NERA states assumptions were updated to match the Commission’s approach and prior analysis but does not disclose explicit sensitivity testing on the key parameters (mark-up rate, wholesaler share, volume conversion). Our clients have no way of knowing if this is correct.
- 4.41 Given that import market share is the central factual proposition supporting NERA’s constraint argument, the absence of disclosed sensitivity analysis on the parameters that drive that calculation is a material omission.

What is missing from the report

- 4.42 **No UPP / GUPPI analysis:** NERA does not provide evidence of calculated Upward Pricing Pressure or a Gross Upward Pricing Pressure Index, which would directly test whether the merger creates incentives for price increases using diversion ratios and margins – the standard modern approach to unilateral effects.
- 4.43 **No recapture modelling:** Despite the Every-Palmer/Mellsop opinion acknowledging recapture, the NERA Appendix B report does not model the multi-product incentive structure of the merged entity.⁵⁶ The model is wrong.
- 4.44 **No counterfactual price modelling:** NERA does not model what prices would be with and without the merger. The entire submission is qualitative inference from observed (client provided and unverified) data, not quantitative simulation.

⁵⁴ [Figure NZ, New Zealand imports of tufted carpets and other textile floor coverings.](#)

⁵⁵ [Link Economics \(27 November 2025\)](#), at paragraph 47.

⁵⁶ See Every-Palmer / Mellsop (NERA) joint opinion, at paragraph 23.

- 4.45 **No engagement with Link Economics:** The report does not cite or respond to any of Link Economics' analysis, despite Link Economics being the only independent economic report on the record opposing the merger.
- 4.46 As reiterated throughout this submission, there is no disclosure of sensitivity testing or independent substantiation of key inputs to verify any claims made.

NERA opines beyond its expertise

- 4.47 NERA opines on Bremworth's financial trajectory, commenting on Bremworth's "*ability to invest*", its likely "*diminishing competitive force*" status, and its investment capacity relative to Godfrey Hirst. Chapman Tripp also builds heavily on this to argue Bremworth's position is "*urgent and grave.*"
- 4.48 NERA's observations regarding Bremworth's financial trajectory and viability are not supported by the type of evidence that the MAG contemplate.⁵⁷ A proper assessment of whether Bremworth is likely to fail requires forensic financial analysis (including cash flow modelling, balance sheet scrutiny, and going concern assessment). This goes beyond the scope of economic consultancy.
- a. The Commission should require this level of evidence before placing weight on viability assertions.
 - b. Bremworth's December 2025 half-year results show material improvement, with cash outflows reduced from \$7.0 million to \$0.8 million and meaningful reductions in distribution and administration costs. This improvement was achieved despite ongoing operational recovery constraints and is expected to strengthen further through 2026 as production, sampling and retail engagement normalise.⁵⁸
- 4.49 With respect, NERA in NZ is an economics consultancy with a core focus on microeconomic theory, competition analysis, and econometrics. Not on:
- a. Business viability assessment (which requires forensic accounting / insolvency expertise);
 - b. Going concern analysis (which requires auditor-level scrutiny of cash flows, balance sheet, and forward projections); and
 - c. Corporate restructuring feasibility (which requires insolvency practitioner / corporate finance expertise).
- 4.50 As insolvency practitioners note, accurate valuations play a pivotal role in guiding decision-making and require independent valuations conducted by qualified professionals. That points to licensed insolvency practitioners or forensic accountants, rather than economic consultants.
- 4.51 In short:
- a. NERA's New Zealand expertise is economics, not business viability assessment.
 - b. The Commission's own Guidelines require evidence that the facts support the claim that the target firm is failing. That implies forensic-level financial scrutiny, not merely economic consultancy opinion.

⁵⁷ See Attachment E: How we assess failing firm arguments.

⁵⁸ [Bremworth FY26 Half Year Results Announcement](#).

- c. This reinforces the **weight** argument: the Commission should give NERA's viability opinions less weight than it would give to (say) a report from an independent insolvency practitioner or forensic accountant

5. BASELINE CONSULTANCY CARPET PURCHASING SURVEY FOR MOHAWK / GODFREY HIRST

Overview

- 5.1 Chapman Tripp filed a consumer survey on carpet purchasing behaviour conducted by Baseline Consultancy in April 2026 (**Baseline Survey**). The Baseline Survey purports to demonstrate that consumers readily switch between wool and synthetic carpet fibres, and that retail salespeople do not materially influence that switching.
- 5.2 For the reasons set out below, the Commission should disregard (or at most minimal weight to) the Baseline Survey and any conclusions said to be drawn from it.
- a. Notably the underlying data in the Baseline Survey appears to be fundamentally flawed as the dataset may not be New Zealand-specific. This defect goes directly to the Baseline Survey's relevance and reliability, making it unsafe to be relied upon.
 - b. The Baseline Survey is nonetheless methodologically unsound, statistically unreliable, internally inconsistent, and its conclusions do not withstand scrutiny (including at a level that would be required by a court or regulator).

The underlying data used in the Baseline Survey is likely flawed

- 5.3 Our clients are concerned that the underlying data used in the Baseline Survey is likely flawed. This is for two reasons.
- 5.4 [
- a.
 - b.
 - c.]
- 5.5 **The Baseline Survey's own findings suggest the underlying data is unreliable:** The Baseline Survey reports that 30% of respondents had an "actual purchase" of a "wool-synthetic blend" carpet. This finding is inconsistent with real world data in the New Zealand market:
- a. Sales of 'blended' carpets are typically only a very small proportion of total carpet sales. With most retailers having a small, limited range in this category.
 - b. Bremworth manufacturers have no wool-synthetic blended products.
 - c. Our clients understand that Godfrey Hirst has a limited range of 'blended' products which are predominantly supplied for commercial (not in residential or retail) applications.
 - d. This contrasts with overseas where wool-synthetic blended carpets are materially more prevalent (especially the US and UK and to a lesser extent Australia).
- 5.6 A finding that 30% of allegedly NZ respondents purchased a product category that barely exists in the domestic retail market is at best a significant anomaly (which should be scrutinised) and at worst, indicative that the Survey is flawed as its sample includes non-New Zealand respondents.

- 5.7 An alternative explanation that consumer recollection has resulted in this inaccuracy is unlikely as the range of wool and blended carpets in NZ showrooms is limited and therefore unlikely for a consumer who recently purchased carpet to misidentify (what would typically be) a significant order. In any event, if there was such a significant level of incorrect recollection by consumers, the Baseline Survey would still be flawed due to the degree of unreliable respondents.
- 5.8 Given the questionability of the underlying data, the Commission should request the underlying raw data from Baseline Consultancy and subject it to independent (flooring expert) scrutiny before placing any material weight on the Baseline Survey's findings. This is particularly warranted given the applicant's own experts provide a disclaimer that they "*have not otherwise reviewed the survey design and sampling approach but assume it was appropriately robust*".⁵⁹
- 5.9 For completeness, the timing of the survey (in April 2026) after Bremworth's own confidential financial position and alleged 'failing firm' status had been publicly characterised in Godfrey Hirst's earlier submissions to the Commission. Those submissions also repeatedly asserted that wool carpet faced declining demand, affordability and durability concerns, and increasing substitution to synthetic alternatives. That public commentary was widely reported. Valid respondents participating in the Baseline Survey would therefore have been exposed to a sustained negative narrative about Bremworth and wool carpet before being surveyed. The underlying data may have been further affected⁶⁰ as the Baseline Survey would not have measured organic consumer behaviour and respondents may have been influenced by the assertions made as part of this process (which it now purports to rely upon).

The Baseline Survey is commissioned advocacy, not independent evidence

- 5.10 The Baseline Survey was commissioned by Chapman Tripp on behalf of the applicant and was expressly designed "*to test the retailers' ability to switch consumers between wool and synthetic.*" This predetermined framing reveals the Baseline Survey was designed to support the applicant's case on substitutability, not to objectively investigate consumer behaviour. No statement of independence or compliance with the High Court Rules 2016, Schedule 4 (Code of Conduct for Expert Witnesses) is made. The Commission has previously indicated an expectation that quantitative evidence filed in merger proceedings will be independent, reliable, and objective.⁶¹ The Baseline Survey does not meet that standard.

The headline conclusions rest on statistically unreliable sub-samples

- 5.11 While the Baseline Survey's stated margin of error of $\pm 6.9\%$ may be technically correct for the total sample of $n=204$, this figure is materially misleading. Every substantive conclusion in the Baseline Survey is drawn from sub-samples far smaller than 204 (in some cases as small as $n=2$) where margins of error are dramatically larger and are never disclosed. For example:
- a. The central claim that salespeople do not influence switching (31% vs 27%) is based on sub-samples of $n=51$ and $n=30$. The 4 percentage point difference is well within the margin of error for those sub-samples ($\sim \pm 13-18\%$). No test of statistical significance is performed, yet the report concludes there is "*no significant variation*".
 - b. The claim that non-preferers who bought wool were "*twice as likely*" to do so without salesperson advice (29% vs 14%) is based on $n=60$, split further by salesperson

⁵⁹ Footnote 9 of the [James Every-Palmer KC / James Mellisop \(NERA\) Opinion provided with the Chapman Tripp submissions on SOUI \(14 May 2026\)](#).

⁶⁰ To the extent that that narrative influenced respondents' recalled preferences or stated willingness to switch.

⁶¹ See [Commission's How to use quantitative analysis in your merger analysis \(December 2018\)](#).

interaction. In absolute terms, this “twice as likely” finding rests on a difference of approximately one person (roughly 5 vs 6 individuals).

- c. The switching analysis for synth-to-wool with no salesperson interaction involves two respondents (n=2). No reliable conclusion can be drawn from a sample of this size.
- 5.12 By presenting percentage figures derived from these minuscule sub-samples without disclosing the applicable margins of error, the Baseline Survey creates an impression of statistical robustness that is not warranted.

Internal inconsistency: the Baseline Survey’s own SSNIP questions contradict the headline finding

- 5.13 The Baseline Survey’s price sensitivity questions (SSNIP test) found that only 2% of respondents (and 0% of wool buyers) would switch to a different carpet fibre type in response to a 10% price increase. At a 5% increase, the figure drops to 1%. These results suggest wool consumers are highly resistant to switching; the precise opposite of the Baseline Survey’s headline conclusion that ~30% of wool preferers switched.
- 5.14 Every-Palmer/Mellsop themselves acknowledge this inconsistency. As discussed, at footnote 9 of their joint opinion, they dismiss the SSNIP survey results as the product of “*cognitive bias*” and “*question misspecification*”. **They expressly reject the findings from their own commissioned survey’s most directly relevant questions.** This is an obvious concession where the applicant’s own experts do not consider the Baseline Survey’s SSNIP questions reliable. Yet the same experts selectively rely on other questions from the same survey instrument, administered to the same respondents, at the same time. The Commission must not treat this ‘evidence’ in both ways – if the Baseline Survey is unreliable for SSNIP purposes due to cognitive bias, the same biases (including recall effects, effort justification, and endowment effects, all identified by NERA) equally taint the broader switching questions.

The “blend” category inflates apparent switching from wool

- 5.15 The Baseline Survey treats any movement from “wool” to “blend” as switching away from wool. However, the Baseline Survey itself describes the blend category as “*wool-nylon blend (80/20 or similar)*”. A consumer who moves from 100% wool to an 80/20 wool-nylon blend has not meaningfully switched away from wool carpet. If such movements are properly characterised, the apparent switching figure of 19% (wool to synthetic/blend) would reduce materially and so too will the Baseline Survey’s core proposition on substitutability.

Significant methodological omissions

- 5.16 The Baseline Survey does not disclose:
- a. The full questionnaire;
 - b. The order in which questions were asked (risking order effects);
 - c. Whether any weighting was applied to correct for demographic or behavioural skews in the online panel;
 - d. The panel response rate;
 - e. The incentives offered to respondents; and

- f. One entire page of the report (page 18) which is redacted.
- 5.17 These omissions prevent any meaningful independent verification or analysis of the Baseline Survey's statistical methodology or results.
- 5.18 The Baseline Survey also suffers from recall bias, requiring respondents to recall carpet purchasing decisions, preferences, and salesperson interactions from up to 3.25 years earlier. That 11% of respondents could not recall whether a salesperson discussed fibres with them, and 5% did not know what carpet they previously had, confirms the limitations of retrospective self-reporting over this timeframe.
- 5.19 More fundamentally, the Baseline Survey does not address the question the Commission must answer. It does not isolate switching between suppliers (as opposed to switching between fibre types within the merged entity's portfolio), nor does it distinguish between lost sales and recaptured sales. As NERA itself acknowledges, the Baseline Survey is "*not a direct application of the SSNIP test.*" It therefore cannot be used to infer whether a hypothetical monopolist of wool carpet could profitably increase price. Nor does it engage with the presence of customers with strong fibre preferences, which the Commission has identified as a relevant feature of demand. Accordingly, the NERA analysis demonstrates that some substitution occurs, but does not establish that substitution would be sufficient to constrain the exercise of market power.

Courts' (and regulators') treatment of survey evidence

- 5.20 Even if the Baseline Survey were methodologically sound (which for the reasons above, it is not) the Commission should be slow to give it weight. New Zealand courts have a long history of treating survey evidence with caution and have consistently emphasised that the weight to be attached to such evidence depends critically on its design, independence, and transparency.
- 5.21 The leading New Zealand authority on survey evidence is *Customglass Boats Ltd v Salthouse Bros Ltd*.⁶² In that case, Mahon J held that properly conducted surveys were admissible to prove "*a public state of mind on a specific question*". However, his honour drew an important distinction that while surveys establish that respondents held and offered the opinions recorded, they do not demonstrate the truth of those opinions.⁶³
- 5.22 That distinction is directly relevant here, the Baseline Survey records what 204 respondents said about their past purchasing behaviour; it does not establish that consumers in fact readily substitute between wool and synthetic carpet in a way that would constrain the merged entity's pricing (noting also that the questions that go directly to this point were discarded).
- 5.23 Subsequent New Zealand authorities have been even more sceptical:
- a. In *Comité Interprofessionnel du Vin de Champagne v Wineworths Group Ltd*, Jeffries J observed that "*market research methods are almost as arguable as some of the conclusions.*"⁶⁴

⁶² [1976] 1 NZLR 36.

⁶³ See also [Professor Janet Hoek and Professor Philip Gendall, *The Use of Survey Evidence in Intellectual Property Disputes \(February 2007\)*](#) which provides a helpful summary of survey evidence in the courts more generally (as part of its analysis of intellectual property disputes).

⁶⁴ [1991] 2 NZLR 432 (HC) at 445.

- b. In *Noel Leeming Television Ltd v Noel's Appliance Centre Ltd*, Holland J stated: “I do not regard evidence from the survey as being significant either way... In the end the issue is one for the Judge”.⁶⁵
 - c. More recently, Gendall J in *Austin, Nichols & Co Inc v Stichting Lodestar* noted that “the authorities emphasise it is for the Court to make up its own mind.”⁶⁶
- 5.24 The UK Competition and Markets Authority’s (**CMA**) guidance on the *Good Practice in the design and presentation of customer survey evidence in merger cases* further supports the necessity of rigour in any survey evidence.⁶⁷ The CMA identifies online panel surveys as “more problematic” sample sources and emphasises the importance of disclosing the full questionnaire, response rates, weighting methodology, and incentive structures.
- 5.25 The Commission also provides an Advisory Note on *How to use quantitative analysis in your merger analysis*.⁶⁸ In that Advisory Note, the Commission notes the characteristics of good quality quantitative analysis under 5 principles:
- a. Principle 1: the analysis has a clear objective.
 - b. Principle 2: the analysis uses appropriate approaches and techniques.
 - c. Principle 3: the analysis is repeatable and replicable.
 - d. Principle 4: the results of the analysis are robust and explainable.
 - e. Principle 5: all quantitative analysis is reviewed.
- 5.26 The Baseline Survey does not hold itself to the level expected by the Commission and CMA of quantitative data.
- 5.27 The consistent thread across these authorities is that courts (and likewise regulators) should readily discount survey evidence where:
- a. It is commissioned by an interested party for the purpose of proceedings;
 - b. The questionnaire, question order, and weighting methodology are not disclosed;
 - c. Conclusions are drawn from sub-samples too small to support the inferences claimed; and
 - d. The survey’s own results are internally contradictory.
- 5.28 Each of those factors is present in the Baseline Survey before the Commission. The Commission should treat it accordingly.

⁶⁵ (1985) 1 TCLR 290.

⁶⁶ CIV 2004-485-1281, at [19].

⁶⁷ CMA [Good practice in the design and presentation of customer survey evidence in merger cases](#).

⁶⁸ See [Commission’s How to use quantitative analysis in your merger analysis \(December 2018\)](#).

6. BREMWORTH SUBMISSION

Overview

- 6.1 Bremworth's submission should be rejected (or significantly discounted) for two reasons.
- 6.2 First, it misstates the law. It understates the "real chance" clearance standard, overstates the threshold for a substantial lessening of competition (SLC), downplays the significance of a substantial lessening within a significant section of the market, and fails to engage with the LET framework. **Table 1** below sets out a clarification of the clearance standard in response to the legal propositions advanced.
- 6.3 Second, without its legal framework, Bremworth's submission adds nothing new. It reiterates themes of declining wool, strong import constraint, low barriers, offshore substitutability, and countervailing power, but the public record does not provide materially stronger evidence in support of those propositions. Repetition does not provide further proof.

Bremworth misstates the law

Hierarchy of authorities more generally

- 6.4 Bremworth cites a mix of (often) lower courts in New Zealand and Australian authorities. The distinction matters. Australian cases cannot displace binding New Zealand authority. Bremworth does not engage with three key Court of Appeal decisions that cut directly against its legal analysis:
- a. *Commerce Commission v Woolworths Ltd (The Warehouse case)*: the definitive authority on the s 66 clearance standard which sets out the "real chance" test;
 - b. *NZ Bus v Commerce Commission*: which discusses the statutory definition of "substantial" as "real or of substance" (which sets a far lower threshold than Bremworth advocates); and
 - c. *Port Nelson v Commerce Commission*: which confirms that competition need not be lessened across the whole market for the lessening to be substantial (directly refuting Bremworth's views on the "significant section" point).
- 6.5 These are not minor omissions as they go to:
- a. the clearance burden;
 - b. the threshold for an SLC; and
 - c. the significance of a substantial lessening within a relevant portion of the market.
- 6.6 Oddly Bremworth also cites an advocacy opinion of Matthew Dunning KC on the Microsoft/Activision Blizzard merger, an opinion prepared for a different transaction in a different context (and which may be incorrect). It carries zero weight and adds nothing to the present analysis.

The Clearance Standard: The "Real Chance" Test

- 6.7 Bremworth's submission does not address with the definitive New Zealand Court of Appeal statement on how section 66 operates.

6.8 In *Commerce Commission v Woolworths Ltd (The Warehouse)* [2008] NZCA 276, the Court held at [98]:

...the Commission may decline a clearance because [it is] not sure and therefore... not satisfied that there will be no substantial lessening of competition... [T]he existence of a 'doubt' corresponds to a failure to exclude a real chance of a substantial lessening of competition.

6.9 This means:

- a. The Commission does not need to find, on the balance of probabilities, that an SLC will occur.
- b. The Commission need only find that it cannot exclude a real chance of an SLC.
- c. If the Commission harbours doubt, that doubt equates to a failure to exclude a real chance of an SLC, and clearance must be declined.

6.10 Bremworth asserting that "*factual assessments need to be made on the balance of probabilities*" (while also citing the same Court of Appeal decision) is misleading in context.⁶⁹ The balance of probabilities language relates to underlying factual findings, not to the ultimate clearance question nor the likelihood of a counterfactual. The ultimate question remains whether the Commission can exclude a real chance of an SLC adopting "*likely*" counterfactuals (which need not be more likely than not). Bremworth's submission omits that distinction.

The statutory threshold for "*substantial*" is misstated

6.11 This is a substantive error. Bremworth invents its own threshold of "*material or serious (such that the public would suffer)*."⁷⁰ That formulation does not reflect the statutory definition or binding New Zealand authority.

- a. Section 2(1A) Commerce Act defines "*substantial*" as "*real or of substance*."
- b. The NZ Court of Appeal in *NZ Bus* at [270] confirmed the threshold is "*a low one*" and that "*any lessening of competition which is more than illusory or transitory is caught*".
- c. French J in *Stirling Harbour* (which Bremworth itself cites approvingly at paragraph 3.9 via *ANZCO* at [246]) said "*meaningful or relevant to the competitive process*" (again lower than Bremworth's preferred formulation).

6.12 There is also an internal inconsistency in Bremworth's own submission. It cites French J approvingly, but his formulation ("*meaningful or relevant*") is lower than the "*material or serious*" standard Bremworth advocates. Bremworth attempts to import a higher threshold from *Dandy Power* over the top of the New Zealand statutory definition and binding Court of Appeal authority. That is wrong as a matter of legal hierarchy.

Market definition as "*objective facts*"

6.13 Bremworth quotes *Port Nelson* (HC) at "*markets are objective facts. They exist, like the weather*." That is a legitimate and well-known passage, but Bremworth overstates its force.

6.14 The Court of Appeal in *Port Nelson*, adopting French J's statement in *Taprobane*, held that market definition performs both a descriptive and a purposive role, involving "*evaluative and*

⁶⁹ At paragraph 2.7(b).

⁷⁰ At paragraph 3.11(b).

purposive selection” by reference to “*economic and commercial realities and the policy of the statute.*” Market definition is a tool directed at resolving the competition question, not an end in itself.⁷¹ The MAG is consistent with this: markets are defined in the way that best isolates the key competition issues.

- 6.15 That purposive approach is consistent with the authorities and with long-standing Commission practice.

The “significant section” argument – Bremworth’s selective and misleading quotation of *Dandy Power*

- 6.16 Bremworth’s reading of *Dandy Power* is highly selective and omits the very passage the Commission relied upon. The SOUI at paragraphs 12 and 262–264 quotes the key passage from *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238:

Although the words ‘substantially lessened in a market’ refer generally to a market, it is the degree to which competition has been lessened which is critical, not the proportion of that lessening to the whole of the competition which exists in the total market. Thus a lessening in a significant section of the market, if a substantial lessening of otherwise active competition may, according to circumstances, be a substantial lessening of competition in a market.

- 6.17 This directly refutes Bremworth’s central thesis (at paras 3.11–3.12) that the Commission must assess overall competitive functioning across the whole market. *Dandy Power* says the opposite: it is the degree of lessening that matters, not its proportion to the whole. The Commission can focus on the wool segment precisely because the degree of lessening there (elimination of the closest competitor) is substantial.
- 6.18 Bremworth’s submission effectively folds the statutory clearance test into a private vendor preference test.
- 6.19 Bremworth also attacks a position the Commission has not taken. Citing *Brambles* (HC) at [132] for the proposition that individual preferences do not justify separate markets, Bremworth ignores that the SOUI defines a broader soft flooring market and examines wool as a *segment within it*, not as a separate market.

Entry, Expansion and the LET Test — The framework Bremworth ignores

- 6.20 Bremworth addresses barriers to entry by citing *Queensland Wire v BHP* and the SOUI’s statement that barriers are “*not overly high.*” But that does not answer the relevant question. Barriers that are not absolutely prohibitive may still sustain market power in a concentrated segment especially where the merger itself would raise barriers and where new entrants cannot replicate the merged entity’s economies of scope.⁷²
- 6.21 Bremworth does not engage with the LET test at all. The Commission’s MAG require an assessment of whether entry or expansion would be **L**ikely, of sufficient **E**xtent, and **T**imely.⁷³
- a. The High Court confirmed the LET test in *Air New Zealand/Qantas v Commerce Commission* (No. 6);⁷⁴

⁷¹ See [137] which states: “*It is important to recognise that market definition is a tool for competition analysis rather than an end in itself.*”

⁷² See SOUI at [189] and [195].

⁷³ MAG, at [3.95] to [3.96].

⁷⁴ (2004) 11 TCLR 347 at [50] and [102].

- b. In *Commerce Commission v NZ Bus* (HC) where Miller J found that “new entry will remain possible but is not likely to occur in an effective and timely way”⁷⁵ and “that concern does not establish that potential competition is an effective constraint.”⁷⁶

6.22 Asserting that barriers are low is not a substitute for this analysis.

Section 47 as a “net test” — efficiencies

6.23 Bremworth correctly cites *ANZCO v AFFCO* (CA) for the “net test” proposition (noting that this is in a non-merger context).⁷⁷ However, the net test applies only to merger-specific efficiencies (that is, efficiencies that could not be achieved without the merger). If Bremworth already has, and in the counterfactual would deepen, economies of scope from manufacturing and selling both wool and SDN, those efficiencies are available without the merger and are not merger-specific.

6.24 For completeness, efficiencies in themselves obviously do not negate competition concerns.

Without its legal framework, Bremworth’s factual claims add nothing new

The “declining segment” narrative is contradicted by current evidence

6.25 Bremworth advances a long-term wool-decline narrative (at paras 3.2(c)(i)–(vii)). That narrative is incomplete and potentially outdated:

- a. **Google Trends data** (Table A of our 2 February 2026 SOI submission):⁷⁸ Searches for “wool carpet” in NZ increased more than 200–250% between 2018 and 2026 while searches for “nylon carpet” were flat or potentially declined.
- b. **Godfrey Hirst’s own General Manager** (Andre May in November 2020):⁷⁹ “people are looking to more sustainable fibres, more natural fibres, possibly more than they have historically and so there’s a natural interest growing” and reported “double-digit growth in wool carpet sales.”
- c. **Campaign for Wool (NZ) data**:⁸⁰ 38% of NZ consumers purchased carpets/rugs in the last 3 years; of these purchasers 55% bought wool or wool-blend products; 70% said they would buy wool again; and 41% of non-purchasers considered wool during the purchase journey.
- d. **NZ Wool Market Report 2025–2030**:⁸¹ Growth “driven by the increasing demand for sustainable and natural fibres.”
- e. **NZ Government procurement policy**:⁸² Government agencies are directed to use wool where practical and appropriate, including Kāinga Ora specifying wool-only for new housing projects.⁸³

⁷⁵ (2006) 11 TCLR 679 at [186] and also similarly at [191].

⁷⁶ (2006) 11 TCLR 679 at [206].

⁷⁷ At [249].

⁷⁸ At paragraph 23.

⁷⁹ RNZ [Demand up for NZ made wool carpets](#) (19 November 2020).

⁸⁰ [The Campaign for Wool Category Fact Sheet NZ 2024](#).

⁸¹ [Ken Research New Zealand Wool Market Report Size Share Growth Drivers Trends Opportunities & Forecast 2025–2030](#).

⁸² See [NZ Government Construction Procurement Guidelines on Use of woollen fibres, where practical and appropriate, in government buildings](#).

⁸³ See [Kāinga Ora media release Wool carpet to be used in new Kāinga Ora homes \(12 June 2025\)](#).

- f. **The SOUI itself:** The SOUI cites “*increasing demand for wool, and/or forecasting demand for wool carpet to grow*” as a factor making the competitive concerns “*particularly acute.*”⁸⁴

6.26 Growing demand going forward is not inconsistent with flat historical sales (especially for one party). If demand for wool carpet is strengthening, the wool segment becomes more significant, and the competitive harm from eliminating one of two main domestic wool suppliers becomes correspondingly more acute.

Bremworth’s decline was self-inflicted and not due to imports

6.27 The evidence shows Bremworth’s decline resulted from strategic decisions rather than structural market conditions. Key decisions included:

- a. Failure to engage major retail groups;
- b. Exiting synthetic carpet (up to 85% of retailer demand);
- c. Publicly disparaging synthetic carpet products;
- d. Attempted shift to direct retailing;
- e. Restructuring experienced sales capability; and
- f. Adopting an imported yarn strategy that was ultimately unsuccessful.

6.28 These decisions were reversed by new board management in 2025, and subsequent performance has materially improved.

6.29 Bremworth’s own statements contradict any “*failing firm*” narrative with recent public statements reflecting confidence in recovery, including statements of revenue growth, restored supply chain performance, and plans to resume dividends.

Offshore wool carpet is not a close substitute for NZ wool carpet

6.30 Bremworth treats imported wool carpets as equivalent competitive constraints. That unevicenced assertion is not consistent with the facts and remains open to substantial challenge:

- a. **NZ wool has distinctive characteristics:** “*NZ wool is prized for its softness and luxurious feel. The fibres are smoother and finer than many other wools... NZ wool is also among the whitest and cleanest in the world, meaning it dyes well, allowing for vibrant, long-lasting colours... NZ wool is ‘strong wool’ with longer strands.*”⁸⁵
- b. **NZ exports wool carpet:** If imported wool were a close substitute, Mohawk would not find it cost-effective to sell NZ wool carpets in the US. The very fact that NZ wool carpet can be exported profitably to international markets demonstrates that it is a **differentiated product**, not a commodity substitutable with offshore wool.
- c. **Double freight for imported NZ-wool carpet:** Importing wool carpet made from NZ wool involves exporting the raw wool/yarn overseas, then re-importing the finished product.

⁸⁴ At [11.2].

⁸⁵ See our initial 18 November 2025 submission.

This creates a structural cost disadvantage for imported NZ-wool carpet that does not exist for domestically manufactured product.

- d. **Link Economics:**⁸⁶ *“Some customers will have a strong preference for NZ wool carpets, whether for sustainability reasons, for the purposes of supporting NZ’s farming sector, and/or a preference for the distinctive look and texture.”*
- e. **Anonymous Submission B:**⁸⁷ *“The majority of the carpet that is imported into New Zealand comes from the USA and attracts a 10% duty”* and that *“independent importers lack the scale to disrupt a merged Mohawk/Bremworth entity.”*
- f. **Bremworth’s imported yarn programme failed:** Bremworth’s reliance on India as a constraint is inconsistent with its own experience of reverting to domestic yarn production which resulted in improved quality, reduced costs, and restored retailer confidence. Bremworth’s own experience with imported Indian wool yarn from 2023 to 2025 produced: (a) very high levels of second-grade carpet; (b) significant colour variations, and (c) was approximately 40% more expensive than yarn from Bremworth’s Napier plant. This is clear real-world evidence that offshore wool is not an effective substitute (highlighting the quality and cost challenges presented by non-NZ wool supply).
- g. **No retailer operates a wool import stocking programme:** For example, Wools of New Zealand who has implemented offshore production has not proved competitive. Only a small number of offshore manufacturers exist, none of which present viable large-scale alternatives.

The “*natural experiment*” refutes the import constraint claim

6.31 Bremworth also does not engage with one of the strongest pieces of contrary evidence on the record, namely Link Economics’ interpretation of the import response following reduced domestic supply.

Bremworth’s exit from SDN carpet supply substantially lessened the competitive pressure faced by Mohawk/Godfrey Hirst, and Mohawk/Godfrey Hirst was not significantly constrained by imports.

And:

Our observations based on import data strongly indicate that rather than a wave of cheap imports entering New Zealand and constraining domestic manufacturers, it was instead the case that the increase in imports was in response to reduced domestic supply.

6.32 The increase in imports was a response to reduced domestic supply, not evidence of effective import discipline. If reduced competitive pressure was followed by higher prices without effective import constraint, that weakens Bremworth’s case considerably.

The 15% inference is a logical non sequitur

6.33 Bremworth asserts (at para 3.13(b)) that because (it says) wool carpet comprises approximately 15% of the soft flooring market, the proportion of non-switching consumers must be “*materially below*” that figure. That does not follow. Even if correct (ignoring market trends), the 15% figure

⁸⁶ [Link Economics \(27 November 2025\)](#), at paragraph 25.

⁸⁷ [Anonymous B, Confidential Submission – Godfrey Hirst / Bremworth \[Statement of Preliminary Issues\] \(November 2025\)](#), at 3.4.

represents wool carpet's share of total soft flooring sales and says nothing about the proportion of consumers within the wool segment who would or would not switch in response to a price increase. Bremworth provides no evidence on that question.

- 6.34 Bremworth's reasoning conflates market definition with competitive effects. A merger that materially reduces competition among wool carpet suppliers harms downstream consumers who purchase wool carpet, regardless of whether some consumers at the margins might consider synthetic alternatives. The existence of marginal switching may constrain pricing to a degree, but Bremworth has not demonstrated that it would do so sufficiently to prevent an SLC.

Supply chain disruption (incl Middle East conflict) undermines the import constraint argument

- 6.35 Bremworth's reliance on potential Turkish wool carpet manufacturing as evidence of future import competition does not account adequately for current supply-chain fragility and shipping risk.
- a. The conflict in the Middle East has materially increased shipping times, costs, and risks for imports from the UAE, and South/Southeast Asia – all key carpet-exporting regions.
 - b. Imported carpets carry *“greater exchange rate risk, longer lead times, higher working capital requirements, and greater supply chain fragility”* – all of which are exacerbated by ongoing geopolitical disruption: Shipping costs have increased, insurance is unavailable in some routes, and suppliers have imposed price increases. These are present commercial realities.
 - c. The forward-looking counterfactual must account for the increased fragility and cost of import supply chains, not assume (as Bremworth does) that Indian or other offshore manufacturing can seamlessly constrain a merged NZ entity.
- 6.36 Recent evidence regarding Indian wool manufacturing does not, without more, establish that Indian suppliers would export to New Zealand in sufficient volumes and within a sufficient timeframe to satisfy the LET test.

Economies of scope – SDN based on common production and selling costs

- 6.37 Bremworth does not properly engage with economies of scope. SDN is not a standalone product. It shares common tufting/backing equipment, sales teams, retailer relationships, and distribution with Bremworth's wool range. The merger eliminates not just a wool competitor but the economies of scope that make Bremworth increasingly competitive across SDN as well.
- a. SDN is not a standalone product. It shares common tufting/backing equipment, common sales teams, common retailer relationships, and common warehousing/distribution with Bremworth's wool range.
 - b. Our 3 February 2026 SOI submission made this point:⁸⁸ *“There are production efficiencies (economies of scope) in manufacturing both wool and synthetic carpet; as well as portfolio effects (economies of scope in selling a variety of carpets).”*
 - c. The SOUI itself notes:⁸⁹ *“Bremworth considers that additional volume and scale associated with the re-entry to SDN, would over time, enable it to harness economies of scale to lower its fixed production overheads per lineal metre of carpet.”*

⁸⁸ [Matthews Law, Submission on the SOI on behalf of interested parties \(2 February 2026\)](#), at paragraph 16.

⁸⁹ At [126.2].

- d. Our clients' SOI submission noted the counterfactual where Bremworth "*should be considered likely to be an entity with the economies of scale and scope it had pre-2020, when Bremworth manufactured and supplied a broad range of synthetic carpets including SDN and PET*".⁹⁰

6.38 This matters because:

- a. It explains why Bremworth's SDN re-entry increases closeness with Godfrey Hirst – it is not simply "*adding a product*" but leveraging shared costs to become a stronger full-spectrum competitor. The merger eliminates not just a wool competitor but the economies of scope that make Bremworth increasingly competitive across SDN as well.
- b. It demolishes the alleged "*double standard*" on SDN (para 4.1(b)) – the Commission is right to treat Bremworth's SDN differently from third-party wool entry because Bremworth's competitive strength is portfolio-wide and driven by shared production and selling costs. Third-party entrants adding wool to an import-based business do not replicate these economies of scope.
- c. It raises the true barriers to entry - a new entrant into wool carpet alone faces higher per-unit costs than Bremworth or Godfrey Hirst, who spread common costs across wool and synthetic. Replicating the *scope* of the merged entity's offering is materially harder than entering wool supply in isolation. The MAG recognises that "*economies of scope ... may require an entrant to produce a minimum range of products in order to be an effective competitive constraint on the merged firm.*"⁹¹
- d. It also undermines the efficiencies claim. If Bremworth already has, and in the counterfactual would deepen, economies of scope from manufacturing and selling both wool and SDN, those efficiencies are available without the merger and are therefore not merger-specific.

Continuous disclosure obligations

6.39 The Commission's current view of the likely counterfactual is that Bremworth will continue as a going concern and the publicly available evidence supports that conclusion. Bremworth's new board adopted a turnaround strategy publicly described as having "*turned it around*". There is no evidence on the public record to depart from this counterfactual.

6.40 Any speculative assertions raised by Chapman Tripp, NERA and/or Bremworth about financial risk⁹² under confidential submissions (or information provided separately to the Commission) would necessitate disclosure on the public record due to Bremworth's continuous disclosure obligations under Rule 3.1.1 of the NZX Listing Rules.⁹³

- a. Rule 3.1.1 requires that Bremworth (its directors or senior managers) must "*promptly and without delay release that **material** information*".⁹⁴

⁹⁰ at paragraph 44.

⁹¹ MAG at [3.109.2].

⁹² For example, if the parties were to argue a failing firm argument and liquidation was submitted as a possibility then this would require disclosure as it would be "*material information*".

⁹³ NZX Listing Rules (January 2025) at Rule 3.1.1. See also NZX Continuous Disclosure Guidance Note (10 December 2020) at [3.1].

⁹⁴ The Glossary to the NZX Listing Rules states that "*Material Information*" has the meaning given in section 231(1) of the FMCA.

- b. The NZX Continuous Disclosure Guidance Note expressly identifies both “*the appointment of a receiver, manager, liquidator*” and “*a proposed change in the general character or nature of the business*” as examples of “*material information*” that may require immediate disclosure.⁹⁵

6.41 No such disclosures have been made.

6.42 Bremworth has also warranted in its Scheme Implementation Agreement under Schedule 2, Part 1, **Warranty 7** that it is not in breach of its continuous disclosure obligations under the Companies Act, FMCA and NZX Listing Rules and not relying on the exception in NZX Listing Rule 3.1.2 to withhold any information from public disclosure.

Cost comparison graphic

6.43 Bremworth’s alternative cost graphic (Figure 1) is self-serving and unverified. General assertions about materially lower labour and utility costs offshore may be plausible at a high level, but the graphic does not provide enough disclosed methodology or data to permit meaningful testing.

Countervailing power

6.44 The SOUI found that retailer self-supply is realistic for synthetic carpet, but the Commission’s focus is on wool carpet. Bremworth’s leap from synthetic self-supply to meaningful countervailing power over wool carpet supply has no basis.

⁹⁵ [NZX Continuous Disclosure Guidance Note \(10 December 2020\)](#) at [3.1]

TABLE 1: CLARIFICATION OF LEGAL PRINCIPLES RAISED BY BREMWORTH

PRINCIPLE	AUTHORITY	EXACT QUOTE / HOLDING	APPLICATION TO MOHAWK/BREMWORTH
Clearance burden is a “real chance”	<i>CC v Woolworths</i> [2008] NZCA 276 at [98].	In doubt “was not intended to adopt the concept of a ‘reasonable doubt’ as that expression is used in the criminal law ... the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”	Bremworth’s “balance of probabilities” (BOP) argument is wrong. The Commission need only identify a real chance of SLC to decline.
“Substantial” = low threshold	<i>CC v NZ Bus</i> [2007] NZCA 502, Wilson J at [270].	“the substantial lessening of competition test ... is a low one. ‘Substantial’ is defined in s 2(1A) as ‘real or of substance’”	Bremworth’s attempt to raise the threshold to “material or serious market-wide harm” is inconsistent with the statutory definition.
“Likely” = real chance, not BOP	<i>CC v NZME</i> [2018] NZCA 389 at [86].	“An effect is ‘likely’ if there is a ‘real and substantial risk’ or ‘real chance’ that it will occur. It must be more than a mere possibility but need not be more likely than not. ¹¹¹ The likely existence of such a risk is a practical commercial or economic question. ¹¹² ”	Reinforces <i>Woolworths</i> . The Commission does not need to find the more competitive counterfactual is more probable than not.
Forward-looking analysis	<i>CC v NZ Bus</i> [2008] NZCA 179, Arnold J at [237].	“[citing QCMA], ‘whether firms compete is very much a matter of the structure of the markets in which they operate’. ... The analysis is a forward-looking one, comparing the likely state of competition if the merger or acquisition proceeds with the likely state of competition if it does not. ... Evidence of past conduct may be relevant ... But to the extent that behaviour within a market is discretionary, it can change, and so may not be a reliable indicator for the future.”	Bremworth’s reliance on historical decline in wool share is backward-looking. The Commission must assess future competitive conditions.
Potential competitor can be a constraint	<i>CC v Woolworths</i> [2008] NZCA 276 at [207].	The Court of Appeal considered <i>Warehouse Extra</i> “to be a real prospect of substantial competitive constraint in one or more of the local markets in which they now operate.”	Bremworth’s SDN re-entry creates a real prospect of restored domestic portfolio competition, even if nascent.
Effects, not motives	<i>CC v NZ Bus</i> [2007] NZCA 502, Hammond J at [78].	“s 47 of the Act is concerned with effects and not motives.”	The private commercial preference of Bremworth’s board for sale to Mohawk is irrelevant to the competition analysis.
Merging closest competitors is “very significant”	<i>CC v NZ Bus</i> [2007] NZCA 502, Hammond J at [99].	“If the lowest cost supplier and the next lowest cost supplier merge, the removal of competitive restraints is very significant, and prices are likely to rise.”	Godfrey Hirst and Bremworth are the two domestic manufacturers and each other’s closest competitors, particularly in wool.

¹¹¹ “*Port Nelson Ltd*, above n 106, at 562–563.”

¹¹² “*QCMA*, above n 27, at 183; adopted in *AMPS-A (HC)*, above n 69, at 512–513.”

Applicant bears practical burden	<i>CC v NZME</i> [2018] NZCA 389 at [86].	<i>“The Commission has inquisitorial powers and may consider information from many sources,¹¹⁴ but it need not continue its inquiries until it has satisfied itself that the relevant effect is or is not likely. Rather, it may rest on the information provided by the applicant. ... For these reasons the applicant bears a practical burden of persuasion.”</i>	Mohawk/Godfrey Hirst must satisfy the Commission. The Commission does not need to prove SLC; it needs only to be unable to exclude a real chance.
Significant section / relevant portion	<i>Dandy Power</i> [1982] FCA 178 (adopted in NZ). See also <i>Port Nelson v CC</i> (1996) 7 TCLR 217 (CA) at 235.	<i>Dandy Power: “one must look at the relevant significant portion of the market ... and determine whether what has been lost ... is seen to be a substantial lessening of competition.”</i> <i>Port Nelson: “Taken more broadly, however, it cannot be the case that competition in a market is not substantially lessened unless competition across the whole of the market is lessened”</i>	Wool carpets are a “relevant significant portion” of the soft flooring market. The loss of rivalry in that portion can amount to SLC even in a broader market.
Countervailing power must be broad	<i>CC v NZ Bus</i> [2007] NZCA 502, Arnold J at [57].	GWRC’s countervailing power was “modest unless and until entry occurred on a substantial scale. Many tenders would attract only one bid.”	Retailers’ influence at point of sale does not equal countervailing power against a merged supplier controlling must-have brands.
Non-price competition matters	<i>CC v NZME</i> [2018] NZCA 389 at [117].	<i>“competition between the appellants is a major driver of quality at present.”</i>	Competition between Godfrey Hirst and Bremworth drives range, quality, service and innovation (not just price).
Uncertainty favours decline	<i>CC v Woolworths</i> [2008] NZCA 276 at [207].	Court of Appeal said yes stating: <i>“In applying this test, it is open to the Commission or Court to decline a clearance and say that, “We are not sure and therefore we are not satisfied that there will be no substantial lessening of competition” (although we accept that it might be better to avoid using the word “sure” given its use in the criminal law as a synonym for proof beyond reasonable doubt).”⁹⁶</i>	Bremworth’s attempt to convert uncertainty about Bremworth’s future into a reason for clearance inverts the statutory test.

¹¹⁴ *“Woolworths, above n 68, at [101]–[102]. The Court there recognised that it is not entirely apt to speak of “proof”.*

⁹⁶ Note leave to appeal to SC (abandoned) included questions on: *“whether clearance can be declined on the grounds that it is uncertain”.*