

COMMERCE COMMISSION

Decision No. 437

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

COMPUTERSHARE REGISTRY SERVICES LIMITED

and

BT PORTFOLIO SERVICES (NZ) LIMITED

The Commission: M J Belgrave
D Bates
P J M Taylor

Summary of Application: The acquisition by Computershare Limited or Computershare Registry Services Limited or a direct or indirect subsidiary of either company, of all the issued share capital or assets of BT Portfolio Services (NZ) Limited.

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

Date of Determination: 28 June 2001

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INTRODUCTION

1. On 22 May 2001 the Commission registered a notice pursuant to section 66(1) of the Commerce Act 1986 (“the Act”), seeking clearance for the acquisition by Computershare Registry Services Limited (“CRS” or “the Applicant”) or its parent company Computershare Limited (“Computershare Australia”), or a direct or indirect subsidiary of either company, of all the issued share capital or assets of BT Portfolio Services (NZ) Limited (“BTNZ”).

THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. The Commission sought and was granted two extensions. Accordingly, a decision was required by 28 June 2001.
3. In its application, CRS sought confidentiality for specific aspects of the application. A confidentiality order, dated 28 May 2001, was made in respect of specific information, for a period of 20 working days from the Commission’s determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply to the information.
4. This application was lodged prior to 26 May 2001, the date on which a change in threshold was enacted by the Commerce Amendment Act 2001. The Commission has applied the repealed dominance test in this instance.
5. The Commission’s determination is based on an investigation conducted by staff. In the course of its investigation, Commission staff discussed the application with the following parties:
 - Computershare Registry Services
 - BT Portfolio Services NZ
 - BK Registries
 - Reserve Bank of New Zealand
 - New Zealand Stock Exchange
 - ASX Perpetual
 - ABN AMRO
 - Fisher and Paykel
 - Fisher and Paykel Finance
 - Advantage Group
 - Baycorp
 - Systems Support Group
 - Perception Knowledge Systems.

THE PARTIES

Computershare Registry Services Limited

6. Computershare Australia, a company listed on the New Zealand and Australian Stock Exchanges, is a financial services and technology provider for the global securities industry, providing services to listed companies, investors, employees, exchanges and other financial institutions. Amongst its core operations Computershare Australia provides registry services for listed companies or other entities which have quoted securities or which require maintenance of membership lists or registers. CRS is a New Zealand wholly owned subsidiary that operates a registry services business in New Zealand.
7. The major clients of CRS include Brierley Investments, Air New Zealand and Contact Energy.
8. The Computershare group operates its registry services business through an internally developed software system named Registry Managers System.
9. The Commission notes that Computershare Australia has also applied to the Australian Competition and Consumer Commission for clearance to acquire the Australian branch of BT Portfolio Services.

BT Portfolio Services (NZ) Limited

10. BTNZ is a wholly owned subsidiary of Principal Financial Services Inc, a company registered in the United States of America. BTNZ operates a registry services business in New Zealand. More specifically, BTNZ provides registry services in the areas of equities, fixed interest and unit trusts. In addition BTNZ offers a range of ancillary services, including the electronic annual general meeting system and the administration of employee/executive share plans.
11. BTNZ's major equities clients include Tower, United Networks, TransAlta and the Advantage Group. BTNZ's fixed interest business holdings consist of government issued retail Kiwi Bonds, wholesale issues by government and local government authorities, corporate issues and bank bills (wholesale) issues. The fixed interest holdings were acquired by BTNZ when it was awarded the contract to provide registry services on behalf of the Reserve Bank of New Zealand ("RBNZ").
12. BTNZ uses the Unishare software system to operate its registry services business in New Zealand. This software system allows the maintenance and processing of registration services for listed equities, warrants, listed and unlisted trusts.

Other Parties

BK Registries

13. BK Registries ("BK") is a privately-owned company which provides registry services to its client companies throughout New Zealand, a number of which are listed on the New Zealand Stock Exchange ("NZSE"). In addition, BK has an alliance with an Australian-based share registry, Registries Limited, which allows it to provide security registry services in Australia to BK's clients that have a dual listing on the Australian Stock Exchange ("ASX").

14. []
15. BK is based in Ashburton and its clients include Infratil, New Zealand Oil and Gas and Kiwi Income Property Trust. BK also provides registry services to all those companies listed on the NZSE's New Capital Markets board.

Reserve Bank of New Zealand

16. One of the RBNZ's historical functions has been the provision of registry services to the government, local authorities, and others in the public and private sector that issue debt securities such as bonds, bills, and notes. In April 2000, those registers held securities with a face value of just over \$62.5 billion.
17. In June 1999, the RBNZ issued a request for proposals ("RFP") to supply registry services on its behalf. The Commission understands that various parties uplifted copies of the RFP []
- [] The RBNZ awarded the contract for the out-sourcing of its registry services to BTNZ.

New Zealand Stock Exchange

18. The NZSE is a national corporate body representing its sharebroker members which was established by the Sharebrokers Amendment Act 1981 as the successor to the Stock Exchange Association of New Zealand.
19. The purpose of the NZSE is to provide and operate an efficient market for the raising of capital for listed companies and the trading of securities, including shares and fixed interest securities such as bonds and government stock. It is also responsible for maintaining professional standards amongst its members and amongst listed companies. The NZSE is funded from fees paid by its members and listed companies, and also charges for the information services it provides.
20. The NZSE electronic interface, which brokers and registries connect to, is known as FASTER (Fully Automated Screen Trading and Electronic Registration System).

Baycorp Limited

21. Baycorp is a publicly listed company which provides credit bureau and data-related services to its clients in New Zealand and internationally. Baycorp has developed comprehensive back-end database and information systems, which enable it to provide the majority of its services on-line.

ASX Perpetual Registrars Limited

22. ASX Perpetual Registrars Limited ("APRL") is a joint venture between ASX and Perpetual Trustees Australia Limited's share registry division, Perpetual Registrars formed in May 2000 for the provision of registry services for listed securities in Australia.

REGISTRY SERVICES

23. In general, registries do not facilitate directly the financial transactions associated with the buying and selling of securities. Rather registries assume the obligations of their client companies pursuant to the provisions of the Securities Act 1978, the Companies Act 1993, the Securities Transfer (Approval of FASTER System) Order 1998, the Income Tax Act 1994, and other applicable laws.
24. Services provided may include:
- Register maintenance - responding to shareholder inquiries, recording shareholder details, providing information to the Inland Revenue Department and other government agencies, and distributing payments.
 - Transfers – receiving and validating transfers, supply of transfer schedules to the client company.
 - Registration – setting up details of all new security holders, and issuing of certificates/shareholding statements.
 - Payment Processing – calculating dividend entitlements and interest entitlements for eligible holders, and making payment less any taxation due.
25. In addition, the following services may be offered by share registries:
- Facility for proxy voting by shareholders.
 - Mailing of annual reports and other correspondence to shareholders.
 - On-line interface.

TECHNOLOGY

Hardware

26. The computer hardware used by registries ranges from the Compaq servers [] which cost in the vicinity of \$10,000 each, to the IBM servers, at an individual base cost of around \$250,000, []. It is necessary for registries to have reliable computer systems, particularly those connecting to FASTER, and the registries therefore may also invest in redundant systems to insure their uninterrupted ability to function.
27. The size and number of hard drives and other components required depends to a large extent on the size of the registry. In addition registries have a number of computer work stations, ranging in cost from \$2000 to \$5000. Again, the number required depends on the size of the registry.

Software

28. There are several ways a provider of registry services can obtain the information systems necessary for the efficient and expedient management of its client registers. First, the provider may obtain the required software from an existing provider under a licensing arrangement. []

29. [

]

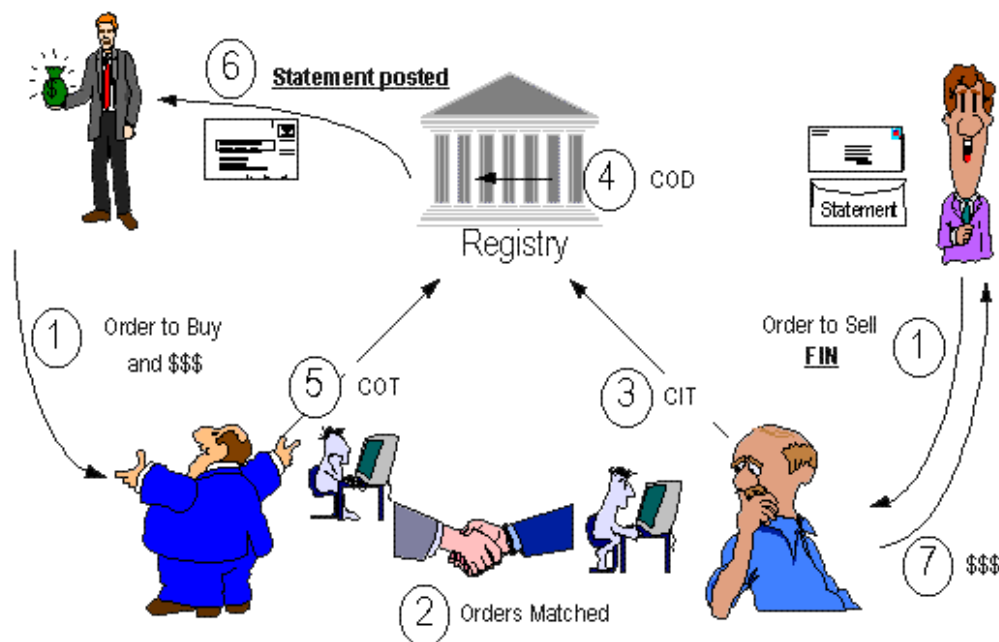
30. The second way of obtaining registry management software is to develop it in-house. The Commission is advised that the cost of such development could range from NZ\$200,000 to several million dollars, depending on the type and size of the registries being managed.
31. During their investigation, Commission staff also sought information on the compatibility of systems, in relation to the ability of companies to switch between providers of registry services. Commission staff were advised that although some 'massaging' of data may need to be undertaken, this is not generally a difficult or involved process and is one which can be carried out in a relatively short timeframe.
32. The Commission understands that issuers of securities own the data/records held on the system of their provider of registry services. When a listed issuer of equities wishes to switch providers, the changeover needs to occur between the close of the NZSE on Friday and its opening on Monday. To facilitate a smooth migration, the two providers generally batch-test samples of data and make any necessary adjustments to the data prior to the changeover date.

NZSE Interface: FASTER

33. Clearing, settlement and registration of securities traded on the NZSE are performed by the FASTER system. This inter-connects the trading system, members' office systems, share registries and payments systems. All active member firms are required to have an office system permanently on-line to FASTER to receive advice of matched trades and to perform settlement functions.
34. The FASTER system provides message switching, logging and non-repudiation to participant systems connecting to the various registries. In effect, participant systems view one single (or virtual) company's register. This is similar to the functioning of a central depository but without an additional intermediary holding the securities.
35. All settlements within FASTER occur using Simultaneous, Final and Irrevocable Delivery versus Payment (SFIDvP). Under SFIDvP all deliveries and payments are settled trade-by-trade, with real payment and irrevocable delivery occurring simultaneously.
36. All funds transfers are performed using a direct connection between FASTER and the Austraclear cash transfer system (run by the RBNZ). This system guarantees same day real-time gross settlement funds.

37. The process of trading equities through the FASTER system is as follows:
- 37.1 Orders to buy and sell flow from clients through brokers and into the trading system. Selling clients must inform their broker of their registry account number and FASTER Identification Number (FIN). These are used to authorise the transfer of securities from the selling client to their broker. Buying clients must present proof of ability to pay.
 - 37.2 The trading system matches orders and forwards the resulting trades to FASTER. FASTER then notifies broker systems of the trades. Clients (buying and selling) are sent contract notes to confirm the trade and payment details.
 - 37.3 The selling broker is then required to perform Client Inward Transfers (CITs) in order to transfer securities from the shareholders' accounts to their transfer account. The CITs must be accompanied by a client supplied FIN which authorises the transfer.
 - 37.4 The selling broker is then required to perform a Claim of Delivery (COD) for each trade. Each COD contemporaneously moves securities from the selling broker's transfer account to that of the buying broker and the associated funds from the buying to the selling broker.
 - 37.5 The buying broker then performs a Client Outward Transfer (COT) to register the stock directly in the name of the buying clients. This is either to an existing holder's account else a new shareholding is established.
 - 37.6 The registry then mails out statements showing any change in holdings and the current balance in that holding. Should a new account be opened then details of the account will be sent to the new shareholder and a FIN authorising the transfer of these securities will be mailed separately.
 - 37.7 The selling client receives payment from his/her broker.

Figure 1: The Process of Buying and Selling Equities through the FASTER System



Source: NZSE web pages: <http://www.nzse.co.nz>

38. During their investigation, Commission staff were advised by industry participants that the cost of developing an interface with FASTER which is compliant with the NZSE's requirements, would be in the vicinity of \$50,000.

MARKET DEFINITION

Introduction

39. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in any market in terms of section 47(1) of the Act.
40. 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.”
41. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,¹ *Commerce Commission v Carter Holt Harvey Building Products Limited*,² and in the Commission's *Business Acquisition Guidelines* (“the Guidelines”).³ A brief outline of the principles follows.
42. Markets are defined in relation to three dimensions, namely product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
43. A properly defined market includes products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (the “*ssnip*” test), assuming that other terms of sale remain unchanged.
44. Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products takes place through a series of stages, which may be visualised as being arranged vertically, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence, the functional market level affected by the application has to be determined as part of the market definition. For example, that

¹ (1991) 4 TCLR 473.

² Williams J, 18 April 2000, HC, yet to be reported.

³ Commerce Commission, *Business Acquisition Guidelines*, 1999, pp. 11-16.

between manufacturers and wholesalers might be called the “manufacturing market”, while that between wholesalers and retailers is usually known as the “wholesaling market”.

The Relevant Markets

45. The Applicant contends that the market that relevant to the proposed acquisition is:
- the market for the provision of registry services in New Zealand

Product Dimension

46. The Applicant argues that traditionally both CRS and BTNZ have managed and maintained registers for listed companies and other entities that issue equities and/or fixed interest securities. However, CRS contends that the technologies used by the companies can be adapted to maintain a number of services other than company registers, such as membership lists and proxy voting systems. The Applicant also provides the example of BT Registries in Australia, which has adapted its software to develop a specialist system to meet the requirements of the Residential Tenancies Bond Authority of Victoria.
47. Discussions with a number of industry participants suggest that a general registries market is too broad. In particular, the general view of the industry is that the provision of registry services could include the management and maintenance of any type of register, for instance, gun registers and motor vehicle registers, but that such activities would more likely be part of the market for the provision of general bureau services. The parties argued that whilst their electronic systems could easily accommodate the maintenance of such registers, the converse would not necessarily hold true.
48. In particular, they contended that an entity managing and maintaining a register for guns or motor vehicles did not necessarily have either sufficiently developed software or the requisite expertise to enable it to easily offer the range of services required by the issuers of securities. The parties referred particularly to the compliance issues, such as reporting and taxation, which are inherent in the management and maintenance of securities registers.
49. [
-]
50. [
-]
51. The example of the service provided in Australia for the Bond Authority register was considered by most in the industry to be a specialist field, requiring highly specialised software and therefore likely to be in a separate market.

52. During their investigation, Commission staff also considered the Applicant's assertion that the in-house provision of registry services could be included in the market for the provision of registry services. Information gathered by Commission staff suggests that in-house providers do not consider themselves to be a part of that market. However, those interviewed conceded that fixed interest in-house providers could assume the management of other fixed interest registries but they doubted whether they would have the required software to manage equities registers. For instance, []].
53. During their investigation, Commission staff noticed that there is a common perception amongst company officers (particularly finance officers) that the management of equities registries is complex. In particular, a number of company officers interviewed cited the need for specialised software and compliance requirements additional to that required for fixed interest securities, as major reasons for out-sourcing the management of their equities registers.
54. []]
55. The Commission is also of the view that the services required to maintain the registries of unlisted companies are, on the whole, significantly simpler than those for listed companies. Again, this is largely because of the reduced compliance and software requirements. CRS, BTNZ and BK can and do provide registry services to unlisted companies, however it is unlikely that the more usual providers of registry services to unlisted companies could provide adequate services to listed companies and issuers of fixed interest securities without a significant investment in software.
56. Using a demand side approach, parties seeking registry services for their equities registers generally require specialist services which are supplied by companies such as CRS, BTNZ and BK. However those companies with fixed interest registers only, have several options, including existing in-house providers and accounting firms. Using a supply side approach, for those parties not currently providing registry services to listed issuers of equities, it would take a significant investment in software to be in a position to supply. Suppliers such as [] could not quickly, and economically, alter the registry services they supply, such that their inclusion in the equities market is justified.
57. The Commission, therefore, is of the view that the market for the provision of registry services should be delineated into: those provided to listed companies that issue equities; and those provided to listed companies and other entities that issue fixed interest securities. Although a wider market could be argued, the Commission has taken this conservative approach on the basis that if there are no dominance concerns in the narrower market then it is unlikely there are any dominance concerns in the wider market (being that for the provision of registry services).

Functional Dimension

58. The Commission agrees with the Applicant's submission that CRS and BTNZ operate at the same functional level. Both companies are providers of registry services to listed companies that issue equities, and to listed companies and other entities that issue fixed interest securities.

Geographic Dimension

59. The Commission agrees with the Applicant that the geographic extent of the market for the provision of such services is national. This is supported by the fact that all of the current market participants, CRS, BTNZ, and BK, provide services to client companies throughout New Zealand. Further, the Commission notes that, as the management and maintenance of equities and fixed interest securities registers is predominantly electronic, geographic location is to a large extent irrelevant. This is evidenced by the fact that BK operates competitively from Ashburton, while CRS and BTNZ are based in Auckland.

Conclusion on Market Definition

60. It is therefore proposed that the following market definitions be adopted:

- the national market for the provision of registry services to listed companies that issue equities ("equities market")
- the national market for the provision of registry services to listed companies and other entities that issue fixed interest securities ("securities market").

COMPETITION ANALYSIS

Introduction

61. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of dominance.

62. Competition in a market is a broad concept. It is defined in section 3(1) of the Commerce Act as meaning "workable or effective competition". In referring to this definition the Court of Appeal said:⁴

"That encompasses a market framework which participants may enter and in which they may engage in rivalrous behaviour with the expectation of deriving advantage from greater efficiency."

63. Section 3(9) of the Commerce Act states:

"For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-

⁴ *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554, 564-565

- (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
- (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
- (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

The Dominance Test

64. Section 47(1) of the Commerce Act prohibits certain business acquisitions:

“No person shall acquire assets of a business or shares if, as a result of the acquisition, -

- (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
- (b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”

65. The test for dominance has been considered by the High Court. McGechan J stated:⁵

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”

...

“Dominance includes a qualitative assessment of market power. It 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*.”

66. Both McGechan J and the Court of Appeal, which approved this test,⁶ stated that a lower standard than “a high degree of market control” was unacceptable.⁷ The Commission has acknowledged this test:⁸

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.”

67. The Commission’s *Business Acquisitions Guidelines* state:

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor {or} customer reaction.”

...

“A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.” (p21)

68. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that

⁵ *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

⁶ *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

⁷ *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

⁸ *Business Acquisition Guidelines*, Section 7

the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined.

69. The Commission applies the dominance test in the following competition analysis.

The National Market for the Provision of Registry Services to Listed Companies that Issue Equities

Market Concentration

70. An examination of concentration in a market provides an indication of whether a merged firm may or may not be constrained by others participating in the market, and thus the extent to which it may be able to exercise market power.
71. The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of section 47 of the Act -
- “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:
- 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.” (p17)
72. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged firm and its rivals is relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Guidelines went on to state that:
- “Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”
73. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by section 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided through market entry, also typically need to be considered and assessed.

74. Estimates of shares of the listed equities market have been assessed in Table 1 below.

Table 1:
Estimate of Shares of the National Market for the Provision of Registry Services to Listed Companies that Issue Equities

Service Provider	Number of Client Companies listed on the NZSE	Estimated Market Share (%)
CRS	178	82
BTNZ	15	7
BK	23	11
Total	216	100

75. As the income derived by the registries is dependent to some extent on the number of equities transactions, the Commission assessed the client companies of the registries in terms of shareholder numbers. Client companies were grouped into small (less than 5000 shareholders), medium (5000 to 10,000 shareholders) and large (over 10,000 shareholders) to determine whether the registries held similar percentages of various sized companies. The Commission is satisfied that the spread of small, medium and large companies is proportionate, which does not alter the market shares in Table 1.
76. The proposed acquisition would therefore result in the merged entity having an 89% share of the listed equities market, with its remaining competitor an 11% market share. These levels of market share are outside the Commission's safe harbour guidelines.
77. However, as mentioned above, market share is but one indicator of market power and other factors must be considered before conclusions are reached.

Potential Competitors

78. Given the structure of the market, the Commission has considered the possibility of new entry carefully. The Commission has had to assess whether a potential competitor could enter the market if the merged entity were to impose a *ssnip*. An assessment of the conditions and barriers to entry is considered below.
79. Greenfields entry by a party not already operating a similar business is likely to cost at least \$500,000 and possibly as much as \$3 million, depending on the scale of proposed entry. The start-up costs are primarily in the acquisition and implementation of computer hardware and software. The disparity in start-up costs is brought about by two factors, the number of client companies for which the company would provide registry services, and the scope of those services.
80. Given the previously mentioned perception that there is a high degree of risk associated with switching providers of equities registry services, any new entrant would need to satisfy potential customers of their ability to maintain reliable systems. To this extent, a number of industry participants, including [] believe that any new entrant would need an established reputation as a reliable provider of a closely related service in order to persuade potential clients to switch providers.

81. The Commission is of the view that greenfields entry to this market by a party not already operating a similar business could be risky. Given the relatively small number and size of New Zealand companies issuing equities, a new entrant basing its entry on one or two large client companies would have difficulty recouping its initial capital investment in the short term.
82. More realistic avenues of entry are by a potential New Zealand entrant forming an alliance with a provider that currently operates in Australia, such as that between BK and Registries Limited, or by an established Australian provider commencing operations in New Zealand with a view to gaining the business of companies dual listed on the NZSE and the ASX.
83. As previously mentioned, []
84. []
85. []
86. []
87. []
88. []
89. []
90. The Commission is therefore of the view that [] to enter the market for the provision of registry services to listed issuers of equities would provide considerable constraint on the ability of the merged entity to increase prices or lower quality standards.

Countervailing Power

91. Although a company could manage its own equities register in-house, it is unlikely to be cost-effective for it to do so. A far stronger possibility, in the event of price increases by the merged entity, is a joint venture between large companies to provide securities registry services for themselves. [] informed Commission staff that it would have no hesitation in setting up such a venture, should prices increase significantly.

Current Competitors

92. [

]

93. However, BK agreed that it would provide registry services to those clients of the merged entity that approached BK with a view to switching providers. The Commission notes that BK has the resources and established reputation to expand its business in this fashion.

Conclusion

94. The Commission notes the following points:
- The potential for new entry is likely to provide strong constraint
 - The strength of the current competitor and its ability to expand are also likely to provide a reasonably strong constraint on the merged entity.
95. On balance, the Commission is satisfied there are sufficient constraints in the relevant market such that dominance would not be acquired or strengthened.

The National Market for the Provision of Registry Services to Listed Companies and Other Entities that Issue Fixed Interest Securities

Market Concentration

96. The Commission has had difficulty assessing the number of listed companies and other entities that issue fixed interest securities, and consequently the shares of the market for the provision of registry services to those organisations. The RBNZ advised the Commission that it had also experienced difficulty assessing the size of this market. The major reason given was the difficulty in assessing the number of in-house providers.
97. This being the case, the Commission has relied on the Applicant's estimate of market share based on the number of registers for fixed interest securities, for which the management is currently out-sourced. Commission staff have tested these figures with several industry participants, and is satisfied that the figures (albeit for out-sourced registers only) provide a reasonable representation of the market. The estimated market shares are as in Table 2 below.

Table 2:

Estimate of Shares of the National Market for the Provision of Registry Services to Listed Companies and other Entities that Issue Retail Fixed interest Securities (out-sourced registers only)

Company	Estimated Market Share (%)
CRS	[]
BT	[]
BK	[]
Total	100

98. The proposed acquisition would therefore result in the merged entity having a [] share of the out-sourced registries, with its remaining competitor a [] market share. These levels of market share are outside the Commission's safe harbour guidelines.
99. However, as mentioned above, market share is but one indicator of market power and other factors must be considered before conclusions are reached.

Potential Competitors

100. The Commission understands that companies which manage their registers in-house, presently do not wish to provide services to those organisations that out-source their own registers. In particular [

]

101. [

]

102. In most cases, companies currently out-sourcing their securities registers could manage their registries in-house if the merged entity were to raise prices or lower quality.

103. As previously mentioned, [

]

Countervailing Power

104. The RBNZ portfolio of registries, which BTNZ now manages, constitutes the largest proportion of fixed interest security registries in this market. The Commission understands that [

]

105. In addition, the term of the contract is [

]

Current Competitors

106. As mentioned above, BK said that it would provide registry services to those clients of the merged entity that approached BK with a view to switching providers. The Commission notes that BK has the resources and established reputation to expand its business in this fashion.

Conclusion

107. The Commission notes the following points:

- The potential for new entry is likely to provide strong constraint
- The strength of the current competitor and its ability to expand is also likely to provide a reasonably strong constraint on the merged entity.

OVERALL CONCLUSION

108. For the reasons given earlier in this determination, the Commission considers that the merged entity will face sufficient constraints to prevent any dominance concerns.

109. Accordingly, having regard to the various elements of section 3(9) of the Act, and all other relevant factors, the Commission concludes that it is satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any market.

DETERMINATION ON NOTICE OF CLEARANCE

110. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Computershare Limited or Computershare Registry Services Limited or a direct or indirect subsidiary of either company, of all the issued share capital or assets of BT Portfolio Services (NZ) Limited.

Dated this 28th day of June 2001

MJ Belgrave

Chair