

## NZBA CROSS-SUBMISSION ON ALL'S INTERIM SUBMISSION IN RELATION TO NZBA'S APPLICATION FOR AUTHORISATION FOR CIT COLLECTIVE BARGAINING

### INTRODUCTION AND EXECUTIVE SUMMARY

1. NZBA has reviewed Armourguard Logistics Limited's ("**ALL**") interim submission (the "**ALL Submission**").
2. NZBA submits that the ALL Submission contains a number of assertions that are not supported by the evidence and/or misinterpret NZBA's authorisation application.
3. Further detail is set out below.

### RESPONSE TO ALL'S CLAIM THAT THE AUTHORISATION APPLICATION SHOULD BE REJECTED

4. Contrary to the claims in the ALL Submission, NZBA's authorisation application is valid and there is no basis for the Commission to reject it.

Assertion in the ALL Submission	NZBA's response
<i>Assertion 1 – participants &amp; parties affected improperly defined &amp; analysed</i>	<p>The class is not "any customers of CIT services in New Zealand" as ALL assert.<sup>1</sup> Rather, the class has been clearly defined:</p> <ul style="list-style-type: none"><li>• It names the current participants (being NZBA, ANZ, ASB, BNZ, Kiwibank and Westpac); and</li><li>• It specifies that other potential participants (namely other CIT customers in New Zealand) have a limited amount of time (20 working days from publication) to confirm whether they would like to participate. That period ends on 10 October 2025</li></ul> <p>This means that by 10 October 2025 the specific identity of any and all participants will be known. It is not an "open class", nor does it cover "any future customers" as the ALL Submission asserts.<sup>2</sup></p> <p>For the Commission's context, NZBA advises that it is currently in discussions with several other New Zealand CIT customers (including non-banks) who have expressed an interest in participating in the collective bargaining (if authorised).</p> <p>The NZBA will confirm the final list of participants to the Commission on 10 October 2025. The Commission and the public will therefore have certainty over the class at an early stage in the process.</p>
<i>Assertion 2 – attempt to vary contracting is ultra vires</i>	<p>The NZBA agrees that the Commission has no power to vary or require extensions of ALL's existing bank contracts. However, the Authorisation Application does not seek that in any event.</p>

<sup>1</sup> Armourguard Logistics Limited – Interim Submission – Submissions on Application – 22 September 2025 ("**ALL Submission**"), at [1].

<sup>2</sup> ALL Submission, at [30] and [11].

	<p>Rather, the parties are seeking interim authorisation to "allow the Participants to <b>collectively negotiate an extension</b> of existing contractual arrangements between Armourguard and each Participant until such time that the Authorisation is granted, to ensure uninterrupted CIT services in the interim, and the proposed terms of any extension".<sup>3</sup></p> <p>If interim authorisation is granted, the Participants merely seek the ability to negotiate collectively with Armourguard in good faith about an extension (and the terms of such an extension) to preserve each Participant's current arrangements until the Commission makes a determination.</p> <p>The NZBA is aware that the Commission cannot compel ALL to accept them, and no such order has been sought from the Commission. However, constructive engagement on reasonable interim terms would support continuity of service and avoid outcomes that could adversely affect the competitive process during this period.</p>
<p><i>Assertion 3 – Overly broad and vague scope</i></p>	<p><b>Scope of conduct is clear and consistent with Commission precedent</b></p> <p>The Participants are seeking authorisation to engage in collective bargaining with ALL. The scope of the proposed conduct is clearly set out in section five of the Authorisation Application with details about the terms that are likely to be the subject of those negotiations.</p> <p>It is clear from the Authorisation Application:</p> <ul style="list-style-type: none"> <li>• Who is involved – see above;</li> <li>• What the collective bargaining is in relation to – CIT services only;</li> <li>• Who the counterparty to the collective bargaining is – Evergreen International NZ, LLC and its interconnected bodies corporate including ALL;</li> <li>• An illustrative list of the potential terms that any agreement with ALL may contain including key commercial and operation terms; "step in" rights; operational sustainability and efficiency opportunities to help ALL save costs;</li> <li>• Negotiating an alternative pricing method to contribute to CIT infrastructure costs; and</li> <li>• The duration of conduct – up to 12 months for negotiations to reach an up to 10-year agreement.</li> </ul> <p>The level of detail in the Authorisation Application is consistent with, and in some respects exceeds, that provided in other authorisation applications for collective bargaining where both provisional and final authorisation was granted (see <i>News Publishers' Association of New Zealand Inc / Collective negotiations with Google and Meta for a 10-year period</i>). It is also consistent with the level of detail provided by the Australian Banking Association to the ACCC in connection with a similar application that impacts the CIT industry.</p>

<sup>3</sup> New Zealand Banking Association – Authorisation Application – 11 September 2025 ("**NZBA Application**"), at [9.2(a)].

	<p>The Participants are seeking authorisation to engage in collective good faith negotiations with ALL to find a workable solution for all participating parties.</p> <p><b>Application does not create the adverse effects claimed</b></p> <p>The ALL Submission asserts that the Authorisation Application jeopardises ALL's existing contracts and its ability to contract with other customers.</p> <p>This assertion is not substantiated by the evidence:</p> <ul style="list-style-type: none"> <li>• The Authorisation Application is clear that all Participants remain free to engage in bilateral negotiations with Armourguard and all Participants are free to opt out at any time. Indeed, there is precedent in other authorisation applications of parties that were initially part of the class seeking authorisation deciding to withdraw from the class and enter into their own arrangements with the counterparties – for example, NZME during the News Publishers' Association authorisation: "NZME Limited (NZME) is an NPA member and was listed as a Participant in the Authorisation application. NZME withdrew from the Authorisation application vis-à-vis Google after signing a Letter of Intent with Google on 25 March 2022. NZME also executed a commercial agreement with Meta on 13 April 2022."<sup>4</sup></li> <li>• Given all Participants remain free to engage in and enter bilateral agreements with ALL, if ALL's current proposals are fair, reasonable and competitive, then presumably customers will choose to accept those bilateral terms.</li> </ul> <p>The NZBA also rejects the assertion that the Authorisation Application "creates risk and uncertainty when there was none".<sup>5</sup> The current uncertainty in the sector is a result of the exercise of market power by ALL, not the Authorisation Application, which is intended to obtain approval to facilitate collaborative and good faith negotiations to find an industry solution in the best interests of New Zealand.</p>
<p><i>Assertion 4 – No nexus between the opposed conduct &amp; claimed benefits</i></p>	<p><b>The aims of the collective bargaining are broader than price</b></p> <p>The prices of CIT services are important to ensure that cash remains accessible to all New Zealanders. However, the non-price benefits that could be obtained through collective bargaining are also important and cannot be achieved by ALL unilaterally imposing its own terms. In particular, the operational sustainability and efficiency opportunities outlined in [5.3(c)] of the Authorisation Application are opportunities that can only feasibly be explored in a collective bargaining setting and were not considered in establishing the IAF.</p> <p><b>Wealth transfers</b></p> <p>ALL's suggestion that "the price terms would merely be a wealth transfer from a far smaller private supplier to large offshore owned banks" is not supported by the evidence.<sup>6</sup> ALL is 100% foreign owned,<sup>7</sup> while several of the Participants are wholly or partially owned by New Zealanders. The Commission has previously recognised that a transfer of wealth from overseas to New Zealand may constitute a public benefit.</p>

<sup>4</sup> News Publishers' Association of New Zealand Incorporated [2022] NZCC 35, at [13].

<sup>5</sup> ALL Submission, at [4.a.].

<sup>6</sup> ALL Submission, at [24].

<sup>7</sup> Understood to be ultimately owned by a family trust established by Gavin and Hope Wolfe (of New York).

	<p>However, this is not the main purpose of the collective bargaining.</p> <p><b>Benefits will flow through to consumers</b></p> <p>It is in consumers' interests that cash is universally available. The key driver of the collective bargaining is to enable the industry to work together to secure the long-term future of CIT services. The sooner a workable long-term solution is found, the better for all stakeholders including consumers and ALL. As the ACCC concluded in its analogous authorisation process: "the Proposed Conduct is likely to result in public benefits in the form of supporting ongoing access to cash for consumers across Australia."<sup>8</sup></p>
<p><i>Assertion 5 – Insufficient information to make a determination</i></p>	<p>Through selective quoting of the Authorisation Application, the ALL Submission has created an incorrect impression of insufficient information. There is sufficient information in the Authorisation Application for the Commission to market test the application and reach a decision. We reiterate the submissions above regarding the participants and scope of conduct and further note that:</p> <ul style="list-style-type: none"> <li>• There is no "open-ended information exchanges".<sup>9</sup> The Authorisation Application makes clear that the Participants are only permitted to "engage in discussions and exchange information <b>to the extent relevant and reasonably necessary for those collective negotiations</b>".<sup>10</sup> Furthermore, "the proposed conduct does not involve entering into contracts, arrangements or understandings regarding non-cash services provided by Participants including services such as home loans, term deposits, credit cards, savings accounts, or other forms of financing".<sup>11</sup> These are clear limits on the scope of any information exchange.</li> <li>• There is a clear governance framework articulated in the Authorisation Application which includes reporting obligations, pre-implementation disclosure, legal oversight of all meetings, and designated forums for any discussions.<sup>12</sup></li> <li>• The duration of the proposed conduct is up to 12 months for the collective bargaining and then up to 10 years to give effect to the provisions of agreements collectively negotiated between Armourguard and the Participants. 10 years was selected to reflect the banks understanding of what Armourguard desired to achieve commercial certainty and recover its investment. If a shorter term proves mutually beneficial during negotiations, then the duration of the agreement can be shorter. The Participants intend to enter into the collective bargaining in good faith and with an open mind to find an industry solution.</li> </ul>
<p><i>Assertion 6 – Urgency is self-created; interim authorisation inappropriate</i></p>	<p><b>Wrong to suggest banks had sufficient notice</b></p> <p>The assertion that the banks have known about ALL's position since the April 2024 filing of its merger clearance application and the Commission's clearance decision in October 2024 is not correct and not supported by evidence.</p>

<sup>8</sup> 4.115. Application for authorisation AA1000674 lodged by the Australian Banking Association Ltd in respect of discussing, sharing information, reaching agreement on and/or implementing short-term financial contributions to Armaguard, operational sustainability and Efficiency Measures and the development and in-principle agreement to apply an Independent Pricing Mechanism.

<sup>9</sup> ALL Submission, at [30].

<sup>10</sup> NZBA Application, at [5.2(b)].

<sup>11</sup> NZBA Application, at [5.7(a)].

<sup>12</sup> NZBA Application, at [5.8].

	<p>At no point during that clearance process did ALL/Evergreen either publicly or privately indicate that if the transaction completed, ALL/Evergreen would proceed to unilaterally impose uniform terms involving significant price increases and the imposition of additional levies on a "take it or leave it" basis.</p> <p>When these matters were brought to their attention during the course of this year, the banks have each independently and separately tried to negotiate in good faith with ALL. However, the current market structure has meant that ALL has refused to meaningfully engage in negotiations.</p> <p><b>Due to ALL's position there is currently no competition between the banks</b></p> <p>The ALL Submission acknowledges that, as a monopoly, ALL is seeking to impose "a pricing methodology akin to that which would be established under Part 4"<sup>13</sup> "through the use of proposed uniform national contract terms... and a utility-like regulated pricing regime".<sup>14</sup> Indeed, ALL acknowledges that Part 4 regulation of its pricing and terms could be appropriate.<sup>15</sup> It is inconsistent with that acknowledgement (being a concession that a regime that exists to regulate businesses that face "little or no competition") for ALL to claim that "harm from information exchange among the banks would be irreversible". Information about another customer's position only holds value in a world where a supplier faces competition and is open to negotiating different terms to different customers. If, in the absence of the Authorisation Application, ALL intends to impose the same uniform terms on all banks and not be willing to negotiate in the manner of a regulated (Part 4) monopoly, any information about another customer's position ceases to be competitively sensitive. The concern raised by ALL cannot be reconciled with its conduct or the rest of the ALL Submission.</p> <p><b>No evidential basis that banks are trying to collapse ALL</b></p> <p>Step-in rights are designed for emergency situations only. They grant banks the ability to step in and operate the infrastructure whilst a more permanent solution can be found. The banks do not seek to own ALL. ALL's suggestion that the collective bargaining is intended to engineer the collapse of ALL is not supported by the evidence and is inconsistent with the stated objectives of this application, which seeks to preserve the viability, reliability and efficiency of ALL's CIT services in New Zealand on fair and sustainable terms.</p> <p>Furthermore, ALL's assertion cannot be reconciled with the view of the Commission in <i>Evergreen/ACM</i> that "it is unlikely that a third party would acquire the assets of ACM's CIT service business to use them to provide CIT services in New Zealand in competition with Evergreen".<sup>16</sup> A position that ALL likely supported as part of its "failing firm" argument.</p> <p><b>ALL's recent losses need to be contextualised</b></p> <p>The ALL Submission states that "ALL is currently incurring monthly losses and has lost [C-I-C] million during the first half of 2025 which represents a 215% increase over the same period in 2024".<sup>17</sup> However, this is likely to include one-off integration and</p>
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<sup>13</sup> *ALL Submission*, at [4].

<sup>14</sup> *ALL Submission*, at [6].

<sup>15</sup> *ALL Submission*, at [42.g].

<sup>16</sup> *Evergreen NZ Holdings clearance application (8 April 2024)*, at [5.2].

<sup>17</sup> *ALL Submission*

	<p>restructuring costs that are attributable to the merger. In its clearance application, Evergreen recognised that "in the long run, the cost savings from the Proposed Acquisition are expected to outweigh the integration/restructuring costs associated with the Proposed Acquisition".<sup>18</sup></p> <p><b>No evidential basis that the proposed conduct "enables tacit collusion" or a "collective boycott"</b></p> <p>ALL's claim that collective bargaining may slip into tacit collusion or a collective boycott is not supported by the evidence:</p> <ul style="list-style-type: none"> <li>• The Authorisation Application is clear that it is not a collective boycott and all Participants may withdraw at any time and consider any alternative offers from ALL separately and independently.</li> <li>• The Authorisation Application is also clear that the discussions between the banks are limited to CIT services and that the meetings will be chaperoned by a competition lawyer and only take place in designated forums. This addresses the risk of any broader spillover effects or tacit collusion.</li> </ul>
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## RESPONSE TO ALL'S ASSERTIONS OF "ANALYTICAL FLAWS"

5. NZBA addresses the assertions of "analytical flaws" raised in the ALL Submission.

<i>Point 1 – Factual vs counterfactual</i>	<p>The ALL Submission asserts that the proposed collective bargaining risks "monopsony effects".<sup>19</sup> Monopsony effects occur where a single or dominant buyer can suppress prices. This is highly unlikely for two reasons:</p> <ol style="list-style-type: none"> <li>1. The goal of the Authorisation Application is to engage in collective bargaining to identify an industry solution that preserves the viability, reliability and efficiency of CIT services on "fair and sustainable" terms.<sup>20</sup> Any outcome where prices are suppressed below a competitive level is not sustainable.</li> <li>2. ALL is, and will remain, a monopoly for comprehensive CIT services. ALL will continue to have countervailing bargaining power as a monopoly in any authorised collective bargaining that rules out the risk of monopsony effects.</li> </ol> <p>The counterfactual is the continuation of ALL using its market power to unilaterally impose terms that are not consistent with a workably competitive market. For the reasons set out below, NZBA refutes the suggestion that ALL's IAF proposal delivers fairness.</p>
<i>Point 2 – the claimed public benefits will be achieved already (no nexus)</i>	<p>NZBA refutes the suggestion that the proposed public benefits will be achieved in the absence of collective bargaining.</p> <p>The NZIER IAF Review &amp; Assessment that ALL cites to give its proposed IAF the perception of legitimacy is flawed including for the following high-level reasons:</p>

<sup>18</sup> RBB Economics *The Proposed Acquisition of ACM by Armourguard: A competitive effects and public benefits assessment* (27 March 2024), at [113].

<sup>19</sup> *ALL Submission*, at [46.a].

<sup>20</sup> *NZBA Submission*, at [8.9].

- **NZIER's claim that the Commission implied ALL would not have market power is false:** NZIER selected "consumer owned" electricity distribution businesses ("EDBs") as the relevant comparator group given they "are not able to exercise market power to earn super profits because of structural constraints on the market in which they operate".<sup>21</sup> NZIER further considered that there was "a lack of capacity of ALL to exercise market power as implied in the Commission's clearance of the merger without requirement for regulation".<sup>22</sup> The Commission granted clearance on the basis that "in both the with and without the acquisition scenarios, Evergreen would be the only national provider of wholesale CIT services in New Zealand and the predominant provider of retail CIT services".<sup>23</sup> The Commission did not at any point say, or imply, that ALL would not have market power nor was it asked to consider whether ALL should be regulated under Part 4. This basic error of fact undermines the NZIER report.
- **NZIER does not take into account the proposed material increases in service charges:** The NZIER report is limited to assessing the reasonableness of the IAF yet ALL intend to charge both an IAF and service fee to Tier 1 banks as well as service fees to other CIT customers. ALL is not constrained by competition in what it charges for its service fees. NZIER's analysis of revenue derived from service charges is based on 2024 revenue numbers when there was competition. ALL is proposing material increases in service fees to both Tier 1 banks and other CIT customers. NZIER's analysis is therefore incomplete as it does not reflect current estimates of all future revenue streams of ALL to determine the "fairness" of the fee.
- **No independent testing or scrutiny of ALL's financial forecast:** NZIER rightfully concede that they "are not experts on the cost range or best practice for the delivery of CIT Services" instead their observations are based on ALL's "pro forma financial forecast for the first full operating year of ALL".<sup>24</sup> Similarly, NZIER concede that "ALL has estimated the potential merger synergies of \$5 million. We do not have sufficient information to comment on whether this estimate is reasonable".<sup>25</sup> There has therefore been no independent testing or scrutiny applied to the model with NZIER accepting ALL's figures at face value with no market testing. In particular, NZIER have incorrectly assumed that there will be no increase in revenue derived from service fees. Unlike NZIER, the Participants do have experience in CIT services and understand best practice. Collective negotiation would allow the IAF to properly be tested and improved in the best interests of New Zealand.
- **Inconsistencies between data used in NZIER report and the clearance application:** In RBB's economic report submitted with Evergreen's clearance application it states that "in the long run, the cost savings from the Proposed Acquisition are expected to outweigh the integration/restructuring costs associated with the Proposed Acquisition". Yet the NZIER report states that "the estimated synergies from the merger of the two largest CIT businesses are forecast to be exceeded by integration and restructuring costs ... These

<sup>21</sup> *Armourguard Logistics – Attachment NZIER Report – Submissions on Application – 31 March 2025, ("NZIER Report")*, at p. ii.

<sup>22</sup> *NZIER Report*, at p. ii.

<sup>23</sup> *Evergreen NZ Holdings clearance application (8 April 2024)*, at [53].

<sup>24</sup> *NZIER Report*, at p. 9.

<sup>25</sup> *NZIER Report*, at footnote 11.

	<p>integration and restructuring costs will leave the newly formed entity Armourguard Logistics Limited (ALL) with a lower (negative) combined EBITDA than the existing stand-alone entities".<sup>26</sup> The inconsistency is likely down to NZIER focusing on a one year forecast which does not take into account that even Evergreen appeared to consider that some of significant cost savings would not be realised until year 3. Given that ALL are proposing a ten-year IAF, it is unclear why such a short term perspective was considered appropriate by NZIER.</p> <ul style="list-style-type: none"> <li>• <b>Consumer-owned EDBs are not comparable to ALL:</b> There are significant differences in consumer-owned EDBs compared to ALL that mean it is not an appropriate comparison to assess the reasonableness of the IAF including differences in ownership structure, relative level of risk, capital intensity, asset life cycles, and depreciation costs as a proportion of revenue. In particular, the Explanatory Note to the Commerce Amendment Bill 2008 which introduced the different approach for consumer-owned EDBs stated that "the reason for this relatively light-handed regime is because consumers, as owners, are able to ensure that the business acts in their interests", and with regard to 100 percent consumer trust-owned businesses, "in principle the case for economic regulation is relatively weak where the customers are the owners of the firm".<sup>27</sup> It has also been noted that "Consumer-owned distributors are distinct as they have trustees who are elected by the community they serve and will focus more on consumer interests than profits."<sup>28</sup> These considerations do not apply in relation to ALL. It is not owned by consumers. It is ultimately owned by New York investors.</li> <li>• <b>NZIER analysis does not rule out that IAF does not result in excessive profits:</b> NZIER report finds that with the IAF, ALL is expected to generate a post-tax return on its invested capital ("<b>ROIC</b>") of 5.9% (this would likely be higher if NZIER took into account the proposed material increases in service fees) and claims this is in line with the ROIC of consumer-owned EDBs of 5.75%.<sup>29</sup> However, this is not a like-for-like comparison as NZIER has compared ALL's <b>post-tax</b> ROIC with the <b>pre-tax</b> RPIC of consumer-owned EDBs.<sup>30</sup> On a like-for-like basis, ALL's post-tax ROIC of 5.9% materially exceeds both the median post-tax ROIC of consumer-owned EDBs (4.84%) and the average post-tax ROIC of consumer-owned EDBs (5.04%).<sup>31</sup></li> </ul> <p>The proposed collective bargaining addresses these risks and opens up the potential for greater cost savings to be discovered through the industry working together collaboratively. The current position is undesirable with ALL exercising market power to unilaterally impose terms.</p> <p>Ultimately, if ALL is confident that its proposed IAF is fair and reasonable and preserves the viability, reliability and efficiency of CIT service in New Zealand on fair and sustainable terms then they should welcome the opportunity to open it up to collective bargaining to demonstrate that on a sector-wide basis.</p>
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<sup>26</sup> NZIER Report, at p. i.

<sup>27</sup> See <https://www.legislation.govt.nz/bill/government/2008/0201/9.0/DLM1194501.html>.

<sup>28</sup> See <https://www.mbie.govt.nz/dmsdocument/30579-regulatory-impact-statement-investigating-options-to-amend-or-remove-the-amount-of-generation-that-electricity-distribution-businesses-may-own>, at p. 8 – 9.

<sup>29</sup> NZIER Report, at p. 3.

<sup>30</sup> NZIER Report, at p. 3 and Table 3.

<sup>31</sup> NZIER Report, at Table 3.



<p><i>Point 3 - The real competition problem is historic buyer power</i></p>	<p><b>The relevant issue is not historic buyer power, it is ALL's substantial market power</b></p> <p>In the ALL Submission ALL asserts that "[t]he sole provider outcome reflects the disproportionate and sustained buyer power exercised by banks seeking to reduce each individual bank's total cost of cash, including reducing consumer access to cash, which forced ALL and ACM to offer prices below cost, ultimately causing ACM to exit the New Zealand cash economy."<sup>32</sup> However, in its own clearance / authorisation application ALL said that:<sup>33</sup></p> <ul style="list-style-type: none"> <li>• The decline in the CIT industry has been driven by: <ul style="list-style-type: none"> <li>○ the continuing decline in the use of cash, with fewer people using cash and a sharp decline in the use of cash as a way to pay for everyday things, with cash being replaced by credit cards and other forms of digital payment;</li> <li>○ COVID, which accelerated the decline in the transactional use of cash with about 70% of the population indicating they use cash in 2020 compared with 95.8% in 2019;</li> <li>○ the comprehensive bank branch and ATM service rationalisation pursued by banks and other financial institutions , with the most recent example being the closure on 29 February 2024 of another 5 ASB Bank branches.</li> <li>○ the substantial reduction in the frequency and/or volume of cash services with the value of these cash withdrawals reducing by 20% from February 2020 to June 2021.</li> </ul> </li> </ul> <p>Irrespective of the above, the Commission is not being asked to consider the historic state of CIT services that have led to ALL's monopoly. Rather, it is being asked to make a forward-looking assessment as to whether there are net-public benefits from authorising the proposed collective bargaining given the current (monopoly) state of the market in which ALL is exercising its market power and CIT customers now do not have any alternatives.</p> <p>As set out in the Commission's <i>misuse of market power guidelines</i>,<sup>34</sup> market power comes from a lack of effective competitive constraint. Any firm that is largely unconstrained by competitive pressures will have "substantial" market power. It is not necessary that a firm has a monopoly or substantially controls the market in order to have substantial market power.</p> <p>In this case:</p> <ul style="list-style-type: none"> <li>• ALL is the sole supplier in the market, which Evergreen recently described as being a "single New Zealand-wide market for CIT services".<sup>35</sup> There are no rival CIT providers capable of constraining its pricing or service terms.</li> <li>• While a monopoly is not required to establish substantial market power, ALL is a monopoly provider.</li> <li>• ALL faces no meaningful competitive constraint from:</li> </ul>

<sup>32</sup> ALL Submission, at [52].

<sup>33</sup> Evergreen NZ Holdings clearance application (8 April 2024), at p. 4.

<sup>34</sup> Commerce Commission, *Misuse of market power guidelines* (March 2023), at [38].

<sup>35</sup> Evergreen NZ Holdings clearance application (8 April 2024), at [5.58].

	<ul style="list-style-type: none"> <li>○ Competitors –there are none; or</li> <li>○ Customers – customers do not have any reasonable alternatives, which provide the full suite of CIT Services, which is a logical prerequisite to the existence of countervailing buyer power. There would be no need for this Authorisation Application if any CIT customer could constrain the actions of ALL.</li> </ul> <p>The application is grounded in the Commission's own findings that the market could not sustain more than one national CIT provider. The analysis of market power must be based on the current market structure, where ALL is the sole supplier and customers do not independently have any countervailing buyer power. This approach reflects the actual competitive dynamics and risks present in the market today.</p> <p><b>Theoretical alternatives are not commercially realistic</b></p> <p>ALL's suggestion that banks retain a practical “make or buy” option, or could simply reduce access to cash or switch to digital alternatives, is commercially unrealistic and not in the best interests of New Zealand.</p> <p>There are no credible alternative full-service CIT providers, nor are there practical means for banks to self-supply nationwide CIT services, especially in the short term. This has been recognised and accepted by the Commission.<sup>36</sup></p> <p>Moreover, banks are subject to regulatory and public interest obligations to maintain access to cash, which further limits their ability to reduce or withdraw these services. The mere fact that ALL is suggesting that the banks could simply reduce access to cash in an attempt to constrain ALL highlights why there is a public benefit collective bargaining – i.e. that customers only options are to reduce acquisition of the relevant services, being an option that would prejudice consumers' continued access to cash.</p>
<i>Point 4 – The conduct could have far broader negative externalities</i>	<p>ALL provide no basis for their claim that the collective bargaining could "have far broader negative externalities". The claim simply cannot be supported in light of the nature of the proposed conduct and the governance arrangement. In particular, the proposed conduct is narrowly scoped to CIT services and includes safeguards such as legal oversight, transparency, and voluntary participation. It does not relate to nor restrict competition in downstream banking or retail markets. These measures are specifically designed to prevent coordination beyond the defined scope. As a result, concerns about broader coordination, tacit collusion, or collective dominance are not supported by the structure or governance of the proposal.</p>
<i>Point 5 – the Australian experience is not analogous</i>	<p>The Australian experience is directly relevant to the current context. Both Australia and New Zealand have faced a transition to a single CIT supplier, raising similar systemic risks and concerns about service continuity. In response, the ACCC authorised collective bargaining, subject to robust safeguards, to address these risks and ensure ongoing access to cash services – with the ACCC stating that there would be a "significant public benefit" and, with the conditions applied, "minimal public detriments".<sup>37</sup> The NZBA application proposes comparable conditions and oversight. Accordingly, the</p>

<sup>36</sup> Evergreen NZ Holdings clearance application (8 April 2024), at [53].

<sup>37</sup> See <https://www.accc.gov.au/media-release/accc-authorises-collaboration-to-improve-the-sustainability-of-cash-in-transit-services>

	<p>rationale for authorisation is equally strong in New Zealand, given the parallel market structure and policy objectives.</p> <p>We do not agree with ALL's suggestion that "a far less intrusive and more appropriate mechanism to review prices exists under Part 4".<sup>38</sup> The Commission has previously recognised that seeking to establish, implement and oversee a bespoke Part 4 regulatory regime would incur significant costs: " These costs are substantial and reflect the fact that Eastland Port would be a single Port in a sector whereas our other areas of regulation benefit from economies of scope from regulating multiple companies within a sector."<sup>39</sup> Collective bargaining offers a workable and proportionate alternative to Part 4 regulation.</p>
<i>Point 6 - Public detriments from authorisation</i>	<p>The claimed detriments are not supported by the structure or safeguards of the proposed authorisation. Specifically:</p> <ul style="list-style-type: none"> <li>• <b>No monopsony or cartel effects:</b> In a market with a sole supplier, collective bargaining does not create buyer dominance – it restores balance to negotiations and prevents the exercise of monopoly power by the supplier. For example, the ACCC has dismissed anticompetitive concerns where the counterparty is a monopolist: "[T]he target of the collective bargaining is a monopoly provider, reducing the probability that the collective bargaining group will achieve inefficiently low prices".<sup>40</sup> In addition, the Commerce Act recognises that joint buying arrangements can be procompetitive and provides an exception to cartel conduct accordingly.</li> <li>• <b>Resilience is enhanced, not reduced:</b> Collective bargaining enables industry-wide solutions and coordinated investment, supporting the long-term resilience and reliability of cash services. Finding a long-term arrangement that both the sole supplier and key customers endorse is the key to the long-term survival of the CIT industry, which is in the public benefit.</li> <li>• <b>Information-exchange risks are controlled:</b> Strict protocols and legal supervision ensure that only necessary information is shared, with full transparency and oversight.</li> <li>• <b>No irreversibility:</b> The authorisation is time-limited, subject to ongoing review, and can be revoked (e.g. if participants do not comply with any conditions imposed).</li> <li>• <b>Supports innovation and investment:</b> A stable, multi-year framework encourages the significant capital investment required to maintain and upgrade critical infrastructure.</li> </ul> <p>Accordingly, the theoretical and highly speculative risks asserted by ALL do not arise in practice. Even if any residual risks were present, they are clearly outweighed by the substantial public benefits of more competitive pricing, improved service quality, and greater system resilience that collective negotiation delivers.</p>
<i>Point 7 – Less-restrictive alternatives</i>	<p>ALL's current approach is not a genuine alternative to collective bargaining. While the ALL Submission refers to the Authorisation Application as an "eleven-year cartel</p>

<sup>38</sup> ALL Submission, at [63].

<sup>39</sup> Preliminary assessment of whether to initiate a Part 4 inquiry into Port services provided by Eastland Port, at [57].

<sup>40</sup> King, S.P. (2013). *Collective Bargaining by Business: Economic and Legal Implications*. UNSW Law Journal, volume 36(1), 107 – 138 at footnote 75.

	<p>arrangement", the alternative is a permanent monopoly with no countervailing bargaining power. It is a unilateral regime, designed and controlled by the monopoly supplier, with no meaningful external accountability or mechanism for customers to negotiate or challenge outcomes. Customers have no meaningful ability to influence terms, test cost allocations, or ensure that arrangements are fair and efficient.</p> <p>Only collective bargaining enables customers to participate meaningfully in setting terms and conditions, providing the necessary checks and balances to achieve efficiency, fairness, and sustainability for all parties.</p>
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## **RESPONSE TO ARMOURGUARD ANNEX A – “CONDENSED CHRONOLOGY OF ENGAGEMENT WITH THE BANKS”**

6. ALL presents the timeline in Annex A of its submission as a neutral “condensed chronology”. In reality it is a carefully curated list that omits material events, mis-states others, and therefore leaves the Commission with an incomplete and inaccurate picture of the parties’ interactions. The contemporaneous correspondence held by all five participating banks, and which will be provided to the Commission, tells a materially different story.