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Statement of Preliminary Issues

Kegstar New Zealand Limited/Konvoy New Zealand Limited

5 August 2025

Introduction

1. On 25 July 2025, the Commerce Commission (Commission) registered an application (the Application) from Kegstar New Zealand Limited (Kegstar) seeking clearance for it to acquire kegs, beacons attached to those kegs or held in inventory, and the New Zealand keg records from Konvoy New Zealand Limited (Konvoy) pursuant to an asset sale agreement (the Proposed Acquisition).[1]

2. As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test, which we describe further below.

3. The Commission will only give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

4. This statement of preliminary issues sets out the competition issues that we have identified to date and will consider during our investigation, and that we currently consider to be important in deciding whether to grant clearance.[2] Our investigation into the Proposed Acquisition is at an early stage and this statement of preliminary issues is based primarily on the material provided by Kegstar in connection with the Application. Other issues may become apparent as we progress our investigation.

5. Through publishing this statement of preliminary issues, we aim to:[3]

    5.1 increase the transparency of our process;

    5.2 provide interested parties with an opportunity to identify any further competition issues which they consider we should investigate and also to consider and submit on the matters identified; and

    5.3 gather further information which might assist our investigation.

[1] A public version of the Application is available on our website at: http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/.

[2] 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.

[3] Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [6.105]. Available on our website at www.comcom.govt.nz.

6. We invite interested parties to provide comments on the likely competitive effects of the proposed acquisition. We request that parties who wish to make a submission do so by **19 August 2025**.

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.

The parties

8. Kegstar and Konvoy both supply beer kegs to breweries on a rental basis, as well as providing logistics services. They supply kegs on a pay-per-fill (PPF) basis,[4] however they also undertake some keg leasing.[5]

9. Kegstar is owned by MicroStar Logistics, LLC which operates a keg services business across Australia, New Zealand, Europe and the United States.

10. Konvoy is owned by Konvoy Holdings Pty Limited, which operates a keg services business in Australia and New Zealand. Konvoy was placed into receivership in March 2025 and went into liquidation on 30 May 2025.

Our framework

11. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[6] As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.

12. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).[7] This allows us to assess the degree by which the Proposed Acquisition might lessen competition.

13. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:

    13.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

[4] Under a PPF model, a brewer can fully outsource the ownership, management and reverse logistics of its kegs to a PPF provider that operates a shared pool of kegs. A brewer pays for these services on a 'per fill' basis (ie, every time it fills a keg).

[5] The Application at [4.2] and https://www.konvoykegs.com/long-term-rentals.

[6] Mergers and Acquisitions Guidelines above n3.

[7] *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

13.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

13.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

14. We define markets in the way that we consider best isolates the key competition issues that arise may from a merger. 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 Act, as a matter of fact and commercial common sense.[8]

15. Kegstar submits that the relevant market for the purpose of assessing the Proposed Acquisition is a national market for the supply of kegs and logistics solutions to brewers.[9] It further submits:

15.1 this market includes suppliers of the individual components of kegs and logistics services (eg, access to kegs and keg logistics);[10]

15.2 in relation to access to kegs, this market includes PPF keg services, the supply of kegs (steel kegs and plastic kegs), keg leasing (including short-term/long-term keg renting/leasing, rent-to-buy or asset finance models);[11]

15.3 on the demand side, customers can choose between different supply options that are highly substitutable and perform the same functional services, being:[12]

15.3.1 owning their own keg fleet, leasing a keg fleet, or using single-use plastic kegs, and then self-supplying their own logistics (reverse logistics, maintenance, and storage) or using a third party logistics supplier; or

15.3.2 outsourcing keg supply, logistics and management to a PPF provider;

15.4 the requirements for different customers do not differ significantly and keg ownership may be a viable economic alternative for brewers of all sizes, so it is not necessary to distinguish separate markets for different customers;[13]

15.5 on the supply side, PPF and keg leasing providers are able to switch between keg leasing and PPF models with minimal cost and could also easily move into selling kegs (with Konvoy already doing so);[14] and

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8 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].
9 The Application at [6.1].
10 The Application at [6.1].
11 The Application at [6.2].
12 The Application at [6.3]-[6.4] and [5.7].
13 The Application at [6.11] and [5.23].
14 The Application at [6.7]-[6.8].

15.6 kegs are supplied on a national basis, and Kegstar and Konvoy both operate nationally.[15]

16. We will consider whether the market submitted by Kegstar is the appropriate market for assessing the competitive effects of the Proposed Acquisition, or if the Proposed Acquisition would be better assessed by defining narrower markets (eg, by type of keg access/service/ product type, customer type, and/or geographically). We will also consider if any other markets are relevant to our assessment of the Proposed Acquisition.

17. In investigating the above, we are (amongst other things) particularly interested in the views of industry participants on:

17.1 the alternative options available to brewers and other customers in terms of access to kegs and keg logistics, and if these have changed in recent years or are anticipated to change in the near future;

17.2 how the pricing and costs of the PPF keg services of Kegstar/Konvoy compare to the alternatives available to brewers and other customers;

17.3 the ability of brewers and other customers to readily switch between the keg services of Kegstar/Konvoy and alternative options available, including:

17.3.1 self-supply of steel kegs (whether through ownership, long-term keg renting/leasing, rent-to-buy or asset finance models); or

17.3.2 use of plastic, single use kegs;

17.4 the extent to which brewers and other customers consider plastic, single use kegs to be substitutable for steel kegs;

17.5 the ability of brewers and other customers to self-supply keg logistics services (directly themselves or using third-party logistic providers);

17.6 the extent to which alternative keg supply options and keg logistics services vary for different types of customers, including:

17.6.1 for brewers of different sizes/scale in terms of volume and distribution (eg, multinational brewers, large national craft brewers, medium-sized craft brewers and small-scale local brewers);

17.6.2 based on the location of the brewers and other customers;

17.6.3 based on the location of the venues to which brewers and other customers are delivery their kegs to; and

17.6.4 for brewers versus other types of customers;

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15 The Application at [6.9].

17.7 the extent to which keg ownership may be a viable economic alternative for brewers or customers of all sizes;

17.8 the ability of both PPF keg services and keg leasing suppliers to readily switch between keg leasing and PPF models, or to selling kegs, including due to the availability of:

17.8.1 kegs for suppliers to purchase; and

17.8.2 third party logistics for suppliers to access; and

17.9 the alternative options (to kegs) available to brewers and other customers to sell their products through licensed hospitality venues, or a producer's own site (eg, brewery taproom).

Without the acquisition

18. To assess the potential competitive effects of the Proposed Acquisition we need to consider what would likely happen absent the Proposed Acquisition.

19. Kegstar submits that absent the Proposed Acquisition:

19.1 Kegstar would continue to operate and compete in the relevant market(s) (ie, the counterfactual for Kegstar would be the status quo);[16] and

19.2 Konvoy would likely cease independent operation, with its assets acquired by other current market participants (eg, brewers)[17] – ie, Konvoy would cease to supply PPF services. This is because, Kegstar considers it unlikely that there would be alternative buyers for Konvoy that would operate it as a going concern, as – in its view – Konvoy is not a viable business and the relevant market(s) lack economies of density (ie, are too small and not dense enough) to support more than one supplier of PPF keg services.[18]

20. While Kegstar has not explicitly submitted that Konvoy is a 'failing firm', given that Konvoy is in receivership and liquidation and its business or assets are beyond sold by its receivers,[19] the Commission's guidance on the assessment of 'failing firm' counterfactuals is relevant. As our guidelines note, if a firm is failing and its assets will leave the relevant market without a merger, there would likely be no material difference between the scenarios with and without a merger. In such circumstances, a merger will not substantially lessen competition.[20]

21. We will assess the possible scenarios that might arise for Konvoy without the Proposed Acquisition. In this case, we will consider whether the counterfactual submitted by Kegstar for Konvoy is the only likely counterfactual, or whether there are other likely counterfactuals where Konvoy's assets remain in any relevant

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16 The Application at [3.12].

17 The Application at [3.10].

18 The Application at [3.9] and [5.31]-[5.36].

19 The outcome so far of the formal sales process run by Konvoy's receivers is the asset sale agreement relating to the Proposed Acquisition. The Application at [3.9].

20 Mergers and Acquisitions Guidelines above n3 at Attachment E.

market(s) and are used to supply kegs and keg logistics services in competition with Kegstar. This will include us considering and assessing:

21.1 the likelihood of Konvoy's receivers selling its assets and business as a going concern absent the Proposed Acquisition to an alternative purchaser that continues to operate Konvoy in competition with Kegstar in the relevant market(s); and

21.2 the likelihood (in a scenario where Konvoy's assets are sold individually absent the Proposed Acquisition) of any of Konvoy's assets being acquired by an alternative purchaser that uses those assets to supply kegs and keg logistics services in competition with Kegstar in the relevant market(s).

22. In investigating the above, we are (amongst other things) particularly interested in the views of industry participants on:

22.1 who would likely acquire Konvoy and/or its assets absent the Proposed Acquisition;

22.2 the plans that any alternative purchaser would have for Konvoy and/or its assets (eg, to continue to provide PPF keg services);

22.3 the degree of competitive constraint that Konvoy or its acquired assets would provide on Kegstar under new ownership; and

22.4 the extent to which the relevant market(s) have the density or scale to support two providers of PPF keg services.

Preliminary issues

23. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market(s) by assessing whether horizontal unilateral and/or coordinated effects might result from the proposed acquisition. The questions that we will be considering on are:

23.1 unilateral effects: would the loss of competition between Kegstar and Konvoy enable Kegstar to profitably raise prices or reduce quality or innovation by itself?[21]

23.2 coordinated effects: would the Proposed Acquisition change the conditions in the relevant market(s) so that coordination between competitors is more likely, more complete or more sustainable?

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

24. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a merged firm can profitably increase price above the level

[21] For ease of reference, we only refer to the ability of Kegstar to "raise prices" from this point on. This should be taken to include the possibility that Kegstar could reduce quality or innovation, or worsen an element of service or any other element of competition (ie, it could increase quality-adjusted prices).

that would prevail without a merger without the profitability of that increase being thwarted by rival firms' competitive responses.

25. Kegstar and Konvoy overlap in the supply of kegs and keg logistics services.

26. Kegstar submits that the Proposed Acquisition would not be likely to substantially lessen competition in due to unilateral effects in the supply of keg solutions.[22] In terms of reasoning, Kegstar further submits:

26.1 PPF keg services are a relatively recent addition to the keg solutions available to brewers in New Zealand (only commencing when Kegstar entered in 2014) and, while many brewers use PPF services, there are many others that have their own keg fleets and manage/outsource keg logistics;[23]

26.2 Kegstar's and Konvoy's PPF keg services compete with all providers who supply access to kegs and keg logistics services. This includes suppliers of kegs (both steel kegs and plastic kegs), other keg rental/leasing providers, keg finance providers, third-party logistics providers and wholesalers/distributors (which supply essential components that make up the kegs and kegs logistics solutions available to brewers);[24]

26.3 with the Proposed Acquisition, Kegstar would continue to face substantial constraint from the providers listed above, who provide alternative options to brewers to obtain kegs and keg logistics solutions, including an ability to own and manage their own keg fleets or use single-use plastic kegs as a one-way keg solution (the latter of which Kegstar considers to essentially be PPF due to its one-way nature, and therefore imposing an increasing constraint on Kegstar's PPF keg services);[25]

26.4 these alternatives exert a direct, strong and ongoing constraint on the pricing and service levels of PPF keg services and would continue to constrain price increases by Kegstar post-acquisition. Kegstar submits that this is because customers routinely assess and either switch entirely between alternatives or adjust the proportion of their operations managed under a certain model (if the customer uses multiple solutions to manage their keg operations) based on cost, flexibility, and operational needs;[26]

26.5 the option for brewers to own and manage (either fully or partially) their own keg fleet due to the increased availability of steel kegs at lower price points is the most significant and durable pricing constraint on PPF keg services, and would continue to provide substantive competitive constraint on Kegstar post-acquisition;[27] and

22 The Application at [8.1(b)].
23 The Application at [5.18].
24 The Application at [7.1]-[7.2].
25 The Application at [8.7] and [8.18].
26 The Application at [8.7]-[8.8].
27 The Application at [8.11] and [8.14].

26.6 there are very low barriers to entry for a PPF keg services supplier, with an entrant only needing access to kegs and contracts with third-party logistics providers. That said, Kegstar does not submit that new entry is likely, maintaining it would not be possible for more than one PPF keg services supplier to achieve the scale and density required to be economically viable in the relevant market(s).[28]

27. We will consider:

27.1 closeness of competition: the degree of constraint that Kegstar and Konvoy impose upon one another. To the extent that any constraint is material, we will assess whether the lost competition between the Kegstar and Konvoy could be replaced by rival competitors;

27.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on Kegstar post-acquisition;

27.3 entry and expansion: how easily rivals could enter and/or expand, and the likelihood of this occurring;

27.4 countervailing power: whether customers have special characteristics that would enable them to substantially influence Kegstar's pricing or resist a price increase by Kegstar post-acquisition (eg, by self-supplying keg services).

28. In investigating the above, we are (amongst other things) particularly interested in the views of industry participants on:

28.1 how closely Kegstar and Konvoy compete, including whether they compete more closely with each other in any specific type of keg access/service type, for any specific types of customers or in any specific geographic areas;

28.2 the competitive impact of the entry of Konvoy in 2020, including in terms of the pricing of PPF keg services;

28.3 the extent to which brewers and other customers – in response to increases in the price of PPF services – have actually switched (or seriously considered or credibly threatened switching) partially or entirely between using the PPF keg services of Kegstar/Konvoy and alternatives, including the:

28.3.1 self-supply of kegs; or

28.3.2 use of plastic, single use kegs;

28.4 what brewers and other customers would do in response to an increase in the price, or a reduction in the quality, of Kegstar's services post-acquisition;

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[28] The Application at [8.4].

28.5 whether there has been a change in the extent of keg ownership by brewers over time (relative to use of PPF keg services), and the reasons for any change;

28.6 how scale impacts on the supply of PPF kegs and keg logistics services, and the scale of Kegstar post-acquisition might impact on competition;

28.7 what would be involved for a new entrant to start offering PPF keg and keg logistics services, and the likelihood of any new entry occurring; and

28.8 the impact that the Proposed Acquisition might have on the state of competition in the relevant market(s).

Coordinated effects: would the Proposed Acquisition make coordination more likely?

29. An acquisition can substantially lessen competition if it increases the potential for a merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from a merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.[29]

30. Kegstar submits that the Proposed Acquisition would not increase the risk of coordinated effects.[30] It further submits that the Proposed Acquisition would not enhance the ability of Kegstar and its competitors to coordinate behaviour, as:[31]

30.1 the Proposed Acquisition would not remove a particularly aggressive or destabilising competitor; and

30.2 there are a large range of alternative differentiated options for customers (be that keg supply, financing options or logistics offerings), the majority of which have pricing that is not easily observable as between competitors.

31. We will assess whether any of the relevant market(s) are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant market(s) so that coordination is more likely, more complete or more sustainable. We invite submissions on why the Proposed Acquisition may, or may not, increase the risk of coordinated effects.

Next steps in our investigation

32. The Commission is currently scheduled to make a decision on whether to give clearance to the Proposed Acquisition by **19 September 2025**. However, this date may be extended with the agreement of the applicant if the material before the Commission at that time does not allow it to be satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially

[29] Mergers and Acquisitions Guidelines above n6 at [3.84].

[30] The Application at [1.5(c)].

[31] The Application at [8.22].

lessening competition in a market in New Zealand.[32] In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.

33. 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.

Making a submission

34. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "Kegstar/Konvoy" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **19 August 2025**.

35. 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.

36. 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. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should resubmit your submission.

37. 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.

32 The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.