

Statement of Preliminary Issues

Hirepool / Hirequip

29 October 2012

Introduction

1. On 15 October 2012, the Commerce Commission (the Commission) received an application from Bligh Finance Limited (owner of the Hirepool rental business) seeking clearance to acquire the business of Hire Equipment Group Limited (Hirequip).
2. The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/detail/772>
3. This Statement of Preliminary Issues outlines the key competition issues that the Commission currently considers will be important in deciding whether or not to give clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
4. The Commission invites interested parties to comment on the likely competitive effects of the proposed merger. The Commission requests that parties who wish to make a submission do so by **5 November 2012**.

The transaction

5. Under the terms of the proposed acquisition, Hirepool would acquire 100% of the shares or assets of Hirequip and its subsidiaries.

Relevant parties

6. Hirepool provides general construction, building and do-it-yourself (DIY) equipment hire services. Hirepool has 46 branches throughout New Zealand.
7. Hirequip also provides general construction, building and DIY equipment hire services. Hirequip has 36 branches throughout New Zealand.

Analytical framework

8. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition in any market. Therefore, an important step in the Commission's analytical framework is to determine the relevant market or markets. To do this, the Commission identifies the areas of where the businesses of the acquirer and the target overlap. The

Commission then considers the relevant products and geographic regions that may be close substitutes from both a customer's and a supplier's point of view.

9. The Commission uses forward looking analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios; with the acquisition and without the acquisition.
10. The impact of the acquisition is then viewed as the difference in competition between those two scenarios.
11. The Commission analyses the extent of competition in each relevant market for both the with and without scenarios in terms of the following:
 - 11.1 Existing competition – the degree to which existing competitors compete and their ability to expand their operations in the event that the combined entity raises prices.
 - 11.2 Potential competition – the ability of businesses to enter the market on sufficient scale in order to provide competitive constraint.
 - 11.3 The countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchasers' ability to exert influence on price, quality and/or terms of supply.
 - 11.4 Coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
12. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition might lessen competition. If the lessening is substantial, the Commission may not give clearance to the proposed acquisition.

Preliminary issues

13. The Commission intends to focus the investigation on the following areas.

Market definition

14. In its application, Hirepool submitted that the merged entity would lead to aggregation in the markets for the:
 - 14.1 national supply of heavy construction rental equipment (eg very large diggers, bulldozers and tip trucks);
 - 14.2 regional supply of building rental equipment (eg smaller diggers, access platforms, generators and portable buildings); and
 - 14.3 sub-regional (local) supply of DIY building rental equipment (eg equipment used by a home handyman such as drills, chainsaws, concrete cutters and welders).

15. The Commission will assess in which hire products or hire product lines the merging parties compete. Although each hire product may not be substitutable from a customer's perspective, if competition occurs over a consistent grouping of hire products then the acquisition may be assessed in an overall hire product group.
16. Further, the Commission will consider the extent to which specialist hire businesses compete with general hire companies such as Hirequip and Hirepool.

Existing competition

17. Hirepool submitted that the proposed acquisition does not raise any competition concerns because:
 - 17.1 the merged entity would face competition from a number of existing competitors across all the markets;
 - 17.2 there are low barriers to expansion and entry in all of the markets; and
 - 17.3 in respect of the DIY markets, the merged entity would be constrained by the low retail price of some DIY equipment and the ease of resale via platforms such as TradeMe.
18. The Commission will consider:
 - 18.1 the closeness of competition between Hirepool and Hirequip as well as the degree of competitive constraint large and small competitors would place on the merged entity across all the markets;
 - 18.2 the extent to which specialist equipment hire businesses such as those who provide scaffolding and portable toilets would provide competition to the merged entity;
 - 18.3 whether existing competitors in the heavy construction hire sector could easily and quickly expand to supply building and DIY equipment in different regions and vice versa.

Next steps

19. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of Hirepool's application. An extension of time has been agreed to by Hirepool such that the Commission should make its final decision by **21 December 2012**. To keep abreast of changes in relation to timing and to find relevant documents, visit the public Clearance Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>
20. The Commission will be contacting parties it believes will provide the best information to help it assess the preliminary issues identified above.

21. The Commission also invites submissions from any other parties that consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference Hirepool / Hirequip in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by 4pm **5 November 2012**. Please clearly identify any confidential information contained in the submission and provide contact details.