PUBLIC VERSION

COMMERCE ACT 1986: RESTRICTIVE TRADE PRACTICES
SECTION 58: NOTICE SEEKING AUTHORISATION (STREAMLINED PROCESS)

The Registrar
Mergers and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON
registrar@comcom.govt.nz

Pursuant to s 58 of the Commerce Act 1986 notice is hereby given seeking authorisation of a proposed restrictive trade practice.

INTRODUCTION

Context

1. This application relates to a potentially restrictive trade practice concerning the supply of refrigerants. The purpose of the proposed restriction is to increase public safety.

2. Refrigerants are chemicals used for refrigeration and air conditioning in domestic, automotive, industrial, and commercial environments. Refrigerants are generally purchased by refrigeration, heating and air conditioning engineers and technicians, who then use the refrigerants to repair and service the refrigeration and air conditioning systems of their clients or employers (the ultimate user of refrigerants).

3. Refrigerants are potentially hazardous substances. There are regulatory requirements in place governing the safe handling of such substances. However, non-compliance with, and lack of understanding of, those regulations is widespread. Non-compliance with regulations directly contributed to the fatal explosion at the Tamahere Icepak Coolstore in April 2008.

Proposed Practice

4. To address safety concerns arising out of widespread non-compliance with safety regulations, the Refrigerant License Trust Board (**RLTB**) (the **Applicant**), on behalf of wholesalers of refrigerants in New Zealand, seeks authorisation for those wholesalers who wish to participate to enter into a Memorandum of Understanding with the RLTB under which the participating wholesalers agree that they will supply refrigerants only to persons who have been trained to safely handle such substances, as evidenced by:

   - a valid Refrigerant License, a license to be introduced and issued by the RLTB; or
   - a valid Approved Handler test certificate issued under the authority of the Environmental Risk Management Authority (**ERMA**, known as the Environmental Protection Authority from 1 July 2011) certifying that the person is qualified to handle hazardous substances (such as refrigerants); or
   - a valid Approved Filler test certificate issued under the authority of ERMA certifying that the person is qualified to fill a compressed gas container with gases (including refrigerants).

   (**Proposed Practice**)

5. The RLTB will aim to secure the participation of all New Zealand refrigerant wholesalers in the Proposed Practice (including any new wholesalers who enter into the market). However, it would be up to each wholesaler whether they decide to participate. The Applicant seeks authorisation for up to 100% of New Zealand refrigerant wholesalers to participate in the Proposed Practice.

6. The large majority of (or possibly all) engineers and technicians who purchase refrigerants are already required by the Hazardous Substances and New Organisms (**HSNO**) Act 1996 and regulations to hold an Approved Handler or Approved Filler test certificate. In relation to those persons, the Proposed Practice simply amounts to a requirement to see proof of compliance with legislative requirements. The Applicant considers that any lessening of

competition resulting from the Proposed Practice will be far outweighed by the safety benefits to the public.

Background

7. All refrigerants currently in use in New Zealand are potentially hazardous. Some refrigerants are classified as hazardous substances under the HSNO Act and regulations. The refrigerant industry is undertaking a number of initiatives to promote the safer handing of these potentially hazardous substances. This has been driven by:

   - the desire to prevent a repeat of the Tamahere incident. The fatal explosion arose through the leaking of refrigerants which became ignited. The subsequent inquiry identified non-compliant handling and storage of refrigerants as contributing to the incident; and
   - the increased use of refrigerant types which are significantly more dangerous. Those refrigerants which are ozone depleting are being phased out under the Montreal Protocol due to their effect on the environment. The alternative types which are being adopted are more dangerous to users and require additional safety measures.

8. One of the industry's initiatives is the development and introduction of the refrigerant licensing scheme. From July 2011, the RLTB will provide refrigerant licensing training courses to technicians and engineers who deal with refrigerants. The course will cover material similar to other Approved Handler and Approved Filler training courses, but will be specifically targeted to the refrigerant industry. Upon completion of the one day training courses, costing between $350 and $450, attendees will be issued with a Refrigerant License from the RLTB that is valid for 30 months, along with an Approved Handler and/or Approved Filler test certificate under the HSNO Act (as applicable).

9. The Proposed Practice is a related measure to the licensing scheme. In order to prevent further damage or injuries being caused by unsafe use of refrigerants, New Zealand refrigerant wholesalers are proposing to agree to sell refrigerants only to persons who have been trained to safely possess and use such potentially hazardous substances, as evidenced by either a Refrigerant License, an Approved Handler test certificate, or an Approved Filler test certificate.

10. The Government has expressed support for the RLTB's refrigerant licensing scheme. In Australia, the Proposed Practice is already legislatively mandated. The Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (Aus) require that all persons or businesses that acquire, store or dispose of refrigerants must hold a current Refrigerant Trading Authorisation and all individuals who intend to handle refrigerants for any work in the refrigeration and air conditioning industry must hold a Refrigerant Handling Licence.

Minimal (if any) competition concerns

11. The Applicant acknowledges that the Proposed Practice may result in a lessening of competition to the extent that:

- it is an agreement between competitors setting out a restriction on who they can sell to; and
- it imposes an additional cost on any purchasers of refrigerants who are not already required by law to hold an Approved Handler or Approved Filler certificate (if there are any such refrigerant purchasers).

12. However, any lessening of competition would be minimal:

- Most (if not all) of those who purchase refrigerants are already required by the HSNO Act and associated regulations to hold an Approved Handler or Approved Filler test certificate. In relation to those persons, the Proposed Practice is requiring no more than what the law requires. In this respect, it is analogous to rental car companies agreeing only to rent vehicles to customers who show a valid driver's license, or liquor stores agreeing to only sell liquor to customers who present relevant identification establishing their age.
- It is in the wholesalers' interests to maximise the sale of refrigerants. Further, in order to secure the wholesalers' on-going participation in the Proposed Practice, the RLTB must ensure that the Proposed Practice operates effectively.
- The price for the refrigerant training course and license is minimal relative to the cost of purchasing refrigerants, and the RLTB will be incentivised to keep those prices low in order to compete with the many other available providers of Approved Handler and Approved Filler training and certification.

Significant public benefits

13. Any competitive detriments that may arise from the Proposed Practice will be significantly outweighed by the benefits to the public. The primary benefit is that the Proposed Practice will ensure that purchasers of refrigerants are trained to safely store and handle those potentially hazardous substances, which will reduce the likelihood of another incident similar to what occurred at Tamahere. Initiatives which help to prevent such incidents help to prevent deaths, injuries, and significant environmental and property damage – the Tamahere incident killed one and seriously injured seven firefighters, destroyed $25 million worth of cheese and $2.2 million worth of fire service equipment. Preventing such an incident also means savings on costs associated with medical treatment, attendances by the emergency services, clean-up, and subsequent investigations. The Proposed Practice will have a broader benefit of highlighting and developing a safety-based culture.

14. The Proposed Practice will also facilitate increased compliance with legal requirements and reduce public monitoring and enforcement costs. Harm to the environment caused by refrigerant emissions from untrained users will also be minimised.

15. The Australian Government has recognised the public benefits associated with licensing refrigerant purchasers by making it a legislative requirement. Authorisation for the Proposed Practice will ensure that the New Zealand public can also benefit from safer handling of these potentially hazardous substances.

PART 1: DETAIL OF APPLICANT AND OTHER PARTIES

1. **Applicant**

1.1 This notice is given by:

Robert Mannes
Chairman
Refrigerant License Trust Board
28E Lambie Drive
Manukau City 2104
AUCKLAND
Telephone: 09 262 1405
Fax: 09 262 1406
Website: www.rlnz.org.nz

1.2 Correspondence and inquiries should in the first instance be directed to:

Minter Ellison Rudd Watts
Lawyers
Lumley Centre
88 Shortland Street
PO Box 3798
AUCKLAND
Attention: Andy Matthews/Nicko Waymouth
Telephone: (09) 353 9700
Direct Dial: (09) 353 9847/(09) 353 9837
Facsimile: (09) 353 9701
Email: andy.matthews@minterellison.co.nz
nicko.waymouth@minterellison.co.nz

1.3 The RLTB is a charitable trust established in April 2011 by the Climate Control Companies Association Inc (CCCA) and the Institute of Refrigeration, Heating & Air Conditioning Engineers (IRHACE). The purpose of the trust is to promote, educate, and train people in the safe handling, filling, recovery and management of refrigerants for the health and safety of all New Zealanders, and to support the refrigeration and air conditioning industries to meet its legislative responsibilities under the HSNO Act.

2. **Other parties**

2.1 The RLTB will aim to secure the participation of all new and existing New Zealand refrigerant wholesalers in the Proposed Practice.

2.2 Some wholesalers (such as Cooling Supplies, Heatcraft New Zealand Limited, Patton Limited, Refrigeration Engineering Co Limited, and Refrigeration Specialties Limited) have indicated that, subject to authorisation from the Commission, they are likely to participate in the Proposed Practice. However, none of the wholesalers have committed to participating.

2.3 All existing and new refrigerant wholesalers in New Zealand (including those existing wholesalers listed in sections 15 and 21 of this application) are potential parties to the Proposed Practice.

3. **With respect to the parties, list the relevant companies and the person or persons controlling these directly or indirectly.**

3.1 The Applicant does not know at this stage which refrigerant wholesalers will be participating in the Proposed Practice. Therefore, the Applicant has not provided shareholding information in respect of any of the wholesalers.

3.2 The Applicant would be happy to provide shareholding information in respect of some or all of the wholesalers if the Commission considers such information to be necessary to its assessment of the Proposed Practice.

4. **Provide a full description of the proposed practices, including any document that details the terms of the practices.**

Proposed restriction

4.1 It is proposed that refrigerant wholesalers wishing to participate in the Proposed Practice will agree to supply refrigerants only to persons who have been trained to handle such potentially hazardous substances. Participating wholesalers would enter into a Memorandum of Understanding with the RLTB under which participating wholesalers agree that, from some yet to be determined date in 2012, it will be mandatory for any person purchasing refrigerants from any of the participating wholesalers to show,[1] at the time of purchasing, either:

- a valid Refrigerant License issued by the RLTB; or
- a valid Approved Handler test certificate, issued under the authority of ERMA under the HSNO Act and regulations, certifying that the person is qualified to handle hazardous substances (including refrigerants); or
- a valid Approved Filler test certificate, issued under the authority of ERMA under the HSNO Act and regulations, certifying that the person is qualified to fill a compressed gas container with compressed gases (including refrigerants).

4.2 A copy of the draft Memorandum of Understanding is **attached** as Confidential Appendix 1 to this application.

4.3 The RLTB will endeavour to persuade all refrigerant wholesalers in New Zealand to participate in the Proposed Practice. Some wholesalers have indicated likely support for the Proposed Practice. However, it would be a decision for each wholesaler whether they enter into the Memorandum of Understanding, and wholesalers that have agreed to participate would be free to terminate their participation at any time without incurring any penalty.

[1] Purchasers who order refrigerants by phone or some other method may satisfy the requirement by quoting the identification number of a valid Refrigerant License, Approved Handler test certificate or Approved Filler test certificate.

4.4 The Applicant seeks authorisation for up to 100% of New Zealand refrigerant wholesalers (including any new wholesaler who enters into the market) to participate in the Proposed Practice.

Refrigerant license

4.5 The RLTB will commence roll-out of Refrigerant License training courses in July 2011 across New Zealand cities and towns. The course will be based on existing Approved Handler and Approved Filler training courses, but will include additional material specifically aimed at the refrigerant industry. Different categories of training and licenses will be available to reflect the different product classes and different systems which refrigerant technicians and engineers work with.

4.6 The course will cover the following topics:

- Introduction
  - Explanation of the course.
  - The importance that the Tamahere incident has played in identifying the lack of industry knowledge of regulations and requirements
- Ozone depletion and global warming
  - Pre-reading material covering Unit Standard 19666 (relating to ozone depletion and global warming, and their significance to the refrigeration and air conditioning industry) and the Montreal Protocol
- Regulations
  - Offences and defences
  - Penalties
- Refrigerant classifications
  - Identifies a refrigerant's properties and risks and the way they are classified
- Hazards and controls
  - Effects of exposure of refrigerants on humans and the environment
  - Safety procedures and equipment
  - Understanding signage and labelling
- Recovery and filling
  - Explanation of the three methods used
  - Safety and calculations
  - Practical demonstration assessment of recovery
  - Theory assessments

4.7 Course trainers will be refrigeration engineers who possess the necessary qualifications and relevant experience, and who have completed a "train the trainers" course. They will be overseen by test certifiers approved by ERMA, who are qualified to issue Approved Handler and Approved Filler test certificates.

4.8 The training courses will be approximately five hours to eight hours long and the proposed fee for the course will be between $350 and $450 (GST exclusive). If attendees successfully complete an assessment and practical demonstration, they will be provided with:

- a Refrigerant License, valid for 30 months; and
- an Approved Filler and/or Approved Handler test certificate, as applicable, valid for 5 years.

4.9 Attendees who fail any component of the assessments are given the opportunity to immediately retake the failed component(s). If an attendee fails to complete the assessments after two attempts, they would be required to pay the course fee and complete the course again.

4.10 When expired, the Refrigerant License can be renewed for a further 30 months by undertaking a renewal course for a fee of approximately $300 (GST exclusive). The renewal courses will cover legislative and other technical developments that have occurred since the technician's last course. The period for the Refrigerant License has been set at 30 months to reflect on-going changes within the industry.

4.11 Adjustments to the initial and renewal course fee may be made in the future. The Applicant anticipates that any adjustments made will likely be to cover the costs of the training course and licensing scheme or due to inflation.

PART 2: THE INDUSTRY

7. **Describe the relevant goods or services supplied by the parties that are relevant to the proposed practices.**

7.1 The parties who would participate in the Proposed Practice are importers and wholesalers of refrigerants. Refrigerants are substances used for the purpose of refrigeration and air-conditioning. The most common uses for refrigerants include:

- household, commercial and industrial refrigeration;
- domestic and commercial air conditioning;
- motor vehicle air conditioning; and
- air conditioning and refrigerated transportation for heavy vehicles, rail, marine, and air transportation.

7.2 There are several types of refrigerants:

- fluorocarbon refrigerants, which can be broadly categorised as:
  - ozone depleting substances which include Chlorofluorocarbons (**CFCs**) and hydrochlorofluorocarbons (**HCFCs**); or
  - synthetic greenhouse gases (**SGGs**) which include hydrofluorocarbons (**HFCs**), perfluorocarbons and sulphur hexafluoride;
- natural refrigerants, some examples of which are:
  - ammonia;
  - carbon dioxide; and
  - hydrocarbons.

7.3 All refrigerants currently in use in New Zealand are potentially hazardous substances and most are classified as class 2 substances under the HSNO Act.

8. **Describe the industry or industries affected by the proposed practices. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.**

8.1 No refrigerants are manufactured in New Zealand. All refrigerants are imported. Bulk refrigerants are imported into New Zealand by importers/wholesalers. Refrigerant manufacturers generally do not supply bulk refrigerants to importers unless they order at least a container load, equivalent to around $200,000. Systems pre-charged with refrigerants (eg refrigerators and air conditioning systems) are also imported into New Zealand.

8.2 The majority of bulk refrigerants are sold in New Zealand over the counter by importers/wholesalers to technicians and engineers who work with air-conditioning and refrigeration systems. Those technicians and engineers use the purchased refrigerants to charge the refrigeration or air conditioning systems of their clients or employers (who are the ultimate end user of refrigerants). Refrigerants are generally sold in cylinders weighing approximately 10-13 kilograms. Large customers of refrigerants, such as refrigeration companies, may order bigger quantities of refrigerants to be delivered to the customer.

8.3 A small number of purchasers have long-term contracts with particular wholesalers, but they tend to be the exception. Competition is primarily price based as the particular refrigerants are essentially undifferentiated eg ammonia. Thus technicians tend to purchase refrigerants from the lowest cost supplier.

9. **Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.**

9.1 Due to the ozone-depleting and global warming properties of some refrigerants, the industry is continuing to move towards alternative refrigerant types, which happen to be more hazardous to users. The Ozone Layer Protection Act 1996 and associated regulations implement New Zealand's obligations under the Montreal Protocol. To minimise harm to the environment from ozone-depleting substances, the legislation prohibits the manufacture and importation of CFCs, and establishes a regime for the staged phasing-out of HCFCs.

9.2 In 2010, the quantity of HCFCs allowed to be imported reduced by 75% of imported quantities of 1998. HCFCs will not be allowed to be imported into New Zealand from 1 January 2015. Users of HCFCs will need to assess how they are going to manage in the phase-down conditions. There will be less HCFCs available and it will be more expensive to purchase HCFCs. Users of HCFCs are switching to other refrigerants. Alternative refrigerants for appliances include ammonia, carbon dioxide, hydrocarbons, liquid carbon dioxide, liquid nitrogen, ice slurries, absorption systems, secondary loop systems using synthetic gases and natural primary refrigerants, distributed systems and desiccant systems. The alternatives that are most readily available for refrigeration and air-conditioning use are HFCs. It is possible to retrofit existing equipment with a range of non-ozone depleting HFCs. However, technicians need to ensure that the retrofit gas will be compatible with the system.

9.3 In addition to the phasing out and phasing down of ozone depleting refrigerants, most SGGs such as HFCs are considered to have high global warming potential and SGGs are scheduled

to enter into the Emissions Trading Scheme in 2013 (although a review of the Emissions Trading Scheme is currently underway).

9.4 New refrigerant gases have been introduced to replace the refrigerants which have been phased out or phased down by legislation. New refrigerants are being created and introduced at a faster rate than in the past due to increased awareness worldwide of refrigerants' impact on the environment and the increasing costs of those existing refrigerants that are subject to phase-down conditions. However, the majority of these alternative refrigerants are significantly more hazardous to human users and premises. Many technicians who use these recently introduced and more hazardous refrigerants have not been trained in how to safely handle these substances. Consequently, there is an even greater need to educate and train all New Zealand users of refrigerants on the safe handling and usage of these potentially hazardous chemicals.

9.5 The incident at the Tamahere Icepak Coolstore was caused by the ignition of a propane-based hydrocarbon refrigerant, which is highly flammable and potentially explosive. Icepak had begun using the propane-based refrigerant as a replacement for the ozone-depleting HCFC refrigerant known as R22.[2] In May 2010, a refrigerant technician suffered burns to his face and hands whilst working on a coolstore refrigeration unit in Pukekohe. He assumed the system contained R22, when it had in fact been replaced with a flammable hydrocarbon-based refrigerant.[3]

9.6 The government has expressed the preference for the refrigeration industry to address the health and safety and compliance issues instead of legislating. The industry is therefore seeking to control the purchase of potentially hazardous refrigerants at the source, the importers and wholesalers of refrigerants.

10. **Please highlight any relevant mergers that have occurred in this industry over the past three years. Include any acquisition of assets of a business or shares which the parties (or any interconnected or associated businesses) to the proposed practices have undertaken in the last three years.**

10.1 Not applicable.

11. **Please provide any reports, surveys or published papers that provide information or analysis on the industry or the relevant markets, in so far as these are relevant to the state of competition existing in the affected markets, over the last five years.**

11.1 Not applicable.

PART 3: MARKET DEFINITION

12. **Please define the market(s) relevant to the proposed practices for the:**

12.1 product(s) or service(s);

[2] New Zealand Fire Service, Inquiry into the Explosion and Fire at Icepak Coolstores, Tamahere, on 5 April 2008, Incident Number F128045, September 2008, www.fire.org.nz/About-Us/.../3d671fa0fbafaaae3a275a8a1e937c61.pdf, (**Fire Service Inquiry Report**), section 9.7.
[3] http://www.osh.dol.govt.nz/order/catalogue/pdfs/haz70-coolstore-refrigerant.pdf.

12.2 functional level;

12.3 geographic area; and

12.4 customer dimension and timeframe (if relevant)

12.1 The Proposed Practice would be entered into, and given effect by, parties which compete in the importation and wholesale supply of refrigerants in New Zealand.

12.2 In *Refrigerant Reclaim Australia Limited,* 12 May 2011, the Australian Competition & Consumer Commission (**ACCC**) considered a product stewardship regime to recover, reclaim, store or safely dispose of fluorocarbon refrigerants. The ACCC considered that it was not necessary to precisely define a market, but that the areas of competition most likely to be affected are the *"wholesale supply of (fluorocarbon) refrigerant in Australia and the recovery, reclamation and/or destruction of this refrigerant"*. [4]

12.3 The conduct considered by the ACCC related only to fluorocarbon refrigerants. The ACCC also noted that natural refrigerants were substitutes for fluorocarbon refrigerants.[5] On that basis, the Applicant considers the relevant market to be the national market for the importation and wholesale supply of all refrigerants.

12.4 The refrigerant licensing scheme to be administered by the RLTB provides safety training and licensing services. Therefore, the national market for the provision of safety training and licensing services to refrigerant engineers and technicians may also be relevant.

13. **Where relevant, please explain how products or services are differentiated within the market(s).**

13.1 There are a wide range of refrigerants available to the trade in New Zealand. Each refrigerant is formulated to provide different operating characteristics. These make them suitable for differing applications such as freezer rooms below zero or coolrooms above zero.

PART 4: COUNTERFACTUAL

14. **In the event that the proposed practices do not take place, describe what is likely to happen to the market/industry and the business operations of the parties.**

14.1 Without the Proposed Practice, most (if not all) of those who purchase refrigerants would still be required by law to hold an Approved Handler or Approved Filler test certificate, and all purchasers would continue to be required to comply with existing regulations. However, the level of compliance with those regulations amongst the industry would likely remain unsatisfactory.

14.2 If the Proposed Practice does not take place, the RLTB would proceed with offering refrigerant licensing training courses to increase understanding of and compliance with regulations. However, persons wishing to purchase refrigerants would not be required to show a valid Refrigerant License or Approved Handler or Approved Filler test certificate in order to purchase refrigerants. That means there would be less incentive for individuals to

[4] Australian Competition & Consumer Commission, *Refrigerant Reclaim Australia Limited,* 12 May 2011, 4.9.
[5] Above, 4.13.

attend a training course to obtain either a Refrigerant License or an Approved Handler or Approved Filler test certificate.

14.3 Another incident similar to what occurred at Tamahere and Pukekohe is more likely to occur without the Proposed Practice. If another such incident occurs, it may give the government more impetus to introduce legislation requiring a refrigerant license to purchase refrigerants, as is the case in Australia.

PART 5: EXISTING COMPETITORS

15. **Identify all of the relevant competitors in the relevant market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).**

Market for the wholesale supply of refrigerants

15.1 Wholesale suppliers of refrigerants in New Zealand include:

- **Auckland Auto Air:** Auckland Auto Air provides parts distribution and servicing facilities for the automotive air conditioning and truck refrigeration industry. It imports and distributes air conditioning parts, components and service equipment throughout New Zealand and the Pacific. It has long standing supplier arrangements in Australia, Asia and the United States and acts as a distributor for major automotive air conditioning suppliers.

- **BOC**: A member of The Linde Group, BOC supplies compressed and bulk gases, chemicals and equipment throughout Australia, New Zealand and the South Pacific. BOC develops safe, sustainable and innovative solutions for customers in many specialty sectors, heavy industry and medical environments.

- **Civic Wholesale**: Civic Wholesale 2000 Limited is a New Zealand company with over 25 years experience in the distribution of automotive products to the Auto Electrical industry.

- **Cooling Supplies**: Established in 2002, Cooling Supplies is an importer and distributor of refrigerants to the refrigeration trade throughout New Zealand.

- **Heatcraft New Zealand Limited**: Heatcraft NZ is owned by Lennox International. Heatcraft NZ is part of Lennox International's Heatcraft Worldwide Refrigeration business. Heatcraft NZ imports and manufactures refrigeration and air conditioning products, including refrigerant gases and oils.

- **Pan Pacific**: For over 30 years Pan Pacific Auto Electronics has specialised in the wholesale of automotive electrical parts and marine electrical parts. Pan Pacific is New

Zealand owned and operated. Pan Pacific maintains a comprehensive range of Starter Motors, Alternators, DC Motors, Electronic Fuel Injection, EFI, Engine Management and Sensors, Distributors, Ignition, Air Conditioning, Climate Control, Car Audio and Cable.

- **Patton Limited**: Established in 1923, Patton is a leading manufacturer and wholesaler of refrigeration, air conditioning and mechanical services products. With manufacturing facilities in New Zealand, Australia and Thailand and sales representation throughout the Pacific and Asia, Patton is an internationally respected global company. The head office is based in Auckland, New Zealand with nine branches spread throughout the country employing close to 70 staff.

- **Refrigeration Engineering Co. Limited (Realcold)**: Established in 1955, Realcold is a wholesale supplier to the refrigeration and air-conditioning industry in Australasia. Realcold has a network of ten branches in New Zealand. Realcold is also a reputed specialist in design and manufacture of refrigeration plant such as condensing units, evaporative coolers and flaked ice machines.

- **Refrigeration Specialties Limited (Refspecs)**: Refspecs is a specialist refrigeration and air conditioning wholesaler, selling spare parts and capital equipment to the trade both locally in New Zealand and exporting throughout the Pacific.

- **Repco/Appco/Ashdown Ingram**: Ashdown-Ingram is Australia and New Zealand's largest distributor of automotive electrical and thermal control parts to the independent automotive aftermarket. Ashdown-Ingram has 43 branches, 400 employees and a philosophy focused on continuous improvement. The business services a wide and diverse customer segmentation including automotive repairers, mining companies & contractors, industrial businesses, vehicle franchises, government departments, agricultural operations, national and regional resellers and retailers, fleet operators and marine wholesalers.

- **Total Air Supply:** Total Air Supply is a specialist Automotive Air Conditioning wholesaler supplying air conditioning parts and accessories nationwide. It was established in 2000 and is managed by Ces Moyes. Total Air is the service agent for market leading Tool & Equipment brands such as CPS and Yellow Jacket but have the experience to service many other industry brands. Total Air has a large stock range including Radiators, Pollen filters, Transducers and more.

- **Totaline**: With over 700 stores globally, Totaline is one of the world's largest Heating Ventilation Air-Conditioning & Refrigeration wholesalers. Totaline New Zealand maximises its global advantage to source installation accessories, capital equipment, line fittings, controls, tools and service aids from leading suppliers.

15.2 A number of other automotive, marine, and aviation wholesalers also supply refrigerants to their respective industries.

15.3 All of the above wholesalers compete vigorously in the market. As noted, very few purchasers have long term arrangements with suppliers. Competition for purchasers is very price driven.

Market for the provision of safety training and licensing services

15.4 A number of companies and individuals provide safety training for handling hazardous substances. Individuals certified to provide Approved Handler or Approved Filler training and test certificates are listed on ERMA's register of test certifiers.[6] A number of companies have also been formed to provide Approved Handler and Approved Filler training and certification. They include:

- **Chemsafety** is based in Christchurch, with a regular presence in Auckland, and assists clients located throughout the country. Chemsafety's experienced consultants work with companies to ensure compliance with HSNO requirements and best practice. HSNO services include approved handler training and certification.

- **Contract Environmental Limited** offers consulting and contracting services in hazardous waste and substances management, hazardous substances location test certification and Approved Handler certification.

- **Envirocom (NZ) Limited** was incorporated late in 2002 for the purpose of offering Test Certification and Approved Handler training pursuant to the Hazardous Substances and New Organisms (HSNO) Act 1996.

- **Haztec** is an Auckland-based company offering hazardous substances consultancy and test certification services. Their consultants have over 25 years experience relating to all classes of hazardous substances.

- **Inferno Consultants** are New Zealand registered fire & design engineers, hazardous substances test certifiers, emergency responders, and training providers. It is government qualified to issue certifications for hazardous substance use and storage.

- **Quality Environmental Consulting Limited** is a Waikato based company formed in 1997 specialising in all aspects of quality, environmental, safety and health management systems, as well as compliance and issuing certification with the HSNO Act.

- **Technical Compliance Consultants Limited** are HSNO consultants and ERMA Test Certifiers specialising in providing training, consultancy, certification and regulatory advice to businesses using hazardous substances. It offers a wide range of services to help businesses achieve compliance with the HSNO Act and regulations.

[6] http://www.ermanz.govt.nz/search-databases/Pages/testcertifiers-search.aspx

15.5 The Proposed Practice does not impact on the level of competition in the provision of safety training and licensing services. Accordingly, and given the ad hoc nature of this market and the large number of individuals and companies providing training and certification services, the Applicant does not propose to analyse competition in this market in any further detail.

16. **Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the parties and competitors identified above.**

16.1 The Applicant has been unable to obtain meaningful estimates of market shares.

16.2 Given that the authorisation application relates to a Proposed Practice to be entered into and given effect by up to 100% of competitors in the market, the Applicant does not consider market share information to be a crucial factor for assessing the Proposed Practice. However, if the Commission considers market share information to be important, Refrigerant Recovery NZ collects a levy from wholesalers on the sale of certain refrigerants, and may be able to provide information to the Commission on volumes of refrigerants sold by each wholesaler. Refrigerant Recovery NZ's contact details are:

Refrigerant Recovery NZ
Trust administrators: PriceWaterhouseCoopers
54 Gill Street
P O Box 144
New Plymouth
Phone: 06 757 5477
Fax: 06 757 9497
Email: rod.tapp@nz.pwc.com

PART 6: POTENTIAL COMPETITION

17. **Please provide details of significant new entry and exit which has occurred in the relevant markets in the past five years.**

17.1 Refrigeration Specialties Limited entered the market in 2010. Due to opportunities arising from the re-structuring of Realcold (formally Refrigeration Engineering Co Limited), former employees formed Refrigeration Specialties Limited.

18. **Please comment on the potential for new entry and/or expansion into the markets within the next two years, the time it is likely to take a new entrant to be in a position to provide effective competition, and the principal factors that may affect new entry.**

18.1 There are very few regulatory barriers to importing refrigerants for sale. Provided the refrigerants to be imported are not CFCs or HCFCs, there are no controls on the importation of refrigerants. Once the refrigerants are in New Zealand, the importer/wholesaler would likely require an Approved Handler test certificate and a location test certificate for the premises where the refrigerants are stored in order to comply with the HSNO Act and regulations.

18.2 One barrier to entry may be that, as noted, refrigerant manufacturers rarely supply refrigerants to wholesalers unless the order is for at least a container load. As stockholding costs are reasonably high, a potential entrant would have to be confident that they can sell those quantities.

18.3 The market for the wholesale supply of refrigerants is very competitive, so it may not be attractive for a potential entrant. However, if any additional costs imposed on purchasers by the Proposed Practice become significant, it may become attractive for firms (who have less regard for the safety of purchasers, the public and emergency services) to enter the market to supply those purchasers who do not hold a Refrigerant License, Approved Handler or Approved Filler test certificate.

PART 7: PUBLIC BENEFITS AND DETRIMENTS

19. **With reference to the Notes to this form (at Appendix 1), please provide evidence to support the public benefits you are claiming, both qualitatively and quantitatively.**

Safer handling of potentially hazardous substances

19.1 The primary benefit of the Proposed Practice is that purchasers of refrigerants are required to have been educated on:

- how to safely store and handle refrigerants, and if applicable, how to safely recover refrigerants from systems; and
- their obligations under the HSNO Act and associated regulations.

19.2 Allowing only trained users to access refrigerants will give the public greater protection from the consequences of unqualified usage of hazardous substances and significantly reduce the likelihood of another incident such as what occurred at Tamahere.

19.3 The massive explosion at the Tamahere Icepak Coolstore was caused by the ignition of leaked propane-based refrigerants, which are highly flammable and explosive. Given the quantity of refrigerants at the coolstore, regulations under the HSNO Act required safety certification in the form of a location test certificate and the use of signs indicating the presence of the hazardous substances.[7] Signs which would have alerted firefighters to the presence of such hazardous substances were not present at the premises and the premises did not have a location test certificate.[8] The Fire Service Inquiry identified the presence of warning signage as a factor which could have prevented the massive explosion and noted that if there had been any indication of flammable gas on the premises, best practice for the fire crew would have been to withdraw immediately and implement procedures for a flammable gas leak.[9]

19.4 There are significant and obvious public benefits associated with preventing another such disaster.

[7] Fire Service Inquiry Report, section 9.9.
[8] http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10509284
[9] Fire Service Inquiry Report, section 25.3.

19.5 Safer handling of refrigerants would likely prevent the death, injuries, and emotional distress suffered by the firefighters who attended to the incident and their families. Firefighter Derek Lovell received fatal injuries in the explosion. Seven other firefighters suffered injuries in the incident, including some who suffered severe burns. The families and colleagues of Mr Lovell and those injured would undoubtedly have suffered tremendous emotional distress, and significant medical costs would have been involved in treating the injured.

19.6 The incident also damaged property and equipment of substantial value. The Icepak Coolstore premises was destroyed, an estimated $25 million worth of cheese was lost, along with two fire trucks and other fire service equipment worth $2.2 million.[10]

19.7 Significant costs would also have been incurred by the fire service and other emergency services who attended to the incident. Eighty to 100 firefighters and around 20 fire appliances attended to the blaze.[11] Work was also undertaken to control contaminated fire water runoff potentially going down drains and to control the flow of melted cheese in the waterways.[12] Incidents like Tamahere can also cause damage to plant and wildlife.

19.8 The fire service would have incurred costs of replacement staff for Mr Lovell and those injured, some of whom may not return to work. The destruction of the Icepak Coolstore also means the loss of the Coolstore's productive capacity.

19.9 Preventing such incidents would also avoid the costly inquiries and litigation that follow. Various investigations by the Fire Service, Department of Labour, the Coroner, along with private investigations commissioned by insurers, have followed the Tamahere incident. The incident has also spanned various court cases which occupy the Court's resources and have imposed significant legal costs on the Government and the parties. Litigation has included prosecution by the Department of Labour,[13] subsequent appeals by the defendants,[14] and a civil claim by Fonterra in respect of stock lost in the explosion.[15]

19.10 The above public benefits are difficult to quantify, but the benefits from preventing injuries and loss of life are substantial.

Increased compliance with laws and creating safer workplaces

19.11 The Proposed Practice will facilitate compliance with the HSNO Act and regulations. Greater compliance with legal requirements was recognised to be a public benefit by the ACCC in its *Homeworkers Code of Practice Committee* determination, 12 December 2005.[16] By requiring evidence that a refrigerant purchaser has undergone the necessary safety training at the time of purchasing, the wholesalers will be helping to monitor compliance with legislative requirements to hold Approved Handler or Approved Filler test certificates at no cost to the Government.

[10] http://www.nzherald.co.nz/fatal-coolstore-fire/news/article.cfm?c_id=1501820&objectid=10534421
[11] http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10502309
[12] Fire Service Inquiry Report, section 14.
[13] *Department of Labour v Icepak Coolstores,* 15 December 2009, CRI-2009-019-011343, Hamilton District Court, Judge Spear.
[14] *Mobile Refrigeration Specialist Ltd v Department of Labour* (2010) 7 NZELR 243. *Mobile Refrigeration Specialist v Department of Labour,* 4 June 2010, CRI-2009-419-94, High Court, Hamilton, Heath J. *Mobile Refrigeration Specialist Ltd v R* [2010] NZCA 543.
[15] *Fonterra Co-operative Group Ltd v Waikato Coldstorage Ltd,* 22 December 2010, CIV-2010-419-855, CIV-2009-419-614, CIV-2009-419-615 High Court, Hamilton
[16] Australian Competition & Consumer Commission, *Homeworkers Code of Practice Committee Inc.,* 12 December 2005, 5.37-5.41.

19.12 Regimes which promote the safer handling of dangerous goods and which reduce the likelihood of further incidents such as what occurred at Tamahere would also help protect New Zealand's reputation as having a regulatory environment which provides for safe workplaces.

19.13 The ACCC has recognised public benefits from similar certification schemes. In *Agsafe Limited*,[17] the ACCC recognised that an accreditation scheme for the transport, storage and handling of farm chemicals *"is likely to benefit farmers, industry personnel and the environment by maintaining a high level of compliance and safety within the agvet chemical industry"*. [18]

Environmental benefits

19.14 The Proposed Practice will also lead to a reduction in the release of potentially hazardous substances into the atmosphere, as only trained and qualified users would be given access to refrigerants. The practice will help minimise avoidable emissions into the atmosphere and keep New Zealand at the forefront of global environmental best practice. In *Ravensdown Corporation*,[19] the Commission considered that a reduction in environmental degradation brought about by the merger of two fertiliser companies was a public benefit.

19.15 In its determination in *Association of Fluorocarbon Consumers and Manufacturers Inc*, the ACCC considered arrangements relating to import limitations and voluntary bans relating to HCFCs and HFCs. The ACCC considered that *"a scheme or arrangement which contributes to limiting the risk to human health and the improvement of the environment would benefit the Australian public, and may also benefit the total world population and environment"*. [20]

Australia has introduced legislation to gain these public benefits

19.16 The public benefit of regimes such as the Refrigerant License scheme combined with the Proposed Practice has been recognised by the Australian Government. The Australian refrigerant licence scheme is administered by the Australian Refrigeration Council on behalf of the Australian Government. Under the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995, all individuals and businesses that acquire, possess, handle or dispose of fluorocarbon refrigerants must have a Refrigerant Trading Authorisation.[21] All individuals who intend to handle fluorocarbon refrigerants for any work in the refrigeration and air conditioning industry must hold a Refrigerant Handling Licence.[22]

20. **With reference to the Notes to this form (at Appendix 1), please provide evidence of any detriments that may result from the proposed practices, both qualitatively and quantitatively.**

20.1 The Applicant acknowledges that the Propose Practice may lessen competition:

- by imposing a restriction on who the parties which are in competition can supply to; and

[17] Australian Competition & Consumer Commission, *Agsafe Limited*, 27 October 2010.
[18] Australian Competition & Consumer Commission "ACCC allows Agsafe to continue industry stewardship program" (Media Release, 27 October 2010).
[19] Commerce Commission, *Ravensdown Corporation/Southfert,* Decision 279, 21 June 1996.
[20] Australian Competition & Consumer Commission , *Association of Fluorocarbon Consumers and Manufacturers Inc*, 26 August 1998, 6.7.
[21] http://www.arctick.org/legislation_regulation.php. Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (Cwth), Part 6A
[22] Above.

- if there are any purchasers who are not already required by law to hold an Approved Handler or Approved Filler test certificate, by increasing the costs of purchasing refrigerants for those purchasers.

20.2 However, for the reasons below, the Applicant considers that any lessening of competition will be minimal.

No additional requirement in respect of most purchasers

20.3 Some refrigerants currently in use in New Zealand such as propane and butane are flammable and hazardous substances under the HSNO Act with a classification of 2.1.1A. Under the Hazardous Substances (Classes 1 to 5) Control Regulations 2001, anyone in possession of more than 100kgs (not permanent gases) or 100m^3 (permanent gases) of class 2.1.1A substances must hold an Approved Handler test certificate in any event.[23]

20.4 Further, most refrigerants currently in use in New Zealand are classified as compressed gases under the Hazardous Substances (Compressed Gases) Regulations 2004 (**Compressed Gas Regulations**). Under the Compressed Gas Regulations, a person recovering compressed gas (refrigerant) to a container must hold an Approved Filler test certificate.[24]

20.5 In most cases, technicians are purchasing refrigerants for the purpose of topping-up refrigeration or air-conditioning systems which they are repairing or servicing. In that case, they would usually first recover some refrigerants already in the system into a container. An Approved Filler test certificate is required to undertake that recovery.

20.6 Therefore, a large number of purchasers (if not all purchasers) of refrigerants are already required by legislation to hold an Approved Handler or Approved Filler test certificate. For those persons, the Proposed Practice imposes no additional cost and does no more than require proof that those persons are complying with their existing legal obligations.

Any additional cost imposed on purchasers is insignificant

20.7 As noted in section 4, the Refrigerant License training course will be a one day course, widely available throughout the country, costing between $350 and $450. The cost of the course is comparable, if not cheaper, than the courses provided by other Approved Handler or Approved Filler test certifiers.

20.8 The RLTB will have little ability to raise prices for the training course as it will be constrained by the many other providers of Approved Handler or Approved Filler training and certification.

20.9 The total additional cost imposed by the Proposed Practice across the industry (if any) is also minimal compared to the significant public benefits. Competenz estimates that there are approximately 5,500 engineers and technicians working in the refrigeration, heating, ventilation & air conditioning industry.[25] The Applicant estimates that around 90% of those 5,500 are required by the HSNO Act to undergo Approved Handler or Approved Filler training and certification. The remaining 10% of engineers and technicians do not use or purchase refrigerants, and would not therefore require a Refrigerant License or Approved Handler or

[23] Hazardous Substances (Classes 1 to 5) Control Regulations 2001, Schedule 3.
[24] Clause 59(1).
[25] http://www.competenz.org.nz/wp-content/uploads/2010/12/Competenz-Investment-Plan-2011-2013.pdf, p 114.

Approved Filler test certificate under the Proposed Practice. Therefore, the Proposed Practice is unlikely to impose any additional costs on the industry or refrigerant purchasers.

Wholesalers will ensure that the Proposed Practice operates efficiently

20.10 Achieving the purpose of the licensing regime and Proposed Practice relies on the voluntary participation of as many wholesalers as possible. As suppliers of refrigerants, wholesalers have an interest in maximising the sale of such substances. The wholesalers will object if the training and licensing requirements become an unnecessarily onerous or expensive obstacle to purchasing refrigerants.

20.11 If it becomes too onerous or expensive for purchasers to obtain a Refrigerant License/Approved Handler certificate/Approved Filler certificate (across the range of training and certification providers) in order to purchase refrigerants from wholesalers who participate in the Proposed Practice:

- some participating wholesalers may look to end their support of the Proposed Practice; and
- companies not in the market may look to enter the market in order to sell to purchasers who do not hold a Refrigerant License/Approved Handler certificate/Approved Filler certificate. As noted, there are very few regulatory barriers to companies wishing to import refrigerants into New Zealand for the purpose of wholesale supply.

20.12 The RLTB and each wholesaler will be aware that either of the above outcomes would undermine the purpose of the licensing regime and Proposed Practice. Therefore, the RLTB and wholesalers have the incentive to administer the Refrigerant License scheme and Proposed Practice as efficiently and purchaser-friendly as possible.

Part 8: Identification of interested parties

21. **Please provide the contact details of likely interested parties, such as customers and suppliers, and any other relevant market participants, in the form of the example table shown below:**

	Name of Company	**Contact details**	**Relevant Contact Person**
	Both Legal and trading names	Postal and physical address, telephone and fax, website	Name, position and contact details including telephone, fax, email
Competitors (and potential participants in the Proposed Practice)	Auckland Auto Air	6 Clemow Drive Mt Wellington Auckland 1060 Tel: 021 935 434 Fax: 09 573 3391 www.autoair.co.nz	Richard Cooper service@autoair.co.nz or parts@autoair.co.nz

	BOC	988 Great South Road Penrose Auckland Private Bag 93300 Otahuhu Auckland 1640 Tel: 0800 262 374 Fax: 0800 229 923 www.boc.co.nz	Caroline Rham Product Manager - Refrigerant Gases Caroline.Rham@boc.com
	Civic Wholesale	22c Industry Road Mt Wellington Auckland 1061 Tel: 09 525 5705 Fax: 09 579 9325 www.civicwholesale.co.nz – under construction	Michael Thomas Hampton Director
	Heatcraft New Zealand Limited	24A Williamson Avenue Grey Lynn Auckland PO Box 12371 Penrose Auckland 1642 Tel: 09 276 4888 Fax: 09 276 8999 www.heatcraft.co.nz	Trent Carter Regional Manager tcarter@heatcraft.co.nz
	ILYS Ltd T/a Cooling Supplies	11A King St Rangiora PO Box 729 Rangiora 7440 Tel: 0800 746 786 Fax: 03 313 7631	Warwick Holtham Managing Director Tel: 0274 746 786 Fax: 03 313 7631 warwick@coolingsupplies.co.nz

	Pan Pacific	30 Walls Road Penrose Auckland Tel: 09 525 1760 Fax: 09 525 3415 www.panpacific.net.nz	David Cunningham Director Tel: 09 818 5558 ext 804 david@cunningham.co.nz
	Patton Limited	88 Carbine Road Mt Wellington Auckland PO Box 12508 Penrose Auckland 1642 Tel: 09 573 0060 Fax: 09 573 0061 www.pattonnz.com	Philip Hitchins General Manager Tel: 021568505 Philip.hitchins@pattonnz.com
	Refrigeration Engineering Co. Limited	9 Prescott Street Penrose Auckland PO Box 12072 Penrose Auckland 1642 Tel: 09 526 5700 Fax: 09 526 5748 www.realcold.co.nz	Johan Van Rensburg Sales Manager Tel: 021 544 799 Fax: 09 526 5721 parts@realcold.co.nz
	Refrigeration Specialties Limited	181A Station Road Penrose Auckland PO Box 17284 Greenlane Auckland 1546 Tel: 09 582 0200 Fax: 09 580 0468 www.refspecs.co.nz	Rob Morgan Owner/Manager rob_morgan@refspecs.co.nz

	Repco/Appco/Ashdown Ingram	22 Sylvia Park Road Mt Wellington Auckland Po Box 112334 Penrose Auckland 1642 Tel: 09 573 0680 Fax: 09 573 0687 www.ashdown-ingram.co.nz	Karen Barrett Account Manager accounts@ashdown-ingram.co.nz
	Totaline	60 Stanley Street Parnell Auckland Tel: 09 355 6720 Fax: 09 355 6735 www.ahi-carrier.co.nz	Mike O'Sullivan
	Total Air Supply	3 Civil Place Albany North Shore City Auckland PO Box 305-558 Triton Plaza North Shore City 0757 Tel: 09 966 6040 Fax: 09 966 6045 www.totalair.co.nz	Ces Moyes Manager
Customers	McAlpine Hussman Limited	11 – 17 Walls Road Penrose Auckland PO Box 12-303 Penrose Auckland 1642 Tel: 09 526 6800 Fax: 09 526 6824 http://www.mcalpinehussmann.co.nz	

	Arneg New Zealand Limited	6 Hotunui Drive Mt Wellington Auckland PO Box 132361 Sylvia Park Auckland 1644 Tel: 09 276 3287 Fax: 09 276 3288 http://www.arneg.co.nz	Matthew Darby Matthew.Darby@arneg.co.nz
	Cowley Refrigeration Engineering Limited	101 Port Road Seaview Wellington PO Box 41-042 Wellington 5047 Tel: 0508 232 1338 Fax: 04 568 8768 http://www.cowleyrefrigeration.co.nz	
Suppliers (There are no New Zealand suppliers)	Arkema Pty Ltd	Arkema Pty Ltd Suite 103 313 Canterbury Road Canterbury VIC 3126 Australia Tel : +61 3 9211 5000 Fax : +61 3 9211 5001 http://www.arkema.com	Brian Jecks Managing Director Tel: +61 3 9211 5002
	Global Refrigerants (Singapore) Pte Limited	9 Tuas Link Singapore 638587 Singapore Tel: +65 6863 3983 Fax: +65 6863 6330 www.globalrefrigerants.com	

	A-Gas (Australia) Pty Limited	9-11 Oxford Road Laverton North Melbourne Victoria 3026 Australia Tel: +61 3 9368 9222 Fax +61 3 9368 9233 http://www.agas.com	
	Honeywell Limited	101 Columbia Road Mailstop M6/LM Morristown NJ 07962 Tel: +1 480 353 3020 http://honeywell.com	
Trade Associations	Institute of Refrigeration, Heating & Air Conditioning Engineers (IRHACE)	28E Lambie Drive Manukau Auckland 2104 P O Box 97453 Manukau Auckland 2241 Tel: 09 262 1405 Fax: 09 262 1406 www.irhace.org.nz	Robert Mannes President Tel: 373 2299 Mob: 021 563 564 Robert@22degrees.co.nz
	Climate Control Companies Association Inc (CCCA)	28E Lambie Drive Manukau Auckland 2104 P O Box 97453 Manukau Auckland 2241 Tel: 09 262 1405 Fax: 09 262 1406 http://www.ccca.org.nz/	Grant Price President Tel: 09 818 9666 Fax: 09 818 0000 Mob: 0274 980 947

Any other relevant market participants or interested parties	Environmental Risk Management Authority (ERMA) Note: ERMA changed to the EPA on Friday 1 July 2011.	BP House 20 Customhouse Quay Wellington P O Box 131 Wellington 6140 Tel: 04 916 2426 Fax: 04 914 0433 www.ermanz.govt.nz	Bryan Watts Senior Compliance Advisor Hazardous Substances Tel: 04 918 4810
	Department of Labour	Unisys House Level 4/56 The Terrace Wellington 6011 Tel: (04) 915 4000 www.dol.govt.nz	Richard Steel Tel: (04) 915 6552
	Ministry for the Environment	Environment House 23 Kate Sheppard Place Thorndon PO Box 10362 Wellington 6143 Tel: 0800 499 700 Fax: +64 4 439 7700 www.mfe.govt.nz	

PART 9: CONFIDENTIALITY

21.1 Confidentiality is sought for the information contained in the Confidential Appendix to the confidential version of this application. The appendix is not attached to the public version of this application.

21.2 Confidentiality is sought until the Applicant confirms in writing to the Commission that the particular information is no longer confidential.

21.3 This request is made because the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it would be likely to unreasonably prejudice the commercial position of the participants. Confidentiality is requested under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982.

21.4 The Applicant requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time a response to such a request is being considered.

21.5 The above also applies in respect of any additional information provided, whether orally or in written form, to the Commission where it has been expressed to be confidential or it is implicit by the nature of that information.

THIS NOTICE is given by Robert John Mannes of Refrigerant License Trust Board

I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the Applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of 2011

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Chairman and Trustee, Refrigerant License Trust Board

I am the Chairman and a Trustee of the Trust Board and am duly authorised to make this application/notice.

CONFIDENTIAL APPENDIX 1 – DRAFT MEMORANDUM OF UNDERSTANDING