

## COMMERCE COMMISSION

### **Decision No. 551**

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**RED BUS LIMITED**

**and**

**LEOPARD COACHLINES**

**The Commission:** Paula Rebstock  
Donal Curtin  
Peter JM Taylor

**Summary of Application:** The acquisition by Red Bus Limited of part of the business of Leopard Coachlines Limited, being the business of operating scheduled urban bus routes under contract to the Canterbury Regional Council.

**Determination:** Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

**Date of Determination:** 28 June 2005

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## EXECUTIVE SUMMARY

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 12 April 2005. The notice sought clearance for the acquisition by Red Bus Limited (Red Bus) of part of the business of Leopard Coachlines Limited (Leopard), being the business of operating scheduled urban bus routes under contract to the Canterbury Regional Council, known as Environment Canterbury.
2. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition in the markets for:
  - rights to operate scheduled, subsidised bus passenger services in greater Christchurch (the Christchurch bus subsidies market);
  - rights to operate scheduled, subsidised bus passenger services in Timaru (the Timaru bus subsidies market);
  - rights to operate scheduled, commercial bus passenger services in Canterbury (the commercial service rights market); and
  - rights to operate school bus services in Canterbury (the school bus rights market).
3. In the event that the acquisition of Leopard's assets by Red Bus did not proceed, the Commission is of the view that the appropriate counterfactual scenario would be that Leopard continues to operate in the bus passenger services market and in the bus subsidies market, either as Leopard or another company who acquires them. In the counterfactual in the bus subsidies market there would be three incumbent operators who are regular bidders for Environment Canterbury (ECan) contracts put up for tender – Red Bus Limited (Red Bus), Christchurch Bus Services Limited (CBS) and Leopard Coachlines Limited (Leopard). However, the Commission considers that Leopard would be weaker and less of a competitive constraint than it has been in the past.
4. In the factual, there would be two incumbent operators who are regular bidders for ECan contracts – Red Bus and CBS. In the future CBS would be a stronger competitor than it is now.
5. The Commission considers that in the factual compared to the counterfactual although there is a loss of competition from Leopard exiting the market post-acquisition, the lessening of competition is not substantial.
6. The combined entity would be constrained to some extent by CBS, other potential bidders [ ], and by ECan. On their own, each of these would not be sufficient to constrain the combined entity. However, the Commission concludes that the combination of these constraints would be sufficient to prevent a substantial lessening of competition in the bus subsidies market.
7. The Commission concludes that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the school bus rights market due to sufficient potential competition from new entrants bidding in the school bus rights market.

8. The Commission also considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the commercial service rights market. Whilst there is likely to be a loss of potential competition, it is unlikely to be significant compared to the counterfactual.
9. The Commission is satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in any of the affected markets.
10. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Red Bus Limited of part of the business of Leopard Coachlines Limited, being the business of operating scheduled urban bus routes under contract to the Canterbury Regional Council.

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 12 April 2005. The notice sought clearance for the acquisition by Red Bus Limited (Red Bus) of part of the business of Leopard Coachlines Limited (Leopard), being the business of operating scheduled urban bus routes under contract to the Canterbury Regional Council.

## PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 28 June.
3. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Merger and Acquisition Guidelines.<sup>1</sup>

## STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission may grant a clearance for an acquisition where it is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in a market. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.<sup>2</sup>
6. The Commission considers that it is necessary to identify a real lessening of competition that is not minimal.<sup>3</sup> Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis, the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.
7. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and able to be sustained for a period of at least two years.

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<sup>1</sup> Commerce Commission, *Mergers and Acquisition Guidelines*, January 2004.

<sup>2</sup> *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

<sup>3</sup> See *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced service, quality or innovation, for there to be a substantial lessening, or likely substantial lessening, of competition, these also have to be both material and sustainable for at least two years.

### **ANALYTICAL FRAMEWORK**

9. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
- with the acquisition in question (the factual) ; and
  - in the absence of the acquisition (the counterfactual).
10. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
- existing competition;
  - potential competition; and
  - other competition factors, such as the countervailing market power of buyers or suppliers.

### **THE PARTIES**

#### **Red Bus Limited (Red Bus)**

11. Red Bus is a wholly owned subsidiary of Christchurch City Holdings Limited, which is a Council controlled Trading Organisation wholly owned by the Christchurch City Council. Red Bus is Christchurch's largest urban bus operator. It operates various bus routes in Christchurch and surrounding areas under contracts granted by Environment Canterbury, together with some commercial bus routes.

#### **Leopard Coachlines Limited (Leopard)**

12. Leopard is a privately-owned company which also operates bus routes in the Christchurch area under contracts granted by Environment Canterbury, as well as other bus operations such as school bus contracts, bus charters, ski field buses and inbound tourism coach operations.
13. The shares in Leopard are owned by:
- Brent Early;
  - Muriel Early;
  - Rainer Heidtke; and

- Andrew Hendra Young and John Charles Brown as trustees of the Leopard Trust.

## OTHER RELEVANT PARTIES

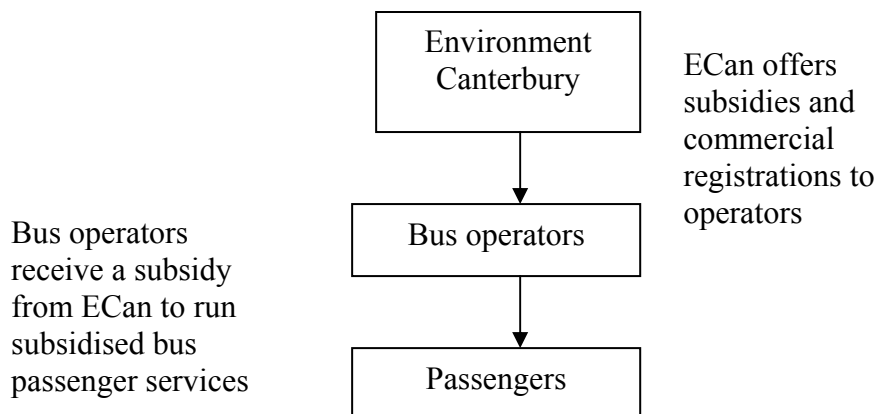
### Christchurch Bus Services Limited

14. Christchurch Bus Services Limited (CBS) is a recent entrant to the bus services market in Canterbury. It is privately-owned company which operates bus routes in the Christchurch area under contracts granted by Environment Canterbury.
15. The directors of CBS are Clive Peter and Dudley Charles Johnson, and the other shareholders are Poorvambal Nancy Peter and Trevor Lewis Wilson.

## INDUSTRY BACKGROUND

16. The proposed acquisition involves the provision of bus passenger services in the Canterbury region. The main industry participants affected by this acquisition are shown in the diagram below and are Canterbury Regional Council (Environment Canterbury), bus operators and passengers.

**Figure 1: Main Industry Participants**



### Environment Canterbury

17. The Canterbury Regional Council, also known by its promotional name Environment Canterbury (ECan), is responsible for the provision of public passenger transport services in the Canterbury region, which includes the Christchurch region and Timaru. ECan receives funding from Land Transport New Zealand (LTNZ), which is a new government agency formed in December 2004 as a result of the merger of Transfund NZ and the Land Transport Safety Authority. In particular, ECan is responsible for:
  - contracting service providers to supply urban bus services;
  - reviewing the quality, frequency and location of the bus routes;
  - monitoring the implementation of contracted services;
  - investigating new public passenger transport initiatives;



- providing public information about all aspects of the public passenger transport system;
- marketing and promoting public transport; and
- administering Total Mobility schemes which provide transport assistance for eligible people with disabilities.

### **Bus Operators**

18. There are currently three bus companies operating in the Christchurch region, all of which hold contracts with ECan to provide subsidised bus passenger services: Red Bus, Leopard, and Christchurch Bus Services Limited (CBS).
19. The number of routes and number of buses currently operating in the Christchurch region, by each operator, are shown in the table below:

**Table 1: Bus Operators in the Christchurch Region**

<b>Bus Operators</b>	<b>No. of routes</b>	<b>No. of buses</b>
Red Bus	37	182
Leopard	6	43
CBS	5	40
Total	48	265

Notes: includes urban, school bus services. CBS has also recently won another contract, but this route is not yet in operation. Does not include commercial services, of which there are three.

20. ECan also tenders contracts for the operation of bus services in Timaru. In Timaru, there are two companies holding contracts with ECan for the provision of bus passenger services, namely Ritchies Transport Holdings Limited (Ritchies) and Geraldine Tourism Service.

### **Bus Passenger Services**

21. Bus passenger services in the Christchurch and Timaru regions can be classified into urban bus services and school bus services. Within urban bus services there are commercial passenger services, which are registered with ECan and subsidised passenger services, which are contracts awarded by ECan through a tender process. Each of these bus passenger services is explained in further detail below.

#### *Urban Subsidised Passenger Services*

22. Subsidised bus passenger services are contracted services awarded by ECan in a 'sealed-bid' competitive tender process. Bus operators submit a tender for a subsidy to run a particular bus service with a pre-set fare schedule and ECan awards the contract to the bidder with the lowest quality-adjusted bid. Subsidised services draw fare receipts in addition to subsidies, although the fare is set by ECan.
23. The majority of bus services in the Christchurch region are subsidised services. There are currently approximately 48 subsidised contracts (urban and school) awarded by ECan in the Christchurch region. The duration of the contracts ranges from 18 months to five years.

24. ECan constantly amends and updates the bus services tendered as additional public transport needs and opportunities are identified through a public consultation process. Following a public consultation process with the community serviced, ECan releases Request for Tender (RFT) documents for urban bus routes. A number of routes are usually tendered at the same time in a 'tender round'.
25. When awarding contracts ECan is required to follow the Competitive Pricing Procedures (CPP) prescribed by LTNZ. The CPP detail the standard competitive pricing measures approved by LTNZ for use by local authorities when purchasing public transport services.
26. Each tenderer must submit two envelopes. Envelope A includes the conforming details of the tender requirements and operator information in support of the operator's tender. Envelope B contains the price submitted, namely the subsidy the operator estimates it will require to operate the service.
27. Envelope A describes the supplier attributes required by ECan which are:
  - relevant experience;
  - track record;
  - management and technical skills; and
  - resourcing programme.
28. To progress beyond Envelope A, a company must score a minimum of 5 out of a possible score of 10 in each category, except relevant experience.
29. The tender prices submitted in Envelope B are based on an operator's estimate of the revenue of the route and an operator's estimate of the costs of running the route. Only the incumbent operator has accurate information about passenger numbers as ECan does not release patronage figures. Other bidders have to make an estimate based on their limited knowledge of the bus routes. Revenue estimates are based on estimates of annual fare revenue as well as any other sources of revenue. Cost estimates are provided for the following:
  - road user charges;
  - fuel and oil;
  - repairs and maintenance;
  - salaries and wages; and
  - other costs.
30. The subsidy required should be equal to the difference between the revenue and cost figures as set out below:

$$\text{SUBSIDY} = \text{costs of running the service} - (\text{fares} \times \text{patronage})$$

31. Supplier attributes are incorporated into the tender process by a calculation of quality-adjusted bids. The companies tendering score points for their supplier attributes. Each route tendered is assigned a value per point, and these values vary per route according to the number of vehicles required and the number of kilometres covered in the route.

32. The tender price submitted by each operator is then discounted as follows:

**value per point x difference in points with the lowest tenderer**

33. [

]

34. This process generates a quality-adjusted price for each tender price. Under the CPP, ECan is required to accept the lowest quality-adjusted bid.
35. In cases where there is only one bidder for a contract, ECan has the ability to negotiate the price submitted with the bidder. It can also re-tender the contract if it is not satisfied with the price, although to date this has not occurred.
36. When the contract is awarded ECan publishes the winning tenderer and quality-adjusted tender price as well as the highest quality-adjusted bid and the number of tenderers.

#### *Urban Commercial Passenger Services*

37. A bus operator wishing to operate a commercial passenger service must register this service with ECan. Commercial services do not receive a subsidy from ECan and rely entirely on fare receipts. A commercial service can be registered at any time and on any route, provided it does not overlap with the services provided on an existing subsidised route, and the bus operator can satisfy a set of supplier attributes. Any route put out for tender to receive a subsidy can be commercially registered by a bus operator before the subsidised contract is awarded. In this case the route becomes a commercial route rather than a subsidised route.
38. If ECan were dissatisfied with the service provided by a commercially registered route, it has the right to invite tenders to operate a similar service, effectively 'tendering over' the commercial service.
39. ECan has an 'anti cherry-picking' policy whereby bus operators are required to commercially register whole routes rather than only the 'profitable' parts of a route. Fares for commercial routes are also controlled by ECan.
40. In the Auckland and Wellington regions, the regional councils allow service providers to register 'profitable' services commercially, which then requires the council to tender the 'non-profitable services' not commercially registered. ECan believes that allowing this type of commercial registration provides the service provider with an unfair advantage in the tender process, as they can cross-subsidise the 'non-profitable' services with the 'profitable' services.
41. There are currently only three commercially registered bus routes in the Christchurch region. These routes are all operated by Red Bus and [
- ].

### *School Bus Services*

42. Scheduled school bus services in the Canterbury region are provided by ECan and the Ministry of Education (MoE). The MoE awards contracts for school bus services for students who have to travel stipulated distances (3.8km for under-10, 4.5km for over-10) in areas where there is no public transport service. This tends to be for school bus services in rural areas. The MoE does not provide services where there is already a subsidised bus service in place.
43. Urban school routes are designed by ECan in circumstances where it is deemed that the use of an urban bus by school children will compromise the successful running of the service. In order that the urban services are not overloaded with school children at key points in the day, school routes are added by ECan. There are currently 13 school bus routes provided by ECan. These are all urban routes.

### **PREVIOUS COMMISSION DECISIONS**

44. The Commission has previously considered several bus mergers. Those of the most relevance are described in greater detail below.

#### *Decision 467: Red Bus Limited / Leopard Coachlines Limited*

45. On 30 July 2002, the Commission declined to give clearance for the proposed acquisition by Red Bus Limited of Leopard Coachlines Limited, being the business of operating certain urban bus routes operated by Leopard.
46. The relevant markets were defined as the markets for the:
  - rights to operate scheduled, subsidised bus passenger services in Christchurch and Timaru (the bus subsidies market); and
  - scheduled bus passenger services in Christchurch and Timaru (the bus services market).
47. The Commission declined the clearance because it found that the acquisition would remove Red Bus' most effective competitor from the bus subsidies market and the bus services market. In addition, barriers to entry were considered to be high, and if entry did occur, it would not provide an effective constraint as it was only likely to occur at a subsidy level similar to ECan's budgeted subsidy, which was [ ]
48. The Commission also concluded that although ECan was able to exercise some countervailing power with respect to fares, it was reliant on the nature and extent of competition to ensure that subsidies would not increase, and it would not be able to exercise sufficient countervailing power in the bus subsidies market to prevent a substantial lessening of competition.

#### *Decision 318 and 326: New Zealand Bus Limited / Transportation Auckland Corporation Limited*

49. On 12 December 1997, the Commission received an application from New Zealand Bus Limited (NZBL) seeking clearance to acquire Transportation Auckland Corporation Limited (TACL). The application was assessed under the dominance test and the application was declined.
50. The relevant markets were defined as the provision of:

- scheduled bus passenger services in the greater Auckland metropolitan region;
  - school bus services in the greater Auckland metropolitan region; and
  - bus charter services in the greater Auckland metropolitan region.
51. The Commission found that in the market for the provision of scheduled bus passenger services the combined entity would have a very high market share and would not face constraint from existing competitors. The Commission also found that barriers to entry were high, and new entry was unlikely. The Commission recognised the Auckland Regional Council exercised some countervailing power, but was not satisfied it was sufficient to constrain NZBL from acquiring dominance. Consequently, on 24 February 1998 the Commission declined to give clearance for the proposed acquisition.
52. However, on 2 April the Commission received another application from NZBL, this time seeking an authorisation to acquire TACL. This too was assessed under the dominance threshold. On 15 May 1998 the Commission cleared the proposed acquisition.
53. In this authorisation, the relevant markets were defined as the provision of :
- scheduled bus passenger services in the greater Auckland metropolitan region; and
  - the rights to operate commercial and subsidised scheduled bus passenger services in the greater Auckland metropolitan region.
54. The Commission again found that existing competition and potential competition were not sufficient to prevent dominance being acquired. However, the Commission reassessed the countervailing power of Auckland Regional Council (ARC) and concluded that it would provide an effective constraint on the combined entity. Given the Commission was satisfied dominance would not be acquired, it was not required to conduct a public benefit and detriment test.

*Decision 460: New Zealand Bus Limited and Wellington Regional Council / Tranz Metro (Wellington)*

55. The Commission also considered Decision 460 which was cleared on 10 April 2002. The issues in this Decision were not relevant to the current application.

## **MARKET DEFINITION**

56. The Act defines a market as:
- “... 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.”<sup>4</sup>
57. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The

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<sup>4</sup> s 3(1) of the Commerce Act 1986.

Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

58. The present Application concerns the rights to operate regular passenger bus services and the rights to operate school bus services.

### **Product Dimension**

59. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market. The degree of demand-side substitutability is influenced by the extent of product differentiation.
60. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
61. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.

### **Bus Passenger Services**

62. Transport is the movement through space and time from a point of origin to a destination. When people buy transport services, they must have a specific point of origin (including temporal location) and they will generally have an intended and reasonably predictable destination. While there may be some scope for substituting one trip for another, people are generally specific about when and where they want to travel. So, in an important sense, individual trips might not be substitutable for each other.
63. The Commission understands that this general description of transport markets applies in the market for bus passenger services in Christchurch and Timaru. So, someone in Hoon Hay who wants to travel to the airport will not take a bus to Taylor's Mistake, except in error. Similarly, someone who wants to arrive at an appointment at 10am will not ordinarily take a 10.30am service.
64. The Applicants have submitted that other modes of transport—particularly cars—supply services that can substitute for bus carriage. At some level, this must be true. For practical purposes, there seem to be few places and times that buses can travel that cars cannot. Walking, cycling and various other means of conveyance can also supply the mechanical means to complete a trip. For certain trips, however, buses provide advantages that other modes do not, and those who take buses rather than other modes of transport value these advantages.
65. For example, bus passengers:
- do not need to find parking, as a private car driver might;
  - generally pay less than taxi passengers; and
  - generally save time and effort relative to cyclists and pedestrians attempting the same trip.
66. The Commission considers that the costs and qualities of different modes of transport vary enough such that it is preferable to define bus markets separately.

67. The Commission understands that, in the Canterbury region, bus operators receive an exclusive licence from ECan to supply passenger services. That is, ECan, in concert with LTNZ, does not permit other bus operators to supply a service that competes with those offered by the operator registered with ECan. It follows that individual bus services are, effectively, separate monopolies.
68. The Commission also notes that, in Canterbury, bus operators determine neither the price of the bus service nor the scheduling. ECan sets these as part of the contract, and ECan also sets certain vehicle quality standards and performance requirements.
69. Effectively, passengers and ECan form the market for bus transport, with bus operators providing agency services. The competitive effects of the proposed acquisition are more sensibly observed and analysed in the market for the rights to operate services, as this is the point at which competition occurs. Therefore, the Commission will not analyse further the competitive effects of the proposed acquisition upon the passenger transport market.

*The Rights To Operate Bus Passenger Services*

70. In offering contracts to supply bus services, ECan is aiming to meet multiple objectives. Some of these objectives are based on the assumption that the market fails to provide solutions to particular social and individual needs. Providing bus transport is integral to ECan's public transport and regional development strategies. ECan's stated objectives of providing bus services in Greater Christchurch and Timaru are to:<sup>5</sup>
- be environmentally friendly, to encourage more efficient energy use and to reduce greenhouse gas emissions;
  - improve access to employment, education and social facilities;
  - provide an alternative to other modes of transport;
  - reduce road congestion; and
  - improve access for the "transport-disadvantaged".
71. Bus services are not the only instruments used by ECan to meet these objectives.<sup>6</sup> Other activities with similar aims and outcomes include:
- land use planning;
  - encouraging walking and cycling as alternatives to motorised transport;
  - managing coastal shipping, rail and taxis;
  - improving road safety;
  - improving conditions for freight transport;
  - road user demand management, through parking, road pricing and education; and
  - implementation of the total mobility scheme.

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<sup>5</sup> ECan, *Environment Canterbury Community Plan 2004–2014*, Part A, Volume 2: Activity Information, ECan, Christchurch, 2004, pp. 40, 43.

<sup>6</sup> *ibid*, and also ECan, *Draft Canterbury Regional Land Transport Strategy 2005–2015*, ECan, Christchurch, 2004.

72. To some extent, ECan may consider these activities as substitutes for providing a bus network. So, for example, if the goal is to decrease congestion in a particular area, ECan might choose between increasing the frequency of bus services or encouraging walking by improving the quality of walkways. The Commission considers that these activities are not close substitutes. Rather, they are complements in an overall land transport strategy. Therefore, for the purposes of analysing the competitive effects of the proposed acquisition, the Commission considers that ECan's spending on bus transport occurs in a market distinct from the market for other services that it provides.
73. As stated in the Industry Background, ECan confers the rights to operate various kinds of bus services, namely:
- school bus services;
  - subsidised regular bus passenger services; and
  - commercial regular bus passenger services.

*Demand-side and Supply-side Substitutability*

74. The Commission has assessed the demand-side and supply-side substitutability between these three different types of bus services.
75. The market for the rights to operate school bus services differs from regular urban bus passenger services on both the demand and supply sides. On the demand side, ECan wishes to accommodate a specific passenger cohort. As school pupils may sometimes irritate mature passengers through disruptive and distracting behaviour, ECan also offers school bus contracts to enhance Canterbury's regular passenger services.
76. ECan has more relaxed requirements concerning the age and conditions of buses used for school services. Bus operators tend to use older buses for these services, ones that can no longer serve regular passenger routes. Red Bus also told the Commission that often staffing is different on school services. There are greater advantages to having the same drivers regularly on school runs than there are to having the same drivers on regular passenger services.
77. Further, there is likely to be supply-side substitutability from urban bus services to school bus services, but not the other way round. School buses require few buses and less staff. It should also be noted that in *Decision 318 and 326: New Zealand Bus Limited / Transportation Auckland Corporation Limited*, a separate market for school buses was defined.
78. In the context of the present application, the Commission focuses only on school bus services contracted by ECan, as it is these "urban" school bus services that Leopard and Red Bus both tender for. School bus routes under contract to the Ministry of Education generally operate in rural areas and Leopard is not involved in this segment of the market.
79. Subsidised regular passenger services differ from commercial ones, mainly on the demand-side. ECan pays for operators to provide subsidised services, for all the reasons discussed above. On the other hand, commercial service rights are often granted on the volition of bus operators themselves for commercial reasons. ECan will licence these services if they are compatible with ECan's



overall transport and social goals, but their reason for being is primarily commercial.

80. For the bus operator, commercial services are a different kind of asset. The operator of commercial services depends entirely on income from passengers, and does not receive the guaranteed payments earned by the winner of a subsidised contract. ECan is still involved in the supply of commercial passenger services, however, in two main ways. First, ECan licences the service, but does so in the context of its subsidised bus network and in the context of its broader social goals. Second, ECan regulates the ticket price on commercial services.
81. The Commission is satisfied that the rights to operate scheduled school services and the rights to operate subsidised and commercial regular passenger services are distinct from each other to such an extent that, for the purposes of analysing the competitive effects of the proposed acquisition, they fall into three separate product markets.

### **Geographic dimension**

82. The Commission will seek to define the geographical extent of a market to include all of the relevant, spatially dispersed, sources of supply to which buyers can turn should the prices of local sources of supply be raised.
83. The proposed acquisition concerns the supply of bus operations in the Canterbury region. ECan does not purchase bus operations outside Canterbury. The Commission will consider in its competition analysis below whether operators external to the Canterbury region might be entrants to the market in Canterbury, but for the purposes of market definition, the Commission will focus on supply within Canterbury.
84. As mentioned above, each route, and each service on that route, could arguably be a separate geographical market. However, since the competitive effects of the proposed acquisition are similar for contracts for various routes, the Commission will group similar routes together, and analyse them as if they represented a single market.
85. In Decision 467, the Commission acknowledged that there might be regional economies of scale, associated with maintaining a local depot and with network effects, and that these could suggest separate Christchurch and Timaru geographical markets. However, the Commission did not, on that occasion, define separate Christchurch and Timaru markets.
86. For the purposes of analysing the present application, however, the Commission will take a more conservative approach. Generally speaking, in recent times Red Bus has won most of the contracts in the greater Christchurch region and Ritchies has won most of the contracts in the Timaru area. Furthermore, the history of bidding for Timaru contracts, as opposed to Christchurch ones, suggests that [ ] It is possible that this market history represents local economies that, while difficult to quantify, are real and of importance when considering market boundaries.

87. For the purposes of assessing the competitive effects of the present application, the Commission will take a conservative view of geographical markets and consider the greater Christchurch and Timaru areas as separate markets.

### **Temporal dimension**

88. Where a market is characterised by infrequent transactions, the Commission may define a separate time dimension for the market. Time considerations are important where there are long-term contracts, as in the markets considered for this application, where the rights to operate bus services are conferred for 18 months to five years.
89. The Commission considers the impact of the acquisition at the point at which it has effect, which, in this case, is when bus contracts are tendered for. The Commission considers that it is appropriate to define a time period for the market that extends far enough to include the markets for contracts for all school and regular passenger transport services in the Canterbury region.
90. The Commission understands that a period of five years would include an entire cycle of tenders for the rights to operate bus services. Consequently, the Commission will consider the competitive effects of the proposed acquisition over five years.

### **Conclusion on Market Definition**

91. The Commission concludes that the relevant markets are the markets for the:
- rights to operate scheduled, subsidised bus passenger services in greater Christchurch (the Christchurch bus subsidies market);
  - rights to operate scheduled, subsidised bus passenger services in Timaru (the Timaru bus subsidies market);
  - rights to operate scheduled, commercial bus passenger services in Canterbury (the commercial services rights market); and
  - rights to operate school bus services in Canterbury under contract to Environment Canterbury (the school bus rights market).

### **COUNTERFACTUAL AND FACTUAL**

92. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a “with” and “without” comparison rather than a “before” and “after” comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).<sup>7</sup> The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.
93. This section of the report assesses the structural aspects of the counterfactual and the factual only. The behavioural implications and competition effects of the counterfactual and factual will be assessed in the competition analysis section.

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<sup>7</sup> Commerce Commission, *Decision 410: Ruapehu Alpine Lifts/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

### **Factual**

94. Red Bus stated that the key driver for the acquisition is the achievement of economies of scale and potential business synergies. It stated that the acquisition would be seamless for staff, and would result in Red Bus simply “doing more of what it does now.”
95. If the acquisition proceeds Red Bus intends to merge the urban bus business of Leopard with its own existing business. Red Bus would acquire the 43 urban buses owned by Leopard as well as the seven urban bus contracts Leopard currently holds with ECan. These contracts include one school route and the large cross-suburban route, Orbiter.
96. In the factual, Red Bus would take an assignment of Leopard’s contracts with ECan and accordingly would be required to operate those contracts according to the service, frequency, vehicle standards and fares set by ECan. Red Bus states that there would be no change to the subsidy being paid by Environment Canterbury under any of the contracts proposed to be transferred for the duration of each of those contracts.
97. The Applicants submitted that its intention is for there to be a continuity of services for the public travelling on the routes it would acquire from Leopard. The only change that would be noticed by members of the public is the colour of the bus on which they would be travelling.
98. In the factual scenario in the Christchurch bus subsidies market, there would be two incumbent bus operators in the Christchurch region, the combined entity and CBS. Post-acquisition, the combined entity would run approximately [ ] of the urban subsidised bus routes in the Christchurch bus subsidies market.
99. Post-acquisition, in the Christchurch bus subsidies market, the Commission considers that Red Bus and CBS would be the main bidders for ECan contracts to operate bus services, although the acquisition may present opportunities for potential bidders such as Ritchies to tender for contracts in the future. This is discussed further in the competition analysis below.
100. In the school bus rights market, the combined entity would run all the school routes contracted for by ECan. The Commission considers that the combined entity would continue to operate in the commercial services rights market. In the Timaru bus subsidies market, there would continue to be two bus operators, (Ritchies and Geraldine Tourism Service) and the Commission considers that the combined entity would continue to be a potential competitor.

### **Counterfactual**

101. Leopard stated that it is inefficient and uneconomic for it to remain in the bus subsidies market. This is because it is not currently achieving what it considers to be an acceptable level of profit compared with the potential profits it can generate in its coach touring business. Leopard stated that it needs its management and financial resources to expand and capitalise on these other opportunities and that therefore it is committed to exiting the urban bus market.
102. Table 2 below shows that since Decision 467 in 2002, the earnings derived from Leopard’s urban bus business [

]

**Table 2: Leopard Coachlines Ltd - Total Earnings before non-direct expenses, depreciation & interest (for the year ended 31 March)**

	Urban	Tourism	Total Earnings	Urban %	Tourism %
<b>2003</b>	[ ]	[ ]	[ ]	[ ]	[ ]
<b>2004</b>	[ ]	[ ]	[ ]	[ ]	[ ]
<b>2005</b>	[ ]	[ ]	[ ]	[ ]	[ ]
<b>2006*</b>	[ ]	[ ]	[ ]	[ ]	[ ]

\*forecast

Source: Leopard

103. The Commission notes that Leopard was keen to exit the bus subsidies market three years ago when the Commission investigated the same acquisition in Decision 476. In that Decision, the Commission considered the relevant counterfactual to be Leopard selling its urban bus business to an independent third party for the following reasons:

- Leopard was committed to exiting the market;
- according to Leopard, the business was profitable;
- there were other potential purchasers of the business;
- because the business was profitable, it was more likely that Leopard would achieve a sale of its business than close down; and
- because the business was profitable, it was likely that the purchaser would remain as vigorous a competitor as Leopard currently was.

104. In this proposed acquisition, the Commission considers that some of the above arguments for the previous counterfactual still hold. [

]

105. The Commission notes that [

]

106. In Decision 467 the Commission found that there would be other parties potentially interested in purchasing Leopard's urban business. Leopard stated that [

]

107. Further, Leopard stated that in [

] The

Commission also contacted [

].

108. Finally, in its current clearance application, Leopard stated that it was committed to exiting the market. The Commission notes that Leopard was keen to exit the market three years ago. However, since Decision 467, Leopard has continued to operate in the bus subsidies market and passenger services market in Christchurch. [ ] (see paragraph 119 for further detail).

109. Leopard recently stated that it tried to exit the market three years ago and was very disappointed when this did not work out. [

] Thus, if Leopard does continue to operate in the market, it is likely to be a weaker competitor than it has been in the past.

110. Red Bus' draft business plan states that [

]

111. On the basis of these considerations, the Commission considers that the counterfactual could involve Leopard continuing to operate in the market by providing passengers services for the remaining lifetime of existing contracts, and possibly continuing to bid for new contracts in the bus subsidies market. Alternatively, it could involve Leopard selling out to another company that would compete in its place.

112. In conclusion, the Commission considers the relevant counterfactual to be that Leopard continues to operate in the bus passenger services market and in the bus subsidies market, either as Leopard or as another company who might acquire it. This is because:

- [ ];
- Leopard has remained in the bus subsidies and passenger services market since 2002; and
- there are other potential buyers.

## **COMPETITION ANALYSIS**

### **The Christchurch Bus Subsidies Market**

113. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).

114. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

115. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

As noted earlier, post-acquisition, the combined entity's market share of the urban subsidised bus routes in the Christchurch bus subsidies market would be [ ], which is outside the Commission's safe harbour guidelines.

116. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.

117. In the Christchurch bus subsidies market competition takes place during the competitive tenders held by ECan. At this time, the bidders compete on price (namely the level of subsidy required to run an urban bus route) and on the quality of service provided.

118. The Commission has analysed the competition effects of the proposed acquisition in the Christchurch bus subsidies market by assessing competition between:

- Red Bus and Leopard; and
- the combined entity and other potential bidders.

Further, the Commission has assessed the differences in the level of this competition in the factual compared to the counterfactual.

#### *Competition Between Red Bus and Leopard*

119. In Decision 467, the Commission considered Leopard to be Red Bus' "most effective competitor". The Commission considered that Leopard provided a more effective constraint in terms of price than other bidders [ ], and was the only bidder other than Red Bus to have won ECan contracts in Christchurch. CBS was not present in the market at this time.

120. [

]

121. The Commission also notes that post-acquisition, the combined entity would run the two major cross-suburban routes in the Christchurch region. The Metrostar was introduced in 2004 and is currently run by Red Bus. Leopard currently operates the popular Orbiter service, [ ]

*Competition Between the Combined Entity and Potential Bidders*

122. The Commission investigated who the likely potential bidders would be in future tender rounds in the Christchurch bus subsidies market and the extent to which they would provide competition in the future. In addition to the combined entity, the Commission has considered the following as potential bidders in future tender rounds:
- CBS;
  - bus operators in other regions; and
  - greenfield entrants.
123. The Commission has assessed the extent to which each of these potential bidders would compete with the combined entity in the future tenders listed in Table 3 below, which will occur within the next five years.

**Table 3: Future Tender Rounds in the Bus Subsidies Market Held by ECan**

	<b>2009</b>	<b>2010</b>
<b>Number of Urban Bus Routes</b>	(two tender rounds) 12 routes 7 routes	3 routes

Competition from CBS

124. The Commission has investigated the extent to which CBS would provide a constraint to the combined entity in future tender rounds post-acquisition.
125. CBS is a successful new entrant in the bus subsidies market. [ ] and has been successful in winning five ECan contracts to date. CBS stated that the company's circumstances are unique in terms of entry into the market. The director of CBS, Clive Peter, is an ex-CEO of Red Bus. He has over 25 years experience in the bus industry in general, and first-hand knowledge of the Christchurch bus market. CBS stated that its experience and knowledge of the Christchurch bus market was one of the key factors to its success in winning contracts.
126. CBS stated that it [ ]
- ]
127. CBS has bid for [ ] of the 32 scheduled contracts tendered since it entered the market. It first successfully tendered in December 2003, for routes due to start in June 2004. It was successful in acquiring three routes, all of which were previously run by Red Bus. CBS acquired another two routes at the start of the year, one from Red Bus and one from Leopard, and began operating these routes on 7 June 2005. In the most recent tender round, CBS won an additional route from Red Bus, which is due to start operation in December 2005.

128. [ ]
129. As evidenced by its success in winning contracts, the levels of bids submitted by CBS [ ] have been aggressive and have provided a competitive constraint to both Red Bus and Leopard. [ ]
130. Since CBS entered the market there have been [ ] contracts for which Red Bus, CBS and Leopard have all bid. On average, Red Bus' bids were [ ] than CBS, and Leopard's bids were [ ] than CBS.
131. Red Bus, in its draft business plan, stated that [ ]
132. Leopard also considers CBS to be a major competitor. Leopard lost a route to CBS in the last tender round. Leopard stated that [ ]
133. [ ] questions CBS' pricing methods as it seems to be submitting very low bids, but sees CBS as a serious competitor who is determined to stay in the market.
134. [ ] stated that CBS has been performing well thus far and is providing substantial competition to Red Bus. It sees CBS as a serious competitor which is committed to staying in the market.
135. On the other hand, [ ] thinks that CBS will exit the market as it cannot survive on the level of subsidies it is currently operating on. [ ] cannot understand how CBS is making money.
136. On the whole, it appears that CBS currently provides competition to Red Bus and Leopard. However, in order to assess the extent to which CBS would constrain the combined entity in future tender rounds, the Commission has assessed the barriers to expansion it would face.
137. The Commission identified three potential barriers to expansion, namely:
- access to finance;
  - access to buses; and
  - access to bus drivers.
- Each of these is discussed in the following sections.

#### **Access to Finance**

138. The extent to which CBS would provide a constraint on the combined entity depends on its financial viability. [ ]

] ]



139. The buses obtained by CBS are [

]

140. In 2004, CBS was successful in winning two further ECan contracts and [

]

141. [

]

142. [

]:

**Table 4: CBS Projected Earnings**

	<b>Net Profit before Tax (year ended 31 March)</b>
<b>2005</b>	[ ]
<b>2006</b>	[ ]
<b>2007</b>	[ ]
<b>2008</b>	[ ]
<b>2009</b>	[ ]
<b>2010</b>	[ ]

Source: CBS

143. Accordingly, the Commission considers that at the time of the next major tender round in 2009 [

].

144. [

]

#### **Access to Buses**

145. There is a six-month lead time between the awarding of a contract and the start of operation of a bus service. This allows time for a new bus operator to build its fleet.

146. Designline is the main urban bus builder in New Zealand and builds approximately [ ] of all urban buses in New Zealand. [

- ]
147. For its two most recent ECan contracts, CBS sourced [ ] second-hand buses [ ]
148. Some industry participants expressed concern about CBS being allowed to use second-hand buses. However ECan allowed CBS to use the second-hand buses and has confirmed that it will allow the use of imported second-hand buses for the operation of bus services in Christchurch, provided the buses comply with the Euro 2 emission standard at the time of first registration in New Zealand.
149. The Commission also understands [ ]
150. It should also be noted that CBS is currently [ ]
151. The Commission concludes that in the future CBS is unlikely to encounter problems relating to the acquisition of buses and that it can be considered to be a low barrier to expansion.

#### **Access to Bus Drivers**

152. Industry participants advised the Commission that there is a nation-wide shortage of drivers. This may provide a barrier to entry for a new bus operator in any region.
153. Despite this shortage CBS has not encountered problems sourcing bus drivers. [ ]
154. The Commission considers that access to bus drivers is a low barrier to expansion for CBS.

#### **Conclusion on Competition from CBS**

155. The Commission concludes that, post-acquisition, competition between the combined entity and CBS would be likely to be strong in future tender rounds in the Christchurch bus subsidies market. The Commission considers that CBS has been aggressive in entering the market and its entry has been facilitated by its particular circumstances (previous knowledge of the bus market). Although it may face moderate barriers to expansion, the Commission considers that CBS would be able to overcome these barriers.

#### Competition from bus operators in other regions

##### **Previous bidders**

156. The Commission has considered whether any of the previous bidders in the Christchurch bus subsidies market, excluding CBS, is likely to provide a significant degree of competition for future ECan tenders.
157. In Decision 467, the Commission found that there were other operators that have bid for contracts tendered between January 2001 and January 2002. In addition to the merging parties, these operators were:
- [ ]

158. However, since Decision 467, [ ]  
It should also be highlighted that when these companies [ ] submitted bids prior to 2002, none were successful in winning ECan contracts. Nonetheless the Commission has considered whether they would consider bidding in future tender rounds, and further, the extent of constraint they would pose to the combined entity in terms of the level of bids submitted.

159. The tender process is a ‘sealed bid’ auction, and as such, bidders know the number of bidders for each route (because this is released by ECan), but not the identity of these bidders. However, industry participants advised the Commission that due to the small size of the industry, bidders usually discover the identity of the other bidders for a contract, through word of mouth.

160. [

].

161. [

]

162. In its draft business plan Red Bus states that [

]

163. The Commission considers that [ ] is a likely bidder in future tender rounds in Christchurch. [

]

164. [

].

165. [

]

166. [

]

167. [

]

168. The Commission considers that [ ] and it would provide some constraint in the future, [ ]
169. In conclusion, the Commission considers that excluding CBS, although previous bidders in the Christchurch bus subsidies market would provide some degree of constraint to the combined entity, on their own they are unlikely to provide sufficient competition in future tender rounds. Further, based on historical information and the uncertainty about the [ ], the Commission considers that the [ ] are unlikely to be sufficient to constrain the combined entity post-acquisition.

#### **New bidders**

170. The Commission has assessed potential competition in the Christchurch bus subsidies market under the factual scenario, by considering competition from new bidders. The Commission identified two different types of new bidders that may enter the Christchurch bus subsidies market - bus operators from other regions that have never submitted bids and greenfield entrants. These two categories of potential new bidders would face different barriers to entry. The Commission has investigated the barriers to entry in the Christchurch bus subsidies market in the section below.

#### **Barriers to entry for bus operators in other regions**

171. The Applicants submitted that barriers to entry are low, as evidenced by the introduction of CBS as a new entrant. The Applicants submitted that CBS has now illustrated that the conditions to entry do not form a substantive barrier to entrants in 2005.
172. In Decision 467, the Commission considered a number of barriers or conditions to entry:
- capital costs of entry (good quality buses at \$300,000 each, infrastructure, staff);
  - regulatory requirements (passenger service license, registration for commercial services, compliance with Vehicle Quality Standards, performance bond to be lodged when bidding for a subsidised service);
  - sunk costs;
  - passenger information access costs when bidding for contract services;
  - economies of scale (for the infrastructure) and scope (linking routes);
  - access to routes (size of contracts limited to 10-12 buses);
  - availability of staff and vehicles;
  - customers' requirements (quality of buses, certainty, one network and one fare system)
  - access to bus stops; and
  - response of the incumbent.
173. In Decision 467, the Commission considered that while each of the entry conditions did not necessarily individually represent a high barrier to entry, their cumulative effect aggregates into a substantial barrier to entry. The Commission concluded that the main barriers to entry were:

- the benefits of the network effects that Red Bus gains as the principal incumbent. This allows it to price more cheaply than other operators;
  - the quality standards set by ECan in its tendering documents, as they require investments that some small operators cannot afford; and
  - incumbency advantages such as market knowledge.
174. The Commission has reassessed each of these barriers to entry in the context of the current application.
175. Even though ECan determines schedules and bus capacity, limiting to some extent the ability of operators to exploit network efficiencies, the Commission considers that there will be some cost advantages to bus operators from operating an integrated network of routes. As mentioned, this was one of the factors that suggest separate markets for Timaru and greater Christchurch. The fact that there is one operator with the majority of the routes in Christchurch suggests that this operator is likely to benefit from network economies not available to other operators. Therefore, the Commission considers that the network effects that Red Bus gains as the principal incumbent constitutes a moderate level of entry barrier.
176. The Commission considers that adherence to the quality standards of buses, set by ECan, is a moderate barrier to entry for an existing operator in 2005. A bus operator in another region is likely to have already invested in high quality buses and the infrastructure associated with operating a bus service. It may need to purchase additional high quality buses for entry into a new region, which would require significant investment as the buses cost approximately \$300,000 each. However, any surplus assets in one region can be easily transferred to another region.
177. The supplier attributes required by ECan include a measure for 'track record' or experience in the Canterbury bus markets. So, ECan sets criteria that, everything else being equal, discriminate in favour of incumbents and against those with less or no experience of the Canterbury bus markets. This means that it will cost an inexperienced operator more than it will an experienced one to win a route. A newcomer would be unable to provide evidence of a proven track record in the region and is therefore placed at a disadvantage when bidding, as its level of bids would be discounted to reflect its lack of experience. It would need to discount its initial subsidy bids to compensate for a potentially low score for supplier attributes related to 'track record'. The Commission regards the supplier attributes required by ECan as a moderate barrier to entry.
178. The Commission considers that a moderate barrier to entry for an already existing bus operator wishing to enter the Christchurch bus market by tendering for contracts is incumbent advantage. This advantage relates to knowledge of the market, revenue and patronage figures, and geographical knowledge of the urban Christchurch region.
179. Knowledge of the Christchurch market provides the incumbent with an advantage over operators in other regions as it knows which routes are the most profitable, the nature of competition in the market, and the relative costs of running a bus service in the Christchurch region. CBS was able to overcome the barrier relating to incumbent advantage as the CEO previously operated a bus service in the Christchurch region.

180. In general the ability to accurately estimate patronage is an advantage that incumbents have over new entrants, and constitutes a moderate entry barrier. Market knowledge can be gained at a cost – for instance, by employing low cost labour to travel on the incumbent’s buses and record patronage. This cost is a partial measure of the barrier. However, information about past patronage is not an infallible predictor of future patronage. Routes are altered and extended periodically as a result of ECan identifying further public transport needs in the community, and patronage varies from year to year.
181. The Commission identified barriers to entry relating to network efficiencies, the quality standards required by ECan, the supplier attributes set by ECan, and incumbent advantage. The Commission considered that while each of these entry barriers did not necessarily individually represent a high barrier to entry, their cumulative effect aggregates into a substantial barrier to entry. The Commission has gone on to assess how likely entry would be from bus operators from other regions.
182. The Applicants listed several potential new entrants that may be attracted to the Christchurch market. These were:
- Stage Coach;
  - First Bus;
  - Transdev;
  - Connex;
  - Toll Holdings; and
  - Go Bus Hamilton.
183. The Commission investigated the possibility of these potential entrants bidding for future ECan contracts.
184. Stagecoach operates a fleet of approximately 1000 urban buses in the Wellington and Auckland regions under contract to the regional council. It stated that [
- ]
- Stagecoach stated that [
- ]
185. In its draft business plan Red Bus states that [
- ]
186. Connex currently operates the Auckland Metropole Train service. [
- ]
187. Go Bus Hamilton operates urban, school and charter buses in the Waikato and Bay of Plenty regions. [
- ]

188. Toll NZ said that it is [

]

189. In its business plan, Red Bus did not [

]

190. [

]

191. On balance, the Commission considers that entry is unlikely from existing bus operators in other regions to constrain the combined entity. Therefore, the Commission considers it is unlikely that potential competition in the form of new bidders would provide a constraint in the Christchurch bus subsidies market.

#### Greenfield entry

192. A greenfield entrant is likely to face the same barriers to entry as a bus operator outside the Christchurch that has never entered the market. These are barriers related to network efficiencies, quality standards, supplier attributes, and incumbent advantage. However, these barriers are likely to be higher for a greenfield entrant. The initial capital costs of setting up a bus operation are high, as buses cost approximately \$300,000 each. CBS is in its second year of operation and has faced an outlay of [ ]. In addition, a greenfield entrant would normally need to establish a bus depot, although CBS was able to use existing premises it owns from its Metallic Sweeping business.

193. The Commission considers that barriers to entry for a greenfield entrant are high. CBS has overcome these barriers and successfully entered the market as a greenfield entrant. However, CBS stated that its situation was unique and that its entry was successful because it had prior knowledge and experience in the Christchurch bus subsidies market. CBS stated that this experience is the major barrier to entry for a greenfield entrant looking to enter the Christchurch market. Due to the high barriers to entry for a greenfield entrant, the Commission concludes that greenfield entry is unlikely.

#### *Comparison of competitors in the counterfactual and the factual*

194. Post-acquisition, there would be a loss of competition from Leopard in the bus subsidies market. Regular bidders such as the combined entity and CBS would face bids only from each other and other potential bidders [ ]. The Commission has considered whether the loss of competition from Leopard is substantial, or whether there is sufficient competition in the bus subsidies market post-acquisition to prevent a substantial lessening of competition.

195. In addition to assessing the level of competition provided by Leopard, CBS and other bidders respectively, the Commission has assessed whether there is a substantial difference in competition dynamics in a bidding market with Red

Bus, Leopard, CBS and potential bidders (the factual) compared to Red Bus, CBS and potential bidders (the counterfactual).

196. The main factors influencing how competitors bid at every auction are:
- the expected revenue from operating the service;
  - its expected costs of operating the service; and
  - the expected lowest bid from a competing bus operator.
197. Each bid will be restrained by expectations about the lowest competing bid for a contract. A bus operator might form expectations about any number of bidders, but only in order to form a view about how much the lowest competing bid might be.
198. Factors that might inform a bus operator's expectations include industry knowledge (for example, knowledge about different bus operators' intentions to enter the Canterbury market), knowledge of the costs of likely bidders, and the bidding history of previous contracts.
199. A bidder may be justified in expecting CBS to offer the most competitive bids in future rounds. Its recent bid history shows that CBS has been an aggressive and determined entrant. [

] The

Commission expects that the position and behaviour of CBS would be similar regardless of whether or not Leopard stays in the market, and it is reasonable to suppose that other bus operators would hold the same expectation.

200. Based on recent history, bidders would be justified in expecting that the most competitive bid would not come from Leopard. Leopard has recently lost routes to CBS, and [
201. Over the last three years Leopard's involvement in the urban bus subsidies market has decreased as it has been concentrating on expanding its tourism operations. [
- The Commission considers that this trend would continue, even if Leopard did continue to operate in the bus subsidies market. In Red Bus' draft business plan it [
- ]
202. The Commission considers that in the counterfactual scenario Leopard would continue to operate in the bus subsidies market. However, given the current focus of Leopard's operations, the Commission considers that it would be a weaker competitor in the bus subsidies market than it has been in the past.
203. The most prudent and successful strategy for a bus operator both in a market that includes Leopard and in one that does not would be to expect that CBS would, in general, pose the greatest threat in later rounds.
204. The Commission considers that both in a factual market contested by Red Bus and CBS, and in a counterfactual market contested by Red Bus, CBS and Leopard, competition for bids would not alter significantly. The removal of



Leopard from the market would therefore be unlikely to lead to increasing bids, as all bus operators would expect the most competitive bid to come from CBS or Red Bus.

205. In addition, a bus operator is continuously faced with the uncertainty of the prospect of other bidders for a contract. [ ]. The Commission expects that [ ] would bid in future contract rounds. If bus operators hold the same expectations, then bids will be constrained by operators perceptions of possible competition from other bidders. While competition from previous bidders (excluding CBS) is not sufficient on its own, it provides some constraint.
206. In the counterfactual scenario there would be three regular bidders in the bus subsidies market, as well as potential bidders [ ]. Leopard would be a weaker competitor than it has been in the past, and CBS would be likely to be Red Bus' most competitive threat.
207. In the factual scenario, there would be only two regular bidders – Red Bus and CBS, as well as other potential bidders [ ]. CBS and Red Bus would be strong competitors and CBS would be likely to be Red Bus' most competitive threat.
208. In conclusion, although there is a lessening of competition in the factual compared to the counterfactual due to the reduction in the number of bidders, the difference in the level of competition between the factual and counterfactual is not substantial, because operators are continuously faced with the uncertainty of other bidders for a contract and would expect the most competitive bid to come from CBS or Red Bus.

#### *Conclusion on Competitors in the Bus Subsidies Market*

209. The Commission considers that although it may face substantial barriers to expansion, CBS would be able to overcome these barriers, for the reasons specific to CBS discussed above. CBS would continue to provide a strong competitive constraint on the combined entity post-acquisition.
210. Post-acquisition, whilst competition from previous bidders (excluding CBS) is not sufficient on its own to constrain the combined entity, it provides an additional constraint.
211. The Commission considered that while each of the entry barriers did not necessarily individually represent a high barrier to entry, their cumulative effect aggregates into a substantial barrier to entry. The combined entity is unlikely to be constrained by competition from new bidders, either greenfield entry or bus operators in other regions.
212. The Commission concludes that although there is a loss of competition from Leopard exiting the market, post-acquisition, there would continue to be competition in the bus subsidies market, due to the presence of competitors such as CBS and to a lesser extent other potential bidders such as Ritchies, IPT and Cityline.

*Countervailing Power in the Bus Subsidies Market*

213. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
214. The Applicants have submitted that ECan has sufficient countervailing power to constrain the combined entity post-acquisition.
215. ECan has responsibility for public transport in the Christchurch region. Its functions include:
- it is the sole buyer of contracted urban bus services in Christchurch;
  - it is the main bus regulator in the region (within the framework set by LTNZ);
  - it sets fare levels;
  - it has the role of structuring the tender process including the number of routes offered, the length of the contracts, frequency of service and Vehicle Quality Standards;
  - it has the ability to decline registration of commercial bus passenger services on certain grounds;
  - it has the ability to cancel contracts if the operator fails to comply with the terms and conditions of the contracts; and
  - it has the ability to “contract over” existing services where existing commercial services are considered to be unsatisfactory.
216. It should also be noted that ECan employs a more prescriptive approach than other regional councils to the regulation of passenger transport services. Its ‘anti-cherry picking’ policy is unique to the region. In Auckland and Wellington bus operators are able to commercially register ‘profitable’ parts of a route whilst the ‘unprofitable’ times of day are subsidised on a tender basis. This may deter entry as a new bus operator can only enter by bidding for subsidies on very small parts of routes. ECan does not allow this practice, and requires that commercial registration encompasses whole routes. As a consequence there are only three commercially registered routes in the Christchurch region. This practice facilitates entry as whole routes come up for tender every five years, whereas commercial routes, once registered, are never available for new operators.
217. There is also a policy in place prohibiting a commercial route from running along the same or a similar route as a subsidised service such that it would affect the commercial viability of the subsidised route.
218. In the factual compared to the counterfactual, there would be two incumbent operators (and regular bidders) rather than three. ECan’s countervailing power may be affected by the reduction in the number of regular bidders.
219. There are two circumstances in which to consider the extent of ECan’s countervailing power in the factual:
- its ability to encourage bidders in future tender rounds: the removal of Leopard as an effective bus operator would reduce the number of bidders (two or more bidder scenario);

- its ability to negotiate with one bidder: in the event that the number of bidders are reduced, the proposed acquisition may result in an increased likelihood of the combined entity, Red Bus, being the only bidder. Compared to the counterfactual, Red Bus would be a larger entity having acquired Leopard (one bidder scenario).

Each of these issues are discussed in greater detail below.

#### Two or more bidder scenario

220. ECan has an influence over price as it sets the ticket price, the level of output, and the service quality. In addition, it has the ability to adjust supplier attributes to affect the operators' expectations about their chances and about their rivals' chances and can even change the terms of the tender.
221. However, once the terms of the auction have been set by ECan, ECan's ability to discriminate between operators' quality-adjusted bids is constrained by the Competitive Pricing Procedures (CPP). In accordance with the CPP, ECan has an obligation to accept the lowest quality-adjusted bid. Thus, the CPP provides a discipline (albeit limited) on ECan's ability to discriminate between bidders.
222. If it is not satisfied with the level of the winning bid submitted, ECan does have the right to re-tender the route, but this has not occurred to date.
223. According to the CPP, after contracts have been awarded in each tender round, ECan is obliged to release the highest bid, winning bid, winning tenderer and the number of tenderers. The Commission considers that this practice weakens ECan's countervailing power, particularly in the situation where only two bids are received (as is often the case). This practice gives tenderers information about rivals' bids and increases the scope for coordinated market power (as discussed below).
224. ECan does openly encourage new bidders in each tender and sends pre-tender documents out to a number of potential bidders. ECan most recently showed its eagerness to encourage new market entrants when it faced an issue regarding the use of second-hand buses. Although ECan has minimum standards for buses and its preference is for a modern, 'clean' fleet, it has confirmed that in the future it will accept the use of second-hand buses (provided they meet the minimum standards).
225. This change in policy can be seen as a deliberate attempt by ECan to foster new entry in the Christchurch bus subsidies market. It recognises that as Designline is the only bus builder which can provide the volume of buses needed at a competitive price in New Zealand, a new entrant may face difficulties in obtaining buses in New Zealand.
226. However, in other situations it appears that ECan has limited its ability to foster new entry and maintain competition in the bus subsidies market. At incumbent operators' request, ECan does not release the patronage data for each route to other operators and potential bidders. This poses a problem for new operators entering the Christchurch bus subsidies market as it is more difficult for a new operator to accurately estimate costs and revenue of a bus route in order to put together a realistic bid for the contract.

One bidder scenario

227. The Commission considers that how many bidders there are, and the expectations of those bidders, are critical to an assessment of countervailing power. In particular, if the market attracts only one bidder, and that bidder can be confident of being the only bidder, its bidding strategy will not be constrained by expectations about rival bids, and ECan's albeit limited, countervailing power would be tested. In other situations, ECan's countervailing power is less likely to be tested. For example, where there is only one bidder, but that bidder expects to face rival bids, the price might be constrained by the bidder's expectations rather than any exercise of countervailing power by ECan. The Commission has assessed the likelihood of these scenarios in the competition analysis above. For the purposes of assessing ECan's countervailing power, the Commission here considers only the scenario where a single bidder correctly and confidently expects to be the sole bidder.
228. In accordance with the CPP, ECan has the ability to negotiate the price of a contract if there is only one bidder for the contract, or alternatively to completely re-tender the contract.
229. To date, ECan has not re-tendered a contract in situations where only one bid was received. In order to do this, it must be able to identify other bus operators as alternatives who would be willing to submit bids for the re-tendered contract. The reduction in competitors post-acquisition would make re-tendering the contract less of a viable option.
230. In the last five years, there have been three instances of tenders receiving only one bid. In 2004, the Clifton Hill to Sumner School and Taylors Mistake to Sumner School contracts received only one bid, from Red Bus. [ ]
231. Last year, Red Bus was the sole bidder for contract 265/04, the Avonhead-Sumner expedited tender, [ ]
232. When the five-year contract for the Avonhead-Sumner route was tendered at the expiry of the expedited tender, although there were other bidders, Red Bus won the contract [ ]
233. [ ]. Based on the history of bidding in the last five years, it seems that ECan [ ] That is, ECan [ ] Of the contracts about which the Commission has complete information, the winning bid for each contract is, on average, [ ] than the budgeted figure. If the combined entity were the only bidder, [ ] The Commission considers that any exercise of market power by the combined entity within the range defined by the notional winning bid in the counterfactual and the budgeted subsidy would be less constrained by ECan's countervailing power.

234. [

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235. In a one-bidder scenario, although ECan has the ability to negotiate price levels, there is uncertainty as to what the outcome of these negotiations would be. ECan's primary aim is to provide a reliable and efficient bus service in Christchurch. A major concern is any potential disruption in the network. Red Bus currently provides the majority of urban bus services in Christchurch, and consequently, ECan has an obligation to maintain a good working relationship with Red Bus. On the other hand, Red Bus' only source of income is derived from the bus routes it runs under contract to Environment Canterbury and it would be anxious about protecting this business. Therefore, the outcome in a one-bidder scenario is unclear.

#### Conclusion on Countervailing Power

236. The Commission considers that ECan should enjoy a greater degree of market power than a "typical" monopsonist might by virtue of the fact that it is also a regulator. This is expressed in various ways including its role in setting fare levels and structuring the tender process, its ability to "contract over" existing services and its ability to completely retender a contract.

237. Thus far, [ ], it has seen no need to exercise the full extent of its countervailing power. The Commission considers that there is further scope for ECan to exercise its countervailing power, but this is not currently being realised by ECan. Consequently, the Commission considers that the countervailing power of ECan would not provide a sufficient constraint on the combined entity post-acquisition. While there is potential for ECan to exercise more countervailing power, the Commission cannot be satisfied that it would do so.

238. In conclusion, although the countervailing power of ECan would not be a sufficient constraint on its own, it would provide some constraint on the combined entity post-acquisition.

#### *Scope for the Exercise of Co-ordinated Market Power*

239. The Commission has assessed the possibility of coordinated market power in the market for the rights to operate urban bus services in the Canterbury region.

240. When assessing the scope for co-ordination in the market, the Commission evaluates the likely post-acquisition structural and behavioural characteristics of the relevant market or markets to test whether the potential for coordination would be materially enhanced by the acquisition.

241. The intention is to assess the likelihood that certain types of behaviour will occur, and whether these would be likely to lead to a substantial lessening of competition. In broad terms, effective coordination can be thought of as requiring three ingredients: collusion, detection and retaliation.

#### Collusion

242. There are several features of market structure and behaviour that the Commission considers in assessing the likelihood of collusive behaviour, such

as high seller concentration, undifferentiated products, static production technology, slow speed of new entry, history of anti-competitive behaviour and lack of fringe competitors.

243. Presently, Red Bus, CBS and Leopard compete vigorously in every contract round<sup>8</sup>. Post-acquisition, CBS would be the combined entity's main rival.
244. Post acquisition, the main regular bidders for contracts would be the combined entity and CBS, [ ] being fringe players. The possibility exists that the combined entity would tacitly collude with CBS to share the routes up for tender in each contract round. In this event, competition would be significantly reduced so that tender prices would rise above competitive levels.
245. The Commission notes that the industry, and one of the market participants, has a history of anti-competitive behaviour. Members of the industry were convicted for price fixing in the Christchurch bus subsidies market in 1998.
246. In general the tender rounds conducted by ECan are relatively infrequent. The next tender round will not take place until 2009, when there will be two relatively large tender rounds within six months. The Commission considers that in this situation there might be increased scope for price signalling. Either of the operators could signal high prices in the June 2009 tender round which would affect how the operators bid in the November 2009 tender round, as the lowest, highest and winning bid is released to the tenderers after the contracts are awarded in each tender round.
247. However, at the point at which tenders are received for each contract, tender prices are not transparent. In order for the parties to collude on price, they would have to bid for all contracts to preserve the appearance of competition, but the operator who it has been tacitly agreed would win the route, would have to tender the lower price in each case to be sure of winning a particular route. This would require each party to know each other's price, which would imply a significant level of collusion.
248. To date, CBS has been an aggressive and unpredictable competitor. [ ]
249. The contracts up for tender are typically for a five year term. As most routes represent a significant stream of revenue over a five-year period, the resolve to adhere to any terms of a market sharing arrangement may be undermined.
250. In addition, other potential bidders can bid for routes at any time, and fringe players [ ]

[ ]. Thus, CBS and Red Bus cannot be certain that they would be the only tenderers and the suspected presence of other bidders would undermine any collusive behaviour by the two regular bidders. Accordingly, the Commission is of the view that it is unlikely that the parties could easily collude on price.

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<sup>8</sup> [ ]

251. On the basis of these considerations, the Commission considers that it is unlikely that CBS and Red Bus would have the ability to collude. Even if they did, it is unlikely that they would be able to sustain such an arrangement.

#### Detection

252. To successfully collude, parties to the arrangement must be able to detect defection and respond swiftly. The Commission considers that the ability of competitors to detect deviation is likely to be enhanced where market conditions apply such as high seller concentration, frequent sales, cost similarities between businesses, and price transparency.
253. Post-acquisition, the market would largely consist of CBS and the combined entity, [ ] being fringe players. Any attempt by either party to deviate from any collusive arrangement which the parties entered into either explicitly or tacitly would be instantly detectable, as one party or the other would either gain or lose contracts. In addition to this, after the contracts are awarded in each contract round, ECan publishes the highest, lowest and winning tender price as well as the winning tenderer. In the case of two bidders, this process ensures that each party knows the exact price at which the other party bid.
254. The Commission considers that if collusion was to occur, the ease of detecting defection in the bus subsidies market may increase the possibility of the collusive arrangement being successfully sustained.

#### Retaliation

255. Deviations from the terms of co-ordination need to be not only quickly detected by the other suppliers, but also the deviating firm needs to be faced with a credible threat of swiftly being punished. The threat of retaliation increases the cost of deviating, thereby reducing the short-term profit to be gained by the business from deviating, and helping to preserve the co-ordination.
256. Bidders have a strong incentive to “cheat” and CBS has been an unpredictable competitor to date. If CBS “cheats” it does not face a credible threat of retaliation from Red Bus. Retaliation is unlikely due to the nature of the bidding market and the infrequency of auctions. Unlike other markets, Red Bus does not have the option of expanding output or immediately dropping price to punish CBS.

#### Conclusion on Scope for the Exercise of Coordinated Market Power

257. Presently, it seems unlikely that firms in the market have the ability to tacitly collude, given that contracts are being won by different firms and are being switched between operators.
258. The Commission considers that post-acquisition the aggressive and unpredictable nature of CBS, as well as the potential for other bidders to enter the market at any time, would be sufficient to undermine any attempt to tacitly collude.
259. If tacit collusion were to occur, detection of deviation from any such arrangement would be straightforward for both CBS and Red Bus, but retaliation by either party is difficult to implement, and thus undermines the ability to sustain the collusive behaviour.

260. In conclusion, the Commission is of the view that it is unlikely that CBS and the combined entity would tacitly collude, and if they attempted to collude, any such arrangement would likely be difficult to sustain.

*Overall conclusion on competition in the bus subsidies market*

261. The Commission concludes that post-acquisition, CBS would continue to provide vigorous competition in the bus subsidies market. CBS has been aggressive in its entry to the market and although it may face substantial barriers to expansion, the Commission considers that CBS would be able to overcome these barriers, for the reasons specific to CBS discussed above. In addition, other potential bidders [ ], would provide some competition to the combined entity post-acquisition.
262. Although ECan enjoys some countervailing power and could potentially make more use of it than it has to date, the countervailing power would not be sufficient on its own to prevent a substantial lessening of competition. However, it would provide some constraint on the combined entity post-acquisition.
263. While there may be potentially increased scope for co-ordinated market power, the Commission considers that post-acquisition the aggressive and unpredictable nature of CBS, as well as the potential for other bidders to enter the market at any time, would be sufficient to undermine any attempt to tacitly collude.
264. In conclusion, the combined entity would be constrained to some extent by CBS, other potential bidders [ ], and by ECan. On their own, each of these would not be sufficient to constrain the combined entity. However, the Commission concludes that the combination of these constraints would be sufficient to prevent a substantial lessening of competition in the bus subsidies market.

**The Timaru Bus Subsidies Market**

265. Post acquisition, in the Timaru bus subsidies market there is likely to be some loss of potential competition. [ ]
266. Next year, ECan plans to hold a tender round for the three Timaru routes which are due to expire. Based on past evidence, the Commission considers that in the counterfactual it is unlikely that Leopard would bid for these routes.
267. Therefore the Commission considers that compared to the counterfactual, competition in the Timaru bus subsidies market is unlikely to be affected significantly.
268. The Commission concludes that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the Timaru bus subsidies market.

**The Commercial Service Rights Market**

269. Post acquisition, in the commercial service rights market there is likely to be some loss of competition. In the counterfactual, Leopard can be considered to be a potential entrant in the commercial service rights market. At present, Red Bus is the only bus operator in the commercial services rights market.



270. Red Bus currently operates three commercial routes, [ ] Red Bus highlighted in its draft business plan that [ ]
271. Due to ECan’s “anti-cherry picking” clause, the majority of bus services in Christchurch are awarded by subsidised contract rather than commercial registration. Bus operators have had little commercial incentive to start up commercial routes. Some industry participants stated that ECan’s criteria for registering commercial routes were quite high.
272. Whilst there is likely to be a loss of potential competition, it is unlikely to be significant as compared to the counterfactual. Leopard has expressed no interest in registering commercial routes and ECan’s policies provide a disincentive for it to do so. The Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the commercial service rights market.

### **The School Bus Rights Market**

273. Post acquisition, the combined entity would be the only provider of school bus routes tendered by ECan. However, most of these school routes contracts expire next year and ECan intends to hold a tender for 10 school routes.
274. In the market for school bus services, previous bidders since 2002 include [ ].
275. The results of the most recent tender round for school buses in 2004 are shown in Table 6 below. There were a total of 13 contracts tendered.

**Table 6: School Bus Routes**

<b>Bus operator</b>	<b>Number of bids submitted</b>	<b>Number of contracts won</b>
Red Bus	[ ]	12
Leopard	[ ]	1
Ritchies	[ ]	0
Cityline	[ ]	0

276. ECan advised the Commission that at the time of this tender round a significant proportion of the Red Bus fleet was reaching ‘school bus age’(that is, they were getting too old to be operated on urban routes). [ ]
277. [ ]
- [ ]

278. CBS stated that it is [ ] CBS considers that it would be [ ]
279. Industry participants advised the Commission that entry into the school bus market in Christchurch is easier than the urban bus market. It is relatively easy for a new operator to enter the Christchurch market and bid for one or two school contracts. As the contracts tend to be smaller and usually involve only one bus utilised twice a day, it is more feasible for a small family-owned operation to enter the market by bidding. ECan's vehicle requirements are less stringent for school bus contracts. The buses used for school buses are usually between 21-25 years of age.
280. The Ministry of Education awards contracts for school services, mainly in rural areas of New Zealand. There are a few Ministry of Education contracts operated in the Canterbury region. The Ministry of Education advised the Commission that there are usually five or six bidders for each of these contracts. The companies operating school contracts range from large players such as Red Bus to small family-owned operations that own only one bus. The Ministry of Education listed the following companies (in addition to Red Bus) as bidders and contract holders:
- Invercargill Passenger Transport Ltd;
  - Ritchies Transport Holdings Ltd;
  - Cityline Christchurch;
  - Torlesse Travel;
  - Hokitika Tour and Charter; and
  - Hawarden Garage & Tpt Co Limited.
281. Hawarden Garage stated that it is a lot easier to enter the school bus market as an entrant does not need the large capital investments that are required for urban buses. [ ]
282. Cityline Christchurch operates a number of Ministry of Education school contracts and has tendered for ECan school contracts in the past. [ ]
283. The Commission considers that as the companies listed above currently operate school bus contracts in the Canterbury region, they are all viable potential bidders for ECan school bus contracts.
284. The Commission considers that the proposed acquisition is unlikely lead to a substantial lessening of competition in the school bus services market due to sufficient potential competition from new entrants bidding in the school bus rights market.

## OVERALL CONCLUSION

285. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the market for the rights to operate scheduled, subsidised bus passenger services in greater Christchurch.
286. The Commission considers the counterfactual to be that Leopard continues to operate in the bus passenger services market and in the bus subsidies market, either as Leopard or another company who acquires them.
287. In the factual compared to the counterfactual, there would be two incumbent operators who are regular bidders for ECan contracts – CBS and Red Bus. The proposed acquisition would result in the loss of one incumbent operator and regular bidder, Leopard.
288. The Commission considers that the competition provided by CBS as well as other potential bidders [ ], provides a constraint on the combined entity post-acquisition.
289. CBS has been aggressive in entering the market and its entry has been facilitated by its particular circumstances (previous knowledge of the bus market). Although it may face substantial barriers to expansion, the Commission considers that CBS would be able to overcome these barriers.
290. The Commission considers that excluding CBS, although previous bidders [ ] are unlikely to provide sufficient competition on their own in future tender rounds in the Christchurch bus subsidies market, they do provide a degree of constraint.
291. The Commission considered that while each of the entry barriers did not necessarily individually represent a high barrier to entry, their cumulative effect aggregates into a substantial barrier to entry. The combined entity is unlikely to be constrained by competition from new bidders, either greenfield entry or bus operators in other regions.
292. The countervailing power of ECan is likely to be decreased in the factual compared to the counterfactual due to the reduction in the number of regular bidders. Although ECan enjoys some countervailing power and could potentially make more use of it than it has to date, the countervailing power would not be sufficient on its own to prevent a substantial lessening of competition. However, it would provide some constraint on the combined entity post-acquisition.
293. Although the scope for co-ordinated market power may be increased post-acquisition with the reduction of the number of regular bidders, the Commission is of the view that it is unlikely that CBS and the combined entity would tacitly collude, and if they attempted to collude, any such arrangement would likely be difficult to sustain.
294. The combined entity would be constrained to some extent by CBS, other potential bidders [ ], and by ECan. On their own, each of these would not be sufficient to constrain the combined entity. However, the Commission concludes that the combination of these constraints would be

sufficient to prevent a substantial lessening of competition in the bus subsidies market.

295. The Commission also considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the commercial service rights market. Whilst there is likely to be a loss of potential competition, it is unlikely to be significant compared to the counterfactual.
296. The Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the school bus services market due to sufficient potential competition from new entrants bidding in the school bus rights market.
297. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in any of the affected markets.

**DETERMINATION ON NOTICE OF CLEARANCE**

298. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Red Bus Limited (Red Bus) of part of the business of Leopard Coachlines Limited (Leopard), being the business of operating scheduled urban bus routes under contract to the Canterbury Regional Council.

Dated this 28th day of June 2005

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Paula Rebstock  
Chair  
Commerce Commission