



ISSN NO. 0114-2720  
J3222

COMMERCE COMMISSION  
Decision No. 336

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

**Massey University**

and

**Auckland College of Education**

**The Commission:** E C A Harrison (Division Chair)  
P R Rebstock  
E M Coutts

**Summary of Proposed Acquisition:** The merger of the assets and business of Massey University and the Auckland College of Education.

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

**Date of Determination:** 24 December 1998

**CONFIDENTIAL MATERIAL IN THIS REPORT IS CONTAINED IN SQUARE  
BRACKETS [ ]**

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>THE PROPOSAL .....</b>	<b>4</b>
<b>THE PROCEDURES .....</b>	<b>4</b>
<b>THE INVESTIGATION .....</b>	<b>4</b>
<b>THE PARTIES.....</b>	<b>5</b>
MASSEY UNIVERSITY .....	5
AUCKLAND COLLEGE OF EDUCATION .....	5
<b>OTHER RELEVANT PARTIES .....</b>	<b>5</b>
TEACHER REGISTRATION BOARD .....	5
NEW ZEALAND QUALIFICATIONS AUTHORITY .....	5
<b>THE TERTIARY EDUCATION SECTOR .....</b>	<b>6</b>
OVERVIEW .....	6
Universities.....	6
Colleges of Education .....	7
Polytechnics.....	7
Wananga (Maori tertiary institutions).....	7
Private training establishments (PTEs).....	7
<b>OVERVIEW OF TEACHER TRAINING .....</b>	<b>7</b>
INTRODUCTION .....	7
APPROVAL OF TEACHER TRAINING PROGRAMMES .....	8
New Zealand Qualifications Authority Approval.....	8
Teacher Registration Board Approval .....	8
Ministry of Education Funding.....	8
<b>Teacher Training Qualifications.....</b>	<b>9</b>
Primary Teacher Training.....	9
Secondary Teacher Training .....	9
In-Service Teacher Training.....	10
<b>THE RELEVANT MARKETS.....</b>	<b>10</b>
INTRODUCTION .....	10
PRODUCT MARKETS .....	11
Primary Teacher Training.....	11
Secondary Teacher Training .....	12
In-Service Teacher Training.....	12
Early Childhood Education Training.....	12
Conclusion on Product Markets .....	12
GEOGRAPHIC MARKETS.....	12
Conclusion on Geographic Market.....	13
OVERALL CONCLUSION ON MARKET DEFINITION .....	13
<b>ASSESSMENT OF DOMINANCE.....</b>	<b>13</b>
MARKET SHARE ESTIMATES IN THE MARKET FOR PRIMARY SCHOOL TEACHING QUALIFICATIONS .....	14
MARKET SHARE ESTIMATES IN THE MARKET FOR SECONDARY SCHOOL TEACHING QUALIFICATIONS .....	15
<b>Market Participant.....</b>	<b>15</b>
MARKET SHARE ESTIMATES IN THE MARKET FOR IN-SERVICE TEACHING QUALIFICATIONS .....	16
CONSTRAINTS FROM EXISTING COMPETITION .....	16
CONSTRAINTS FROM MARKET ENTRY/EXPANSION.....	17

BARRIERS TO ENTRY .....	19
<i>Facilities</i> .....	19
<i>Access to Schools</i> .....	20
<i>Ability to offer degrees</i> .....	20
CONCLUSION ON THE MARKET FOR PRIMARY TEACHER TRAINING QUALIFICATIONS .....	20
CONCLUSION ON THE MARKET FOR SECONDARY TEACHER TRAINING QUALIFICATIONS.....	20
CONCLUSION ON THE MARKET FOR IN-SERVICE TEACHING QUALIFICATIONS.....	21
<b>OVERALL CONCLUSION.....</b>	<b>21</b>
<b>DETERMINATION ON NOTICE OF CLEARANCE .....</b>	<b>22</b>

## **THE PROPOSAL**

- 1 On 7 December 1998, the Commission registered a notice pursuant to s 66(1) of the Commerce Act 1986 (“the Act”) seeking clearance for the merger of the assets and business of Massey University (“Massey”) and the Auckland College of Education (“ACE”). The merger is subject to the approval of the Minister of Education under the provisions of the Education Act 1989.

## **THE PROCEDURES**

- 2 Section 66(3) of 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 longer period of time. In the case of this application, an extension of three working days was sought by the Commission and agreed to by Massey. Accordingly a determination was required by the Commission by no later than 24 December 1998.
- 3 Massey has sought confidentiality for certain information contained in the application, and a confidentiality order was made in respect of that information for a period of 20 working days from the Commission’s determination of the application. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply to that information.
- 4 The Commission’s Decision is based on an investigation conducted by staff and their subsequent advice to the Commission.

## **THE INVESTIGATION**

- 5 Commission staff contacted the following parties during the investigation of the proposed acquisition:
  - Masters Institute;
  - UNITEC Institute of Technology;
  - University of Auckland;
  - Auckland Institute of Technology;
  - Manukau Institute of Technology;
  - Waikato Polytechnic;
  - University of Waikato School of Education;
  - Teacher Registration Board;
  - Post Primary Teachers Association;
  - Ministry of Education;
  - Christchurch College of Education; and
  - New Zealand Qualifications Authority.

## **THE PARTIES**

### **Massey University**

- 6 Massey is one of seven universities in New Zealand. It provides tertiary qualifications in the broad areas of agriculture, business, science, humanities, arts and education.
- 7 Massey is involved in the teacher education field, through the Massey University College of Education (formed after a merger with the Palmerston North Teachers Training College). It offers degree, certificate and diploma qualifications at all levels, both under-graduate and graduate. It offers internal teacher training programmes in Palmerston North, Hawke's Bay, Taranaki and Albany (Auckland). There are also external teacher training options available through extramural papers.

### **Auckland College of Education**

- 8 ACE is one of four Colleges of Education in New Zealand. It was established in 1881 and is the largest teacher education organisation in the country.
- 9 ACE provides a range of programmes including social work, special education, continuing education for teachers, adult education, Pacific Island early childhood education, as well as pre-service teacher education. The degree programmes offered are the Bachelor of Education (Teaching), Bachelor of Physical Education and the Master of Education degrees.

## **OTHER RELEVANT PARTIES**

### **Teacher Registration Board**

- 10 The Teacher Registration Board ("TRB") is a Crown entity, established under the Education Act 1989 ("the Education Act"). It maintains a register of teachers who fit the requirements of the Act. Teachers are issued with a practising certificate valid for three years. There are approximately 64,500 teachers with a current practising certificate<sup>1</sup>. The TRB is funded from the practising certificate fees paid by teachers.

### **New Zealand Qualifications Authority**

- 11 The New Zealand Qualifications Authority ("NZQA") is a Crown Entity established under the Education Act. NZQA administers qualifications and provides assurances about qualifications quality, oversees the examination system, and develops the National Qualifications Framework.
- 12 The recent Government White Paper<sup>2</sup> recommends that a new body – the Quality Assurance Authority of New Zealand ("QAANZ") be established, with overall responsibility for the quality assurance of tertiary education in New Zealand. QAANZ will not carry out quality validation itself, but it will have the overall responsibility for ensuring that approved validation systems maintain educational quality. Tertiary

---

<sup>1</sup> TRB 1996 Annual Report

<sup>2</sup> Tertiary Education in New Zealand: Policy Directions for the 21<sup>st</sup> Century, White Paper, November 1998, Ministry of Education, Wellington, p.6

providers wanting to obtain public tuition subsidies for their students will be required to have their quality assured by a validation agency or another arrangement that has been approved by QAANZ.<sup>3</sup>

## THE TERTIARY EDUCATION SECTOR

### Overview

- 13 New Zealand's education system consists of compulsory and non-compulsory education. The Education Act provides for free education in state primary and secondary schools for students between the ages of five and 19. Attendance is compulsory until the age of 16 years.<sup>4</sup>
- 14 "Tertiary" education describes all forms of education and training available beyond compulsory education. Post-compulsory education in New Zealand is available from a variety of sources including universities, polytechnics, wananga, and private training establishments (PTEs).<sup>5</sup> These educational bodies are discussed below.

### *Universities*

- 15 The seven universities in New Zealand are:
  - the University of Auckland;
  - the University of Waikato;
  - Massey University;
  - Victoria University of Wellington;
  - the University of Canterbury;
  - Lincoln University; and
  - the University of Otago.
- 16 All universities provide courses in the core faculties of arts, sciences, and commerce.
- 17 Universities are controlled by their own councils, established under legislation which encourages their autonomy while being consistent with the normal requirements of accountability for public funding. All management matters are the responsibility of the university's council, as are course regulations and the maintenance of consistent standards for degrees and other qualifications.<sup>6</sup>
- 18 Massey University established teaching programmes at its Albany campus in the early 1990's. More recently, the Christchurch College of Education has established teacher training courses at Manukau, as well as a number of other centres.

---

<sup>3</sup> *ibid.*

<sup>4</sup> New Zealand Official Yearbook 1998, GP Publications, Thorndon, Wellington, p.201

<sup>5</sup> *ibid.*, p. 241.

<sup>6</sup> *ibid.*, p.216.

### *Colleges of Education*

- 19 These are specialised tertiary institutions which provide courses leading to teaching qualifications. The four Colleges are located in Auckland, Wellington, Christchurch and Dunedin.

### *Polytechnics*

- 20 There are 25 polytechnics in New Zealand, providing a diverse range of academic, vocational and professional programmes which cover an increasing number of subjects at various levels of specialisation. Polytechnics are controlled by their own councils. Members of polytechnic councils tend to represent business, industry, local authorities, universities, women's and ethnic groups, as well as education and community interests.<sup>7</sup>

### *Wananga (Maori tertiary institutions)*

- 21 Wananga provide tertiary education and training in an environment recognising tikanga Maori. Two wananga have qualified for funding on the same basis as universities, polytechnics, and colleges of education with effect from 1994. Wananga are governed in the same way as other tertiary institutions.<sup>8</sup>

### *Private training establishments (PTEs)*

- 22 There are large numbers of PTEs in New Zealand, of which about 800 are registered with the New Zealand Qualifications Authority<sup>9</sup>. PTEs offer a wide range of courses, often in niche markets.

## **OVERVIEW OF TEACHER TRAINING**

### **Introduction**

- 23 Prior to the enactment of the Education Act, only colleges of education and universities trained teachers. Since then, there has been increasing diversity in the providers of teacher education.
- 24 In 1997, there were 16 directly-funded providers of pre-service teacher education<sup>10</sup>. The traditional providers are the colleges of education in Auckland, Wellington, Christchurch, Dunedin, and two universities where the colleges of education have amalgamated with the local university (Waikato and Massey).<sup>11</sup> The newer providers are the polytechnics or institutes of technology, PTE's, and the University of Auckland.

---

<sup>7</sup> *ibid*, p. 219.

<sup>8</sup> *ibid*, p. 222

<sup>9</sup> *ibid*.

<sup>10</sup> For the purposes of this Decision the Commission defines "pre-service education" as educational programmes which enable a person to teach at early childhood, primary and secondary levels.

<sup>11</sup> Quality Teachers for Quality Learning: A Review of Teacher Education, Green Paper, Ministry of Education, Wellington, October 1997, p.13.

- 25 There are now 28 centres where teacher education is being provided and a total of 44 programmes which students can access<sup>12</sup>.

### **Approval of Teacher Training Programmes**

- 26 There is no central control of pre-service teacher education course content<sup>13</sup>. Institutions wishing to provide teacher training programmes must gain the requisite approval from both the NZQA and the TRB. The exception to this is universities (or any organisation aligning itself with a university) which are authorised under the Education Amendment Act 1990 to approve their own courses.

#### *New Zealand Qualifications Authority Approval*

- 27 Any institution (with the exception of universities as mentioned above) that wishes to offer a teacher education programme must gain course approval and accreditation for that programme from the NZQA. The NZQA has its own set of criteria, including structure of the course, curriculum content, and the capability of the institution to offer the course.

#### *Teacher Registration Board Approval*

- 28 Following the requisite approval from the NZQA, the applicant provider submits its course for TRB approval. The TRB has its own criteria for approval, which include such factors as: entry criteria for admission of students, the subject matter of the programme units, the qualifications of staff, and the level of resources available. A further requirement is that the programme must include the practical assessment of student teachers placed in schools. To satisfy this requirement, providers must enter into relationships with schools in their area, such that their students can be accommodated and assessed.
- 29 In-service or further teaching training is not subject to the same requirements. There is no requirement for TRB approval for in-service training programmes.

#### *Ministry of Education Funding*

- 30 Both NZQA and TRB approval are required before Ministry of Education funding is granted. The current Equivalent Full-Time Student (EFTS) funding system funds institutions in bulk according to the number of students and the courses that those students are taking. Polytechnics, colleges of education, universities and wananga receive government subsidies for the number of equivalent full-time students in each of the course-cost categories at their institution. Tertiary institutions receiving this money must meet the requirements of both the Public Finance Act 1989, and the Education Act 1989.<sup>14</sup> All tertiary institutions are now funded according to the EFTS system.
- 31 With regard to domestic tertiary students, the Universal Tertiary Tuition Allowance will be introduced in 1999.<sup>15</sup> This allowance, which replaces the existing Study Right student allowance, offers financial assistance to students. It will be calculated

---

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> New Zealand Official Yearbook, *supra*, p. 204.

<sup>15</sup> Tertiary Education in New Zealand: Policy Directions for the 21<sup>st</sup> Century, White Paper, November 1998, Ministry of Education, Wellington, p.4



according to the age of the student, parental income and whether the student is living away from home.

### **Teacher Training Qualifications**

- 32 The Education Act sets out specific training qualification requirements for those who wish to teach in the New Zealand primary or secondary school system. Section 120A of the Education Act provides that only those persons holding practising certificates can be permanently appointed to any teaching position in any private or state secondary school, primary school or kindergarten. Practising certificates are issued only to registered teachers (section 130).
- 33 Persons wishing to teach primary and secondary students in New Zealand can also obtain their qualifications in Australia. Under the Trans-Tasman Mutual Recognition Act 1997, persons registered to carry on an occupation in Australia can carry on that occupation in New Zealand, and vice versa. Accordingly, a person who is a registered teacher in Australia is entitled to practice as a teacher in New Zealand once his/her qualification has been confirmed by the New Zealand Qualifications Authority.

#### *Primary Teacher Training*

- 34 There is a range of different courses offered in primary teacher training. The appropriate course will largely depend on whether the applicant has any tertiary qualifications. The three main forms of primary teacher training are:
- a. Degree qualifications: these are three to four year courses designed for those with no previous tertiary qualifications. For example, Bachelor of Education and Bachelor of Teaching.
  - b. Three year diplomas of teaching: these are designed for those with no previous tertiary qualifications.
  - c. Graduate diplomas of teaching: these are one to two year courses designed for those wishing to become primary teachers who already have tertiary qualifications (though not necessarily a teaching qualification).
- 35 The majority of students enrolled in primary training are school leavers or those with no previous tertiary qualifications. Accordingly, enrolments in the degree qualification and the three year diploma courses form the majority of primary teacher trainees.
- 36 The diploma course has traditionally been the main qualification for primary teacher training. However, the relatively recent degree qualification is now attracting a much larger number of students. It appears that this is due to the greater status given to a degree qualification and the higher salary that it attracts.
- 37 There are 16 TRB-approved institutions throughout New Zealand for primary teaching. These are listed in Appendix A. Eight of these institutions provide programmes based in Auckland.

#### *Secondary Teacher Training*

- 38 As with primary teacher training, two groups of applicants can be distinguished by the secondary teacher training courses on offer: school leavers/those with no tertiary qualifications, and near graduates and graduates. The two main forms of training available to those wishing to become secondary teachers are:

- a. Degree qualifications: These are designed for school leavers and those with no degree qualifications. Previously these programmes have been available only in a few specialised areas eg ACE offers physical education and music. However, at University of Auckland a degree structure is being established and is in place in 1998 in a general form.
  - b. Graduate Diploma: These are one year courses designed for those who already hold degree qualifications.
- 39 The majority of enrolments in secondary teacher training are in one year graduate diploma training.
- 40 Again, there are a number of institutions approved throughout New Zealand for secondary teacher training. These are listed in Appendix B. Seven of these institutions provide programmes in Auckland.

### *In-Service Teacher Training*

- 41 In-service teacher training is available for qualified teachers who wish to further their qualifications and/or skills. In-service qualifications, such as the Higher Diploma of Teaching and Advanced Diploma of Teaching, assist a teacher with promotional advances and salary increases. Students of in-service courses are normally in full-time employment, and therefore usually undertake in-service training in the region in which they are employed.
- 42 There are a number of institutions offering in-service teacher training throughout New Zealand. The applicant stated that there are seven such providers in Auckland.

## **THE RELEVANT MARKETS**

### **Introduction**

- 43 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 under consideration. 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 in any of those markets.
- 44 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.
- 45 The Commission's *Business Acquisition Guidelines* outline the Commission's approach to market definition.<sup>16</sup> A brief discussion of this approach follows.

---

<sup>16</sup> Commerce Commission, *Business Acquisition Guidelines 1996*, pp 11-16.

- 46 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 was 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.
- 47 In practice, the process of defining markets is unlikely to be as precise and as scientific as suggested by the *ssnip* test. However, in the Commission's view, the *ssnip* approach provides a useful framework for assessing the question of what other products, or products from other areas, are substitutable for the product in question as a matter of fact and commercial common sense.
- 48 Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products proceeds through a series of vertical functional levels, so the functional levels affected by the application have to be determined as part of the market definition. 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". In relation to the present application it does not seem appropriate to distinguish a functional level.

## Product Markets

- 49 The applicant submits that, for students wishing to teach, there is no substitute for an approved teacher training programme. This is due to the requirement from the TRB that a graduate teacher applying for registration must have completed an approved teacher training course.
- 50 The applicant submits further that there is a separate product market for each of the areas of teaching, being early childhood, primary and secondary. The completion of training in one area does not, in general, result in the ability to teach in another area of the schooling system.<sup>17</sup>
- 51 The applicant also argues that in-service training is a separate market as these courses are post-graduate qualifications, and therefore not substitutable for the undergraduate qualifications in the other markets.

### *Primary Teacher Training*

- 52 Any person wishing to become a primary school teacher must complete a recognised primary teaching qualification. The successful completion of a primary teaching

---

<sup>17</sup> School Boards of Trustees are free to employ a teacher in any position. However if the teacher is being paid by the Ministry of Education, and the Ministry does not regard the qualification as adequate for the position, then the teacher would be paid as 'untrained'. For the purposes of analysing this acquisition, the Commission considers that the incidence of this occurring is low, and will adopt the position that training in one qualification does not allow a teacher to teach in another area of the schooling system.

qualification allows the student to apply to the TRB for registration as a primary school teacher. It does not, in general, result in the ability to teach in any other area of the schooling system.

### *Secondary Teacher Training*

- 53 A secondary teaching qualification is required by those persons wishing to teach in a secondary school. As with primary teaching, a secondary teaching qualification does not, in general, allow a secondary teaching graduate to teach other than in a secondary school.

### *In-Service Teacher Training*

- 54 A number of in-service training programmes are also offered by tertiary institutes and private providers. As stated earlier, in-service qualifications are undertaken by qualified teachers wishing to increase their qualifications and/or skills.
- 55 In-service qualifications are recognised by employers with regard to promotional opportunities and salary increases.

### *Early Childhood Education Training*

- 56 The applicant submits that there will be no aggregation in relation to what it describes as “early childhood education training” as Massey does not participate in early childhood education at its Albany campus or at any location in the Auckland region.
- 57 Therefore, as no market aggregation will result, the Commission will not consider this market further in the context of this application.

### *Conclusion on Product Markets*

- 58 The Commission concludes that there are three separate relevant product markets. These are the provision of programmes of study leading to:
- primary school teaching qualifications;
  - secondary school teaching qualifications; and
  - in-service teaching qualifications.

### **Geographic Markets**

- 59 The applicant submits that the geographical extent of the markets is the greater Auckland area, and has included Northland in its definition. The applicant argues that anecdotal evidence suggests that students wishing to enter teacher training do not, in general, travel long distances to attend training institutions. The applicant has provided data which appears to support this conclusion.
- 60 There are some arguments available that would support a broader market. However, in considering the geographic extent of the markets, the Commission will tend to take the narrowest market on the basis that if no competition concerns arise in that market, there are unlikely to be any concerns within a wider geographic market.

### *Conclusion on Geographic Market*

61 For the purpose of this application, the Commission has adopted the market definition proposed by the applicant, being the greater Auckland area (including Northland).

### **Overall Conclusion on Market Definition**

62 The Commission has concluded that the following markets need to be considered in terms of the application:

- the market for primary school teaching qualifications in the greater Auckland area (including Northland);
- the market for secondary school teaching qualifications in the greater Auckland area (including Northland); and
- the market for in-service teaching qualifications in the greater Auckland area (including Northland).

### **ASSESSMENT OF DOMINANCE**

63 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.

64 Section 3(9) of the Act states that a person is in a “dominant position” if:

... a person as a supplier or an acquirer of goods or services either alone or together with an interconnected or associated person is in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market ...

65 That section also states that a determination of dominance shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

66 In *Port Nelson Ltd v Commerce Commission* [ ] 3 NZLR 554, the Court of Appeal approved the following dominance standard, adopted by McGechan J in the High Court:

...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*.

- 67 In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:<sup>18</sup>
- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
  - the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.
- 68 Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market(s) and measurement of market shares, fall within these “safe harbours”.
- 69 However, as Tipping J stated in the High Court decision of *New Zealand Magic Millions Limited & Anor v Wrightson Bloodstock Limited* (1990) 3 NZBLCA 99-175:
- [M]arket share is not the sole determinant of the presence or absence of dominance or market power. The most that can be said is that dominance is frequently attended by substantial market share but all the other relevant factors must be brought to account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.
- 70 Accordingly, before a conclusion on dominance is reached, it is necessary to consider all factors listed in s 3(9) and any other relevant factors.

### **Market Share Estimates in the Market for Primary School Teaching Qualifications**

- 71 The applicant submits that there are 8 institutions in the Auckland region currently offering primary teaching qualifications, and estimates that the combined entity would have a market share of approximately [ ] in this market. However, the applicant notes that it is difficult to accurately estimate market shares given the incomplete nature of the available data.
- 72 On the basis of information provided by the applicant, the Ministry of Education and other market participants, the Commission estimates that market shares in the market for primary school teaching qualifications would be as follows:

---

<sup>18</sup> Refer Commerce Commission’s Business Acquisitions Guidelines, 1996, p17.

<b>Market Participant</b>	<b>Student Numbers</b>	<b>Market Share Estimate</b>
ACE	[ ]	[ ]
Massey University (Albany)	[ ]	[ ]
<b>Combined Entity</b>	[ ]	[ ]
University of Auckland	[ ]	[ ]
Northland Polytechnic	[ ]	[ ]
UNITEC Institute of Technology	[ ]	[ ]
Masters Institute	[ ]	[ ]
Wanganui Polytechnic (Mangere) <sup>19</sup>	[ ]	[ ]
Awanui-a-rangi <sup>20</sup>	[ ]	[ ]
Total	[ ]	100%

- 73 From the available data, it would appear that the combined entity’s market share would fall outside the Commission’s “safe harbours”. However, as earlier stated, the fact that a proposed acquisition may lead to a market share falling outside these “safe harbours” does not necessarily mean that it will be likely to result in the acquisition or strengthening of a dominant position in the market. Additional factors must also be considered before a conclusion on dominance is reached. These other factors are discussed below in paragraphs 82 to 107.

#### **Market Share Estimates in the Market for Secondary School Teaching Qualifications**

- 74 The applicant submits that there are 7 institutions in the Auckland region currently offering secondary teaching qualifications, and estimates that the combined entity would have a market share of approximately [ ] in this market. Again however, the applicant notes that the incomplete nature of the available data makes it difficult to accurately assess market shares.
- 75 Based on information available to the Commission, existing competitors in the market for secondary school teaching qualifications are estimated to have the following market shares:

<b>Market Participant</b>	<b>Student Numbers</b>	<b>Market Share Estimate</b>
ACE	[ ]	[ ]
Massey University (Albany)	[ ]	[ ]
<b>Combined Entity</b>	[ ]	[ ]
University of Auckland	[ ]	[ ]
Auckland Institute of Technology (Auckland)	[ ]	[ ]
Northland Polytechnic	[ ]	[ ]
Christchurch College of Education (Manukau)	[ ]	[ ]
Total	[ ]	100%

<sup>19</sup> and <sup>20</sup> Information for Wanganui Polytechnic and Awanui a rangi is estimated.

- 76 The Commission estimates that the combined entity would have a market share of approximately [ ], with the next largest market participant, the Auckland Institute of Technology having a market share of approximately [ ]. The University of Auckland has an approximate market share of [ ]. [ ].

### **Market Share Estimates in the Market for In-Service Teaching Qualifications**

- 77 The applicant submits there are seven institutions offering in-service teaching qualifications in the Auckland region, and estimates that the combined entity would have a market share of approximately [ ] in this market. Confirmation of student numbers was received from four institutions.
- 78 Based on information available to the Commission, existing competitors in the market for in-service teaching qualifications are estimated to have the following market shares:

<b>Market Participant</b>	<b>Student Numbers</b>	<b>Market Share Estimate</b>
ACE	[ ]	[ ]
Massey University (Albany)	[ ]	[ ]
<b>Combined Entity</b>	[ ]	[ ]
Auckland Institute of Technology	[ ]	[ ]
Waikato Polytechnic (Auckland)	[ ]	[ ]
Total	[ ]	100%

- 79 The applicant estimates that the combined entity would have a market share of approximately [ ] following implementation of the proposed acquisition. On the basis of available information, the Commission estimates that the combined entity would have a market share of approximately [ ], which falls well outside the Commission's "safe harbours".
- 80 However, as stated above, the combined entity's market share is only one of several factors which must be considered before a conclusion is reached on whether the proposal will not result, or be likely to result, in the acquisition or strengthening of a dominant position in the relevant market.
- 81 As the three identified markets are sufficiently similar in their characteristics, albeit targeting different student groups, it is proposed to analyse the three identified markets together when considering other relevant factors including the constraints from existing competition, market entry/expansion and barriers to entry.

### **Constraints from Existing Competition**

- 82 The applicant submits that the combined entity will be constrained by the existing competitors, particularly as existing market participants have broadened the training programmes offered, and a number of new market participants have recently entered the market.
- 83 There are various institutions in the greater Auckland region providing teaching qualifications programmes in competition with the merger parties. There has been new



entry into the markets in recent years, despite the strong presence of ACE. For example, the applicant states that of the 15 types of primary teaching qualifications offered by institutions in the Auckland region, 11 types of qualifications were first awarded in 1997 or later, or have yet to be awarded. However, a number of these market participants are relatively small, “niche” operators offering specialist courses (eg: religious and Maori based programmes), and would appear to have limited market power.

- 84 The University of Auckland has recently entered the markets for primary, secondary and in-service teacher training. For example, the first awards of its Diploma in Teaching (Secondary) and Diploma in Teaching (Primary) were made in December 1997. The applicant submits, and other market participants agree, that the University will provide increasing competition in the markets in the future.

### Constraints from Market Entry/Expansion

- 85 A business acquisition is unlikely to result in any person acquiring or strengthening a dominant position in a market if behaviour in that market continues to be subject to significant constraints from the threat of market entry.

- 86 The applicant submits that the combined entity will be constrained by potential competition from market entry and from the expansion of existing competitors. As discussed above, the applicant submits that the University of Auckland will become a significant competitor in the markets. It is also argued that there is nothing preventing other market participants from expanding the range of training programmes provided and the number of student enrolments.

- 87 [

]. The applicant states that the viability of such market entry in the Auckland region is evidenced by the fact that both Massey University (in Albany) and the Christchurch College of Education (in Manukau) have recently established a presence in Auckland.

- 88 Further, the applicant and other market participants anticipate that the proposed changes to the funding regime will result in increased competition from private providers.

- 89 Before the Commission will conclude that new entry will provide an adequate constraint on the combined entity so as to allay dominance concerns, such entry must be likely, sufficient in extent, timely and sustainable (the *lets* test).<sup>21</sup> That is, in order to be a constraint on market participants, entry must be likely in commercial terms. The threat of market entry must also be at a level and spread of sales such as to be likely to cause market participants to react in a significant manner. The Commission will not consider entry which might only occur at relatively low volumes or in localised areas to represent a sufficient constraint to alleviate dominance concerns.

---

<sup>21</sup> Business Acquisition Guidelines, 1996, pp19-20.

- 90 Timeliness of market entry is examined on a case by case basis, but for most markets, the Commission considers that entry which cannot be achieved within two years from initial planning is unlikely to be sufficiently timely to alleviate dominance concerns. There must also be a lasting economic incentive for market entry.
- 91 The University of Auckland offers an extensive range of tertiary courses and qualifications, which now includes teaching qualifications in the primary school, secondary school, and in-service teaching markets. As such, the University has a well-established reputation as an education provider, with the requisite facilities, equipment and resources.
- 92 Further, [ ]  
]. Given the University's long-standing involvement in tertiary education, existing competitors and other industry participants have predicted that the University will increase its market presence in the teaching qualifications markets, including the market for in-service teacher training. The [ ]  
]. The Ministry of Education considers that there are no particular barriers to entry into the in-service teacher training market.
- 93 The Manukau Institute of Technology ("MIT"), which currently runs the Te Reo Maori and technology secondary teacher training programmes for the Christchurch College of Education, [ ] proposes to introduce another technology-based secondary teacher training programme in 1999, in conjunction with the University of Auckland. MIT also considered that it would be viable to increase its student numbers if required, and enter into relationships with other institutions to provide teacher training qualifications.
- 94 [ ]  
]. Masters Institute also believed that it had the capacity to expand in the primary teaching market, and [ ]  
].
- 95 The applicant notes the possibility of new institutions entering the identified markets, including overseas providers which could enter in their own right or could form relationships with existing market participants. For example, the Christchurch College of Education has an affiliation with Griffith University in Brisbane. This relationship provides opportunities for staff exchanges, professional development, and access to qualifications. It is also noted that the [ ]  
].
- 96 Other market participants considered it likely that there would be further market entry in the short term, particularly following the introduction of the proposed funding changes. From the year 2000, private providers will be able to compete for the same pool of funding at the same level as all other teaching qualifications providers.

- 97 In relation to timeliness, the applicant submits that market entry could take anywhere from 2 or 3 years to 5 years (de novo entry), although the time required would depend on the scale of entry. It is noted, for example, that Massey University approved the purchase of its Albany campus in 1990 and offered its first programmes in 1993.
- 98 The applicant submits that the development of distance learning, Internet-based courses and other external training programmes will also provide some constraint on the combined entity. Other market participants agreed that the industry will see growth in the number of Internet-based training courses available, although this may raise concerns in terms of course content and quality standards. While the extent to which external training programmes will develop is uncertain, the Commission does not regard these courses as being likely to provide a significant constraint in the short to medium term.
- 99 The applicant argues that New Zealand students could seek teaching qualifications in Australia, as the TRB in New Zealand has no additional registration requirements for Australian-qualified teachers. However, the Commission considers that this is unlikely to occur and industry participants estimate that the number of New Zealand students studying for teaching qualifications in Australia is extremely low. In addition, the Commission has been informed that, as from 1998, the student grants previously available to New Zealand students studying in Australia have been discontinued. Consequently, it would appear unlikely that New Zealand students would find it economically advantageous to attend teaching qualifications institutions in Australia.

### **Barriers to Entry**

- 100 Entry conditions, including the nature and height of any entry barriers, must be considered before the constraints from potential new entry/expansion can be evaluated.
- 101 The applicant argues that conditions to enter the markets for the provision of teaching qualifications include:
- access to suitable facilities, such as buildings and equipment;
  - access to schools, for the placement of student teachers for practical training; and
  - the ability to offer degree qualifications.
- 102 As previously discussed, there are also a number of prescribed regulatory approvals. For example, it is necessary for training institutions, other than universities, to be accepted by the NZQA.

### *Facilities*

- 103 The applicant submits that one entry barrier for new entrants is the large costs involved in building or obtaining access to the requisite facilities. Unless an institution already has facilities of this type in place, a large amount of capital would be required to enter the market. However, a number of parties have suggested that it would be possible to enter the market on a smaller scale than that of a large university or polytechnic, which would entail lower capital investment. It would also be possible for a new entrant to form relationships with existing training institutions.

### *Access to Schools*

- 104 As earlier outlined, it is a requirement of pre-service teacher education that students have the opportunity to teach in schools. Teaching institutions must therefore establish placement arrangements with sufficient schools to fulfil this requirement. The applicant submits that it would be reasonably easy for new entrants to form relationships with schools, as there is a very large number of schools in the region, and schools are able to form relationships with more than one institution.
- 105 The applicant does note, however, that an entrant without an established reputation may find schools reluctant to place their students, as it may perceive the professional development benefits to be lower. In comparison, market participants with established reputations would be unlikely to have any difficulty in gaining access to schools for student placement.

### *Ability to offer degrees*

- 106 The applicant submits, and other industry participants agree, that training institutions which are able to provide degree qualifications are in a more favourable position than other competitors. This is part of an overseas trend which is seeing teaching increasingly become a graduate profession. As such, it is becoming more and more important for training institutions to offer degree qualifications.
- 107 The applicant states that institutions can gain degree status for their training programmes either by obtaining approval from the NZQA or by forming an alliance with an institution that currently has degree conferring status. Currently, the merger parties and the University of Auckland have the requisite ability to offer degrees in teaching. Further, the AIT is seeking university accreditation to be in a position to do so in the future.

### **Conclusion on the Market for Primary Teacher Training Qualifications**

- 108 The combined entity's share in the market for primary teacher training qualifications falls outside both of the Commission's "safe harbours" (refer paragraph 64). However, it is concluded that existing competitors, particularly the University of Auckland, exercise a strong constraint over the parties to the acquisition in respect of primary teacher training qualifications. It is considered that the merged entity will also be constrained in this market by the threat of new entrants and market expansion. For these reasons, the Commission concludes that the acquisition would not, and would not be likely to, result in any person acquiring or strengthening a dominant position in a market.

### **Conclusion on the Market for Secondary Teacher Training Qualifications**

- 109 The combined entity's share in the market for secondary teacher training qualifications narrowly falls outside the Commissions "safe harbours", [ ]. However, there are two market participants, [ ].

Accordingly it is concluded that there would be sufficient constraint on the combined entity from existing competitors in the market.

- 110 Further, it is considered that the merged entity will also be constrained in this market by the threat of new entrants and market expansion. For these reasons, the Commission concludes that the acquisition would not, and would not be likely to, result in any person acquiring or strengthening a dominant position in a market.

### **Conclusion on the Market for In-service Teaching Qualifications**

- 111 The acquisition in this market falls well outside the Commission's "safe harbours". This high market share has resulted from an historical situation whereby in-service training was traditionally provided only by colleges of education. This situation is now changing with recent new entrants to the primary and secondary teacher qualification markets being free to provide in-service training as demand develops. [ ]
- 112 Given the low barriers to entry/expansion for institutions already providing primary and secondary teacher training qualifications. It is concluded that, on balance, the acquisition would not, and would not be likely to, result in any person acquiring or strengthening a dominant position in a market.

### **OVERALL CONCLUSION**

- 113 The Commission has considered the impact of the proposal in the three relevant markets, which are those for the provision of programmes of study leading to:
- primary school teaching qualifications in the greater Auckland area (including Northland);
  - secondary school qualifications in the greater Auckland area (including Northland); and
  - in-service teaching qualifications in the greater Auckland area (including Northland).
- 114 Having regard to the factors set out in section 3(9) of the Commerce Act and all the other relevant factors, the Commission concludes that the proposal would not result, and would not be likely to result, in Massey or any other person acquiring or strengthening a dominant position in a market.

## **DETERMINATION ON NOTICE OF CLEARANCE**

115 Accordingly, pursuant to section 66(3) of the Commerce Act 1986, the Commission gives clearance for the merger of the assets and business of Massey University the Auckland College of Education.

Dated this                      day of December 1998

---

E C A Harrison  
Member

APPENDIX A

INSTITUTIONS OFFERING APPROVED PRIMARY COURSES

INSTITUTE	LOCATION
Northland Polytechnic	Whangarei
Auckland College of Education	Auckland
University of Auckland	Auckland
Awanui-a-rangi	Auckland
UNITEC Institute of Technology	Auckland
Masters Institute	Auckland
Massey University College of Education	Albany (Auckland) Palmerston North
Wanganui Community Polytechnic	Auckland Wanganui
University of Waikato School of Education	Hamilton
Bethlehem Institute of Education	Tauranga
Wellington College of Education	Wellington
Christchurch College of Education	Christchurch Nelson Rotorua Gisborne
Christchurch Polytechnic	Christchurch
NZ Graduate School of Education	Christchurch
Dunedin College of Education	Dunedin
University of Otago	Dunedin

APPENDIX B

INSTITUTIONS OFFERING APPROVED SECONDARY COURSES

INSTITUTE	LOCATION
Northland Polytechnic	Whangarei
Auckland College of Education	Auckland
University of Auckland	Auckland
Auckland Institute of Technology	Auckland
UNITEC Institute of Technology	Auckland
Massey University College of Education	Albany (Auckland) Palmerston North
Christchurch College of Education	Auckland Nelson Rotorua Gisborne
Bethlehem Institute of Education	Tauranga
University of Waikato School of Education	Hamilton
Wairarapa Community Polytechnic	Masterton
Whitireia Community Polytechnic	Paraparaumu
Wellington College of Education	Wellington
NZ Graduate School of Education	Christchurch
Dunedin College of Education	Dunedin Invercargill