



COMMERCE COMMISSION

## Statement of Preliminary Issues

iSite / O.T.W.

2 September 2011

11.4/13005

### INTRODUCTION

1. On 25 August 2011, the Commerce Commission (Commission) received an application from iSite Limited (iSite) seeking clearance to acquire all the billboard assets of O.T.W. Advertising Limited (OTW). The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/assets/Uploads/PUBLIC-iSite-OTW-Advertising-Application-25-August-2.pdf>

2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks. The Commission invites interested parties to comment on the likely impact of the proposal on competition.

### RELEVANT PARTIES

#### **The Acquirer – iSite Limited**

4. iSite is a subsidiary of Infratil Limited, a publicly listed company based in Wellington. iSite provides outdoor and 'out of home' (OOH) advertising services. Companies then use this service to advertise products and services. OOH advertising includes outdoor billboards, the advertising space on buses, and the signage at airports.

#### **The Target – O.T.W. Advertising Limited**

5. OTW is a private company that also supplies OOH advertising services. OTW only provides OOH services via billboards which are located throughout New Zealand.

## **ANALYTICAL FRAMEWORK**

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's analytical framework<sup>1</sup> is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.
7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
- with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.

8. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
- existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
  - potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
  - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
  - coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
9. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

## **PRELIMINARY ISSUES**

10. Of the factors outlined in the previous section, the Commission considers its focus in respect of the proposed acquisition will be on the following areas:

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

## Market Definition

11. In assessing the relevant market/s the Commission will consider whether:
- advertisers readily switch between different forms of OOH advertising such as billboards, street furniture (eg bus shelters), advertising space at airports, railways, shopping malls and on buses;
  - OOH advertising is so different from other forms of advertising such as television, radio and print that it forms a separate market; and
  - any market that includes OOH advertising is local or national in nature.

## Existing Competition

12. In its application, iSite submits that the proposed acquisition would increase its market share but that it would still face significant constraints from existing competitors such as APN Outdoor.
13. iSite states that advertising agencies can easily switch between different OOH advertising suppliers and that this would prevent it from raising prices post acquisition. In addition, iSite considers there are no barriers to competing OOH advertising service providers expanding their operations.
14. The Commission invites comment on these issues.

## NEXT STEPS

15. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz)), the Commission has a draft timeframe in which to consider the issues raised by iSite's application for clearance.
16. An extension of time was agreed by the Applicant such that the Commission should make its final decision by **6 October 2011**; however, this timeframe could change. Any updates to the timeframe will be posted on the Clearance Public Register on the Commission's website along with relevant documents. The website address is:

<http://www.comcom.govt.nz/clearances-register/>

17. If you wish to make a submission, please send it to the Registrar, at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference iSite / OTW in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **4pm on Friday 9 September 2011**. Please clearly identify any confidential information contained in the submission and provide contact details.