

Statement of Preliminary Issues

HP New Zealand Limited: Application seeking authorisation for resale price maintenance

5 May 2026

Introduction

1. On 4 May 2026, the Commerce Commission (**Commission**) registered an application (**Application**) under section 58 of the Commerce Act 1986 (**Act**) from HP New Zealand Limited (**HPNZ** or the **Applicant**).
2. The Applicant seeks authorisation under section 58(7) of the Commerce Act 1986 (the **Act**) to engage in resale price maintenance (RPM) in relation to its proposed arrangements for its HP online stores and prospective HP online marketplace stores (collectively, the **HP Stores**) for a period of up to 10 years (**Arrangement**).
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 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, in relation to an application under section 58(7) 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.¹
5. This Statement of Preliminary Issues (**SOPI**) sets out the issues we currently consider to be important in deciding whether to grant authorisation.²
6. We invite interested parties to provide comments on the issues set out in this SOPI, including the likely benefits and detriments of the Arrangement. Parties who wish to make a submission should do so by close of business **19 May 2026**.
7. 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.

¹ Section 61(8) of the Act.

² The issues set out in this statement are based on the information available when it was published and may change as our assessment progresses. The issues in this statement are not binding on us.

The Applicant

8. HPNZ is a member of the HP Group. Its US-listed parent company, HP Inc., is a manufacturer of HP-branded technology products including desktop computers, notebooks, printers and related accessories and supplies (ink cartridges, toners, etc).
9. HPNZ imports, distributes and supplies HP products in New Zealand through its network of authorised distributors, retailers and resellers for resupply to a variety of customers. Such customers include large corporate and government end-users, small-to-medium businesses and individual/home consumers.
10. HPNZ currently operates HP Stores in New Zealand, but it does not sell direct to consumers in New Zealand. Instead, under the terms of an existing authorisation, it sells goods to a local entity. Consumers place orders with the HP Stores but in fact it is the local entity that supplies the goods to consumers from its pre-purchased stock. If the Commission authorises the Arrangement, the target audience of the HP Stores will continue to be small to-medium businesses, individual/home consumers and students.

Background to the Arrangement

11. The Commission previously authorised the Arrangement on 30 August 2021 for five years, which is due to expire on 31 August 2026.³

The Arrangement for which authorisation is sought

12. The Arrangement for which the Applicant seeks authorisation is described in the Application. In summary, the Applicant seeks authorisation for it to continue the arrangement as authorised by the Commission's previous authorisation granted on 30 August 2021 to enter into an agreement between the Applicant and a selected third-party distributor and engage in resale price maintenance (**RPM**). The agreement provides that the selected third-party distributor will not sell the goods at a price less than the price specified by the Applicant and the third-party distributor will sell and receive payments for the HP products on:⁴

12.1.1 current and prospective public and private online stores (HP Online Store);
and

12.1.2 prospective HP online marketplace stores (HP Online Marketplace Stores),
(collectively, the **HP Stores**).

³ *HP New Zealand Limited* [2021] NZCC 14 (the 2021 Determination). A public version of the 2021 Determination is available on our website at: https://www.comcom.govt.nz/assets/pdf_file/0025/264418/5B20215D-NZCC-14-HP-New-Zealand-Final-determination-30-August-2021.pdf.

⁴ Application by HP New Zealand for authorisation (1 May 2026) (the **Application**) at [1](8) and [2](a). A public version of the Application is available on our website at: <https://www.comcom.govt.nz/case-register/case-register-entries/new-zealand-bankingassociation/>.

13. HPNZ intends to control the product and marketing strategies and specify the prices at which the third party will sell the HP products on the HP Stores. The RPM conduct will only apply to products sold by the third-party distributor through the HP Stores. HP's existing distribution network, which consists of various authorised distributors, resellers and retailers of HP products and non-HP stores will continue without change.⁵
14. The Applicant is seeking authorisation for a period of 10 years.⁶ The Applicant considers the requested authorisation period to be appropriate and necessary for the following reasons:⁷
 - 14.1 HPNZ aims to maintain and expand HP's business in the South Pacific region, including providing NZ consumers with greater choice and an improved buying experience in purchasing HP products online in the most efficient and cost-effective way; and
 - 14.2 the Commerce (Promoting Competition and Other Matters) Amendment Bill as currently drafted proposes to allow the Commission to grant notifications for RPM for up to 10 years.⁸

Our framework for authorisations

15. We undertake a two-stage assessment in any authorisation application under section 58 of the Act:⁹
 - 15.1 first, establishing whether the Commission has jurisdiction to authorise (the 'jurisdictional threshold'); and
 - 15.2 second, assessing whether the associated benefits mean that authorisation should be granted (the 'public benefit test').

Jurisdictional threshold

16. The Applicant has applied for authorisation under section 58(7) of the Act.
17. The Commission has jurisdiction under section 58(7) of the Act where a person wishes to engage in the practice of resale price maintenance to which that person considers section 37 of the Act would or might apply. The practice of resale price maintenance is defined in section 37 of the Act, and requires one (or more) of the acts set out in section 37(3).

⁵ Ibid., at [2](b).

⁶ Ibid., at [5.3].

⁷ Ibid., at [2](b) and [5.3].

⁸ Commerce (Promoting Competition and Other Matters) Amendment Bill 237—1, cls 22 and 59 inserting new ss 65E—65Q and Schedule 8.

⁹ See Commerce Commission, *Authorisation Guidelines* (June 2023) at https://comcom.govt.nz/_data/assets/pdf_file/0012/91011/Authorisation-Guidelines-June-2023.pdf.

18. Here, the Applicant considers that the Arrangement amounts to the practice of resale price maintenance in potential contravention of section 37 of the Act, because:¹⁰

the Conduct may technically be considered to amount to HPNZ entering into an agreement for the supply of goods to another person, where one of the terms is that the other person will not sell the goods at a price less than a price specified by HPNZ.

19. The Commission is considering whether it has jurisdiction to assess the Arrangement, and invites submissions on this point, including the extent to which the Applicant proposes to engage in the practice of resale price maintenance.

Public benefit test

20. The Commission can authorise an arrangement under section 58(7) if it is satisfied that the arrangement will in all the circumstances, be likely to result in such a benefit to the public that the matter should be permitted.¹¹

21. The benefits and detriments we include in our assessment must arise from the Arrangement for which authorisation is sought.¹² To determine whether the benefits and detriments are specific to the Arrangement, we assess:

21.1 what is likely to occur in the future with the Arrangement (the factual); and

21.2 what is likely to occur in the future without the Arrangement (the counterfactual).

22. 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 arrangement proceeds. The detriments or benefits “must be more than a mere possibility but need not be more likely than not”.¹³

23. Once we have identified all likely benefits and detriments, we then exercise our evaluative judgment in determining whether the benefits outweigh the detriments. We seek to quantify the likely benefits and detriments where possible but also conduct qualitative analysis which carries independent, decisive weight where appropriate.¹⁴ When making that assessment, matters we may take into account include how the conduct could affect:

¹⁰ The Application, above n 4, at [2](a).

¹¹ Section 61(8) of the Act.

¹² *Authorisation Guidelines*, above n 9, at [43].

¹³ *NZME Ltd v Commerce Commission* [2018] 3 NZLR 715 (CA) at [83] and [86(a)].

¹⁴ *Authorisation Guidelines*, above n 9 at [51]-[52] citing *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA); *Air New Zealand and Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347 (HC) at [319] and *Godfrey Hirst NZ Ltd v Commerce Commission* [2016] NZCA 560 at [38].

- 23.1 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;
 - 23.2 productive efficiency – whether the conduct could improve or worsen production processes; and
 - 23.3 dynamic efficiency – whether the conduct could assist or hinder innovation in products or processes.
24. However, 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.¹⁵ Ultimately, the Commission seeks to assess what benefits accrue to the public in the circumstances of any given case.¹⁶
25. If we are satisfied that the benefits of the Arrangement likely outweigh the detriments, we will grant authorisation. If we are not satisfied, we will not grant authorisation.¹⁷

Market definition

26. When we consider an application for authorisation, we usually assess the competitive effects that the Arrangement could have within relevant markets in New Zealand.
27. 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.¹⁸ We define markets in the way that we consider best isolates the key competition issues that arise from the Arrangement. In many cases, this may not require us to precisely define the boundaries of a market.
28. The Applicant submits that the Arrangement broadly affects the relevant market(s) for the retail supply for personal computers and print products.¹⁹ The Applicant further submits that the markets could be segmented:
- 28.1 for personal computers, into consumer desktops, consumer notebooks, commercial desktops, commercial notebooks, PC accessories, support services and Office collaboration solutions e.g headsets, conferencing; and
 - 28.2 for print products, into home printers, office printers, home print supplies, office print supplies and support services.²⁰

¹⁵ *NZME Ltd v Commerce Commission*, above n 13, at [81].

¹⁶ *Authorisation Guidelines*, above n 9, at [42].

¹⁷ *Ibid.*, at [49].

¹⁸ Section 3(1A) of the Act.

¹⁹ The Application, above n 4, at [4].

²⁰ *Ibid.*, at [4].

29. The scope of the Arrangement includes HP products sold on the HP stores to two target audiences:
- 29.1 commercial: small to medium sized businesses consisting of approximately 1-99 employees; and
 - 29.2 consumer: at home users or students.²¹
30. In the 2021 Determination, the Commission considered that it was not necessary to precisely define the boundaries of the relevant market(s) for the purpose of assessing the application.²²
- 30.1 The Commission's views were that, at the time (and the current situation appears to be similar), HPNZ supplied a wide range of computers, printers and accessories for consumer and business customers, and may have been operating within many separate product markets, where HPNZ (as a member of the HP Group) competed with other computer and printer manufacturing groups.²³
 - 30.2 In that decision, we considered that our assessment would have been the same regardless of how the relevant product market(s) were defined and, in that instance, defining markets would not have helped the Commission assess key claimed benefits of the HP Stores, relating to the service quality, support, convenience, and other experience benefits that HP submitted they would provide. Any such benefits were likely to apply regardless of the products sold in the HP Stores. Product market definition also did not assist with the counterfactual assessment of whether HPNZ could have implemented similarly effective online stores without engaging in RPM, by using a different commercial model.²⁴
 - 30.3 In the 2021 Determination the Commission considered that the geographic market was likely to be national. HP Stores were to sell to consumers nationally. They were likely to be in direct competition with most of the largest electronic retailers in New Zealand who tend to have online stores and national distribution networks. Again, the Commission noted that its assessment would be the same regardless of how geographic market definition was applied.²⁵
31. We are seeking submissions on relevant markets to consider in our current assessment, including to test whether:
- 31.1 the market definitions adopted in our 2021 Determination are still appropriate; and

²¹ Ibid., at [4].

²² 2021 Determination, at [34].

²³ Ibid., at [35.1].

²⁴ Ibid., at [35.2].

²⁵ Ibid., at [36].

- 31.2 there are any other relevant markets that may be affected by and/or inform our assessment of the Arrangement. This may include whether the Arrangement will affect competition in any other adjacent or downstream market.

With the Arrangement (the Factual)

32. The Applicant submits that if the Commission authorises the application it will improve the experience of, and service offerings to, customers that source HP Products from the HP Stores in the most efficient and cost-effective way.²⁶ It will achieve this by:
- 32.1 outsourcing logistics, warehousing and order fulfilment functions to its selected third party distributor which will allow for fast day delivery times country wide, and faster refunds and returns processes for HP customers;²⁷
- 32.2 operating a locally based HP managed e-commerce platform that would be dedicated to improving customer experience. For example, it would allow for a wider range of payment and delivery options for customers;²⁸
33. We will test the Applicant's submissions on the likely future if the Arrangement goes ahead, particularly with regard to any potential effects of the Arrangement on competition in any relevant markets.
34. We are seeking submissions on what is likely to occur in the future with the Arrangement in place. In particular, we are seeking submissions and evidence relating to any or all markets that may be relevant, on:
- 34.1 whether the outcome in the factual will likely be different than in the counterfactual (see below) and, if so, how;
- 34.2 whether the 10-year duration sought by the Applicant for the relevant agreement to be in place is appropriate and justified; and
- 34.3 the ability of competitors in any relevant market to continue to compete against HPNZ if the Arrangement is authorised.

Without the Arrangement (the Counterfactual)

35. The Applicant submits that in the absence of the Arrangement, it cannot operate the HP Stores in NZ as HP cannot commercially justify a model in NZ that does not align with its regional e-commerce strategy.²⁹
36. The Applicant further submits that in the counterfactual:³⁰

²⁶ The Application, above n 4, at [5.2].

²⁷ Ibid., at [5.2](i).

²⁸ Ibid., at [5.2](ii).

²⁹ Ibid., at [2](a) and [6].

³⁰ Ibid., at [6].

- 36.1 it would not be able to continue operating HP stores in NZ;
 - 36.2 it would not have a direct-to consumer online presence for its NZ customers for the near to medium term; and
 - 36.3 customers of the HP Online Store would not be able to buy direct from HP and avail themselves (at least for a long period) of the enhanced customer and brand experience that is currently offered by the HP Online Store, nor would they have the opportunity to make purchases through any prospective HP Online Marketplace Stores.
37. According to HPNZ, the current model for the HP Stores including the resale price maintenance provisions is the only reasonable way forward in terms of commercial viability and HP being in a position to offer an HP branded owned and managed online service and experience to its customers.³¹
38. 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.
39. We are seeking submissions and evidence on:
- 39.1 whether the Applicant's submitted counterfactual, being the cessation of any online retail presence of HP in New Zealand, and an overall loss of competition and choice for New Zealand consumers, is an appropriate counterfactual against which to assess the Arrangement; and
 - 39.2 whether there are any other 'likely' counterfactuals, for example:
 - 39.2.1 whether HPNZ could run the HP Stores without necessarily controlling the retail pricing of HP products in the HP Stores; and/or
 - 39.2.2 whether HPNZ would continue with the current model for the HP Stores in the absence of the Arrangement, and if so in what manner it may undertake that (eg, changing to a situation where the selected third party distributor sets retail prices rather than HP).

Preliminary issues

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

³¹ Ibid., at [6].

Benefits and detriments of the Arrangement

42. The Applicant submits that authorisation should be granted. It says the net effect of the benefits and detriments of the Arrangement will outweigh the net effects of a situation in which HP cannot operate the HP Stores in NZ. This is because HP cannot commercially justify a model in NZ that does not align with its regional e-commerce strategy, and so if the authorisation is not given then NZ customers will otherwise miss out on the availability and choice of, HP products on an HP operated store.³²
43. The Applicant submits that the following benefits result from authorising the Arrangement:³³
- 43.1 faster and more predictable delivery times (including through delivery tracking options);
 - 43.2 competitive price offerings and promotions;
 - 43.3 dedicated product offerings under private HP Online Stores (i.e. HP Corporate Employee Store, HP Employee Store and HP Small Business Store);
 - 43.4 wider choice for customers, in:
 - 43.4.1 range of products/SKUs offered;
 - 43.4.2 delivery options; and
 - 43.4.3 payment options;
 - 43.5 improved user experiences for online customers of the HP Stores, including: faster page load times, on site search capabilities and ease of navigation; and higher website functionality, such as customer review functionality, real-time stock availability, product comparison and filtering tools, order history logs and one touch re-ordering.
 - 43.6 higher quality of, and better access to, customer service.
44. The Applicant submits that no detriments arise from the Arrangement. In particular, the Applicant submits that:³⁴
- 44.1 there are limited supply chain impacts given the limited scope of the Proposed Conduct, as the total sales of HP Products from the HP Online Store account for a small proportion of sales of HP Products (and a smaller proportion of total Information Technology product sales in NZ);

³² Ibid., at [2].

³³ Ibid., at [2](d).

³⁴ Ibid., at [2](e).

- 44.2 the competitive landscape and availability of alternatives for consumers, both in the procurement of HP products and in the procurement of alternative Information Technology products is limited; and
- 44.3 none of HP's distributors and resellers are affected by the Proposed Conduct, including its selected distributor in respect of HP products on non-HP Stores channels, which continues to sell these non-HP Store products with full independence and discretion;
- 44.4 that the Arrangement does not result in customers paying more for HP products as HP only has control over the retail prices of HP products sold on the HP Stores (and at no other independent store, including the selected distributor's store).³⁵
45. The Applicant also submits that its assessment of the Arrangement is also consistent with the Australian Competition and Consumer Commission (ACCC)'s decisions to allow the notification for RPM for HP PPS Australia Pty Limited (HP Australia) in in 2019 and 2020 in relation to sales via HP Australia's Online and Marketplace Stores.³⁶

Benefits and detriments of the Arrangement compared to other potential counterfactuals

46. As noted at paragraph 39 above, 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 Arrangement compared to that counterfactual.
47. Accordingly, we are seeking submissions as to the benefits and detriments of the Arrangement against any other potential counterfactuals that submitters consider may be likely.

Next steps in our assessment

48. The Commission is currently scheduled to decide on whether or not to authorise the Arrangement by **21 October 2026**.³⁷
49. 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.
50. As part of our assessment, 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 assessment timeline.

³⁵ Ibid., at [2](e).

³⁶ Ibid., at [5], referring to Australian Competition and Consumer Commission, *Statement of reasons RPN10000456* (10 October 2019) and *RPN10000456* (2 October 2020).

³⁷ 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.

Making a submission

51. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "HP Authorisation" in the subject line of your email, or by mail to PO Box 2351, Wellington 6140, or by courier to Level 9, 44 The Terrace, Wellington 6011, marked for the attention of Rhyno Heydenrych, Evidence Team Leader. Please do so by close of business on **19 May 2026**.
52. 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.
53. 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.
54. 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).