

BLACKTOP

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Public version

Dear Susan

Mainland Print / Inkwise – response to Letter of Issues

1. I write on behalf of Mainland Print, its shareholders, and the shareholders of Inkwise in response to the Commission's Letter of Issues.
2. The parties remain of the view that Mainland Print's acquisition of the assets of Inkwise would not be likely to substantially lessen competition in any market. This letter deals with the following topics in turn:
 - 2.1 the extent of competition between Inkwise and Allied Press for the supply of coldset printing services;
 - 2.2 the parties' perspective on the competitive position of Stuff and its ability to exert constraint should clearance be granted;
 - 2.3 the other competitive options open to coldset customers for whom Inkwise and Allied Press may be considered to compete;
 - 2.4 the likelihood of coordination should clearance be granted; and
 - 2.5 the ability and incentive for Allied Press to engage in vertical foreclosure if Mainland Print acquires Inkwise's assets.
3. Information that is confidential to Allied Press is highlighted in yellow (i.e., **[ALLIED PRESS CONFIDENTIAL]**), information that is confidential to Inkwise is highlighted in blue (i.e., **[INKWISE CONFIDENTIAL]**), and information that is confidential to third parties is highlighted in grey (i.e., **[3rd PARTY CONFIDENTIAL]**).

The extent of competition between Inkwise and Allied Press

4. The parties believe it is important to place the extent of competitive rivalry between Inkwise and Allied Press into its proper context. Placed in its proper context, any loss of competition between Allied Press and Inkwise should not be regarded as substantial. And, to the extent there is any loss of competition, that loss of competition would be replaced by increased competition from Stuff, countervailing power, or via constraint from printers in adjacent markets.

No impact on Stuff as a customer for coldset printing

5. As stated in the Clearance Application, as ‘customers’ for coldset printing, Stuff and Allied Press account for approximately 85% of all coldset printing sales. Allied Press will not be adversely affected by the acquisition, and nor is there any conceivable way the acquisition could harm Stuff as a customer of coldset printing.
6. Except for The Southland Times, which is printed by Allied Press in Dunedin, Stuff prints all its own publications at its Christchurch press. These publications will not be affected by the acquisition.
7. Nor will the acquisition impact on competition to print The Southland Times. The fact that Stuff has chosen Allied Press to print The Southland Times rather than printing The Southland Times itself indicates that Stuff does not regard its Christchurch press as being competitive with Allied Press’ Dunedin press for that printing. It follows that nor would Stuff regard Inkwise as a competitive alternative to Allied Press.¹ Therefore, the acquisition would not remove a competitive alternative for Stuff.
8. In any event, to the extent that there was some competitive constraint from a Christchurch plant, Stuff’s next best alternative to Allied Press would be Stuff’s own Christchurch press, not Inkwise.
9. Finally, Stuff would have a greater ability to exert countervailing power in respect of The Southland Times through its heatset purchases if the acquisition proceeds than if it does not. Stuff has no ability to exert countervailing power on Allied Press through its heatset purchases today.²
10. The parties do not understand the Commission to disagree with the proposition that Stuff will not be harmed as a customer (and nor will Allied Press). Rather, the parties understand that the Commission’s focus is on the remaining (approximately) 15% of the market, which are independent publishers.³

Actual competitive overlap between Allied Press and Inkwise for independent publishers is confined

11. The Commission’s letter is correct in noting that Inkwise provides coldset printing for several independent newspaper publishers in the South Island.
12. However, the parties do not believe it is correct to say that Allied Press is a competitor or potential competitor for each of those independent newspapers. Where Allied Press is not a competitor or potential competitor for Inkwise, there is no prospect of unilateral effects or coordinated effects arising from the acquisition.
13. Put another way, while the parties accepted for convenience in the Clearance Application that it is sufficient to adopt a South Island wide market, the constraint imposed by each of Allied Press and Inkwise is not symmetric throughout the South Island. As stated in the

¹ [3rd PARTY CONFIDENTIAL].

² [INKWISE CONFIDENTIAL]. This may indicate that Stuff does not consider it is likely to suffer any change in coldset prices. In any event, [ALLIED PRESS CONFIDENTIAL].

³ For this reason, the Commission’s estimates of market share provided to counsel do not provide an accurate guide for competition for this 15% of the market. Both Stuff and Allied Press volumes should be removed from those figures for Allied Press and Inkwise respectively. That means Inkwise has sales of \$[INKWISE CONFIDENTIAL] to independents, and Allied Press approximately [ALLIED PRESS CONFIDENTIAL].

Clearance Application, the reality is that the location of a publisher and the frequency of their publication (daily, weekly, monthly or one-off) materially influences the presses that are alternatives for that publisher.

Acquisition has no impact for independent daily publications

14. The Ashburton Guardian is the only non-Staff or Allied Press daily newspaper in the South Island. Allied Press is not a viable option for the publishers of the Ashburton Guardian, and so it will not lose a competitive alternative as a result of the acquisition.
15. The reason is that, for daily publications like the Ashburton Guardian, a press needs to be very closely located to the customer's area of distribution to ensure delivery of the product. This is why Stuff prints The Southland Times at Allied Press' Dunedin plant. Put simply, Allied Press is too distant from Ashburton to ensure the publisher can be sure of on-time delivery.

Allied Press and Inkwise only overlap south of Canterbury for the printing of weekly and fortnightly publications

16. For weekly and fortnightly publications, a publisher has more leeway to explore options over a wider geographic area. However, it remains the case that the further a press is away from the customer, the greater the service risks⁴ and usually the cost to the customer of using that press.
17. This is why, for example, Allied Press has chosen to print The Christchurch Star at Inkwise. The Christchurch Star is Allied Press' flagship publication in Christchurch. Printing The Christchurch Star at Inkwise means Allied Press can avoid the risks (and costs) associated with trucking the paper from Dunedin to Christchurch. What Allied Press' conduct reveals is that there is a very significant service advantage that overwhelms the benefit to it of printing The Christchurch Star itself.⁵
18. Therefore, the parties do not believe it is correct to say that a weekly or fortnightly newspaper can be printed anywhere in the South Island. Rather, Allied Press is not generally a viable option for any weekly or fortnightly independents north or west of Christchurch.⁶ While Allied Press does print its own North Canterbury news in Dunedin and absorbs the risk of this option, it is unlikely that independents north or west of Christchurch would regard Allied Press as a strong option. Indeed, Allied Press' own decision to print The Christchurch Star at Inkwise is evidence of this.
19. In the parties' view, the overlap between Allied Press and Inkwise for weekly or fortnightly newspapers is the area between Christchurch and Dunedin, encompassing the following publications:
 - 19.1 Wanaka Sun – 16 pages and approximately **[INKWISE CONFIDENTIAL]** copies distributed weekly and printed by Stuff;

⁴ For example, the road from Dunedin has been closed approximately 8 times in the last year.

⁵ Allied Press does print the other Christchurch community newspapers it publishes in Dunedin as it can print these over the weekend for delivery on Monday.

⁶ This is supported by **[3rd PARTY CONFIDENTIAL]**.

- 19.2 Advocate South (Fiordland) – 24 pages and approximately [INKWISE CONFIDENTIAL] copies distributed weekly;
- 19.3 The Record (based in the Selwyn region) – 16 pages and approximately [INKWISE CONFIDENTIAL] copies distributed weekly and published by Integrity Community Media Ltd; and
- 19.4 The Geraldine News – 12 pages and approximately [INKWISE CONFIDENTIAL] copies distributed weekly.
20. If publishers with weekly or fortnightly publications based in and around Christchurch were also included, then that would include:
- 20.1 NZ Messenger, a Chinese weekly, which is 24 pages and [INKWISE CONFIDENTIAL] copies;
- 20.2 Korea Review, a Korean weekly, which is 16 pages and [INKWISE CONFIDENTIAL] copies;
- 20.3 Kaiapoi Advocate, which is 12 pages and [INKWISE CONFIDENTIAL] copies distributed fortnightly, and the Akaroa Mail, which is 20 pages and [INKWISE CONFIDENTIAL] copies distributed fortnightly (both owned by the same person).
21. However, it is highly unlikely that Allied Press would be a strong constraint for these publications given the proximity of these publishers to the Stuff and Inkwise presses.⁷

Monthly and one-off publications – national options

22. While there are not many monthly or one-off coldset publications published in the South Island, publishers of these publications have even wider options, especially when that product is distributed over a wide area. The parties consider that for these publications the market is like the national heatset market, i.e., presses across the country can and do compete to supply printing for such publications. In addition to the parties, the North Island coldset publishers who compete for these customers are NZME, Horton Media, and Beacon Print.
23. For example, Inkwise prints [INKWISE CONFIDENTIAL]. Inkwise prints these in Christchurch and delivers them for distribution throughout the North Island. The monthly publishing timeframe allows Inkwise to provide a good level of service for this customer.⁸
24. Other examples are:
- 24.1 the [INKWISE CONFIDENTIAL] and [INKWISE CONFIDENTIAL], which Inkwise lost to [INKWISE CONFIDENTIAL]; and
- 24.2 [INKWISE CONFIDENTIAL], [INKWISE CONFIDENTIAL], and [INKWISE CONFIDENTIAL], which Inkwise lost to [INKWISE CONFIDENTIAL].
25. The parties acknowledge that the only monthly newspaper publisher located between Dunedin and Christchurch is the publisher of The East Otago Review, which is 20 pages and

⁷ [ALLIED PRESS CONFIDENTIAL].

⁸ [3rd PARTY CONFIDENTIAL].

approximately [INKWISE CONFIDENTIAL] copies. [3rd PARTY CONFIDENTIAL]⁹ [3rd PARTY CONFIDENTIAL]

26. So, while Inkwise and Allied Press (and Webstar) could be said to compete for these customers, there are also several other competitors in addition to Stuff, such as NZME, Horton Media, and Beacon Print.
27. This means that either the market is wider than the South Island for these customers, or, if the Commission defines a South Island market, the constraint imposed from these printers in the North Island needs to be fully considered.¹⁰ Regardless of which approach the Commission adopts, it can be satisfied that these customers will not face any substantial loss of competition.

Stuff's ability and incentive to impose competitive constraint

28. The parties perceive Stuff to be a strong constraint. Stuff would be motivated and able to replace any competition lost between Allied Press and Inkwise as evidenced by its conduct over the last two years. Specifically:
- 28.1 around 14 months ago, Stuff approached the Wanaka Sun and won that business off Inkwise; and
- 28.2 in late 2018, Stuff approached the publishers of the [INKWISE CONFIDENTIAL] in a bid to win that business from Inkwise, although Inkwise managed to retain the business after responding to Stuff's competitive conduct.
29. Stuff's conduct indicates that it does not believe that it faces any disadvantages compared to Inkwise for smaller publications. The publications listed above are all publications ranging in size from [INKWISE CONFIDENTIAL] copies ([INKWISE CONFIDENTIAL]) to [INKWISE CONFIDENTIAL] copies ([INKWISE CONFIDENTIAL]).
30. Moreover, the publications listed in paragraph 28.2 amount to in excess of [INKWISE CONFIDENTIAL] copies per week. This is in excess of the number of copies required for Stuff to meet the requirements of the publishers identified at paragraph 19 above. In other words, Stuff's conduct illustrates it has the capacity needed to replace any competition lost now, even putting aside the capacity that will be freed up in the future due to the continued decrease in circulation of all coldset publications in New Zealand. (Furthermore, Inkwise understands that [INKWISE CONFIDENTIAL])
31. [3rd PARTY CONFIDENTIAL]¹¹ [3rd PARTY CONFIDENTIAL]¹²
32. Finally, the publications that Stuff pitched for as identified in paragraph 28.2 are all located in the north of the South Island. The relevance of this is that Allied Press is not a potential competitor for these publishers. That is, Stuff was incentivised to compete strongly to win the business of these publishers notwithstanding that it only faced competition from Inkwise. Indeed, there has been no discernible difference in Stuff's conduct where it faces competition or potential competition from both Inkwise and Allied Press (Wanaka Sun) or

⁹ [3rd PARTY CONFIDENTIAL].

¹⁰ *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) at [34]-[39] and [157]-[159].

¹¹ [3rd PARTY CONFIDENTIAL].

¹² [3rd PARTY CONFIDENTIAL].

from only Inkwise (top of the South Island). This real-world evidence should allay any theoretical concerns that the acquisition will give rise to coordinated effects.

Publishers do have other options

33. For any publisher that may possibly be affected by the acquisition, it will retain options beyond Stuff, Mainland Print, and Allied Press.

Monthly and one-off customers can use publishers in the North Island

34. As discussed above, for monthly publications, publishing timeframes mean that they have additional options over and above those in the South Island. The reality is that these customers could use any of the coldset presses in the North Island, such as NZME, Horton Media and Beacon Print (setting Webstar aside).

[INKWISE CONFIDENTIAL] will have countervailing power

35. For independents publishing weekly and fortnightly publications, the parties accept the Commission's view that most of them will lack the ability to exercise countervailing power. However, that is not universally true.
36. For example, [INKWISE CONFIDENTIAL]. Inkwise prints all these publications for [INKWISE CONFIDENTIAL] and earns [INKWISE CONFIDENTIAL] from the [INKWISE CONFIDENTIAL] than it does from printing [INKWISE CONFIDENTIAL]. So, if Mainland Print sought to increase the price of coldset printing for [INKWISE CONFIDENTIAL], it would risk [INKWISE CONFIDENTIAL] shifting its [INKWISE CONFIDENTIAL] to a North Island publisher.¹³ This is likely to be a sufficient constraint – in and of itself – to prevent Mainland Print from imposing a price increase (even if it could do so).¹⁴

Ovato is a viable option for remaining customers

37. Even if new coldset press entry is unlikely, the parties believe that 'entry' by Ovato is likely in the event of an increase in prices to uncompetitive levels. Ovato could easily run newsprint on its Christchurch heatset press – it would simply need to use newsprint. Inkwise already does this with its heatset press on occasion.¹⁵
38. Ovato would be capable of printing a 16-page publication in one-pass through its heatset press. The Wanaka Sun, The Record, and The Geraldine News are all 16 pages or less. Ovato also has the collation equipment to print multiple runs and collate these multiple runs together. This collation process is how Inkwise prints publications that are over 32 pages today.

No increased likelihood of coordination should clearance be granted

39. The parties do not believe that the acquisition will lead to any increase in the prospects of coordinated effects.
40. For the reasons explained above, the parties believe that it is an oversimplification to consider the acquisition as leading to a three to two in the South Island coldset market. Such

¹³ [3rd PARTY CONFIDENTIAL].

¹⁴ Other customers in the north of the South Island could exercise countervailing power. Inkwise can provide details if the Commission retains concerns in relation to the impact of the acquisition on these customers.

¹⁵ [3rd PARTY CONFIDENTIAL].

a view overlooks the asymmetric competitive constraints explained above. That is, the acquisition removes potentially meaningful competition between Inkwise and Allied Press in only a small part of the South Island.

41. Moreover, as also demonstrated above, even for those potentially affected publishers, the acquisition is not a true three to two merger. These publishers will not only retain Stuff as an option but could also use Ovato and, in some cases, exercise countervailing power.
42. The Commission's letter notes the constraint imposed by the continuing decline in newspaper circulation driving strong competition. This is illustrated by Stuff's conduct in the north of the South Island, an area where Allied Press is not a potential competitor. Stuff was incentivised and did compete strongly to win Inkwise customers and this can be expected to continue.
43. There is reference in the Commission's letter to prices being 'transparent' in this market. That is not correct. The only visibility printers have of the prices their competitors charge is what their customers tell them. There is no way for a printer to know the veracity of that information. Furthermore, if it was not in a customer's interests to tell printers this information, the customer would not do so. So, in the parties' view, it is incorrect to say that prices in this market are transparent.

Ability and incentive for Allied Press to engage in vertical foreclosure if Mainland Print acquires Inkwise's assets

44. The parties do not consider there is any likelihood of Allied Press engaging in foreclosing conduct that would substantially lessen competition in any downstream publishing market.
45. As outlined in the clearance application, there are very few areas where Allied Press competes with an independent. Those publications are The Wanaka Sun, The Record, and the East Otago Review. There is no evidence to suggest there would be any likely impact in any other markets.
46. Each of the Wanaka Sun, The Record, and the East Otago Review either uses Stuff now (Wanaka Sun) or could do so. They could all also use Ovato. Moreover:
 - 46.1 **[INKWISE CONFIDENTIAL]** in a way that would reduce the incentive for Allied Press to attempt to foreclose; and
 - 46.2 The East Otago Review is a monthly publication, meaning it is likely to have an even greater range of options.
47. Finally, Webstar would have no incentive to allow Allied Press to damage Mainland Print to the downstream benefit of Allied Press.
48. It is therefore very difficult to see Allied Press having the ability to engage in foreclosure, let alone whether it would have the incentive to do so.

Final comments

49. As stated at the start of this letter, the parties remain of the view that Mainland Print's acquisition of Inkwise's assets is unlikely to substantially lessen competition in any market.

To summarise, the parties do not consider unilateral effects in the coldset market are likely because:

- 49.1 the scope for Allied Press and Inkwise to impose meaningful constraint on each other is limited;
 - 49.2 Stuff, through its actions, has demonstrated that it has both the ability and the incentive to compensate for any loss of competition;
 - 49.3 Ovato could easily produce coldset publications on its heatset press and would have the incentive to do so if there was any sustainable loss of competition as a result of the acquisition; and
 - 49.4 while not all small customers could exercise countervailing power, some do have that ability.
50. For similar reasons, the parties do not consider there is any likelihood of coordinated effects. Labelling the acquisition as a three to two is an oversimplification. There is only a confined overlap between Allied Press and Inkwise, and Stuff's strong competitive conduct in the north of the South Island despite only facing competition from Inkwise is the best evidence of what can be expected in areas where the acquisition will reduce the number of participants, i.e., continued strong competition.
51. Finally, there is no basis for considering that Allied Press would either have the ability or incentive to engage in vertical foreclosure.
52. The parties therefore request that the Commission grant the clearance sought. If you need any further information, please do not hesitate to contact me.

Yours sincerely



David Blacktop

Director

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