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## **Commerce Commission**

### **Decision No. 318**

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

**NEW ZEALAND BUS LIMITED**

**and**

**TRANSPORTATION AUCKLAND CORPORATION LIMITED**

**The Commission:** Peter Allport  
Cathie Harrison  
Roger Taylor

**Summary of Proposed Acquisition:** The proposed acquisition by New Zealand Bus Limited, or any interconnected body corporate, of either all the assets and business, or all of the shares of Transportation Auckland Corporation Limited.

**Working Day 10:** 19 January 1998

**Working Day 35:** 24 February 1998

**Determination:** Pursuant to s 66(3)(b) of the Act, the Commission determines to decline to give a clearance for the proposed acquisition.

**Date of Determination:** 24 February 1998

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## INTRODUCTION

1. On 12 December 1997, the Commission registered a notice pursuant to s 66 of the Commerce Act 1986 (the Act) seeking clearance for New Zealand Bus Limited (NZ Bus) to acquire either the assets and business of Transportation Auckland Corporation Limited (TACL), or all of the shares of the company.

## BACKGROUND

2. On 5 May 1997, the then Minister of Transport, Mrs Jenny Shipley, instructed the Auckland Regional Services Trust (the Trust) to dispose of its shares in TACL in accordance with the Local Government Amendment Act (No. 4) 1989. The sales process must be completed no later than 30 November 1998.
3. A Divestment Unit has been assembled, and it has completed the preparation of a divestment plan in respect of the TACL. Final approval of the divestment plan is required from the Minister of Transport before the sales process can proceed.
4. In addition to NZ Bus, three of the largest bus operators in Europe - First Bus Plc, National Express Group (both of the United Kingdom) and CGEA (France) - have expressed an interest in purchasing TACL.

## PROCEDURES

5. Section 66(3) of the Act requires the Commission either to give clearance or decline to give clearance for the acquisition within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. By agreement between the Commission and the applicant, the deadline for the date for the Commission's determination on the application has been extended four times (30 January 1998, 13 February 1998, 19 February 1998, and finally to 24 February 1998).
6. This report concludes that staff are not satisfied that the proposed acquisition would not, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market, and recommends that, in terms of s 66(3)(b) of the Act, and that the Commission should decline to give clearance for the proposed acquisition.

## THE PARTIES

### **New Zealand Bus Limited**

7. NZ Bus is a wholly owned subsidiary of Stagecoach Holdings plc, one of the major bus and train operators in the United Kingdom. NZ Bus is also the holding company for Wellington City Transport Limited and Cityline (NZ) Limited, which in turn operate scheduled bus passenger services under the trade names Stagecoach and Cityline. Through its subsidiaries, NZ Bus operates scheduled bus services in Wellington, the Hutt Valley, and between South Auckland and Auckland City.

### **Transportation Auckland Corporation Limited**

8. TACL is a local authority trading enterprise 100% owned by the Trust, which in turn is a body constituted to own shares in various public assets in the Auckland region. The company is the largest provider of scheduled bus passenger services in New Zealand, operating extensively throughout the greater Auckland region primarily under the trade name, The Yellow Bus Company (YBC).
9. The major assets of TACL comprise a fleet of about 520 buses, 6 depot sites and two bus information/transport centres (Otahuhu and New Lynn). The company also owns the Whenuapai Bus Company Limited, which operates in West Auckland, and the Devonport Bus Company Limited, which operates in the Devonport area. Further, TACL is a joint venture partner with Fullers Group Limited (Fullers Group) in the Link Partnership, which runs buses and harbour ferry services on an integrated basis for travellers between the North Shore and central Auckland.

## OTHER RELEVANT PARTIES

### **Other Auckland Bus Operators**

10. The other main bus companies operating in the greater Auckland region are Howick and Eastern Buses Limited (Howick & Eastern), a privately owned bus company operating scheduled bus services primarily between South-East Auckland and central Auckland; and Birkenhead Transport Limited (Birkenhead Transport), a family owned company which provides scheduled bus services in an area extending from Albany to Birkenhead, and between that area and central Auckland. In addition, there is a range of smaller companies which run scheduled bus services in

various parts of Auckland (eg, Hanhams Buses Limited (Hanhams), Greenhalgh Motors -100% owned by Ritchies Transport Holdings Limited, Taxis North Shore and Eastern Taxis).

### **Tranz Rail Limited**

11. Tranz Rail Limited is the name of the holding company that purchased NZ Rail Limited in 1993. It is a multi-modal transport and distribution company which provides suburban rail passenger services in Wellington and Auckland; long distance rail passenger services and freight transport services throughout New Zealand; and rail ferry services between the North and South Islands.

### **Fullers Group Limited**

12. Fullers Group operates passenger ferry services on Auckland Harbour. The company also runs passenger ferries between Auckland city, Waiheke and Great Barrier Islands, and bus services on Waiheke Island. As noted in para 9, Fullers and TACL operate the Link Partnership, which has been established to run integrated bus and ferry services.

### **Other Relevant Parties**

13. Other means of transport include private motor vehicles, which can be used by the owner either alone or shared, motor cycles, bicycles, taxi services, which are provided by numerous firms in Auckland, shuttle bus and “dial-a-ride” services.

### **Auckland Regional Council**

14. The Auckland Regional Council (ARC) is a body corporate constituted under the provisions of the Local Government Act 1974. As part of the ARC’s function to provide appropriate facilities and services on behalf of central government, the ARC is responsible for arranging the provision of passenger transport services not already provided by the commercial market. The ARC compiles a Regional Transport Plan, which is an operational plan specifying the passenger services that the ARC proposes be provided in its region, and which outlines the ARC’s policies for the provision of those services. The ARC then invites tenders to meet the requirements of these services. The successful tenderer undertakes subsidised services on behalf of the ARC, and receives the relevant subsidy.

## **Transfund New Zealand**

15. Transfund New Zealand (Transfund) is a crown entity established by the Transit New Zealand Amendment Act 1995. It has the responsibility for the land transport system funding operations, formerly carried out by Transit New Zealand. This involves allocating road-user funds from the National Road Account based on the funding applications received from Transit New Zealand, territorial authorities and regional councils. Transfund also has a core responsibility to approve competitive pricing procedures (CPP's). The ARC receives 40% of its funding from Transfund in order to provide subsidised public transport services in the Auckland region, and is required to follow the CPP's approved by Transfund.

## **BACKGROUND TO THE MARKET**

### **Urban Passenger Bus Services in the Greater Auckland Region**

16. During the 1980's and the early years of the 1990's, there was a significant decline in patronage of local bus services in Auckland. The primary reason for the decline appears to have been the development in Auckland of new centres of activity in sub-regional locations, the relatively low density of passenger traffic as well as increased use of private motor cars.
17. Since about the mid-1990's, patronage of bus passenger services in Auckland has shown some growth. Road traffic congestion continues to make public transport an attractive alternative for the commuting public, and both Transfund and the local authorities in Auckland have shown support for the need for bus priority measures and dedicated bus lanes on major corridors. In addition, the market appears receptive to various initiatives, including the introduction of new services (eg YBC's City Loop service), improvements in existing services and scheduling (eg the use of smaller buses more frequently and more direct routing), and the introduction of new buses.
18. Statistics show that 78.5% of Aucklanders drive to work by car, while only 6.6% per cent travel by bus.<sup>1</sup> Other modes of public transport in Auckland include suburban rail services, harbour ferries and taxi services.

19. Until July 1991, public transport services within New Zealand were strictly regulated. Deregulation of the industry, which occurred in 1991, was designed to encourage competition, including the entry of new players, into the provision of bus passenger services. Subsequently, the Auckland market has seen the entry of new operators, including NZ Bus (through its acquisition of Cityline Auckland in 1992 from New Zealand Railways Corporation), MacBus Limited (a New Plymouth-based company), Hanhams and Cesta. Subsequently, two of those operators (MacBus and Cesta) have withdrawn services. YBC remains by far the largest local bus company followed by NZ Bus, then Howick & Eastern and Birkenhead Transport (see paras 69 to 73 for market share details).
20. The provision of local bus passenger services in greater Auckland is characterised by operators concentrating their activities within traditional geographic areas, and there has been a reluctance on the part of most operators to expand significantly beyond those areas. NZ Bus appears to be the only company which has shown any discernible growth, but this expansion has been confined largely to the South Auckland/Central Auckland corridor, and to adjacent areas.

### **Regulatory Environment**

21. The provision of local bus passenger services is subject to the following legislation:

#### *Transport Services Licensing Act 1989*

22. Under this Act, a licence to operate bus services may be granted to any person provided the applicant does not have a criminal record, or any major convictions under the Transport Act, and can demonstrate a familiarity with the relevant legal requirements. The Act also specifies that a licence holder who proposes to operate a commercial service must register that service with the appropriate regional council. There are only very limited grounds on which a regional council can decline registration - for traffic or environmental reasons, if the service is likely to have a detrimental impact on an existing subsidised service, or if the service is likely to raise the net cost to a regional council of any subsidised service.

#### *Transit New Zealand Act 1989 and the Transit New Zealand Amendment Act 1995*

23. The Transit New Zealand Act 1989 established a government agency responsible

for planning national passenger transport and for allocating Government funds to regional councils for the provision of subsidised passenger services. The Act also specified that funds should be allocated only to those services which have been determined by a CPP.

24. The Transit New Zealand Amendment Act 1995 established a new funding agency Transfund, to undertake the funding allocation role previously held by Transit New Zealand (also see para 15).

### **ARC Tendering Process**

25. Broadly speaking, there are two types of passenger transport services - subsidised (or contracted) services and commercial services. Subsidised services are partly subsidised from grants from the ARC, which administers funds collected from local body rates, and from Transfund. The ARC contributes 60% of the subsidy value, and the balance is provided by Transfund.
26. A competitive tender process determines the operators of subsidised services. The ARC is required to invite operators to submit tenders to supply particular services which are not provided on a commercial basis. The tender documents specify the routes, timetables, a maximum fare schedule, the length of the contracts, and other terms and conditions.
27. Tenders are assessed on the basis of a points system which takes into account matters such as the age and appearance of buses, the facilities provided for passengers, and the acceleration and manoeuvrability of the buses. The most important factor, however, is the level of subsidy which will be required by the operator in order to provide the service. The lower the level of subsidy sought, the more attractive the bid is likely to be.
28. Once the tender is awarded, the successful bidder must operate the subsidised service(s) in accordance with the conditions outlined in the tender documents including timetabling. Maximum fares for subsidised services are set by the ARC. Failure to comply with the relevant terms can lead to pecuniary penalties being imposed, and in extreme instances, to cancellation of the contract. The duration of the contracts varies between 3 and 5 years with staggered expiry dates. The ARC, however, has advised staff that it is moving progressively towards awarding contracts on 4 to 5 year periods.



29. If there are no rival bids to operate a subsidised service, the ARC can negotiate on price with the successful tenderer and/or re-tender the contract.
30. Commercial services can be registered at any time, on any route, and to any timetable, provided the ARC is satisfied that the service will not have a material adverse effect on the financial viability of any subsidised service, or is unlikely to increase the net cost to the ARC of any subsidised service, and is not contrary to any traffic management or environmental factors identified by the ARC.
31. An operator that registers a route as commercial must rely on its own ability to attract patronage to ensure that the route is financially viable. Commercially registered services do not need to comply with the Regional Passenger Transport Plan or the associated policies, nor do the operators have any obligation to report to the ARC on the level of patronage.
32. If the ARC is dissatisfied with the commercial service provided, then it can invite tenders from bus companies to operate a similar subsidised service (ie it can “contract over” an existing commercial service).

### **The Setting of Bus Passenger Fares**

33. Fares for commercial and subsidised services are to a large extent set by the ARC. As noted above, the ARC sets the maximum fare schedule for subsidised routes. Further, because commercial services and subsidised services are often operated on the same routes, or sections of routes, there are logistical difficulties associated with applying a higher fare for commercial routes. Accordingly, each bus company tends to charge a common price for each section regardless of whether its services are commercial or subsidised. Further, the maximum fares for subsidised services can only be varied with the approval of the ARC.
34. The influence of the ARC in the setting of fares is further reinforced by the ARC’s concessionary fare reimbursement scheme, which applies to senior citizens, students, and to disabled passengers. Under this scheme, the ARC further subsidises up to 30% of the full fare for qualifying passengers using either subsidised or commercial services, but only if the full fare does not exceed the maximum fare set by the ARC in its fare schedule. For example, if the fare is \$1.00, the passenger pays only 60 cents, the ARC pays 30 cents (being three-quarters of the discount of 40 cents),

and the operator carries the remaining 10 cents. The scheme provides an attractive source of extra revenue for bus companies, currently providing around [ ] of gross fare revenue for YBC and NZ Bus, around [ ] of the gross fare revenue for Howick & Eastern, and about [ ] of Birkenhead Transport's gross fare revenue.

35. Following lengthy negotiations between the ARC and local bus companies, the YBC increased its fares for subsidised and commercial routes by 10% in October 1997, which was the first increase for about 8 years. Howick & Eastern and Birkenhead Transport also increased their fares for subsidised and commercial services by 10% at about the same time as YBC, but NZ Bus chose to maintain its fares at existing levels.

## THE MARKETS

### Introduction

36. The purpose of defining markets is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in terms of s 47(1) of the Act.
37. Section 3(1A) of the Act provides that:  
“the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”
38. In a 1984 decision, the Commission, drawing upon the Australian Trade Practices Tribunal decision in *Queensland Co-operative Milling Association*,<sup>2</sup> defined a market as:  
“a field of actual or potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive.”<sup>3</sup>
39. Markets are defined in relation to product type, geographical extent, and functional level. With the first two dimensions, market boundaries are determined by testing for substitutability, in terms of the response to a change in relative prices of the good or service in question and possible substitute goods or services. A properly defined

market will include products which are regarded by buyers as being not too different ('product' dimension), and not too far away ('geographical' dimension), and are thus products to which they could switch if a small yet significant and *non-transitory* increase in *price (ssnip)* of the product in question were to occur. It will also include those suppliers currently in production who are likely, in the event of such a *ssnip*, to shift promptly to offer a suitable alternative product, even though they do not do so currently.

40. In addition, markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products proceeds through a series of functional levels. For example, that between manufacturers and wholesalers might be called the "manufacturing market", while that between wholesalers and retailers is usually known as the "wholesaling market".

## **Market Definition**

### *Overview*

41. As described in the section outlining the activities of the participants, NZ Bus and YBC each run scheduled bus passenger services in greater Auckland, although for the most part they concentrate on servicing different routes in that region. The parties to the proposal also provide school bus and bus charter services in the greater Auckland region.
42. As noted previously, scheduled bus passenger services can essentially be divided into commercial and subsidised services. However, we do not consider that it is necessary to incorporate these services into separate markets. The reason is that bus companies have the opportunity to operate on a commercial basis a bus route which has previously been subsidised, while the ARC has the power to tender for subsidised services on all, or part, of a commercially registered service if the ARC is dissatisfied with that commercial service (see paras 22 and 30 for further details). The issue is whether there is a bus passenger services market, or whether those services are part of a wider urban transport market.
43. In its application, NZ Bus contends that the relevant market is that for the provision of personal transport services in the greater Auckland area. Further, it considers that from the demand-side, the travelling public in Auckland have a choice between various modes of transport, including private motor vehicles, taxis, scheduled bus

services, suburban rail, harbour ferries, and for short distances, walking. In submissions prepared on behalf of the applicant, Messrs Michael Copeland, Brown Copeland & Co Limited, and Ian Wallis, Booz- Allen & Hamilton (NZ) Limited, concur with NZ Buses's broader market definition. Both Mr Copeland and Mr Wallis contend that there is a high degree of substitution between bus and car travel.

44. There is a range of factors which influence the mode of transport used. These include:
- price;
  - time available to undertake a journey;
  - the time of day/night a journey is undertaken;
  - access to private vehicular transport;
  - reliability, scheduling, frequency, convenience and the standard of equipment on public transport services;
  - access to rail services, ferries and other forms of transport; and
  - access to parking for private motor vehicles in close proximity to the final destination point.
45. We have also reviewed the available information to assess the extent to which scheduled bus services compete with other forms of transport in greater Auckland. The following is a summary of our findings.

#### *Private Motor Vehicles*

46. Private motor vehicles are the predominant form of transport in Auckland, with nearly 80% of the people of Auckland using motor vehicles as their primary means of transport to work.<sup>4</sup> The applicant (and certain other parties) consider that the availability of second-hand cars imported from Japan has led to a decrease in the cost of car ownership, and that this in turn has increased the affordability of cars for a wide cross-section of the general public. For these reasons, the applicant contends that motor vehicles provide a high degree of substitutability for local bus passenger services as well as for other forms of public transport.
47. However, staff note that the cost of private vehicles must take into account operational and other relevant costs, including fuel, repairs and maintenance, depreciation, and where appropriate, parking fees. Also, there are major differences in terms of price, availability and convenience to the user. In relation to

certain user groups who do not own, or have access to a car, most notably children, senior citizens, and those in lower income households, local bus passenger services often represent the only practical mode of transport. Moreover, even if cars were a substitute for bus travel, the time period needed for bus users to switch to car use in response to a *ssnip* might well exceed the 12 month period because of the costs of acquiring a substantial asset like a car, and possibly the need to undertake driver training.<sup>5</sup>

48. Having regard to the above factors, our view is that private motor vehicles only represent a limited substitute for bus services. In the long run, it may be possible for some travellers who are captive to bus services to make alternative arrangements, including saving to purchase a vehicle or entering a car-pooling arrangement. However, we consider that a significant element of users will continue to be dependent on buses as their sole mode of transport on an ongoing basis.

#### *Taxi Services*

49. There are numerous taxis which are licensed to operate in the greater Auckland area. We have been told by a number of parties that travellers are likely to substitute taxis over short distances (eg to travel to or from the local supermarket), or at certain times for personal security reasons, or when local bus services are less frequent. However, taxis are considerably more expensive than buses, and while the differential decreases when several people travel together to one or more locations, we do not consider this is sufficient to make them a practical substitute for most bus users.

#### *Suburban Rail Services*

50. Staff have found that suburban rail services in Auckland represent an alternative for many of those travelling within the corridor extending from South Auckland to the central city, and to a lesser extent, from Waitakere (West Auckland) to the central Auckland. While rail services provide a degree of choice, at similar price levels, for users of buses on certain routes along these corridors, the amount of competition offered to bus services is limited by the small network coverage. For this reason, suburban rail services do not represent an effective substitute for bus services in the greater part of the greater Auckland region.

### *Ferry Services*

51. Passenger ferry services provide an alternative for those travelling between Birkenhead, Devonport and Bayswater on the North Shore and the Auckland central business district. However, it is unlikely that ferries would provide an adequate substitute for buses for many of those travelling between the North Shore and the Auckland isthmus due to scheduling, and the additional time required to undertake a journey using a combination of the two modes. Ferries are also clearly limited to those routes in which there is ready access to water.

### *Other Modes of Transport*

52. We have found that walking and bicycling can represent an alternative to buses over relatively short distances. For instance, those travelling between Auckland city and say Ponsonby, may choose to walk as a substitute for YBC's City Loop bus service. However, we consider that in the main, walking and bicycling and similar modes of transport do not constitute a substitute for bus passenger services.
53. We have found only a limited amount of empirical data showing the extent to which the Auckland travelling public are likely to switch between various modes of transport in response to relative price movements, or to changes in the quality of services. The Home Interview Survey (HIS) carried out in 1992 as part of a joint survey undertaken by the ARC, Transit New Zealand, and by the Auckland Territorial Local Authorities, found that around 91% of public transport trips in Auckland were captive to those services (see Appendix A for a summary of the survey findings). Another ARC survey, which was carried out in 1992 into the attitudes of car drivers to public transport, found that car drivers were insensitive to a range of policy measures, none of which had much impact individually or as a group on the preference for car transport (see Appendix B for a summary of those survey findings).
54. Further, studies carried out in the UK, the US, Australia, Brazil and Canada show that price elasticity of demand for local bus services or public transport is inelastic. This suggests that there are no close substitutes for local bus transport, implying that there is a distinct market for local bus services. While no studies appear to have been carried out in New Zealand, and such studies can be context-specific, it seems likely that similar demand elasticities would be found here.

55. While the ARC survey findings and UK studies are not conclusive and should be treated with some caution, they nevertheless indicate the likely response to the application of the *ssnip* test. If a hypothetical monopoly supplier of bus passenger services in greater Auckland were to raise its prices by 5% for a period of at least 12 months, it is unlikely that a significant number of bus passengers would switch to an alternative mode of transport.
56. We note also that there are many non-price factors which influence the choice of transport used by the travelling public. Indeed, some parties have commented that non-price factors are at least as important as price, or more so when determining the mode of transport employed. However, the *ssnip* test is conducted on the basis that these non-price factors remain unchanged.

#### *Conclusion on Relevant Product/Service Market*

57. We consider that there is an element of substitutability between the various forms of transport outlined above, but the extent to which travellers can exercise choice will depend ultimately on a number of factors, including access to such alternative modes, and the length of the journey or convenience. We propose to define bus passenger services in a separate product/function market, but acknowledge that in certain situations some competition is likely to be provided by other forms of transport. Staff note that in several bus merger decisions in the UK, the Monopolies and Mergers Commission has adopted a bus passenger services market.

#### *Geographic Market*

58. As noted above, the provision of passenger services in Auckland is highly fragmented. In some parts of greater Auckland, there are many routes where buses represent the only form of public transport (eg parts of the North Shore), while in other parts of the region, travellers have a choice between various modes of transport (eg suburban rail services may provide an alternative to many of those travelling within a corridor between South Auckland and the central city). Typically, the provision of bus passenger services involves the carriage of passengers over numerous routes which, for the most part, are unlikely to be regarded by bus passengers as being substitutable one for another. While from this demand perspective it could be argued that each of those routes constitutes a separate market, we consider that each route displays similar demand and supply characteristics. To avoid having to analyse a large number of route markets, we

propose for the sake of simplicity to group them into one composite market covering the greater Auckland metropolitan area. It also has to be acknowledged that on certain routes, some competition is provided by other modes of transport, including suburban rail services and ferries. Subject to this qualification, our view is that the greater Auckland metropolitan area can be viewed as a discrete market for the purpose of investigating the competition implications of the proposed acquisition. This corresponds in broad terms with the area administered by the ARC, the agency with the responsibility for the registration of commercial public passenger services, and for purchasing subsidised services in the greater Auckland area. Attached as Appendix C is a map showing the geographic boundaries of the affected market.

#### *Time Dimensions*

59. We have found that the degree to which bus passenger services are substitutable for alternative forms of transport can be influenced by temporal factors. For instance, bus passengers who travel to and from work in the peak morning and afternoon/evening hours may substitute private motor vehicles, or other forms of transport in off-peak times, including the evenings and weekends. However, we do not consider that such factors are sufficient to divide the market separately into off-peak and on-peak time periods.

#### *Conclusion on Markets*

60. For the purpose of analysing the competition issues arising from the proposed acquisition, we intend to define the relevant markets in this report as follows:
- the provision of scheduled bus passenger services in the greater Auckland metropolitan region;
  - the provision of school bus services in the greater Auckland metropolitan region; and
  - the provision of bus charter services in the greater Auckland metropolitan region.



## ASSESSMENT OF DOMINANCE

### Overview

61. Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to give clearance for a proposed acquisition if it is satisfied that the proposed acquisition would not result, and would not be likely to result, in a person acquiring or strengthening a dominant position in a market. If the Commission is not so satisfied, clearance must be declined.
62. Section 3(9) of the Act states that a person is in a “dominant position” in a market if:  
“...that person as a supplier or an acquirer...of goods and services, is...in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is...in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to –
- (a) The share of the market, the technical knowledge, the access to materials or capital of that person...:
  - (b) The extent to which that person is constrained by the conduct of competitors or potential competitors in that market:
  - (c) The extent to which that person is constrained by the conduct of suppliers or acquirers of goods or services in that market.”
63. In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing non-exhaustive factors and any other relevant matters that may be found in a particular case. Important factors to consider in this case include the constraint from existing competition, entry conditions, the countervailing power of the ARC, and the constraint from alternative modes of transport.
64. In *Port Nelson Limited v Commerce Commission*<sup>6</sup>, the Court of Appeal approved the following dominance standard adopted by the High Court (McGechan J):  
... (“dominance”) involves more than “high” market power; more than mere ability to behave “largely” independently of competitors; and more than power to effect “appreciable” changes in terms of trading. It involves a high degree of market *control*.

## **School Bus And Bus Charter Markets**

65. Our enquiries have revealed that there are numerous market participants and few impediments to entry in relation to the provision of school bus and bus charter services in the greater Auckland metropolitan region. Further, we consider that the implementation of the proposed acquisition is unlikely to reduce the level of actual and potential competition in these markets. Accordingly, we conclude that the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in either of these markets.

## **Scheduled Bus Passenger Services Market**

### *Current Competition*

66. YBC is by far the largest urban bus operator in the greater Auckland area, providing an extensive range of scheduled commercial and subsidised services in many parts of the region. NZ Bus, the second largest operator, also operates a mixture of commercial and subsidised services, but these are confined to a corridor extending from South Auckland to Auckland city, and areas adjacent to this corridor.
67. The balance of bus services in the greater Auckland metropolitan area is provided by various companies, including:
- Howick & Eastern, which services certain routes between Howick, Pakuranga, other parts of south-east Auckland and the central city;
  - Birkenhead Transport, which operates services in Birkenhead, Glenfield, and surrounding areas of Auckland's North Shore, and between those suburbs and the central city;
  - Hanhams, which operates on certain routes on the North Shore; and
  - Greenhalgh Motors (100% owned by Ritchies Transport Holdings Limited), which operates services in West Auckland.
68. In addition, there is a number of other smaller operators, including bus and taxi firms, which provide bus passenger services, predominantly at off-peak times or on routes which generate only sufficient passenger traffic to warrant the use of mini-buses or vans.

## **Market Shares**

69. The ARC has provided the Commission with data on a confidential basis showing the estimated patronage of local bus services in its area of responsibility. This information is based on actual returns submitted by bus companies on the number of passenger boardings on subsidised routes, and the ARC's estimate of the number of passenger boardings on commercially registered routes.
70. On the basis of the ARC's data, market shares are estimated as follows:

### **Market Shares:            Number of Passenger Boardings for the Year Ending 30 September 1997**

| <b>Company</b>       | <b>Millions of<br/>Passenger<br/>Boardings</b> | <b>% (Approx.)</b> |
|----------------------|--|--------------------|
| YBC                  | [ ]  | [ ]                |
| NZ Bus               | [ ]  | [ ]                |
|                      | [ ]  | [ ]                |
| Howick & Eastern     | [ ]  | [ ]                |
| Birkenhead Transport | [ ]  | [ ]                |
| Others               | [ ]  | [ ]                |
|                      | [ ]  | <u>100.0</u>       |

71. The major drawback with the above method for calculating market shares is that it does not take account of the length of the journey travelled by bus passengers. To address this problem, we calculated market shares on the basis of the fare revenue generated by the four largest suppliers of bus services in greater Auckland who, in our estimation, together account for at least 95% of total fare revenue. Using this methodology, market shares are estimated as follows:

| <b>Market Shares:</b> | <b>Revenue</b>    |                   |
|-----------------------|-------------------|-------------------|
| <b>Company</b>        | <b>\$ million</b> | <b>% (Approx)</b> |
| YBC                   | [ ]               | [ ]               |
| NZ Bus                | [ ]               | [ ]               |
|                       | [ ]               | [ ]               |
| Howick & Eastern      | [ ]               | [ ]               |
| Birkenhead Transport  | [ ]               | [ ]               |
|                       | [ ]               | <u>100.0</u>      |

72. On the basis of revenue data supplied by the four significant Auckland bus companies, estimated market shares relating to commercial and subsidised services are as follows:

| <b>Market Shares:</b> | <b>Commercial/Subsidised</b> |                   |
|-----------------------|------------------------------|-------------------|
| <b>Company</b>        | <b>% of Total Revenue</b>    |                   |
|                       | <b>Commercial</b>            | <b>Subsidised</b> |
| YBC                   | [ ]                          | [ ]               |
| NZ Bus                | [ ]                          | [ ]               |
|                       | [ ]                          | [ ]               |
| Howick & Eastern      | [ ]                          | [ ]               |
| Birkenhead Transport  | [ ]                          | [ ]               |
|                       | 100.0                        | 100.0             |

Notes:

1. The figures for YBC are for the year ending 31 December 1997.
2. The figures for NZ Bus are based on projections for the 3 months ending 31 January 1998.
3. The figures for Howick & Eastern are based on the year ending 31 March 1997.
4. The figures for Birkenhead Transport are for the year ending 31 October 1997.

| <b>Company</b>       | <b>% of Company Revenue</b> |                   |
|----------------------|-----------------------------|-------------------|
|                      | <b>Commercial</b>           | <b>Subsidised</b> |
| YBC                  | [ ]                         | [ ]               |
| NZ Bus               | [ ]                         | [ ]               |
|                      | [ ]                         | [ ]               |
| Howick & Eastern     | [ ]                         | [ ]               |
| Birkenhead Transport | [ ]                         | [ ]               |
|                      | [ ]                         | [ ]               |

Note: The percentage figures for company revenue may fluctuate quite significantly over a period of time. Therefore, some caution should be exercised when interpreting the figures.

#### *Conclusion on Market Shares*

73. On the basis of the above market share calculations, the combined entity would in our estimation account for around [ ] on average of total scheduled bus passenger services in the greater Auckland metropolitan region. The two next largest operators (Howick & Eastern and Birkenhead Transport) would hold substantially lower shares of around [ ] each. Actual market shares will vary depending by route and area.

## **Constraint by Existing Competitors**

74. Bus companies in greater Auckland have traditionally concentrated on operating services in specific parts of the region, and such day-to-day competition as exists occurs mainly along the boundaries between rival bus networks.
75. Our investigations suggest that there are few bus routes in Auckland (commercial or subsidised) which are capable of supporting more than one bus operator on a profitable basis. As a result, bus companies compete directly with each other to only a relatively limited extent on common routes. NZ Bus competes only to a relatively limited extent with the YBC in its sphere of operation. They only compete with each other in certain parts of the corridor extending between South Auckland and Auckland city as well as in neighbouring areas. Competition appears to be relatively strong in those areas where the services of NZ Bus converge with those of other bus companies (eg the Great South Road area).
76. Other bus companies in Auckland also tend to concentrate on servicing their traditional routes. For example, Howick & Eastern provides bus passenger services from its base in South-East Auckland, and it has shown no interest in expanding substantially beyond its immediate area of operation. Similarly, Birkenhead Transport focuses on a geographically limited area encompassing Birkenhead, Glenfield and surrounding areas.
77. Our view is that Howick & Eastern, Birkenhead Transport and other smaller operators provide little effective competitive constraint on the parties to this proposal, and that this is unlikely to alter to any significant extent, if the proposed acquisition proceeds. Moreover, we consider that these operators lack the financial and other resources to compete effectively with the parties to the proposal. In these circumstances, we consider that the combined entity would face little effective constraint from existing competitors.

### *Competition for Subsidised Services*

78. We have found that the level of competition in the tendering process for subsidised services varies according to the location and nature of the routes covered. However, the average number of tenders is usually over two per route tendered. For example, in the last two rounds for the Auckland Central sector, an average of 2.7 bids were received per Registration for Tender.

79. There appears to be a feeling on the part of some incumbent bus operators that there is no security or guarantee when bidding for such contracts, and that bids must be pitched at a competitive level to ensure existing subsidised business is retained. By removing NZ Bus as the major actual and potential bidder for subsidised services, the proposal has the scope to reduce the level of competition in the tendering rounds for certain subsidised services.

#### *Conclusion on the Constraint by Existing Competitors*

80. Taking into account the above factors, we conclude that if the proposal were to proceed, there would be a considerable lessening in the level of the competitive constraint provided by existing operators on the combined entity.

#### **Constraint by Potential Competitors**

81. Entry conditions, including the nature and height of any entry barriers, must be determined before the threat of new entry, which might constrain the conduct of the combined entity, can be properly evaluated.

#### **Conditions of Entry**

##### *Overview*

82. The applicant contends that there are no significant barriers to entry into the bus industry. YBC broadly agrees with this view, noting that entry barriers are relatively low. Others spoken to have commented that, while in certain respects entry is not difficult, there are certain factors which are likely to hamper the successful entry of a new market player, and for it to maintain a presence in this market. A review of the relevant entry conditions is provided below.

##### *Access and Cost of Vehicles*

83. The applicant contends that there is a significant number of suitable second hand buses readily available, and estimates that they can be imported from Japan for between \$15,000 and \$30,000. However, almost all of the other parties spoken to were of the view that for such an outlay, the purchaser is unlikely to obtain a bus which meets the vehicle quality standards laid down by the ARC to operate

subsidised services (see para 86). Several parties consider that an outlay of at least \$100,000 is required to purchase a bus which complies with the appropriate standards.

84. Our enquiries suggest that access to a suitable fleet of buses is unlikely to represent a major obstacle to a new entrant. While a relatively large outlay is necessary for new buses, there are unlikely to be any major sunk costs incurred by a bus operator due to its ability to recover part of the initial outlay if the firm decides to exit the market. We note, however, that the extent to which an operator can recover this outlay will depend on the state of the re-sale market.

#### *Regulatory Requirements*

85. As noted previously, there are no significant regulatory approvals required for those proposing to launch scheduled bus passenger services. For example, a passenger service licence is required, but these can be easily obtained. A bus service operator in Auckland is also required to register a commercial service with the ARC, but there are limited grounds on which the ARC can decline to accept a registration (see para 22 for further details).
86. In recent years, the ARC has introduced various requirements, which must be met by a bus company operating a subsidised service. These include compliance with vehicle quality standards (VQS). A performance bond is also required to be lodged with the ARC when submitting a bid for a subsidised service. However, while some parties have identified these requirements as an impediment to entry, our view is that they do not represent a factor which is likely to constrain a new entrant from entering the market.

#### *Access to Depot and Maintenance Facilities/Bus Stops*

87. Another entry requirement into this market is access to depot and maintenance facilities. While a large depot may require an outlay of \$2 million, or more, such facilities can be leased for a much smaller outlay, and do not require to be particularly large or comprehensive. The major requirement is for sufficient space to park vehicles. Maintenance can be undertaken either in-house by specialist staff, or can be contracted out.



### *Access to Bus Stations*

88. All bus companies have ready access to the Auckland City Council's Britomart terminal in central Auckland as well as to all bus stops throughout the greater Auckland region. While YBC owns interchange facilities at Otahuhu and New Lynn, the company told us that it can, and does, allow third parties to use these facilities.

### *Passenger Information*

89. Before commencing services, a new entrant requires various kinds of information relating to the area in which it plans to operate, including routes operated, departure times and locations, and potential passenger numbers. NZ Bus claims that passenger information can be obtained without any major difficulty. However, staff consider that it is likely that incumbent operators have an advantage over newcomers in that they already have better knowledge of the area and the service requirements, whereas a new entrant may incur costs in obtaining access to such information as well to establish its reputation. Such costs are not recoverable if the new services do not proceed.
90. It can be expected that an incumbent operator would have a competitive advantage when determining the appropriate bid to run a subsidised service. [
- ]. Although the costs and the time to develop familiarity with new services may make entry difficult for a new entrant with limited financial resources, staff consider access to such information does not represent a major obstacle.

### *Incumbent Response*

91. The threat of retaliation by an existing operator appears to be a major factor which influences new entry into this market by smaller operators. In the past, new entrants have faced a competitive response to new entry. That response may take several forms, including registration by an existing operator of a commercial service over or adjacent to the routes operated by a new entrant. This would reduce the revenue to the successful bidder of a subsidised service, and possibly make it uneconomic to continue with the contract. In addition, staff consider that the ability of the combined entity to cross-subsidise across routes due to its size and financial strength, has the potential to act as a strong deterrent to a new entrant without significant financial

backing operating on a limited number of routes.

### **Assessment of the Constraint by Potential Competition**

92. The Commission has acknowledged that potential competition can act as a constraint on business activity, and an assessment of the nature and extent of that constraint represents an important element in the Commission's evaluation of competition and market dominance.<sup>7</sup>
93. In order for the threat of market entry to be a sufficient constraint on the exercise of market power, it must be likely, sufficient in extent, timely and sustainable (ie the "lets" test).<sup>8</sup>

#### *Likelihood and Sustainability of Entry*

94. The applicant contends that "In terms of new entry (whether by new or existing players) the test is whether the merged firm would be constrained from increasing its prices or lowering services by the threat of new entry". Further, it considers that the mere rumoured interest of potential bidders was sufficient for YBC to significantly reduce its tender prices for ARC contracts in the 1994, 1995 and 1996 tender rounds.
95. However, in order to be an effective constraint on incumbent market operators, entry must be likely in commercial terms. In addition, entry is likely only if there is likely to be a lasting economic incentive.<sup>9</sup>
96. As noted above, there are few major physical impediments to entry in terms of the capital requirements, availability and cost of buses, depots, and similar infrastructure. However, staff have found that to establish a presence on a commercially viable and sustainable basis may raise some difficulties for a prospective entrant. The reasons are:
- the difficulties associated with acquiring and maintaining a sufficiently large share of the market to capture economies of scale and scope necessary to compete effectively;
  - the financial strength and the commitment of the combined entity to defend its existing routes from new entrants; and

- the cost and time involved in obtaining detailed knowledge about the market place, and to develop a reputation for reliability and service quality.

97. While the applicant claims that the market is competitive, and entry barriers are low, the question arises as to why successful entry has been so limited. The only examples of new entry into this market in the greater Auckland area over recent years have been NZ Bus, MacBus, Cesta and Hanhams. This, in part, can be attributed to the relatively short period of time that has elapsed since public transport was deregulated in 1991. As noted previously, NZ Bus entered the market by acquisition in 1992. MacBus entered the market on a limited basis in 1994, but despite its industry experience and financial support it departed the market within six months due to a misjudgment of likely revenue. Cesta began operating bus services in 1994 also, but only lasted a short period before exiting the market because of inadequate equipment and poor performance. Hanhams entered this market about 4 years ago by providing subsidised services on a small number of routes, and continues to do so on a minor scale. The company is currently being offered for sale.

#### *Extent of Entry*

98. 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 participants to react in a significant manner.
99. Staff have found that entry on a modest or localised basis is not difficult, and there is evidence of such entry having occurred on this scale previously. For example, taxi companies have lodged successful bids to operate subsidised bus services at off-peak times, and smaller operators, such as Hanhams, have launched bus passenger services on a relatively small scale.
100. However, staff consider that entry on a small scale or localised basis is unlikely to be sufficient to provide an adequate constraint on the combined entity. To effectively constrain the conduct of the merged company, it would be necessary to establish services on a substantially larger scale.
101. However, large-scale entry is likely to present difficulties for a prospective operator. This is largely due to difficulties in competing “head on” on commercial routes due to

limited passenger numbers, and the restrictive nature of the CPP which the ARC is required to follow. The CPP's have the effect of limiting the size of contracts into relatively small packages, thereby hindering the prospect of a large operator acquiring sufficient routes to obtain critical mass, and capture the economies of scale and scope necessary to compete effectively. Following a recent review of the CPP, Transfund has adopted a more liberal attitude on contract size, which enables regional councils to offer larger contract packages to achieve service integration. The intention is to make entry by both small and large operators to the market more attractive.

102. However, despite the proposed changes, staff are of the view that it is unlikely that new entry could be achieved on a scale sufficiently large to effectively constrain the merged entity.

#### *Timeliness of Entry*

103. Subject to the preceding comments, it is considered that if entry into the affected market were to occur, it could be achieved in a relatively timely fashion. Any prospective entrant wishing to secure a contract to provide services for the ARC would have sufficient time to order and commission the buses. Accordingly, entry if it were to occur, could do so within a reasonable time period.

#### *Conclusion on Constraints from Potential Competitors*

104. Staff conclude that entry into the relevant market might be expected to be achieved in a timely manner, but entry would not be likely, sufficient in extent or sustainable enough to constrain dominance.

#### **Constraint from the ARC**

105. As described earlier in the report, the ARC has a major role in the funding and regulation of bus passenger services in the greater Auckland region. This arises through the ARC's regulatory responsibilities as well as through its role in providing subsidies for bus services in the region.
106. The ARC's influence on the nature and level of competition in this market can be exercised in various ways, including:

- the power to control and structure the tendering process, including the numbers of routes offered, (eg breaking up some of the contracts to encourage smaller players to enter the market), and setting the maximum price levels, the length of the contracts, timetabling, vehicle quality standards, and other terms and conditions;
  - the ability to influence the fare levels for commercial services through fixing the fare schedule for subsidised services (see para 33);
  - the ability to influence the fare levels through the concessionary fare scheme (see para 34);
  - the ability to decline registration of commercial bus passenger services on certain prescribed grounds;
  - the power to cancel contracts if the operator fails to comply with the terms and conditions of such contracts; and
  - the power to “contract over” existing services, where existing commercial services are considered to be unsatisfactory.
107. The influence of the ARC is probably best illustrated by the events surrounding the recent fare increase which involved protracted negotiations between the ARC and bus operators. In theory, bus operators had the option to increase the fares for commercial routes and/or to register subsidised services as commercial, and to then to raise fares on those routes. We discussed this matter with the Chief Executive of the YBC. He told us that bus companies had explored ways of raising fares for commercial routes, but they were unable to find any practical solution without corresponding increases on subsidised routes – which required approval from the ARC.
108. The critical issue arises as to whether the ARC’s influence on the nature and level of competition in the market is likely to provide an effective constraint on the combined entity. Staff are of the view that post-acquisition, the ARC would retain some ability to restrain the behaviour of the combined entity. However, this ability is likely to be reduced:

- as the number of subsidised services declines, and the number of commercial routes increase;<sup>10</sup> and
- with the reduction in the number of actual and potential bidders by the removal of a large well resourced player. This is likely to reduce the options available to the ARC in the tendering process, and the scope for it to limit the market power of the combined entity.

109. Staff are of the view that post-acquisition, the balance of power between the ARC and the combined entity is likely to be more evenly balanced. The effect on competition in the market is difficult to ascertain with any real certainty. On the one hand, the ARC may continue to exercise some countervailing power. On the other hand, there is the real potential for the combined entity to exercise undue market power. This exercise of power may occur through either higher fares for customers or higher subsidy levels than would otherwise be the case or some combination.

#### *Conclusion on Constraint by the ARC*

110. Accordingly, although the ARC currently provides some competitive discipline on the behaviour of the YRC and NZ Bus, staff cannot be satisfied that the ARC will continue to provide an effective constraint on the combined entity post-acquisition.

#### **Constraints From Alternative Modes of Transport**

111. Staff have reviewed the competitive constraint likely to be provided by a range of alternative modes of transport on the conduct of the combined entity.

#### *Private Motor Vehicles*

112. As noted earlier, Auckland is characterised by very high levels of private car ownership with around 90% of households in the region owning one or more vehicles. In addition, the privately-owned car is the main means of transport used by Auckland residents to travel for work and recreational purposes. On the basis of available data, around 80% of Auckland residents use private vehicles to travel to work.

113. Notwithstanding the high usage of private motor vehicles, our enquiries and the available data indicate that a relatively high proportion of those who use buses and

other modes of public transport do not own, or do not have ready access to, private motor vehicles. Available information suggests that this captive element is a very high proportion. At the same time, there is a very substantial proportion of private motor vehicle users who are wedded to car use, and would not consider public transport as an alternative.

114. Having regard to the above factors we consider that private motor vehicles are unlikely to provide an effective constraint for the bulk of the patrons of bus passenger services in the greater Auckland metropolitan region, and, therefore, would be unlikely to provide a sufficient discipline on the combined entity post-acquisition.

#### *Suburban Rail Services*

115. Tranz Rail is the sole operator of commuter rail passenger services in the greater Auckland region. The company currently provides services on two lines, one extending from central Auckland to Waitakere in the west, and the other from central Auckland to Papakura in the south.
116. Rail passenger volumes have doubled over recent years to around 2 million passenger trips per year. This follows the introduction of new diesel multiple units, and scheduling improvements. We consider that the availability of suburban rail services provides a competitive constraint to bus services in the corridors along the Papakura railway line, and to a lesser extent, on the Waitakere line, particularly for those commuters who reside in close proximity to a station. We note, however, that there are restrictions particularly in relation to track capacity on the West Auckland service, and while there is some scope to increase capacity, this is unlikely to increase patronage significantly, at least in the short term.
117. Staff consider that suburban rail services are likely to provide some competitive constraint on the combined entity in the Auckland city/South Auckland corridor, but due to the capacity restrictions on the Waitakere line, and in the absence of an extensive rail network in greater Auckland, they are unlikely to provide a major constraint over most routes, and the region as a whole.

### *Harbour Ferry Services*

118. The three harbour ferry services in Auckland operated by Fullers Group have experienced growth in patronage, but still make up only [ ]<sup>11</sup> of total public transport services in Auckland. The Birkenhead and Bayswater ferries have been marketed under the brand 'Link' as part of a joint venture partnership with the YBC. The Devonport ferry is also due to be renamed as a 'Link' product some time this year. Although the ownership of the 'Link' ferries remains with Fullers Group, the present relationship the company has with the YBC is likely to continue following the implementation of the proposed merger. Staff believe that constraint from ferries on the combined entity is likely to be limited because of this relationship.
119. Furthermore, although ferries have become a popular form of transport, they are limited to over-water routes, and are often dependent on the integration of other forms of transport, such as buses or motor vehicles.
120. Accordingly, staff consider ferries are unlikely to constrain the combined entity to any significant extent, if the proposed acquisition proceeds.

### *Taxis*

121. The number of taxis available for hire in Auckland has increased substantially over recent years. However, while taxis may provide some constraint on short routes, and particularly in the weekends or late at night, they are expensive in comparison to bus services. Accordingly, our view is that taxis would not provide an effective constraint on the combined entity.

### *Other Modes of Transport*

122. Other modes of transport available in the greater Auckland region include cycling and walking, but apart from relatively short journeys, these forms of transport are unlikely to provide a significant constraint on the combined entity.

### *Conclusion on Constraints from Alternative Modes of Transport*

123. We conclude that rail passenger services provide a competitive constraint on certain routes in the Central Auckland/South Auckland corridor, but not significantly over the geographic market as a whole. In our view, private motor vehicles and other



modes of transport are unlikely to provide a sufficient competitive constraint on the conduct of the merged entity, if the proposal proceeds. With the exception of rail, we are unable to attach any significant weight to other modes of transport as an actual or potential competitive constraint on the combined entity in the post-acquisition market environment.

#### OVERALL CONCLUSION

124. We conclude that implementation of the proposal would not result in any person acquiring or strengthening a dominant position in the markets for the provision of school bus services and charter bus services in the greater Auckland metropolitan region.
125. In relation to the market for the provision of scheduled bus passenger services in the greater Auckland metropolitan region, we are not satisfied that the level of constraint from existing and potential competitors, the ARC, and alternative modes of transport would be sufficient to prevent the combined entity from acquiring or strengthening a dominant position in that market.

#### RECOMMENDATION

126. We have had regard to the factors set out in s 3(9) of the Act, and are not satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any market. We recommend that you decline to give clearance to the proposed acquisition under s 66 (3) (b) of the Act.

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Investigator

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Investigator

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Manager

**DETERMINATION: NEW ZEALAND BUS LIMITED/TRANSPORT AUCKLAND CORPORATION LIMITED**

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposed acquisition 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 New Zealand Bus Limited, or any interconnected body corporate, to acquire either the business and assets, or all of the shares of Transport Auckland Corporation Limited.

Dated at Wellington this                      day of                      1998

\_\_\_\_\_  
P C Allport  
Acting Chairman

\_\_\_\_\_  
E C Harrison  
Member

\_\_\_\_\_  
R N Taylor  
Member

- 1 Transport Facts and Figures, ARC Fact Sheet, 1996
- 2 *Queensland Co-operative Milling Association*, (1976) ATPR 40-012 at 17,247.
- 3 *Edmonds Food Industries/WF Tucker & Co Limited*, Decision No. 84, 21 June 1984.
- 4 *1996 Census of Population and Dwellings, Regional Summary*, Statistics New Zealand.
- 5 The Commission will generally consider a *ssnip* to involve a 5% increase in price for a period of a minimum of one year. See page 15 of the Commission's *Business Acquisitions Guidelines, 1996*.
- 6 *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.
- 7 See p. 19 of the Commission's publication, *Business Acquisition Guidelines 1996*.
- 8 *Ibid*, p. 19.
- 9 *Ibid*, p.19 and 20.
- 10 On the basis of revenue data, around 60% of the bus passenger market is provided by subsidised services and the balance by commercial services.
- 11 This percentage is based on passenger boarding figures which have been compiled by the ARC.