

ISSN NO. 0114-2720
J2683

COMMERCE COMMISSION

DECISION NO. 319

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

CARGLASS (N.Z.) LIMITED

and

SMITH & SMITH LIMITED

The Commission: T G Stapleton (Chairman of Division)
E C A Harrison
R N Taylor

Commission Staff: John Preston
Jane Chilcott
Juliet Fletcher

Summary of Proposed Acquisition: The purchase by Carglass (N.Z.) Limited or its wholly owned subsidiary of the retail automotive glass business of Smith & Smith Limited.

Working Day 10: 12 March 1998

Determination: Pursuant to s 66(3)(a) of the Commerce Act 1986, the Commission determines to give a clearance for the proposed acquisition.

Date of Determination: 12 March 1998

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

CONTENTS

THE PROPOSAL	1
THE PROCEDURES	1
THE INVESTIGATION	2
THE PARTICIPANTS	3
Carglass (N.Z.) Ltd	3
Smith & Smith Ltd	3
BACKGROUND	4
OTHER RELEVANT PARTIES	4
Novus Windscreen Repair and Replacement	4
Alert Glass Company Ltd	4
Auto Glas Ltd	4
Other Operators	5
THE RELEVANT MARKETS	5
Introduction	5
Market Definition	6
Conclusion on Market Definition	9
ASSESSMENT OF DOMINANCE	9
THE RETAIL MARKET FOR THE REPAIR OF AUTOMOTIVE GLASS IN NEW ZEALAND	10
Market Concentration	10
Conclusion on Assessment of Dominance	12
THE RETAIL MARKET FOR THE REPLACEMENT OF AUTOMOTIVE GLASS IN NEW ZEALAND	12
Market Concentration	12
[]	14
Constraint from Existing Competition	15
Constraint from Market Entry	16
Conclusion on Constraint from Market Entry	19
Constraint from Buyers	19
Conclusion on Constraint from Buyers	23
Conclusion on Assessment of Dominance	23
OVERALL CONCLUSION	24
RECOMMENDATION	25

THE PROPOSAL

- 1 On 26 February 1998, the Commission registered a notice pursuant to s 66(1) of the Commerce Act 1986 (“the Act”) seeking clearance for the acquisition by Carglass (N.Z.) Limited (“Carglass”) of the retail automotive glass business of Smith & Smith Limited (“Smith & Smith”).
- 2 The acquisition is for the brand name and goodwill of the retail automotive glass repair and replacement business of Smith & Smith. [

].
- 3 [

].

THE PROCEDURES

- 4 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. As such, a determination is required by 12 March 1998.
- 5 In the notice, the applicant requested confidentiality as to the fact of the proposed acquisition. However this request was later withdrawn following a public announcement of the proposal.
- 6 This report concludes that staff are satisfied that implementation of the proposal would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in a market. Accordingly, it is recommended that in terms of s 66(3)(a) of the Act, the Commission gives clearance for the proposal.

THE INVESTIGATION

7 Staff discussed the proposal with a range of parties including:

- Existing competitors of Carglass and Smith & Smith including Novus Windscreen Repair and Replacement, Auto Glas Ltd, Alert Glass Company Ltd, Professional Auto Glass Ltd, Windscreen Wholesalers Ltd, Hamilton Windcreens Ltd, Autoglass Specialists Ltd, and Screen Surgeon;
- Insurance companies including State Insurance, AMI Insurance, AA Insurance, National Insurance, FAI Insurance, Sun Alliance Insurance, and NZI Insurance;
- Rental car companies including Hertz Rent A Car and Budget Rent A Car;
- Pilkington (New Zealand) Holdings Ltd in its capacity as a manufacturer and wholesaler of windcreens and body glass;
- The Automobile Association;
- The Land Transport Safety Authority; and
- The Insurance Council of New Zealand.

8 Additional information was also provided by the applicant.

THE PARTICIPANTS

Carglass (N.Z.) Ltd

9 Carglass is a wholly owned subsidiary of Belron International NV. The ultimate holding company of Belron International NV is The South African Breweries Ltd, a publicly listed company in South Africa.

10 Carglass is involved in the retail sale, fitting and repair of automotive glass, operating from 12 outlets throughout New Zealand. The company is also involved in the wholesale supply of automotive glass to retailers. Carglass sources most of its automotive glass requirements from Pilkington (New Zealand) Ltd, and the balance from Australian Autoglass, a wholly owned subsidiary of O'Brien Glass which is also ultimately owned by Belron International NV.

Smith & Smith Ltd

- 11 Smith & Smith is a wholly owned subsidiary of Pilkington (New Zealand) Holdings Ltd, which is a wholly owned subsidiary of Pilkington Australasia Ltd. Pilkington Australasia Ltd is a wholly owned subsidiary of Pilkington Plc, a publicly listed company in the UK.
- 12 Smith & Smith is involved in the retail sale, fitting and repair of automotive glass, and the wholesale supply of automotive glass to retailers. The company acquires most of its automotive glass requirements from Pilkington (New Zealand) Ltd. Smith & Smith is also involved in the wholesale and retail supply, processing and installation of flat glass, primarily used for windows and in the furniture industry.
- 13 Smith & Smith operates from a total of 47 outlets, 37 of which offer automotive and/or flat glass repair and replacement services. The remaining 10 outlets supply and fit flat glass only, however it is noted that the acquisition does not involve the flat glass business of Smith & Smith.

BACKGROUND

- 14 In April 1995, the Commission received an application for clearance from Pilkington (NZ) Ltd to acquire all of the assets employed in the business operations of Smith & Smith Glass Ltd, including 75% of the shares in Sauvarins Ltd and 50% of the shares in Norm Fowke Glass Ltd. The Commission, in concluding that the proposed acquisition would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in any market, gave clearance for the proposed acquisition on 27 April 1995. As a result of that acquisition, Smith & Smith Glass Ltd (a subsidiary of Carter Holt Harvey Ltd at the time), became a wholly owned subsidiary of Pilkington (NZ) Ltd.

OTHER RELEVANT PARTIES

Novus Windscreen Repair and Replacement (“Novus”)

- 15 Novus is a franchise network consisting of 22 owner-operated outlets throughout New Zealand. Initially, Novus was only involved in the repair of automotive glass, however it has recently started moving into replacement as well. Novus expects to be “in full replacement mode” in about 6 months.

Alert Glass Company Ltd (“Alert Glass”)

- 16 Based in Hamilton, Alert Glass is a wholesale supplier of windscreens, and is also involved in repair and replacement. Alert Glass imports windscreens from Australia and China, and supplies nationwide, although the South Island to a lesser extent.

Auto Glas Ltd (“Auto Glas”)

- 17 Auto Glas is involved in the repair, supply and installation of windscreens and body glass. The company provides a mobile service in Auckland and Wellington, and will soon also be operating in Christchurch. The Managing Director of Auto Glas also operates Windscreen Distributors Ltd, which is the sole New Zealand distributor for Protector Glass Industries Pty Ltd of Australia. Auto Glas sources all of its product requirements from Windscreen Distributors Ltd.

Other Operators

- 18 In addition to the companies listed above, there is a large number of smaller independent operators throughout New Zealand offering retail services for the repair and/or replacement of automotive glass. Those contacted by staff include Professional Auto Glass Ltd, Windscreen Wholesalers Ltd, Hamilton Windscreens Ltd, Autoglass Specialists Ltd, and Screen Surgeon.

THE RELEVANT MARKETS

Introduction

- 19 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.

- 20 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.

- 21 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.
- 22 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, 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".

Market Definition

- 23 The applicant submits that the specific market which will be affected by the proposed acquisition is the market for the retail supply, fit and repair of automotive glass in New Zealand.

Product/Service Type

- 24 There are two basic categories of automotive glass: windscreens and body glass. Windscreens are made from laminated glass, which is manufactured by bonding together two sheets of glass after placing a thin sheet of polyurethane between them. Laminated glass is more resistant to shattering than toughened glass. Body glass is made from toughened glass, which is unable to be cut after it has been manufactured whereas laminated glass can be cut once it has been produced.
- 25 The applicant states that as similar skills and equipment are required to supply and fit them, no distinction has been made between windscreens and body glass. All

market participants contacted by staff were in agreement that windscreens and body glass are in the same market.

- 26 Cracked automotive glass is repaired if possible, however if repair is not possible or cannot be done safely, the glass is replaced. It was generally agreed by market participants that due to the development of new technology, there has been a marked increase in the volume of windscreen repairs. For example, the applicant states that over the last 7 years windscreen repairs have grown from 0% to 25% of total work in this industry.
- 27 The applicant's suggested market definition includes the phrase "supply and fit", which is considered by staff to signify the total service of replacement. For the purposes of this report, "replacement" will be used to indicate this service.
- 28 The average cost of a windscreen repair was estimated by Novus to be \$70, compared to the average cost of replacement at \$180. Professional Autoglass estimated that the average automotive glass repair would cost \$40, and replacement of a windscreen \$300. The costs involved in repair and replacement are therefore significantly different.
- 29 Different techniques and equipment are used for repair and replacement. In the case of repair, a hole is drilled into the glass, and resin is then injected into the hole. Replacement however involves completely different tools in order to cut out the existing windscreen and fit a new one. The Land Transports Safety Authority informed Commission staff that there are existing safety standards that apply to vehicle glazing and repairs. An Australasian standard for windscreen repairs is also under consideration, but has not yet been implemented.
- 30 Considering the differences in cost, equipment and processes, staff do not regard the repair and the replacement of automotive glass to be substitutable services, or viable replacements for each other. For the purpose of assessing the likely effects of the proposed acquisition, separate markets will be considered for each.

Geographical Extent

- 31 Carglass and Smith & Smith both provide automotive glass repair and replacement services from a nationwide network of outlets. Novus is the only other market participant providing a nationwide service from outlets around New Zealand. As

mentioned above, Novus is a franchise network of 22 outlets primarily offering a repair service, however it has recently started to provide a replacement service as well.

- 32 There is a large number of smaller, independent retailers involved in repair and/or replacement throughout New Zealand, operating only in the region in which they are physically located. An increasing amount of work is being carried out using mobile services, particularly in the larger centres such as Auckland, Wellington and Christchurch.
- 33 Repair and replacement are usually carried out in the location most convenient to the customer. All market participants contacted by staff considered that the regional markets throughout New Zealand have essentially the same characteristics.
- 34 The largest customers for repair and replacement of automotive glass are insurance companies such as State Insurance, AMI Insurance, AA Insurance and National Insurance. Most of the insurance companies contacted by staff indicated that for a variety of reasons including cost, “bulk discounts” and convenience, they preferred to deal with an operator able to provide a nationwide service.
- 35 In terms of geographic market definition, it is considered that the retail markets for the repair and replacement of automotive glass are a series of regional markets, with similar characteristics. This reflects the demand side characteristics of these services and functional markets. However, Commission staff consider that the analysis of the competition effects of the proposal will be the same, whether analysed on a regional or national basis, and for that reason propose national markets.

Functional Level

- 36 Both Carglass and Smith & Smith (through its parent company Pilkington (NZ) Holdings Ltd) are wholesalers of automotive glass, however it is noted that the proposed acquisition involves the purchase of Smith & Smith’s retail operations only. The proposal will not result in aggregation of business activity at the wholesale level of the market.

Conclusion on Market Definition

37 It is concluded that the relevant product and functional markets for the purpose of assessing the dominance implications of the proposal are as follows:

- the retail market for the repair of automotive glass in New Zealand; and
- the retail market for the replacement of automotive glass in New Zealand.

ASSESSMENT OF DOMINANCE

38 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.

39 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 ...

40 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.

41 In reaching a conclusion 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 are the constraint exercised by existing competitors and the constraint exercised by customers.

42 In *Port Nelson Ltd v Commerce Commission* [1996] 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*.

- 43 A dominance assessment for each of the retail markets for the repair and the replacement of automotive glass follows.

The Retail Market for the Repair of Automotive Glass in New Zealand

Market Concentration

- 44 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 exist¹ :

- 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.

- 45 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”.

- 46 Both Carglass and Smith & Smith are involved in automotive glass repair work nationwide. There are also a large number of locally and regionally based market participants, including Novus, a franchise network with outlets nationwide.

- 47 No statistics are available on a regional basis, but as each regional market has similar characteristics, it is proposed to analyse the impact on market shares of the proposed acquisition by reference to national statistics.

- 48 The applicant estimates, and Commission staff have confirmed, that approximate market shares for existing competitors in the retail market for the repair of automotive glass in New Zealand are as follows:

Market Participants	Existing Market Shares
Smith & Smith	[]
Carglass	[]
Merged entity	[]
Novus	[]
Others	[]
TOTAL	100%

49 The applicant argues that post-acquisition market shares for the merged entity and Novus will fall as a result of the sale to independent third parties of a number of existing Smith & Smith outlets. [

]. Commission staff have taken a conservative approach to post-acquisition market shares and have calculated post-acquisition shares on the basis of current market shares for existing competitors.

50 While implementation of the proposal would lead to some aggregation in the retail market for the repair of automotive glass, the merged entity's market share would appear to fall within both of the Commission's "safe harbours", having less than in the order of a 40% share of the relevant market, and having less than in the order of a 60% share of the relevant market and facing competition from at least one other competitor having no less than in the order of a 15% share of the relevant market.

Conclusion on Assessment of Dominance in the Retail Market for the Repair of Automotive Glass in New Zealand

51 Consequently, Commission staff conclude that implementation of the proposal would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in the retail market for the repair of automotive glass in New Zealand.

The Retail Market for the Replacement of Automotive Glass in New Zealand

Market Concentration

- 52 Carglass and Smith & Smith are both involved in the retail market for the replacement of automotive glass, with outlets nationwide. There are also a large number of local and regional market participants.
- 53 As with the automotive glass repair market, no regionally-based statistics are available, so the effects of the proposed acquisition on market shares are assessed by referring to national statistics.
- 54 The applicant estimates that the total number of windscreens in the retail market for the replacement of automotive glass is approximately [] units, with Smith & Smith retailing [] units or [] and Carglass retailing [] units or []. The applicant estimates that the parties would have similar market shares in relation to bodyglass.
- 55 Market share figures provided by Pilkington New Zealand are consistent with the applicant's estimates. Pilkington New Zealand estimates that the total number of windscreens in the market is [] units, of which Pilkington New Zealand supplies [] or [], and the remainder is imported. Pilkington New Zealand supplies [] units to Smith & Smith, with Smith & Smith also sourcing some of its automotive glass requirements from Australian Autoglass. As such, it is estimated that Smith & Smith would have a market share of approximately [].
- 56 On the basis of the above estimates, the merged entity would have a market share of approximately [] of the retail market for the replacement of automotive glass, facing competition from many small retailers with a combined market share of approximately []. Novus, with a relatively high share of the retail market for the repair of automotive glass, has only recently started providing automotive glass replacement services, and so does not have a large presence in the market.
- 57 The merged entity's market share would fall outside the Commission's "safe harbours", having less than in the order of a 60% share of the relevant market but not facing competition from at least one other market participant having no less than in the order of a 15% market share.
- 58 Whether a dominant position would exist in a market following implementation of a merger is not determined on the basis of market share analysis alone. As Tipping J

stated in *New Zealand Magic Millions Ltd & Anor v Wrightson Bloodstock Ltd* (1990) 3 NZBLC 99-175:

... market 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 a substantial market share but all other relevant factors must be brought into account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.

59 Accordingly, the Commission considers a range of additional factors before reaching a conclusion about the acquisition or strengthening of a dominant position in a market, such as the constraint from potential competition, barriers to entry, and the constraint from buyers. These additional factors are discussed below.

[]

60 The applicant argues that the merged entity's market share will be less than the combined total of the two parties existing market shares as a number of Smith & Smith retail outlets will either cease to operate or be sold to independent third parties. [

].

61 [

].

62 [

].

Constraint from Existing Competition

63 The applicant submits that there is a large number of competitors in the market, and that these existing competitors will continue to provide a competitive constraint on the merged entity. While Novus anticipated that it would increase its share in the

market over time, its present market share is very small, and Commission staff do not consider that Novus would be in a position to constrain the merged entity from exercising market control in the short term. Similarly, it is not considered that the presence of a large number of very small market participants acts as much of a constraining influence on the merged entity.

- 64 It is also noted that a number of existing competitors considered that the proposed merger could benefit smaller market participants. For example the Managing Director of Auto Glas, Mr Glen Bishop, stated that the proposed merger could [
-]. Novus also considered that the proposed merger could be of benefit as customers looked for alternative automotive glass retailers. The Manager for Alert Glass, Mr John Neilson, stated that implementation of the proposed merger would [
-].

Constraint from Market Entry

- 65 It is necessary to determine whether the merged entity would be subject to significant constraints from the threat of market entry. Potential competition which could act as a constraint could come from either new entry to the market or imports. Before the Commission will consider that new entry will provide an adequate constraint on a merged entity so as to allay dominance concerns, such entry must be shown to be *likely*, of sufficient *extent*, *timely* and *sustainable* (the “*lets*” test).²
- 66 The applicant submits that there is the potential for Protector Glass Industries Ltd (“Protector Glass”), based in Australia, to establish a retail automotive glass chain in New Zealand. Protector Glass currently manufactures, distributes and retails automotive glass in Australia, and supplies automotive glass to the Auto Glas Group in New Zealand.
- 67 From discussions with the Managing Director of Auto Glas, Mr Glen Bishop, Commission staff consider it unlikely that Protector Glass will enter the retail market for the replacement of automotive glass in New Zealand in the short to medium term. Mr Bishop explained that [
-].

68 Commission staff have also been informed of the intentions of a group of independent retailers to set up a nationwide network of automotive glass retailers. Mr Mark Heal, of Autoglass Wholesalers, has stated that the proposed network of between 15-20 retailers will be named “Windscreen Independents Nationwide”. Members will display a banner stating that they belong to the nationwide network and advertising an 0800 number for customers to call. The group has had initial discussions with at least one insurance company at this stage, []].

69 As previously stated, Novus has recently entered the retail market for the replacement of automotive glass, and intends to expand its presence in the market. It would appear that Novus has the ability to be just as an effective competitor in the replacement market as it has been and is in the repair market.

Barriers to Entry

70 The applicant submits that the retail market for the replacement of automotive glass in New Zealand is extremely competitive, with low barriers to entry. Other market participants agreed that barriers to entry are low for entry at a local or regional level, but entry on a nationwide scale would involve considerable financial costs.

71 Existing competitors experience little difficulty in sourcing their automotive glass requirements. The particular automotive glass which is required for any vehicle depends upon the year, make and specifications of the vehicle. Retailers can source their automotive glass requirements from one of several wholesalers, but it is generally accepted that Pilkington New Zealand supplies the majority of automotive glass in New Zealand. Other wholesalers include Carglass, motor vehicle dealerships, other specialist importers, and independent retailers.

72 Pilkington New Zealand is the only automotive glass manufacturer in New Zealand, supplying automotive glass to Smith & Smith, Carglass and other market participants. For example, Smith & Smith purchases the majority of its automotive glass supplies from Pilkington New Zealand, and Carglass purchases approximately [] of its requirements from Pilkington New Zealand. Both companies also purchase some automotive glass from Australian Autoglass (a wholly owned subsidiary of O’Brien Glass in Australia). As earlier stated, Pilkington New Zealand estimates that it would supply approximately [] windscreen units per annum or []

] from a total number of [] units. It is assumed that Pilkington New Zealand has a similar share of the bodyglass segment of the market.

73 Automotive glass is also imported into New Zealand from a number of countries including Australia, Japan, Hong Kong, and China. For example, Windscreen Distributors currently imports a wide range of glass products from Protector Glass in Australia, and is the sole distributor for Protector Glass in New Zealand. Alert Glass imports its automotive glass requirements from Australia and China.

74 It was noted by a number of smaller market participants contacted by Commission staff, that Smith & Smith and Carglass are able to purchase automotive glass at much lower prices than the smaller retailers. As a result, these smaller retailers are unable to compete on price with Smith & Smith and Carglass. The General Manager for Pilkington New Zealand, Mr Bruce Crawford, agreed that companies purchasing larger volumes are able to negotiate more favourable prices. However, he noted that it was possible for automotive glass to be sourced from Australia and elsewhere at very competitive rates.

75 The applicant argues that low barriers to entry are indicated by a number of further factors including:

- modest skills are required to fit automotive glass
- no premises are required as business can be conducted from mobile vans;
- large stock levels are not required as business can be conducted with minimal or no stock levels by sourcing glass requirements on an “as needed” basis from one of the several wholesalers in the industry; and
- there are no legal restraints on entry.

Conclusion on Constraint from Market Entry

76 Commission staff conclude that the merged entity is unlikely to be constrained by the threat of market entry on a national scale and in a timely fashion from Protector Glass, or any other new entrant. However, it is considered that increased competition from Novus and the proposed network of independent retailers will provide some constraint. It is also noted that barriers to entry to the market are low, there are no difficulties in sourcing automotive glass, and there do not appear to be any significant barriers to the importation of automotive glass.

Constraint from Buyers

- 77 The applicant argues that the major customers in the retail market for the replacement of automotive glass, insurance companies, have a significant degree of countervailing power in the market and are in a position to constrain the merged entity if it was to increase prices or reduce the quality of its services. This view was shared by a number of insurance companies and existing market participants contacted by Commission staff.
- 78 The applicant submits that insurance companies generally seek quotations from around three companies and award their automotive glass work to the firm with the most competitive quotation. The contracts for this work are for a limited duration, between 6 months and 2 years. The work is then put up for competitive tender again.
- 79 A number of the larger insurance companies confirmed that they have negotiated national agreements with one or other of the merger parties. As a result of these national agreements, smaller market participants have lost marked proportions of their automotive glass replacement work. One of the main reasons for these national agreements is the ability of Smith & Smith and Carglass, unlike smaller market participants, to offer nationwide coverage.
- 80 State Insurance has a national agreement with Smith & Smith for its automotive glass repair and replacement work. The agreement involves a “set price” for all automotive glass work that is carried out by Smith & Smith, whether it be repairs or replacement. The Motor Assessment Manager for State Insurance, Mr Brian Hill, estimated that approximately [] of State Insurance’s [] total spend on automotive glass claims per annum would go to Smith & Smith.
- 81 AMI has recently reached an agreement with Carglass for its automotive glass repair and replacement work. The agreement involves []
- 82 AMI estimated that it spends approximately [] on automotive glass claims per annum, with Carglass accounting for around [] or [] of that total. The balance goes to smaller market participants. It was anticipated that Carglass’s share of AMI’s automotive glass spend would increase this year as the AMI/Carglass agreement includes the central North Island, which has not been included in the past.

- 83 National Insurance has a “preferred supplier” arrangement with Smith & Smith, which involves National Insurance’s clients being encouraged to use a Smith & Smith outlet for automotive glass work. However, clients are not prohibited from using another company if they wish to do so. National Insurance estimated that it would spend in excess of [] on automotive glass claims per annum, with approximately [] of that total going to Smith & Smith.
- 84 National Insurance has an agreement with Smith & Smith which involves National Insurance “encouraging” its clients to go to Smith & Smith outlets for automotive glass work. The Executive Manager for National Insurance, Mr Alan Black, estimated that only [] of National Insurance’s annual automotive glass spend is with Smith & Smith, the remainder with other market participants.
- 85 New Zealand Insurance (“NZI”) has a national agreement with Smith & Smith as the company considers that it is []. NZI estimated that approximately [], or [] of the company’s total automotive glass spend would be with Smith & Smith. Just under [] is spent with other market participants.
- 86 FAI Insurance does not have an agreement with either Smith & Smith or Carglass. Automotive glass work for FAI’s clients is carried out by the company of the client’s choice. FAI estimated that it would spend approximately [] on automotive glass claims per annum.
- 87 The applicant argues, and Commission staff agree, that given the volume of work that is generated in the market through insurance companies, the countervailing power of insurance companies to dictate prices and terms is considerable. For example, it is estimated that State Insurance and AMI, the two largest motor vehicle insurers in New Zealand accounting for approximately [] of all insured motor vehicles, has a combined spend on automotive glass of approximately []. Following implementation of the merger, the merged entity will account for around [] of that total [].

INSURANCE SPEND (\$m)

	Smith & Smith	Carglass	Others	Total
State	[]			[]
AMI			[] []	[]
National	[]			[]
NZI	[]			[]
FAI				[]
Total	[]	[]	[]	[]

88 The following is noted:

(1) [] or around [] of the above insurance companies' automotive glass spend is spent with the merger parties;

(2) [] or around [] of the total spend is spent with other than the merger parties or is not 'tied' to any preferred supplier arrangement.

89 State Insurance's Motor Assessment Manager, Mr Brian Hill, considered that State's bargaining power would be reduced once the proposal is implemented. However, Mr Hill noted that State Insurance [

].

90 AMI also agreed that the insurance companies have bargaining power in the market, but believed that AMI's negotiating power will be reduced if the proposed merger is implemented. Novus was not considered a strong player in the replacement market at the present time. [

]. However, staff noted that of AMI's total spend of [], [] is spent with others.

91 National Insurance considered that it would be feasible for it to negotiate with regional or local market participants if the company became dissatisfied with the merged entity's prices or services. The company's Executive Manager, Mr Alan Black, stated that although it would be more difficult for National Insurance to deal on a regional as opposed to a national basis, it would be possible, and National Insurance would be prepared to do so.

92 NZI also considered that it had alternatives if dissatisfied with the merged entity's post-acquisition performance. NZI would be prepared to turn to regional market participants in order to meet its clients' needs and its own requirements.

- 93 The Chief Executive of the Insurance Council of New Zealand, Mr David Sargeant, stated that while it was possible for insurance companies to deal with local or regional market participants, there had been a move away from doing so. Any shift back to regional arrangements would involve increased costs to the insurance companies, and loss of administrative and other efficiencies.
- 94 Budget and Hertz, which are both self-insured vehicle rental companies, have agreements for their automotive glass repair and replacement work with one or other of the merger parties. Carglass carries out the majority of Budget's automotive glass work and Smith & Smith has a preferred supplier arrangement with Hertz. Neither company expressed concerns in relation to the proposal, with the National Fleet Manager for Hertz noting that local market participants in many regions offer competitive prices and services.

Conclusion on Constraint from Buyers

- 95 Accordingly, Commission staff conclude that the major customers in the retail market for the replacement of automotive glass in New Zealand would provide constraint on any exercise of market power by the merged entity sufficient to alleviate any concerns of market dominance.

Conclusion on Assessment of Dominance in the Retail Market for the Replacement of Automotive Glass in New Zealand

- 96 Commission staff conclude that implementation of the proposal would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in the retail market for the replacement of automotive glass in New Zealand.**

OVERALL CONCLUSION

- 97 Although implementation of the proposal would lead to aggregation in the retail markets for the repair and replacement of automotive glass in New Zealand, staff consider that the proposal would not result, and would not be likely to result, in the merged entity or any other person acquiring or strengthening a dominant position in either of these markets. There would appear to be sufficient competitive constraints from existing competition, and from the substantial countervailing power of major customers, to eliminate concerns that the merged entity or any other person would acquire or strengthen a dominant position in either of these markets.

98 Having regard to the factors set out in s 3(9) of the Act and all other relevant factors, staff conclude that the proposal would not result, and would not be likely to result, in the merged entity or any other person acquiring or strengthening a dominant position in either of the following markets:

- the retail market for the repair of automotive glass in New Zealand; and
- the retail market for the replacement of automotive glass in New Zealand.

RECOMMENDATION

99 It is recommended that, in terms of s 66(3)(a) of the Act, the Commission give clearance for the proposed acquisition.

John Preston
Chief Investigator

Jane Chilcott
Investigator

Juliet Fletcher
Investigator

Jo Bransgrove
Manager

DETERMINATION ON NOTICE OF CLEARANCE:

CARGLASS (N.Z.) LIMITED/SMITH & SMITH LIMITED

We agree/disagree with the recommendation.

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

Accordingly, pursuant to s 66 (3) (a) of the Commerce Act 1986, we hereby give/decline to give clearance for the purchase by Carglass (N.Z.) Limited or its wholly owned subsidiary of the retail automotive glass business of Smith & Smith Limited.

Dated this day of March 1998

T G Stapleton
Member

E C A Harrison
Member

R N Taylor
Member

¹ Refer Commerce Commission's Business Acquisitions Guidelines, 1996, p17.

² Business Acquisition Guidelines, 1996, pp19-20.

This document is sourced from an unsigned electronic version and does not include appendices which were supplied to the Commission in hardcopy; pagination may also differ from the original. For a full public copy of the signed original (copy charges may apply) please contact the Records Officer, Commerce Commission, PO Box 2351 Wellington, New Zealand, or direct dial +64 4 498 0929 fax +64 4 471 0771.

This document is sourced from an unsigned electronic version and does not include appendices which were supplied to the Commission in hardcopy; pagination may also differ from the original. For a full public copy of the signed original (copy charges may apply) please contact the Records Officer, Commerce Commission, PO Box 2351 Wellington, New Zealand, or direct dial +64 4 498 0929 fax +64 4 471 0771.