ISSN NO. 0114 - 2720

COMMERCE COMMISSION

DECISION NO. 284

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

PRI FLIGHT CATERING LIMITED

and

AIR NEW ZEALAND LIMITED

The Commission:	Dr A E Bollard (Chairman) P C Allport Dr K Brown
Summary of Proposal:	The acquisition by PRI Flight Catering of the assets of the flight catering division of Air New Zealand Ltd.
Determination:	Pursuant to s 66(3)(b) of the Act, the Commission determines to decline to give a clearance for the acquisition.
Date of Determination:	12 March 1997

AUT/BA P15/1
M 2327

MEMORANDUM

To:	The Chairman Peter Allport Kate Brown
From:	Jeff Hamilton Roger Snell John Preston Jo Bransgrove
Date:	12 March 1997 (Working Day 10)
Subject	**Commerce Act 1986: Business Acquisition: PRI Flight Catering Limited/ Air New Zealand Limited**

Working Day 8: 10 March 1997 **Working Day 10: 12 March 1997**

Confidential material in this report is contained in square brackets

THE PROPOSAL

1 Clearance has been sought by PRI Flight Catering Limited (PFC) to acquire the assets of the flight catering division of Air New Zealand Ltd (Air NZ).

BACKGROUND TO THE PROPOSAL

2 Air NZ recently announced its intention to investigate the sale of its in-flight catering business, which it considers to be a non-core activity. The company has invited expressions of interest from parties for the catering business. The assets which are available for sale include plant and equipment, property leases, the arrangements Air NZ has to supply certain overseas carriers, and service agreements proposed to be entered into between the successful purchaser of the business and Air NZ for the supply of catering services to the Air NZ group.

3 Air NZ has been holding discussions with [ ] overseas parties over the possible sale of the Air NZ catering business. [ ]. PFC has also expressed

interest in purchasing Air NZ's catering business, [ ]

4 [ ]

PROCEDURES

5 Section 66 (3) of the Commerce Act (the Act) requires the Commission either to clear, or to decline to clear a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a time extension. The proposal was registered on 26 February 1997, and therefore the date for a decision on the proposal is 12 March 1997.

INVESTIGATION

6 During the investigation of the proposed acquisition, staff consulted a range of parties, including Air NZ, Ansett New Zealand Ltd and various international airlines, airport companies, commercial caterers, MAF Qual (in relation to quarantine regulations), companies with airline catering interests in other countries, and in-flight caterers who provide services under sub-contract arrangements to Air NZ and PFC at smaller airports. Additional information was sought and obtained from PFC.

THE PARTICIPANTS

7 PFC is involved in commercial catering, specialising in in-flight catering services. The company operates kitchens at Auckland, Wellington and Christchurch, and currently supplies in-flight catering services to six international airlines as well as to Ansett New Zealand Ltd (Ansett NZ). PFC is owned as to 55% by Pacific Rim Investments Ltd, and as to 45% by Direct Capital Partners Ltd.

8 Air NZ, a listed company, is involved in providing international and domestic air passenger travel, and various related services. This includes the provision of in-flight catering services. The catering division of Air NZ has three kitchens in New Zealand: one each at Auckland, Wellington and Christchurch airports. It provides catering services to airlines within the Air NZ group, and to 16 international airlines.

THE RELEVANT MARKET

Market Definition

Product/Function Market

9 As noted in the section describing the activities of the parties to the proposal, PFC and Air NZ are both engaged in the provision of airline catering services. In addition, PFC provides general catering services to other clients, and this accounts for between [ ] and [ ] of its total business. Air NZ's catering operation is directed exclusively towards in-flight catering, but the applicant claims that it could offer general catering services.

10 The applicant contends that the parties to the proposal are both involved in general commercial catering, the product/function market in its view being the provision (manufacture and wholesale supply of food and beverages) to re-suppliers to the public. It states that:

> "There is a general commercial catering market, with a large range of supply-side substitution possibilities, within which different organisations seize different opportunities that arise and may occupy different segments...."

11 However, on the basis of discussions with industry participants, staff consider this definition to be too broad as it would encompass numerous commercial caterers, most of whom currently lack the scale and expertise to provide in-flight catering services, and related activities. In our view, the provision of in-flight catering constitutes a more specialised type of catering, and from the "demand side" falls within a discrete market.

12 According to Air NZ, the in-flight catering business comprises five main elements:

- receipt of information from airlines being that airline's
- meal menu and beverage specification;
- on-board equipment and its specification;
- variable daily forecast of passengers for a given flight, and the airline timetable;

- ordering and purchasing of materials of all sorts followed by preparation of meals and beverages to the required specification from raw, partially finished, or finished product;

- assembly of meals, meal trays, servery equipment, and packing these into meal carts or containers;

- transporting meal carts etc to out-bound aircraft, stowage into aircraft galleys, and removal of used equipment for washing at the catering facility; and

- disposal of refuse, washing, inventory and storage of returned equipment to enable the cycle to continue.

13 On the basis of enquiries with industry participants, in-flight airline catering is not an overly complex operation but, when it is carried out on a large scale it requires a relatively high level of sophistication, and extends beyond catering. We have been advised by Air NZ that the Inflight Catering Association, a European-based organisation which is generally accepted as the central guidance body for in-flight services, has said that in-flight catering is 15% culinary, and 85% logistics and assembly.

14 We have identified a number of characteristics which differentiate the provision of in-flight catering from other types of catering, including the requirement for:

- certain purpose built plant and equipment, which may include washing machines, specialist trucks, cooking and refrigeration equipment;

- a large kitchen facility usually located on, or in relatively close proximity to, an airport;

- special techniques and purpose-built equipment for preparing and cooking food for in-flight consumption. While these are not unique to airline catering, they are distinguishable from those used in most other forms of catering (eg the requirement to prepare food in advance, refrigerate it, and then reheat it for in-flight consumption at high altitude);

- familiarity with the layout of aircraft and airline services, and the handling of a large volume of meals at the major airports, often under tight time and other constraints.

- complying with stringent health, quality and, in relation to in-coming international flights, quarantine requirements ,which are specified respectively by health authorities, airlines and MAF.

15 Taking into account the above factors, we consider that the requirements of providing in-flight catering lead to a more restrictive product and function market definition than simply commercial catering. In our view, a more appropriate product/function definition is that for the provision of in-flight catering and related services.

Geographic Market

16 There is a number of geographic markets affected by the proposal, representing all those airport locations (and surrounding areas), in which Air NZ and PFC have in-flight catering operations.

17 The major locations at which both PFC and Air NZ have facilities are Auckland, Wellington and Christchurch airports, and their environs. In addition, there is aggregation of market share at some other locations, including Hamilton, Dunedin and Palmerston North, which are supplied by caterers under sub-contract (see para 21 for further details).

Conclusion on Market Definition

18 We conclude that the relevant market is that for the provision of in-flight catering services, and related activities, to domestic and international airlines on flights departing New Zealand airports ("the in-flight catering services market").

EXISTING COMPETITION IN THE IN-FLIGHT CATERING SERVICES MARKET

Market Participants

19 There are two major providers of in-flight airline catering services in New Zealand: Air NZ and PFC. Air NZ's catering division provides in-flight catering services to all airlines within the Air NZ group of companies, and to 16 international airlines which land in New Zealand. It has three kitchens - one each at Auckland, Wellington and Christchurch airports. About [ ] of Air NZ's catering business is generated by airlines within the Air NZ group.

20 PFC provides in-flight catering services to Ansett NZ, and to 6 international airlines landing in New Zealand. It has full kitchen facilities at Auckland, Wellington and Christchurch. [ ] of PFC's in-flight catering business is derived from two customers: Ansett NZ and United Airlines. PFC acquired the business last year from P & O Flight Catering.

21 A number of catering companies are sub-contracted to the Air NZ group, and to PFC, to provide in-flight catering services at various smaller provincial centres throughout New Zealand. These include Spotless Services (NZ) Ltd (Spotless Services), which is sub-contracted to provide in-flight catering services at Dunedin for Air NZ (and its subsidiaries), and Ansett NZ. Similarly, Glenview Motor Hotel sub-contracts to PFC to provide in-flight catering for Ansett NZ and Freedom Air International at Hamilton, while Skyway Catering Co Ltd sub-contracts to Mount Cook Airlines to supply in-flight catering for that airline at the same location. Arrangements of a similar nature are in place between airlines and commercial caterers at other airports throughout the country.

"Import" Competition

22 Some Australian and South Pacific-based in-flight caterers, including Qantas Airways in Australia, and an in-flight kitchen at Nadi in Fiji, provide in-flight catering to certain providers of international flights which depart New Zealand airports. This involves a practice known as "double catering", whereby meals

are prepared and loaded, say in Sydney or Nadi, for a flight to New Zealand, and for the return flight.

23 However, staff enquiries reveal that "double catering" only represents an alternative for some airlines in certain situations. It can be, and is used relatively frequently by those operators providing short-haul services (eg Trans-Tasman and some Pacific routes). However, it may not be practical for in-flight kitchens to provide "double-catering " for all short-haul services (eg aircraft that remain at an airport overnight). Further, we have been told that "double-catering" cannot be employed by those airlines providing long-haul services (e.g. Cathay Pacific's non-stop flights between Hong Kong and Auckland), because there is only space on the aircraft to store two hot meals per passenger. Nor does the practice represent a viable option for those airlines providing domestic services, and for smaller narrow-bodied aircraft, such as Boeing 737's, when they are employed on international services.

End Users Of In-Flight Catering Services

24 The customers of in-flight catering services are the various domestic and international airline companies which service New Zealand. According to the applicant, there are eight carriers which constitute over 90% of in-flight demand, those being Air NZ (and its subsidiaries), United Airlines, Singapore International Airlines, Cathay Pacific, Ansett NZ, Qantas, Japan Airlines and Malaysian Airlines. The balance of demand is accounted for by at least another 10 international airlines which land at New Zealand airports.

25 In-flight catering services are provided in accordance with contracts or arrangements which are either undocumented, or documented formally or semi-formally. Contracts which are not documented are terminable by either party at will, or on reasonable notice, while formal or semi-formal contracts are terminable on 90 day's notice, or less. These contracts are negotiated periodically, and stipulate the specifications, pricing and other conditions under which in-flight catering services must be provided.

26 Some airlines have switched from using Air NZ to PFC (and its predecessors), and *vice versa*, for their catering needs. These include United Airlines, which changed from Air NZ to P&O Flight Catering in 1991, and Polynesian Airlines, which switched from PFC to Air NZ during 1996. [ ]

27 [ ]

Market Shares

28 The applicant estimates at a "best guess" that the total value of the in-flight catering business is $150m, which is divided as to $50m for domestic services, and as to $100m for international services. However, our enquiries reveal that this estimate is too high, and that the actual figure is in the order of [ ].

29 On the basis of total sales turnover figures, we have estimated that the market shares for the provision of in-flight catering services, and directly related services, for flights departing New Zealand are as follow:

	% (Approx)	% (Range)
Air NZ	[	] }
	100	100

Entry/Expansion Conditions

30 The applicant claims that entry into in-flight catering is relatively straightforward, and could be achieved quickly and cost effectively by a range of local and/or overseas parties. However, many of those spoken to have indicated that entry on a large scale is significantly more difficult as it would involve a major investment in purpose built plant and equipment, and would require a longer establishment period than claimed by PFC.

31 The relevant entry conditions are discussed below.

Access to an Appropriate Site

32 To enter this market, it is desirable to have access to a site at, or in relatively close physical proximity to, an airport. This is largely for operational reasons, including the need for prompt delivery of meals, and the requirement to be able to respond quickly to timetable changes, and to changes in meal requirements. However, it is not essential that a kitchen facility be situated at, or near to, an airport. For example, P&O Flight Catering which formerly

owned the PFC business, operated a kitchen facility located some five kilometres from Auckland airport until about five years ago when it re-located to its present site. In addition, there are overseas examples of in-flight kitchens being situated at relatively significant distances from the airport being served.

33 At Auckland and Wellington airports, Air NZ and PFC each have facilities close to the respective airport terminals. In Christchurch, PFC operates a facility which is located about two kilometres from the airport terminal, while Air NZ's in-flight catering operation is located on the airport itself.

34 On the basis of discussions with airport companies, it appears that there are sites available at, or in close proximity to, the three major airports. These sites appear to be suitable to accommodate a competing supplier, if the demand arose. Auckland International Airport Ltd (AIAL) wrote to PFC on 31 January 1997, indicating its likely response to a request for such a site at Auckland airport. In that letter, AIAL stated that:

> Should PRI be a successful bidder for the (Air NZ catering) Business, AIAL reserves the right to introduce a competing flight catering concessionaire, if warranted by the volume of business at the airport and/or in response to carrier demand for a competing service.

Capital Cost

35 The establishment of an airline catering facility can involve a substantial investment in plant and equipment. The amount depends in part on the scale of the operation, and on whether the premises are owned or leased.

36 Apart from the building itself, an entrant would be required to outlay expenditure on purpose built equipment, which may include specially fitted trucks for loading and unloading trolleys, washing machines, and cooking and refrigeration equipment. A wide range of capital costs has been suggested as being necessary to establish an in-flight catering facility.

37 Depending on the size of the operation, the applicant has suggested a capital cost of between [ ] and [ ], based on a rental non-purpose built type of building with minor alterations needed. Air NZ estimates that the cost of a facility of say 5,000m^2, which would enable up to 10,000 meals per day to be

processed, would be in the order of $12-15m. Caterair, a large international in-flight catering supplier, estimates the capital cost to secure [ ] of the national market would be [ ].

38 We have been advised that P&O Catering spent around [ ] to establish the current PFC kitchen at Auckland airport, although P&O Catering's earlier smaller-scale facility at Airport Oaks, five kilometres from the airport, had cost about [ ] to establish in leased facilities some eight years ago. That operation was designed to serve Ansett NZ's domestic operation only. AIAL suggests that it is possible to start on a small-scale and grow into this market. It also suggests that the capital cost is lower since the quarantine requirements imposed by the Ministry of Agriculture now accept less capital-intensive means to dispose of waste food, such as sterilisation rather than incineration.

39 For a new entrant to justify the capital expenditure required to develop a new airline catering complex, we consider that it would be necessary for it to capture at least one large customer on a relatively long-term basis, or several medium to large airline customers.

Regulatory Requirements

40 To provide in-flight catering for international flights, it would be necessary to comply with the Biosecurity Act 1993, and related requirements, which govern the disposal of waste from in-coming overseas flights. Provided that it can be demonstrated that quarantine requirements are met, this does not appear to impose any major obstacle to a new entrant. Facilities for incineration or sterilisation of waste appear to be readily available at, or close to most major airports. It is understood that sterilisation represents a less capital intensive means of disposing of food wastes than incineration.

41 The other major regulatory requirements involve obtaining the appropriate consents in terms of the Resource Management Act, and compliance with health and sanitary requirements. These do not appear to be unduly restrictive in relation to the establishment of an in-flight catering business.

Access to Expertise and Know-How

42 When establishing a large scale in-flight kitchen, there is a requirement to

develop know-how and a familiarisation with the techniques for cooking food for consumption at high altitude in pressurised cabins, airline services, and the logistics associated with the preparation and delivery of a large number of meals of varying complexity. While such knowledge is relatively specialised, we have been told by PFC and Air NZ that it can be learned or acquired without major difficulty by an existing commercial caterer of some size, and within a relatively short period. Additionally, some commercial caterers who undertake catering for hospitals, and other large institutions, employ the "cook-chill" method, which is used in airline catering.

Certainty as to Customers

43 Given the capital investment required for entry, staff consider that a new entrant to in-flight catering would need to ensure it has secured sufficient orders for its work to justify that investment. We also consider that contracts for supply from airlines for a period into the future would be needed to provide certainty that customers would be available.

Time Required for Entry

44 Estimates of the period required to establish a new in-flight catering operation vary from the 30-90 days suggested by the applicant, which depends on whether a leased building were used, or not, through to 12-18 months nominated by several other persons. This estimate takes into account the time required to construct a new in-flight catering facility, and to obtain the appropriate consents under the Resource Management Act. We understand that P&O Catering took seven months to re-locate its kitchen facilities to its then new site at Auckland airport.

History of Entry and Expansion

45 The only example of entry into in-flight catering on any significant scale at the major airports was a flight catering business established to service Ansett NZ when it commenced providing domestic main trunk air passenger services in 1987. At that stage, the business was confined to supplying in-flight catering for Ansett NZ's domestic services. Subsequently, P&O Flight Catering acquired the business and continued to operate it until last year. In that time, P&O expanded its customer base to include United Airlines, and other overseas carriers.

ASSESSMENT OF DOMINANCE

Constraints by Existing Competitors

46 The acquisition by PFC of the Air NZ catering division would lead to a reduction from two to one in the number of New Zealand-based firms currently providing in-flight catering services to domestic and international airlines for flights departing New Zealand. On the basis of available data, the level of aggregation of market would be in the range of 85-90%, if Australian and other overseas suppliers are included. Further, the constraint each of the parties to the proposal currently imposes on the other would be substantially reduced.

47 If the proposal were to be implemented, the only other existing suppliers would be some operators of Australian- and South Pacific-based kitchens, including Qantas Airways, which provide "double catering" services on certain international flights departing New Zealand. However, staff consider that such caterers would only provide a limited constraint on the conduct of the combined entity. The reasons are as follow.

48 For international carriers which operate long haul non-stop services from New Zealand airports, and the two major domestic airlines, it is not practical to use "double catering". Rather, the ability to "double cater" is confined largely, but not exclusively, to certain international airlines operating short-haul services, such as trans-Tasman flights, and certain Pacific routes. This includes the trans-Tasman services provided by Air NZ, Qantas Airways and other carriers, together with carriers which operate between New Zealand and certain South Pacific destinations (eg Nadi). However, even in relation to short-haul services, "double catering" is restricted to certain flights, and is dependent on the time of day when the flight commences, the turn-around time of aircraft, and other operational factors.

Conclusion on the Constraints by Existing Competitors

49 Having regard to the factors outlined above, staff consider that only limited weight can be attached to "double catering" provided by overseas in-flight caterers as an effective constraint on the enlarged PFC post-implementation.

Constraints by Potential Competitors

50 In the absence of any effective constraints from existing competitors, it is then necessary to examine the constraints likely to be provided by potential competitors on the merged entity. As noted in the Commission's Business Acquisitions Guidelines, for the threat of entry to be a sufficient constraint on the exercise of market power, entry must be likely, sufficient in extent, timely and sustainable[1].

Likelihood and Sustainability of Entry

51 The applicant submits that entry into the in-flight catering business could be achieved through the outlay of around [ ]. Such an outlay, it adds, could potentially generate about [ ] in turnover, which amounts to the catering requirements of about three small to medium-sized carriers. PFC identifies a number of parties which could readily enter the market, including local caterers (eg Spotless Services, Austins and Glenview Motor Hotel), and overseas in-flight caterers (eg Gates Gourmet, Caterair, Dobbs and Ogdens).

52 However, a number of parties have expressed doubts about whether *de novo* entry is likely to be commercially viable, regardless of whether it were to originate from local or overseas-based parties. This is due to the significant capital cost (in excess of $10m), which would be necessary to establish and fit out a large kitchen facility at, or near to, a major airport. Further, some parties consider that the New Zealand market is of insufficient size to justify entry on a large scale. However, we have received some comments to the effect that entry might be possible under certain conditions. For instance, it has been suggested by some parties that entry may be possible if sufficient airline customers, and particularly Air NZ, were to commit themselves on a long term basis to justify the large initial outlay necessary to construct a new flight kitchen facility.

53 Staff have found that there are no major physical barriers to entry in relation to the provision of in-flight catering services. There are sites available at, or in close proximity to all three major airports, the technology is not overly complex, and quarantine and other regulatory requirements are not overly restrictive.

54 The critical factor in relation to entry appears to be the need to secure sufficient clients on a long term basis to warrant the investment in an in-flight kitchen facility. On the basis of available information, staff consider that unless a new entrant could secure the business of Air NZ, or several of the other major carriers, it is unlikely that entry could be achieved on a scale which would generate a positive return on the initial investment over a sustained period. This is especially so given the financial costs of entry, including provision for initial operating losses, the sunk costs likely to be incurred in investing in certain assets associated with a new in-flight kitchen operation (eg specialised trucks), and the relatively small size of the New Zealand market.

Extent of Entry

55 To effectively constrain existing market participants, the threat of entry must be at a level and spread of sales such as to be likely to cause market participants to react in a significant manner[2].

56 As noted previously, the applicant contends that entry on a small scale by a range of commercial caterers would be relatively straightforward, and it refers to those caterers already active in providing meals and beverages to Air NZ and PFC on a sub-contract basis. Further, the applicant considers that there would be no impediments to those caterers expanding their businesses. This is the method by which PFC's predecessor companies developed their business (see para 45 for details).

57 While entry into the in-flight catering services market at the smaller centres, or on a modest scale at the major airport locations, appears possible, we do not consider that entry on such a scale would be sufficient to provide an adequate competitive discipline on the enlarged PFC. To effectively constrain the merged concern, it would be necessary to establish a large scale facility to handle the requirements of overseas and domestic air carriers. The parties which appear most likely to enter on a large scale, and be in a position to meet the specifications and standards laid down by airlines, are overseas-based in-flight caterers. However, based on our enquiries, it is uncertain whether such firms could be encouraged into the in-flight catering services market in New Zealand on such a scale in opposition to the incumbent. Caterair suggests that

an overseas caterer may require around a [ ] market share. Given the substantial investment which would be necessary to build a plant to accommodate such a business, it is questionable if there would be entry on a sufficient scale to provide an effective constraint on the combined PFC/Air NZ.

Timeliness of Entry

58 To provide an effective constraint on the exercise of market power to the extent necessary to alleviate dominance concerns, entry must be likely to occur before consumers in the relevant market are detrimentally affected to a significant extent[3].

59 The period of time required to establish an in-flight kitchen is likely to depend on a range of factors, including the scale of the plant, and whether the operation requires the construction of a new building, or can be achieved from an existing building on a leasehold basis. Staff consider that the 30-90 day period for *de novo* entry, which has been suggested by the applicant, would generally be too short. However, on the basis of discussions with many other parties, it appears possible that a new facility could be built, and the appropriate consents in terms of the Resource Management Act could be obtained, in a 12-18 month period. This is within the two year time period which the Commission has set down in its Business Acquisition Guidelines.

Conclusion on Constraints by Potential Competitors

60 Following a review of the available information, staff consider that, although the prospect of entry on a timely manner into the in-flight catering services market cannot be excluded, we are not satisfied that such entry would be likely, sufficient and sustainable.

Constraints by Customers

61 As noted previously, the customers for the suppliers of in-flight catering services are the airlines which provide air passengers services to and from, and within New Zealand. According to the applicant, there are eight major airlines which account for the bulk of demand for in-flight catering services at New Zealand airports. These include Air NZ itself which is the largest single

customer of in-flight catering services. Air NZ, and the other major airlines, can and do wield considerable countervailing power in their capacity as end users of in-flight catering services. In addition, these airlines are familiar with in-flight catering and in some instances, such as Singapore International Airlines, Cathay Pacific and Qantas, are involved in operating airline catering facilities of their own elsewhere.

62 At present, the customers of in-flight catering services in New Zealand have the option in most circumstances of using either Air NZ or PFC for their in-flight catering needs. In some situations, airlines can, and do by-pass the two local suppliers, and source their requirements through “double catering” in Australia, or elsewhere. Also, as noted above, airlines are able to terminate their contracts with Air NZ or PFC on relatively short notice (see para 25 for further details).

63 The question to address is whether or not implementation of the proposal would lessen the constraint currently provided by existing customers such that the acquisition or strengthening of a dominant position by any person would arise.

64 It has been suggested by the applicant that, if the airlines were dissatisfied with the pricing or level of service provided by the merged PFC/Air NZ they might encourage a new entrant into the market to service international and/or domestic airlines. This may include one of the many large international providers of in-flight catering, such as Gates Gourmet, Skyway Chef, Dobbs, Ogdens, Caterair, Cathay Pacific and Singapore International Airlines. It may be possible for those parties to enter on their own, or in a joint venture arrangement, including partnerships with certain local commercial caterers, such as Spotless Services.

65 However, the extent to which airlines are likely to constrain the conduct of the merged concern is dependent on various factors, including the scope which they have to use “double catering”, and the volume of their business which could be used as leverage. For some airlines, including Air NZ, the ability to increase “double catering”, and/or to use their buying power as a leverage, may represent a major constraint on the merged concern. Those airlines might be in a position to encourage a likely entrant into the market, or use the threat of entry, and thereby provide a strong actual or potential constraint on the

combined PFC/Air NZ catering operation.

66 However, we consider that there are certain airlines which, because of the nature of their services, would be incapable of using "double catering" from off-shore catering facilities (eg Ansett NZ), and/or lack the volume of business to make it profitable for a new entrant to commence in-flight catering on a profitable basis. Such parties in our view would not appear to have any viable alternative post-acquisition, and therefore are unlikely to be in a position to impose any effective constraint on the merged company.

Conclusion on Constraints by Customers

67 Having regard to the above factors, we consider that although some airlines, including Air NZ, might be able to effectively discipline the enlarged PFC, the level of constraint from other customers is likely to be severely restricted.

OVERALL CONCLUSION

68 Implementation of the proposal would result in aggregation of market share to around 85-90%. The only constraint from existing competitors would be provided by those operators of in-flight kitchens in Australia, and some South Pacific locations, but we are not satisfied that this would constitute an effective constraining influence. There are no major physical barriers in terms of access to appropriate sites, technical expertise and regulatory requirements, and entry to in-flight catering might be achieved in a timely manner. However, on basis of the analysis of available information, staff do not consider that entry into the in-flight catering services market would be likely, sufficient and sustainable to provide an effective actual or potential constraint on the combined PFC/Air NZ. Further, while some airlines can, and are able to exercise a significant degree of countervailing power, the scope for certain other customers to constrain the merged concern is likely to be limited to a significant extent.

69 If the Commission cannot be satisfied that a proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any market, it must decline to give clearance for the acquisition. On balance, and after reviewing the available information, we are not satisfied that the proposed acquisition, if implemented, would not, or

would not be likely to result, in a person acquiring or strengthening a dominant position in the market for the provison of in-flight-flight catering services, and related activities, to domestic and international airlines on flights departing New Zealand airports.

RECOMMENDATION

70 We recommend that you decline to give clearance to the proposal under s 66 (3) (b) of the Act.

Investigator	Investigator
Chief Investigator	Manager

DETERMINATION TO DECLINE TO GRANT NOTICE OF CLEARANCE:
PRI FLIGHT CATERING LIMITED/AIR NEW ZEALAND LIMITED

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3) (b) of the Commerce Act 1996 (the Act), we hereby decline to give clearance for PRI Flight Catering Ltd, or any interconnected body corporate thereof, to acquire the assets of the flight catering division of Air New Zealand Limited.

Dated at Wellington this day of 1997

Dr A E Bollard Chairman	P C Allport Deputy Chairman	Dr K Brown Member

The Seal of the Commerce Commission
was affixed hereto in the presence of:

Dr A E Bollard
Chairman

Date: / /1997

[1] *Commerce Commission Business Acquisition Guidelines 1996*, p. 19.

[2] *Ibid*, p. 19.

[3] *Ibid* , p. 20.