

Statement of Preliminary Issues

New Zealand Gynaecology Association Inc: Application seeking Authorisation and Interim Authorisation for Collective Bargaining

25 May 2026

Introduction

1. On 19 May 2026, the Commerce Commission (**Commission**) received an application (**Application**) under sections 58(1), (2), (6B) and (6D) and 65AAA of the Commerce Act 1986 (**Act**) from New Zealand Gynaecology Association Inc (**NZGA** or the **Applicant**) on behalf of itself and its members (together, **Participants**) to collectively bargain with Southern Cross Health Insurance (**SCHI** or **Southern Cross**)¹ and/or hospitals.²
2. The Applicant seeks authorisation under section 58 and interim authorisation under section 65AAA to (together, the **Proposed Arrangements**):
 - 2.1 collectively bargain with Southern Cross and/or hospital(s) for the provision of private gynaecological services to Southern Cross-insured patients (including to periodically negotiate any further changes as needed during this period);
 - 2.2 enter into a limited Standstill Agreement between the Participants defer any contracting with SCHI for a period of six months;
 - 2.3 engage in discussions and exchange information to the extent relevant and reasonably necessary for those collective negotiations;
 - 2.4 enter into individual bilateral agreements between individual gynaecologists and SCHI and /or hospital(s) based on a common set of reference terms (ie, a contractual framework) as collectively negotiated; and
 - 2.5 give effect to the provisions of agreements and / or separate agreements based on the reference terms collectively negotiated (including any revisions from time to time).
3. Authorisation allows firms to engage in conduct that they perceive would otherwise breach the Act. It is a voluntary process that parties may avail themselves of if they

¹ In this document, “Southern Cross”, “Southern Cross Health Insurance” and “SCHI” refer to Southern Cross Medical Care Society (**SCMCS**) and all SCMCS interconnected bodies corporate and associated persons.

² A public version of the Application is available on the [case register](#) on our website.

perceive a competition law risk with the arrangements they wish to enter into or conduct they wish to engage in.

4. The Commission will authorise an arrangement if it is satisfied that:
 - 4.1 in relation to an application under s 58(1) to 58(6A) of the Act, the arrangement will result, or is likely to result, in a benefit to the public which would outweigh the lessening of competition;³ or
 - 4.2 in relation to an application under s 58(6B) to 58(8) of the Act, the arrangement will result, or is likely to result, in such a benefit to the public that the arrangement should be permitted.⁴
5. The Commission can grant interim authorisation in respect of an application for authorisation if it considers it appropriate to do so, and it may grant such interim authorisation for such period as it sees fit.⁵ If the Commission grants an interim authorisation, it remains in force until the Applicant withdraws the application for authorisation, the Commission revokes the interim authorisation under section 65 of the Act, or the Commission declines or grants the application for authorisation.⁶
6. This Statement of Preliminary Issues (**SOPI**) sets out the issues that we have identified to date and will consider in deciding whether to grant authorisation.⁷
7. Through publishing this SOPI, we aim to:⁸
 - 7.1 increase the transparency of our process;
 - 7.2 provide interested parties with an opportunity to consider and submit on the matters identified and also to identify any further competition issues which we may wish to consider; and
 - 7.3 gather further information which might assist our assessment.
8. We invite interested parties to provide comments on the likely benefits and detriments of the Proposed Arrangements. Parties who wish to make a submission should do so by Tuesday 9 June 2026.
9. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

³ Section 61(6) of the Act.

⁴ Section 61(8) of the Act.

⁵ Sections 65AAA(1) and 65AAA(5) of the Act.

⁶ Section 65AAA(4) of the Act.

⁷ The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us and other issues may become apparent as we progress our assessment.

⁸ Commerce Commission, Authorisation Guidelines (June 2023).

The Applicant and Participants

10. NZGA is an industry representative organisation that represents and advocates for the interests of its member gynaecologists. It currently has 131 members, representing roughly 92% of private gynaecologists in New Zealand.⁹NZGA's members provide gynaecological surgical and associated services to women and their unborn or newborn children in public and private practice settings.
11. NZGA submits that the **Participants** in the Proposed Arrangements include:
 - 11.1 itself; and
 - 11.2 NZGA's current and future members that choose to participate in the Proposed Arrangements.

Background to the Proposed Arrangement

12. The Applicant submits that authorisation to engage in the Proposed Arrangements is sought against the background of a proposed restructure by SCHI of the provision of private gynaecology services for SCHI customers.
13. The Applicant submits that within the private healthcare context, the contractual framework has historically been as follows:¹⁰
 - 13.1 **Surgeon-patient:** the primary contract for the supply of gynaecological services is between the surgeon and patient. Patients pay on a Fee-for-Service basis.
 - 13.2 **Surgeon-hospital:** surgeons are independent practitioners who are granted access to private hospitals through credentialling, but are not employed by them and typically operate across multiple sites.
 - 13.2.1 Hospitals must compete to attract surgeons (who influence a patient's choice of hospital) by providing quality services to both surgeons and patients, including infrastructure, technology, and personnel.
 - 13.2.2 Some hospitals may hire equipment they do not own for a particular case to support surgeons performing procedures in their hospital. Hospitals also provide surgeons with surgical assistants (specially proctored/trained nurses) and often send nurses for specific courses to enable them to be proficient in certain types of surgical assisting.
 - 13.3 **Insurer-insured:** separately, the patient enters into a contract of insurance with the insurer. This contract operates by way of indemnity or reimbursement.

⁹ NZGA represents approximately 32% of all specialists across public and private systems.

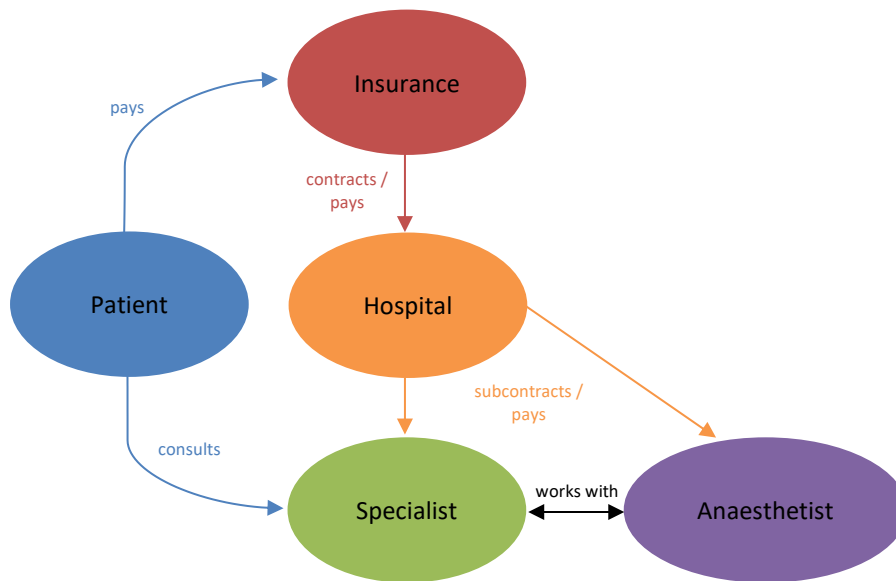
¹⁰ NZGA, "Notice Seeking Authorisation of a Restrictive Trade Practice pursuant to Sections 58(1), (2), (6B) and (6D) and 65AAA of the Commerce Act 1986 (19 May 2026) (**Application**) at [5.39].

- 13.4 **Affiliated Provider (AP) and approval arrangements:** AP schemes and pre-approval processes govern eligibility for reimbursement and operate as conditions of access to insured patients, but do not constitute contracts for the purchase of medical services by the insurer. Affiliation or participation arrangements operate as conditions of access to insured patients, not as contracts for the supply of services to the insurer.
14. A patient requiring gynaecological services contracts with the gynaecology practice of their choosing. The choice of gynaecology practice may be influenced by the patient's insurance company to obtain comfort that their costs will be reimbursed.
15. If the gynaecologist determines that surgery is appropriate, a decision will be made as to the hospital where the surgery will be undertaken. This will depend on the hospital (or hospitals) where the gynaecologist operates. In determining which hospital(s) to operate at, gynaecologists may take into account facility costs, location, timeliness and anticipated quality of care. Sometimes the patient's insurer will have an influence on the choice of hospital, in that patients might be encouraged to select a particular option.
16. The gynaecologist incurs the facility fee and passes this onto the patient, either directly or indirectly through their service fees. The patient will also contract directly with an anaesthetist. These fees will be covered by the patient's insurance company or paid by the patient themselves.
17. Southern Cross is New Zealand's largest health insurance provider. It has more than 945,000 members,¹¹ represents approximately 60% of the health insurance market (by customer numbers) and pays 68% of the value of all health insurance claims paid in New Zealand.¹²
18. The Applicant told us that Southern Cross has approached gynaecologists seeking to establish a new contractual framework. The Applicant summarised the new contractual framework in the below chart.

¹¹ Southern Cross "About Southern Cross" <https://www.southerncross.co.nz/about-southern-cross>

¹² Southern Cross "Southern Cross Medical Care Society Group 2025 Annual Report – Summary" at page 3 (https://www.southerncross.co.nz/-/media/files/corporate/annual-reports/schi_annual_report_2025.pdf?rev=c182d27c6f734bc9be555015b2b3de7e).

Figure 1: Contractual Framework proposed by Southern Cross (AP-only model)



19. The Applicant stated that some details of the proposed framework are unclear, but it would encompass the following:
- 19.1 Southern Cross would enter into contracts with private hospitals. Hospitals would subsequently subcontract gynaecologists on standardised terms as a condition of access to Southern Cross-insured patients.
 - 19.2 Southern Cross would pass “bundled fees” to private hospitals in exchange for gynaecology services to its insured members. Hospitals would then split the bundled fees between the hospital, the gynaecologist and the anaesthetist. Southern Cross may provide recommended pricing for how the bundled fees are split but would leave it up to the hospitals to determine how to compensate gynaecologists and anaesthetists.
 - 19.3 Southern Cross would require hospitals to procure gynaecology services from individual clinicians for significantly (30-50%) lower rates than what they currently receive.¹³ Common rates of compensation would be set for categories of gynaecology surgeries, established by Southern Cross.
 - 19.4 Gynaecologists that do not accept the terms and conditions would be excluded from providing services to Southern Cross-insured patients.
20. The Applicant also stated that there was a “compressed timetable” with limited opportunity for individual gynaecologists to negotiate with Southern Cross.¹⁴

¹³ Application at [5.45(d)].

¹⁴ Application at [5.50(e)].

Proposed Arrangements for which authorisation and interim authorisation is sought

21. The Proposed Arrangements for which the Applicant seeks authorisation and interim authorisation are described in the Application.
22. In summary, the Applicant seeks authorisation and interim authorisation for it and the Participants to:
 - 22.1 collectively bargain with Southern Cross and/or hospitals in relation to gynaecology services to Southern Cross-insured patients (including to periodically negotiate any further changes as needed during the authorised period);
 - 22.2 enter into a limited “Standstill Agreement” between the Participants to defer any contracting with Southern Cross for a period of up to 12 months;
 - 22.3 engage in discussions and exchange information to the extent relevant and reasonably necessary for those collective negotiations;
 - 22.4 enter into individual bilateral agreements between individual gynaecologists and Southern Cross and/or hospitals based on a common set of reference terms (ie, a contractual framework) collectively negotiated; and
 - 22.5 give effect to provisions of agreements and/or separate agreements based on the reference terms (including any revisions from time to time).
23. The Applicant expects the scope of the collective negotiations to include (but not be limited to):¹⁵
 - 23.1 determining whether the proposed new head contractor/sub-contractor model is clinically workable, including exploring alternatives;
 - 23.2 negotiating and refining the AP coding framework, including ensuring that coding appropriately reflects clinical practice, complexity of gynaecological surgery, and the ability to combine procedures where clinically indicated;
 - 23.3 negotiating non-price terms, including matters relating to clinical governance, eligibility criteria, participation requirements, and dispute resolution processes;
 - 23.4 collective engagement on the general approach to pricing and the application of risk corridors. This may involve either:
 - 23.4.1 negotiating for the ability of gynaecologists to be able to continue competing on price; or

¹⁵ Application at [6.4].

- 23.4.2 if Southern Cross maintains common pricing in line with its own proposal, ensuring that common prices are consistent with the long-term sustainability of private gynaecology practice, and determined transparently;
- 23.5 engaging in discussions and exchange of information to the extent relevant and reasonably necessary for those collective negotiations;
- 23.6 collectively negotiating a set of reference terms;
- 23.7 entering into individual bilateral agreements between individual gynaecologists and Southern Cross and/or hospitals based on reference terms (ie, a contractual framework) as collectively negotiated; and
- 23.8 giving effect to the provisions of any such agreements resulting from collective negotiation with Southern Cross and/or hospitals.
24. The Applicant has further proposed the following measures as potential conditions to support the effective implementation and oversight of the Proposed Arrangements:¹⁶
- 24.1 The Participants (or via a representative) could provide regular quarterly reports to the Commission which set out material activities taken under the authorisation.
- 24.2 The Participants (or a via a representative) could notify the Commission 5 working days prior to any proposed collective agreement(s) and/or common contractual framework collectively negotiated being agreed.
- 24.3 All meetings and discussions in relation to the Proposed Arrangements will be overseen by an external legal adviser to ensure the conduct remains compliant with any authorisation granted.
- 24.4 All authorised conduct will occur within forums between NZGA and Southern Cross and/or hospitals specifically designated for the discussion of gynaecology services, to ensure structured oversight and compliance with the scope of the authorisation.
25. The Applicant is seeking authorisation for a period of up to 10 years. The Applicant submits that this period is appropriate and necessary for the following reasons:¹⁷
- 25.1 it is expected that collective negotiations with Southern Cross will take many months to determine;
- 25.2 a long-term agreement would likely provide contractual certainty, and support consistent future planning and investment;

¹⁶ Application at [6.15].

¹⁷ Application at [6.6]-[6.7].

- 25.3 Southern Cross may wish to renegotiate/change terms every 3 years; and
- 25.4 authorisations for a period of approximately 10 years are not unusual.
26. The Applicant has not sought interim authorisation by a specific deadline but has noted the urgency of its application.

Our framework for authorisations

27. We undertake a two-stage assessment in any authorisation application under s 58 of the Act:¹⁸
- 27.1 first, establishing whether the Commission has jurisdiction to authorise (the ‘jurisdictional threshold’); and
- 27.2 second, assessing whether the associated benefits mean that authorisation should be granted (the ‘public benefit test’).

Jurisdictional threshold

28. The Applicants have applied for authorisation under s 58(1) and (2), and s 58(6B) and (6D) of the Act.
29. The Commission has jurisdiction to consider an application for authorisation under s 58(1) and (2) of the Act where a person wishes to enter into and/or give effect to a contract, arrangement or understanding which it considers might substantially lessen competition such that section 27 would, or might apply.¹⁹
30. The Commission also has jurisdiction under s 58(6B) and (6D) of the Act where a person wishes to enter into and/or give effect to a contract, arrangement or understanding which contains a provision that is, or might be, a cartel provision.²⁰ In order to grant authorisation, the Commission is not required to determine whether a particular provision is in fact a cartel provision, provided there are reasonable grounds for believing that it might be.²¹
31. The Applicant submits that the Commission has jurisdiction under sections 58(1) and (2). It submits that section 27 might apply and that a lessening in competition may arise to the extent that:²²

¹⁸ Authorisation Guidelines (June 2023).

¹⁹ Section 27(1) of the Act prohibits entering into a contract or arrangement, or arriving at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market. Section 27(2) of the Act also prohibits giving effect to a provision of a contract, arrangement, or understanding that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

²⁰ Section 30A of the Act states that a cartel provision is a provision, contained in a contract, arrangement, understanding, or covenant, that has the purpose, effect, or likely effect of 1 or more of the following in relation to the supply or acquisition of goods or services in New Zealand: price fixing, restricting output, market allocating.

²¹ Section 61(9) of the Act.

²² Application at [8.2].

- 31.1 in the absence of the Proposed Arrangements, there may be more diverse price/non-price terms negotiated in individual bilateral agreements; and
 - 31.2 a Standstill Agreement may defer implementation of Southern Cross' proposed changes.
32. The Applicant also submits that the Commission has jurisdiction to consider the application under sections 58(6B) and (6D) as:
- 32.1 one or more gynaecologists might be in competition to be included as a supplier of gynaecological services to hospitals under Southern Cross' proposal; and
 - 32.2 under that proposal, gynaecologists would be reaching a commitment (as to supply, output or price) in relation to the supply of gynaecological services. In particular:
 - 32.2.1 the Proposed Arrangements (excluding the Standstill Agreement) could include a cartel provision as it would involve agreeing common terms upon which supply is made; and
 - 32.2.2 separately, the Standstill Agreement would be to agree not to supply services under any new contract (albeit, for a limited time).
33. The Commission is considering whether it has jurisdiction to assess the Proposed Arrangements, and invites submission on this point, including the extent to which:
- 33.1 there is a likely lessening of competition such that section 27 would, or might apply; and
 - 33.2 there are reasonable grounds for believing that the Proposed Arrangements contain a provision that is, or might be, a cartel provision.

Public benefit test

34. The Commission can authorise an arrangement under s 58 if it is satisfied that the Proposed Arrangements will in all the circumstances:
- 34.1 in relation to an application under s 58(1) to 58(6A) of the Act, be likely to result in a benefit to the public which would outweigh the lessening of competition;²³ or
 - 34.2 in relation to an application under s 58(6B) to 58(8) of the Act, be likely to result in such a benefit to the public that the matter should be permitted.²⁴

²³ Section 61(6) of the Act.

²⁴ Section 61(8) of the Act.

35. While stated differently, the courts have held that there is no material difference between the two tests.²⁵
36. The benefits and detriments we include in our assessment must arise from the Proposed Arrangements for which authorisation is sought.²⁶ To determine whether the benefits and detriments are specific to the Proposed Arrangements, we assess:
- 36.1 what is likely to occur in the future with the Proposed Arrangements (the factual); and
- 36.2 what is likely to occur in the future without the Proposed Arrangements (the counterfactual).
37. As a general principle, detriments and benefits will be considered likely if there is a “real and substantial risk” or “real chance” that they will happen if the Proposed Arrangements proceed. The detriments or benefits “must be more than a mere possibility but need not be more likely than not”.²⁷
38. Once we have identified all likely benefits and detriments, we then assess the value of those benefits and detriments. When making that assessment, matters we may take into account include how the conduct could affect:
- 38.1 allocative efficiency – whether the conduct would raise or lower prices, and whether it would reduce or improve quality, choice or other elements of value to consumers;
- 38.2 productive efficiency – whether the conduct could improve or worsen production processes; and
- 38.3 dynamic efficiency – whether the conduct could assist or hinder innovation in products or processes.
39. The Commission is not limited to considering efficiencies. New Zealand courts have recognised that efficiencies are not the only benefits and detriments which are relevant to the Commission’s assessment.²⁸ Ultimately, the Commission seeks to assess what benefits accrue to the public in the circumstances of any given case.²⁹
40. When assessing an authorisation application in respect of collective bargaining, we may apply a bargaining framework to assess likely outcomes following negotiations in the factual (collective) and counterfactual (bilateral).

²⁵ See *Air New Zealand and Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347 (HC) (Air New Zealand) at [33] and also *Godfrey Hirst NZ Ltd v Commerce Commission* (2011) 9 NZBLC 103,396 (HC) (Godfrey Hirst (No 1)) at [88]-[90].

²⁶ Authorisation Guidelines at [43].

²⁷ *NZME Ltd v Commerce Commission* [2018] 3 NZLR 715 (CA) at [83] and [86(a)].

²⁸ *NZME Ltd & Ors. v Commerce Commission* [2018] NZCA 389 at [81].

²⁹ Authorisation Guidelines at [42].

41. The outcome of bargaining, bilateral or collective, partly depends on the balance of bargaining power³⁰ between the negotiating parties. The relative bargaining power of the negotiating parties and the division of surplus depends on several factors, including:³¹
- 41.1 the quality of each party's outside options – key to bargaining strength;
 - 41.2 the bargaining costs and losses each party incurs by delaying agreement;
 - 41.3 the payoffs either party derives from walking away from negotiations;
 - 41.4 the costs suffered by making small concessions to the other party; and
 - 41.5 the extent of information asymmetry, for example on costs or value.
42. Outcomes from bargaining, bilateral or collective, can be efficient/more efficient (beneficial to the public) or inefficient/less efficient (detrimental to the public). Inefficient/less efficient outcomes can arise if bargaining terms tend strongly towards the position of the party with greater bargaining strength while more efficient outcomes tend to arise if the parties move towards maximising their joint surplus.³² In the authorisation context, a collective bargaining arrangement produces a public benefit (or detriment) if the outcome is more (or less) efficient than the situation without the arrangement.
43. Several factors can contribute to inefficient/less efficient outcomes of bargaining between buyers and sellers, including:³³
- 43.1 information asymmetry³⁴ and incomplete contracts;
 - 43.2 challenges with contracting important aspects of business relationships;
 - 43.3 purchase (supply) of inefficiently low volumes because prices are too high (too low); and
 - 43.4 breakdown in negotiations or conclusion of inefficient contracts that lead to commercial disputes, litigation, etc.

³⁰ Bargaining power is a key concept referring to the ability of buyer(s) or seller(s) in a negotiation to influence the outcome of bargaining in their favour (eg, extracting lower or higher prices).

³¹ Baker, J. B., Farrell, J., & Shapiro, C. (2008). Merger to monopoly to serve a single buyer: Comment. *Antitrust Law Journal*, 75(2), 637–646. <http://www.jstor.org/stable/27897589> and O'Brien, D. P. (2014). The welfare effects of third-degree price discrimination in intermediate good markets: the case of bargaining. *The RAND Journal of Economics*, 45(1), 92–115. <http://www.jstor.org/stable/43186448>

³² Baker, J. B., Farrell, J., & Shapiro, C. (2008). Merger to monopoly to serve a single buyer: Comment. *Antitrust Law Journal*, 75(2), 31.

³³ *Ibid.*, at [638], [639] and [640].

³⁴ Information asymmetry is present in any bargaining situation or transaction where at least one party has information that other parties lack. It affects each party's behaviour during bargaining, and consequently, the outcomes of bargaining due to the uncertainty regarding the other party's knowledge. Higher levels of information asymmetry are generally associated with detriments because it gives rise to issues relating to moral hazard and adverse selection which can lead to market failure.

44. Having assessed the value of benefits and detriments, if we are satisfied that the benefits of the Proposed Arrangements likely outweigh the detriments, we will grant authorisation. If we are not satisfied, we will not grant authorisation.³⁵

Our framework for interim authorisations

45. The Commission has not, to date, granted an interim authorisation under section 65AAA to the Act, which was inserted into the Act in 2022. However, the Commission has revised and republished its Authorisation Guidelines since section 65AAA was inserted, to provide guidance as to the framework it will follow in respect of applications for interim authorisation.³⁶
46. The Commission's Authorisation Guidelines state the following:
- 46.1 An interim authorisation may be granted in respect of some or all of the conduct for which authorisation has been sought.
 - 46.2 An interim authorisation may be subject to such conditions as the Commission sees fit.
 - 46.3 The Commission may grant an interim authorisation at any time while it considers an authorisation application, but it is more likely to do so either at the beginning of the process or at the draft decision stage.
 - 46.4 The Commission is not required to issue a draft decision or hold a conference in respect of an interim authorisation and would only do so in exceptional circumstances.
 - 46.5 Granting, or not granting, an interim authorisation should not be taken as any indication of what the Commission's decision on the authorisation application will be.
 - 46.6 Although the Commission is not required to be satisfied that the relevant arrangements meet the public benefit test, the Commission will consider the following factors:
 - 46.6.1 the purpose of the Act, to promote competition in markets for the long-term benefit of consumers within New Zealand;
 - 46.6.2 the urgency of the application for authorisation, including whether:
 - (a) there is a risk that some or all of the benefits of the authorisation may not materialise if interim authorisation is not granted; or

³⁵ Authorisation Guidelines (June 2023) at [49].

³⁶ The Commission clarified its existing guidance on the application of section 65AAA in *New Zealand Banking Association – Interim Determination* [2025] NZCC 23 at [15]-[20].

- (b) an emergency situation exists and interim authorisation is needed to allow parties to respond;
- 46.6.3 the potential benefits and detriments based on all information available to the Commission at the time the application for interim authorisation is considered;
- 46.6.4 to the extent to which any relevant market may change if an interim authorisation is or is not granted – interim authorisation is more likely to be granted when:
 - (a) it will maintain the market status quo; or
 - (b) it is unlikely to materially alter the competitive dynamics of the market;
- 46.6.5 the possible harm, if any, to the applicant if an interim authorisation is not granted;
- 46.6.6 the possible harm to other parties (such as customers and competitors) or the public if a request for interim authorisation is granted or not; and
- 46.6.7 the likely scope and duration of the interim authorisation, and any conditions that might be imposed within it.
- 46.7 Interim authorisation is unlikely to be granted if the relevant agreement or unilateral conduct could significantly alter the competitive dynamics of the market permanently, or for a substantial period, if the application for authorisation is later declined.
- 46.8 The Commission may exercise powers in respect of interim authorisations more than once in respect of the same authorisation application.
- 46.9 Where the applicant seeks interim authorisation and authorisation at the same time, the Commission will aim to make a decision on interim authorisation as soon as practicable, but by no later than when it makes a draft determination.
- 46.10 How quickly the Commission makes a decision on interim authorisation will ultimately depend on the facts in each particular case, including relative complexity and any urgency.
- 46.11 In most cases, there will be an opportunity to make submissions when the application for interim authorisation is published. The Commission may also engage in targeted consultation with parties that are likely to be affected if the interim authorisation is granted.

47. Between May 2020 and April 2023, the Commission had powers to grant provisional authorisations under sections 65AA-65AE of the Act.³⁷ Although the Commission will be guided by its procedure and decisions under these sections of the Act during the time they were in force, the interim authorisation power in section 65AAA is a different power to the provisional authorisation power that was set out in sections 65AA-65AE. The Commission is not bound to follow the same procedure and/or the same guiding factors for interim authorisation as it did for provisional authorisations.
48. The Applicant submits that the Commission should grant interim authorisation for the following reasons:³⁸
- 48.1 SCHI's proposal is considered to be a fundamental change in contracting relationships for gynaecological surgery while also signalling tight timeframes (deadlines) to pressure providers to respond or provide information, with material consequences if responses are not provided within those timeframes. The Applicant is concerned that the market may move rapidly to a new, effectively permanent contractual structure before there has been any opportunity for meaningful engagement of the proposed changes.
- 48.2 SCHI has indicated that it is unwilling or unable to engage meaningfully with NZGA and its members on aspects of the proposal, citing competition law concerns. Interim authorisation would therefore reduce "chilling effects" and permit limited, safeguarded engagement to occur promptly while the Commission considers the substantive authorisation application.
49. We are seeking submissions on whether interim authorisation should be granted, including:
- 49.1 if interim authorisation is granted, whether it should be granted in full or in part, eg, whether it would be appropriate to exclude entry into and giving effect to any collectively negotiated agreement(s);
- 49.2 whether there is a risk that the benefits of the substantive authorisation may not arise if interim authorisation is not granted, eg if Southern Cross intends to implement the proposed contractual framework quickly;
- 49.3 the extent to which the benefits of the Proposed Arrangements outweigh the detriments or vice versa, for example as described below at paragraphs [68]-[70.5.1]; and
- 49.4 the extent of any harm to the Participants and/or other parties (eg, anaesthetists, patients) if interim authorisation is not granted.

³⁷ These provisions were inserted into the Act pursuant to the COVID-19 Response (Further Management Measures) Legislation Act 2020.

³⁸ Application at Section 12.

Market definition

50. When we consider an application for authorisation, we usually assess the competitive effects that the Arrangement could have within relevant markets in New Zealand.
51. The term “market” refers to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.³⁹ We define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Arrangements. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.⁴⁰
52. In the Application, NZGA submits that the Proposed Arrangements would impact the following markets:⁴¹
- 52.1 a national market for the provision of health insurance in New Zealand;
 - 52.2 regional markets for the provision of hospital facilities to private gynaecologists;
 - 52.2.1 submarkets for the provision of day-stay hospital facilities;
 - 52.2.2 submarkets for the provision of in-patient hospital facilities;
 - 52.3 local markets for the provision of private gynaecology services;
 - 52.3.1 labour submarkets for the provision of gynaecology services. The Applicant noted that while gynaecologists would be independent contractors under Southern Cross’ new contractual framework, they would arguably be more analogous to employees.
53. The Applicant was not clear whether there would be any flow-on effects that the Commission may wish to consider including to potential markets such as:⁴²
- 53.1 markets for the provision of private anaesthetist services for private gynaecology procedures; and
 - 53.2 national and regional public sector markets for the provision of gynaecology services.
54. We are seeking submissions on how the relevant markets should be defined, including:

³⁹ Section 3(1A) of the Act.

⁴⁰ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

⁴¹ Application at [7.1].

⁴² Application at [7.3].

- 54.1 whether the market definition provide by NZGA are appropriate;
- 54.2 whether there are separate regional markets for the provision of day-stay and in-patient hospital facilities to private gynaecologists;
- 54.3 whether there are local, regional, or national markets for the provision of private gynaecological services; and
- 54.4 whether there are any other relevant markets that may be affected by and/or inform our assessment of the Proposed Arrangements.

With the Proposed Arrangements (the Factual)

- 55. The Applicant submits that although SCHI will ultimately decide whether to accept any changes, if the Commission authorises the application, the Applicant and/or the Participants will:
 - 55.1 collectively bargain with Southern Cross and/or individual hospitals (or groups of hospitals) in relation to gynaecology services, specifically:⁴³
 - 55.1.1 ensuring pricing is consistent with the long-term sustainability of private gynaecology practice and is determined on a transparent basis;
 - 55.1.2 alignment of AP coding with realities of clinical practice;
 - 55.2 engage in discussions and exchange information to the extent relevant and reasonably necessary for those collective negotiations;
 - 55.3 enter into a collective agreement(s) and/or separate agreements based on a common contractual framework collectively negotiated between Southern Cross and/or individual hospitals (or groups of hospitals) in relation to gynaecology services;
 - 55.4 give effect to provisions of agreements collectively negotiated between Southern Cross and/or individual hospitals (or groups of hospitals), and the Applicant and/or the Participants; and
 - 55.5 enter into a Standstill Agreement for up to six months, where gynaecologists would agree to defer signing up to bilateral agreements with hospitals under Southern Cross' proposed contractual framework to allow collective bargaining to occur.
- 56. We will test the Applicant's submissions on the likely future if the Proposed Arrangements go ahead, particularly with regard to any potential effects of the Proposed Arrangements on competition in any relevant markets.

⁴³ Application at [11.8].

57. We are seeking submissions on what is likely to occur in the future with the Proposed Arrangements in place. In particular, we are seeking submissions and evidence relating to any or all markets that may be relevant, on:
- 57.1 how the negotiation process between the Applicant and/or Participant(s) and Southern Cross and/or hospital(s) will likely unfold, for example:
 - 57.1.1 whether and to what degree Southern Cross will engage with a collective bargaining process;
 - 57.1.2 whether and to what extent gynaecologists will participate in the collective bargaining through NZGA;
 - 57.1.3 whether and how hospitals will engage with a collective bargaining process;
 - 57.1.4 whether the Proposed Arrangements rebalance or create an imbalance in the bargaining process.
 - 57.2 the likely outcome of the collective negotiations including (but not limited to):
 - 57.2.1 any changes to the structural relationships between patients, gynaecologists, anaesthetists, insurance companies and hospitals;
 - 57.2.2 any likely impact on the provision of gynaecology services such as the quantity, quality, investment and innovation of gynaecology services; and
 - 57.2.3 any likely impact on prices;
 - 57.3 whether the outcome in the factual will likely be different than in the counterfactual (see below) and, if so, how;
 - 57.4 whether the 10 year duration sought by the Applicant for the Proposed Arrangements to be in place is appropriate and justified; and
 - 57.5 the ability of competitors in any relevant market to continue to compete if the Proposed Arrangements are authorised.

Without the Proposed Arrangements (the Counterfactual)

58. We will consider what the parties would do if the Proposed Arrangements did not go ahead. We will consider the evidence on whether the without-the-authorisation scenario is best characterised by the status quo, or whether the parties would seek alternative options.
59. The Applicant submits that the assumed counterfactual should be one in which SCHI's current proposals (as described above at paragraphs [18]-[20]) take effect with no further changes. In summary, under that counterfactual, Southern Cross

would impose an entirely new funding and contracting model for the provision of gynaecological surgery. Under this model, gynaecologists are paid by hospitals rather than patients or Southern Cross, and hospitals receive bundled fees from Southern Cross for certain specified gynaecological procedures to then pay gynaecologists and anaesthetists.

60. The Applicant recognised that there may be efficiency benefits associated with this proposal.⁴⁴ However, it stated that contracts between hospitals and gynaecologists would include potential exclusionary provisions and/or (significantly) reduced compensation and a common price for all suppliers of gynaecological services.⁴⁵
61. The Applicant submits that gynaecologists negotiating individually with Southern Cross and/or hospitals lack the bargaining power to secure fair or differentiated terms.
62. However, the Applicant indicated that there was currently sufficient uncertainty associated with the detail of SCHI's current proposals that there could be other counterfactuals including:⁴⁶
 - 62.1 **modified proposal with partial/staged implementation:** where Southern Cross implements its new contractual framework incrementally (eg, on limited procedures, regions, or on an opt-in basis initially) and some gynaecologists participate while others remain on a Fee-for-Service model.
 - 62.2 **modified proposal with limits of cover and co-pay:** where Southern Cross caps the cover offered, but gynaecologists remain free to price independently and patients can pay the difference.
 - 62.3 **status-quo:** gynaecologists continue to charge on a Fee-for-Service basis.
63. The Commission may be required to consider multiple counterfactuals to determine all likely benefits and detriments relevant to its authorisation assessment. We will test the Applicant's submissions, including whether there are other likely counterfactuals.
64. We are seeking submissions and evidence on:
 - 64.1 The extent to which any of the Applicant's submits counterfactuals would be an appropriate counterfactual against which to assess the Proposed Arrangements.
 - 64.2 Whether there are any other 'likely' counterfactuals, eg, one in which Southern Cross and/or hospitals would contemplate different terms for different users, or where hospitals would supply hospital services to gynaecologists outside of the Southern Cross terms; and if so, what the

⁴⁴ Application at [11.2].

⁴⁵ Application at [5.57] and [2.14].

⁴⁶ Application at [10.4] and Table 2.

effects of that alternative counterfactual would be on the relevant benefits and detriments.

- 64.3 How the negotiation process between the Applicant and/or Participant(s) and Southern Cross and/or any hospital(s) would likely unfold, ie, whether there is an imbalance in the bargaining process in the absence of collective negotiation.
- 64.4 The likely outcome of the bilateral negotiations by individual gynaecologists, including in terms of operational efficiencies, innovation, investment, quality of care, ease of access to care, quantity and prices.
- 64.5 Whether the outcome will likely differ from the presence of collective bargaining and, if so, how.
- 64.6 The ability of competitors in any relevant market to continue to compete in the absence of the Proposed Arrangements.

Preliminary issues

- 65. At this stage of our investigation, our focus is to identify, assess, and (to the extent practicable) quantify the benefits and detriments that are likely to arise from the Proposed Arrangements.
- 66. We will test the Applicant's submissions, including the extent to which the benefits and detriments set out in the Application arise from the Proposed Arrangements, and thus the extent to which we can take them into account as part of our assessment.

Benefits and detriments of the Proposed Arrangements

- 67. The Applicant submits that authorisation should be granted because the net effect of the benefits and detriments of the Proposed Arrangements will outweigh the net effects of a situation in which gynaecologists continue to bargain individually for hospital services.
- 68. The Applicant submits that the following benefits result from authorising the Proposed Arrangements:⁴⁷
 - 68.1 Collective bargaining could address information asymmetry between Southern Cross and the Participants, which could otherwise result in market failure. NZGA submits that collective negotiation will enhance allocative efficiency and verifiability of information and how it is used to design contracts and contract terms. It stated that at present there is no meaningful engagement and the Applicant does not have sufficient transparency over SCHI's proposed contractual framework.⁴⁸

⁴⁷ Application at [11.4], [11.11]-[11.35] and Table 3.

⁴⁸ Application at [11.20].

- 68.2 In particular, the Proposed Arrangements may:
- 68.2.1 allow parties to resolve deficiencies in the categorisation of AP coding for common gynaecological procedures, particularly in urogynaecology and gynae-oncology;
 - 68.2.2 allow parties to address inefficiencies arising from the exclusion of clinically appropriate procedures, in particular where multiple procedures in a single surgery would be clinically beneficial but would only be covered by Southern Cross across multiple surgeries, leading to poorer health outcomes for patients;
 - 68.2.3 clarify whether pelvic floor procedures would be included under the new scheme.
- 68.3 Collective bargaining could rebalance bargaining power to create allocative efficiency gains from more efficient and balanced contractual terms. For instance, collective bargaining may encourage Southern Cross to allow gynaecologists to account for variation in surgical complexity or patient factors that would extend their post-operation recovery. NZGA submits that SCHI is an unavoidable trading partner for gynaecologists and that the imbalance in bargaining power without the Proposed Arrangements is overwhelming.⁴⁹
- 68.4 Collective bargaining could facilitate the sharing of information to enable more efficient resolution of fee structures, to enable more sophisticated, efficient and mutually beneficial contracts to be reached between the Participants and Southern Cross and/or hospitals. In particular, it may allow NZGA and Southern Cross to negotiate and address concerns that compensation for gynaecological services will be below the market price, causing gynaecologists to leave New Zealand and driving down supply, and causing remaining gynaecologists to be less inclined to compete on innovation.
- 68.5 Collective bargaining will result in transaction cost savings by avoiding duplicative negotiations. NZGA submits that the Proposed Arrangements would result in transactional cost savings by avoiding bilateral negotiations between each Participant and SCHI and/or hospitals.
69. The Applicant submits that no detriments arise from the Arrangement.⁵⁰
70. We are seeking submissions on the potential benefits that will likely arise out of the Proposed Arrangements compared to a situation in which NZGA did not collectively bargain or enter into a Standstill Agreement. For example:

⁴⁹ Application at [11.15] and [11.35].

⁵⁰ Application at [11.36].

- 70.1 The extent to which the Proposed Arrangements, including the Standstill Agreement, rebalances the bargaining process vis-à-vis Southern Cross and/or hospitals.
- 70.1.1 As above at paragraph [68.3], NZGA submits it would rebalance the bargaining process.
- 70.2 The extent to which the Proposed Arrangements would reduce and/or share the time and cost of putting individual agreements in place between gynaecologists and SCHI and/or hospitals.
- 70.2.1 As above at paragraph [68.5], NZGA submits it would result in transaction cost savings.
- 70.3 The extent to which the Proposed Arrangements could improve patient care and outcomes.
- 70.3.1 NZGA submits that it would improve patient care and outcomes as surgeries would be performed in an efficient manner and patients would receive timely and clinically backed care and cover.⁵¹
- 70.4 The extent to which the Proposed Arrangements would enable more effective and efficient negotiations and the consequent transfer of useful information between parties.
- 70.4.1 As above at paragraph [68.1], NZGA submits that the Proposed Arrangements could allow more effective and efficient negotiations and address deficiencies in SCHI's proposed contractual framework.
- 70.5 The extent to which the Proposed Arrangements would increase investment and innovation of gynaecological services.
- 70.5.1 As above at paragraph [68.4], NZGA submits that the Proposed Arrangements could increase investment and innovation to the extent that gynaecologists consider their services to be sufficiently compensated.
71. We are also seeking submissions on the potential detriments that will likely arise out of the Proposed Arrangements compared to a situation in which NZGA did not collectively bargain or enter into a Standstill Agreement. For example:
- 71.1 The extent to which the Proposed Arrangements would undermine operational efficiencies sought by Southern Cross under the proposed contractual framework.
- 71.1.1 NZGA submits that the Proposed Arrangements are unlikely to have a detrimental impact on SCHI's objectives in simplifying its insurance

⁵¹ Application at [11.10].

processes.⁵² NZGA also submits that the Proposed Arrangements would be more likely to yield positive effects for Southern Cross by enabling negotiated outcomes to be reached more efficiently and transparently and facilitating higher rates of adoption at a national level.⁵³

71.2 The extent to which the Proposed Arrangements would likely result in insurance premiums paid by Southern Cross customers increasing, decreasing or staying the same (all else equal).

71.2.1 NZGA submits that any impact on insurance premiums paid by SCHI members would likely be minimal (if not better) under the Proposed Arrangements.⁵⁴ NZGA also submits that even if there were any marginal increase in fees, this would likely be offset in corresponding benefits to SCHI members.

71.3 The extent to which the Proposed Arrangements would influence the insurance coverage received by Southern Cross customers.

71.3.1 NZGA submits that the Proposed Arrangements would likely lead to access to combination surgeries, which are more efficient (both on a cost and time basis) and reduce patient risk.⁵⁵ NZGA also submits that AP coding deficiencies would likely be addressed under the Proposed Arrangements.

71.4 Whether there are any inefficiencies and costs arising from a Standstill Agreement.

71.4.1 NZGA submits that any detriments arising from the Standstill Agreement would be minimal, and that SCHI members would continue to access private gynaecological services under existing arrangements during this period with no interruption to coverage or service availability.⁵⁶

71.5 The extent to which there are flow-on effects to anaesthetists and other health professionals (for example, whether they may be paid less as a result of Southern Cross or hospitals allocating more funds to gynaecologists).

71.5.1 NZGA acknowledged that if collectively negotiated fees for gynaecologists were to increase while bundled fees remained unchanged that this could compress margins for hospitals and anaesthetists, but stated that this risk is not unique to the Proposed

⁵² Application at [11.23].

⁵³ Application at [11.24].

⁵⁴ Application at [11.25].

⁵⁵ Application at [11.25] and [2.19].

⁵⁶ Application at [11.27].

Arrangements and the same outcome could arise if SCHI implemented a bulk-funded model absent any collective bargaining.⁵⁷

Benefits and detriments of the Proposed Arrangements compared to other potential counterfactuals

72. We are seeking submissions as to whether there are other potential 'likely' counterfactuals. To the extent that the Commission identifies another 'likely' counterfactual, we may choose to assess the likely benefits and detriments that would arise out of the Proposed Arrangements compared to that counterfactual.
73. Accordingly, we are seeking submissions as to the benefits and detriments of the Proposed Arrangements against any other potential counterfactuals that submitters consider may be likely.

Next steps in our investigation

74. The Commission is currently scheduled to decide on whether or not to authorise the Proposed Arrangements by 22 October 2026. However, the Commission appreciates the urgency with regard to this application and will progress this as soon as possible.⁵⁸
75. Prior to making our final decision, we will publish a draft determination and seek submissions on the draft. The draft determination sets out our preliminary view on whether we are likely to grant an authorisation, and the reasons for that view.
76. We may also make a decision on the NZGA's application for interim authorisation, at or in advance of the time we publish a draft determination. We are unlikely to make an interim authorisation decision without undertaking at least some consultation on the Application, including receiving and reviewing submissions on this SOPI. If we make such a decision, we will publish a decision document. We would not publish a draft decision in respect of an interim authorisation, but parties will have the ability to submit in respect of that decision after it is made and we will consider those submissions in assessing the substantive application.
77. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above. This may impact our investigation timeline.

Making a submission

78. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "NZGA Authorisation" in the subject line of your email, or by mail to Level 12, 55 Shortland Street, Auckland CBD 1010, marked for the attention of

⁵⁷ Application at [11.30].

⁵⁸ The Commission maintains a case register on our website at <https://comcom.govt.nz/case-register> where we update any changes to our deadlines and provide relevant documents.

Jenna Machado da Cruz, Evidence Systems Coordinator. Please do so by close of business on Tuesday 9 June 2026.

79. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.
80. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.
81. All information we receive is subject to the Official Information Act 1982 (**OIA**), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information. If your submission contains information which you consider there is good reason to withhold under the OIA, please identify specifically the information which you consider should be withheld and explain the reasons for that position (preferably with reference to the criteria for withholding information under the OIA).