COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

Date: 07 July 2006

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

PART I: TRANSACTION DETAILS

1.	What is the business acquisition for which clearance is sought?

1.1 The business acquisition for which clearance is sought is the acquisition by ORIX New Zealand Limited (**Applicant** or **ORIX**) of 100% of the shares in Truck Leasing Limited trading as Esanda FleetPartners (**TLL**) from UDC Finance Limited (**UDC**), a subsidiary of Australia and New Zealand Banking Group Limited (**ANZ**).

1.2 The Applicant has submitted an indicative bid for TLL and intends to submit a final bid on 26 July 2006.

The Person Giving Notice

2.	Who is the person giving this notice?

2.1 This notice is given by:

ORIX New Zealand Limited
32 Manukau Road
Newmarket, Auckland

Telephone: (09) 520 9700
Facsimile: (09) 520 9797
Attention: Mr Chris Briggs, Acting General Manager
Email: chris.briggs@orix.co.nz

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Simpson Grierson
88 Shortland Street
Private Bag 92518
AUCKLAND
Telephone: (09) 358 2222
Facsimile: (09) 307 0331
Attention: Peter Hinton/Mark Tan
Email: peter.hinton@simpsongrierson.com

mark.tan@simpsongrierson.com

Confidentiality

3. Do you wish to request a confidentiality order?

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long, and why?

3.2.1 The Applicant has provided two versions of the notice to the Commission:

- one copy marked "Confidential Version", in which the confidential information the Applicant wishes the Commission to withhold is highlighted in square brackets; and

- one copy marked "Public Version", in which the confidential information has been deleted.

3.2.2 The foregoing request for confidentiality is made not only in relation to this application, but also for all additional information of a similar nature that the parties provide to the Commission.

3.2.3 The Applicant requests that the confidential information identified in the Confidential Version or any additional information provided be subject to a confidentiality order for an indefinite period, or until the Applicant advises the Commission that it may disclose the information concerned.

3.2.4 Confidentiality is sought under section 100 of the Commerce Act 1986. After the expiry of such an order, confidentiality is sought under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and its disclosure would be likely to unreasonably prejudice the commercial position of the parties;

(b) the Applicant believes that there are no other considerations which render it desirable in the public interest to make the information available under the Official Information Act 1982.

Details of the Participants

4. Who are the participants?

4.1 The Acquirer is:

ORIX New Zealand Limited
32 Manukau Road
Newmarket
AUCKLAND
Telephone: (09) 520 9700
Facsimile: (09) 520 9797
Attention: Chris Briggs
Email: chris.briggs@orix.co.nz

4.2 The Vendor is:

UDC Finance Limited
C/- 5/100 Queen Street
Melbourne
VIC
Australia
Telephone: +613 9273 5914
Facsimile: +613 9273 5622
Attention: David Valentine/John Campbell
Email: valentd1@anz.com/campbd1@anz.com

5. Who is connected to or associated with each participant?

5.1 **Acquirer group/associates:**

Refer Appendix I for corporate structure diagram

5.2 **Target company group/associates:**

Refer Appendix II for corporate structure diagram.

6. Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

The Applicant is not aware of either participant or any interconnected body corporate of either participant holding any beneficial interest in any other market participants.

7. Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 The Applicant has an informal arrangement with [ ], a provider of fleet management services, to make [ ]'s fuelcard available to the Applicant's customers as part of a full fleet leasing and fleet management package, as the Applicant does not operate its own fuelcard. [ ] bills the Applicant for the fuel purchases made on the fuelcard and the Applicant passes these charges on to the customer. The Applicant understands TLL have a similar arrangement with [ ].

7.2 Apart from this the Applicant is not aware of any links between either participant or any interconnected body corporate of either participant and any other market participants.

8.	Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

The directors of the Applicant are not directors in any other companies that are involved in the markets in which TLL operates.

9.	What are the business activities of each participant?

9.1 Esanda FleetPartners is the specialist vehicle lease and fleet management business of ANZ with operations in both Australia and New Zealand. TLL runs the New Zealand operations of Esanda Fleetpartners and is primarily a provider of vehicle leases and fleet management services.

9.2 Similarly the ORIX Australia Group provides vehicle lease and fleet management services in Australia and New Zealand with the Applicant running the New Zealand operations.

10.	What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

The Applicant's ultimate parent company, ORIX Corporation of Japan, sees the acquisition of the Esanda FleetPartners business in Australia and New Zealand as a chance to consolidate its position worldwide by further expanding its operations in the regional Asia-Pacific market. This business is believed to strongly complement the capabilities and existing resources of the Applicant, allowing the Applicant to expand its service offerings, improve the operating performance of both the Applicant's business and the Esanda FleetPartners business as well as enhancing the quality and efficiency of the customer service of both businesses.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

11.1 Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 - 5.1.4), and

- the business to which the assets relate, or
- the 'target company' (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)

are both engaged?

11.1.1 For the purposes of this application, the Applicant has used the market definitions used by the Commission in Decision 478 when it considered the proposed acquisition of Hertz Fleetlease by Custom Fleet (NZ) Limited (**Decision 478**), that is the New Zealand market for the provision of fleet leasing services and the New Zealand market for the provision of fleet management services. Both the Applicant and TLL are engaged in these markets.

11.1.2 The Applicant refers the Commission to section 11.2 for further details.

11.2 Please identify for each market:

- the product(s), functional level, geographical area and (where relevant) timeframe;
- the specific parties involved;
- the relationship of those parties to the acquirer or the target company as the case may be.

Product Market

11.2.1 The Commission considered the issue of product market definition in the vehicle leasing industry in Decision 478. The Commission there stated that:

> The Commission proposes to adopt a conservative approach in the definition of the appropriate markets and assess the competitive effect of the transaction within narrowly defined markets. The Commission therefore concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate product markets are:

- The market for the provision of fleet leasing services;
- The market for the provision of fleet management services.[1]

11.2.2 The Applicant does not necessarily agree that the relevant product markets should be defined as narrowly as the Commission has defined them in Decision 478 and indeed, in the case of fleet leasing at least, the Applicant believes that it may well be appropriate to include other vehicle finance products on the basis of a high degree of demand side substitutability.

11.2.3 Nor does the Applicant believe that it is appropriate to view fleet leasing and fleet management separately. From a commercial perspective the Applicant regards fleet leasing and fleet management as a single market. All fleet leasing companies also provide fleet management and it is rare for a customer to lease vehicles without having them managed.

11.2.4 However, the Applicant does not object to proceeding for the purposes of this clearance application on the basis of the product markets defined in Decision 478.

Geographic Extent

11.2.5 The Commission has previously accepted in Decision 478 that the geographic extent of the markets for fleet leasing services and fleet management services are national, and for the purposes of this application, the Applicant has no objection to the Commission proceeding on this basis for the purposes of this clearance application.

Functional Level

11.2.6 The Commission considered in Decision 478 that:

> The functional level is the supply of fleet leasing services and fleet management services. [2]

11.2.7 Again the Applicant has no objection to the Commission proceeding on this basis for the purposes of this application.

Conclusion On Market Definition

11.2.8 The Applicant and TLL are both active in the supply of fleet leasing and fleet management services throughout New Zealand.

11.2.9 The Applicant believes that its business competes head on with, and is very much competitively constrained by, other forms of vehicle financing but nevertheless has no objection to

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[1] At paragraph 50.
[2] At paragraph 55.

proceeding on the relatively narrow markets adopted by the Commission in Decision 478, being:

(a) the New Zealand market for the supply of fleet leasing services; and

(b) the New Zealand market for the supply of fleet management services.

Differentiated Product Markets

12. Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price)

12.1 The Commission considered the issue of product differentiation in the markets for fleet leasing and fleet management and considered that:

> …the fleet leasing and fleet management markets are largely undifferentiated given that customers have multiple contracts with various fleet management and fleet leasing firms and consumption decisions are based predominantly on price. [3]

12.2 The Applicant suggests that this continues to be the case and, if anything, fleet leasing and fleet management is becoming even more commoditised, with an increasing emphasis simply on price rather than other characteristics as the differentiating factor between suppliers.

13. For differentiated product markets:

13.1 Please indicate the principal characteristics of products that cause them to be differentiated one from another.

Not applicable.

13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?

Not applicable.

13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?

Not applicable.

13.4 Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

[3] Decision 478 at paragraph 49.

Not applicable.

Vertical Integration

14. Will the proposal result in vertical integration between firms involved at different functional levels?

14.1 Are the "acquirer" (or any interconnected or associated company identified in questions 5.1.1-5.1.4) and:

- the business to which the assets relate, **or**
- the 'target company' (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2)

engaged at different functional levels of the same product market(s)?

The Applicant does not believe that the proposed acquisition will result in any vertical integration between the firms at different product levels.

14.2 Please identify for each market:

14.2.1 products(s), functional level(s), geographic area(s) and (where relevant) time frames;

14.2.2 the specific parties involved;

14.2.3 the relationship of those persons to the 'acquirer' or 'the target company' as the case may be.

Not applicable.

14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.

Not applicable.

15. In respect of each market identified in questions 11 and/or 14 identify briefly

15.1 All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case, the outcome of the notification (eg cleared, authorised, declined, withdrawn) and whether the proposed acquisition has occurred.

The Applicant is not aware of any occasion during the previous three years where the Applicant, ANZ, UDC, or TLL has formally notified the Commission of any proposed acquisition involving the fleet leasing or the fleet management markets.

15.2	Any other acquisition of assets of a business or shares in the last three years which either participant (or any interconnected body corporate) has undertaken in the last three years.

The Applicant is not aware of any occasion during the previous three years where the Applicant, ANZ, UDC or TLL proceeded with any acquisitions involving the fleet leasing or fleet management markets, although the Commission has considered these markets before in relation to Decision 478.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

16. In the market or markets, who are the suppliers of competing products, including imports?

16.1 Please identify the owners of those suppliers (including ultimate owner/s).

The Applicant refers the Commission to its response in section 16.2.

16.2 What are their estimated market shares, both in terms of productive capacity and of sales?

FLEET LEASING

16.2.1 The Applicant estimates market shares in the fleet leasing market as follows:

Fleet Leasing			
Supplier	**Owner of Supplier**	**Estimated No of Vehicles Leased**	**Estimated % of Market (by no of vehicles)***
Custom Fleet	NAB	[ ]	[ ]%
GE Capital Fleet Services	GE Corp	[ ]	[ ]%
ORIX NZ	ORIX Japan	[ ]	[ ]%
LeasePlan	ABN Amro	[ ]	[ ]%
TLL	ANZ/UDC	[ ]	[ ]%
Toyota Finance	Toyota	[ ]	[ ]%
Others**	Various	[ ]	[ ]%
Total		[ ]	100%

*The Applicant has based this market share information from management estimates over the past 12 months and believes such information to be reasonably accurate.
**Others include Marac Finance Limited, Flexilease, Nationwide Finance Limited and the car dealer networks of Holden and Mitsubishi.

16.2.2 The Applicant would have a post acquisition market share of approximately [ ]% in a market where the largest three participants would have a combined market share of [ ]%, which would fall well within the Commission's prescribed safe harbours. However, if the proposed acquisition is viewed in context of the proposed acquisition by GE of Custom Fleet, in respect of which the Applicant understands the Commission has recently granted clearance, assuming both acquisitions were to proceed, the largest three participants post acquisition would have a combined market share of [ ]% which would take this acquisition just outside the safe harbours. In order to assist the Commission with its inquiries, the Applicant will proceed with the remainder of this clearance application on the conservative basis that the prescribed safe harbours would not apply, in other words on the assumption that the proposed acquisition by GE of Custom Fleet will proceed before the Applicant proceeds with this proposed acquisition.

16.2.3 Notwithstanding that the prescribed safe harbours may not be available, the Applicant believes that existing competition will nevertheless continue to provide a substantial constraint on its ability to exercise unilateral market power following the proposed acquisition on the basis of the following:

(a) The Applicant would continue to face a significant competitive constraint from a slightly larger (if the proposed acquisition of Custom Fleet by GE proceeds) rival in Custom Fleet.

(b) The Applicant would continue to face a number of competitors which, although smaller in size, provide a significant competitive constraint given the low barriers to expansion that has already been recognised by the Commission in Decision 478 and discussed in greater detail below. GE and Leaseplan in particular are major global suppliers of fleet leasing and fleet management and the Applicant believes they would be in a strong position to rapidly expand in response to any attempt to exercise market power (to the extent that GE remains an independent competitor).

(c) The Applicant would be operating in a competitive environment where customers can and do play competitors off against each other. The Applicant notes that customers will often have relationships with more than one supplier and will contact the competing suppliers for quotes for each vehicle required. Larger fleet requirements are generally put out to tender and the Applicant does not believe there is anything to prevent even smaller suppliers from successfully bidding for such tenders.

(d) The Applicant would continue to face:

considerable constraint from outside the market. For instance, customers who are contemplating leasing their fleet have the option of owning themselves or one of the many other forms of finance available (e.g. bank loans or funding from their own cashflows).[4]

[4] Decision 478 at paragraph 83.

16.2.4 The Applicant therefore believes that existing market participants in the fleet leasing market and competition from outside the market currently provide a strong competitive constraint against the Applicant and TLL and would continue to do so following the proposed acquisition.

FLEET MANAGEMENT

16.2.5 Fleet management can be undertaken as a standalone activity separate from fleet leasing or it can be bundled with fleet leasing. In general, industry participants view the fleet management market as encompassing the former only and on this basis the proposed transaction would not appear to involve any overlap between the Applicant and TLL as neither has any market presence in standalone fleet management services.

16.2.6 If fleet management is considered to encompass both standalone fleet management and fleet management bundled with fleet leasing then the proposed transaction will result in a degree of aggregation. It is difficult to estimate market share information for an overall fleet management market. The Applicant is only able to provide the Commission with market share data based on its estimates of the number of vehicles managed:

Fleet Management					
Supplier	**Owner of Supplier**	**Estimated Number of Vehicles Leased and Managed***	**Estimated Number of Vehicles under Standalone Management ****	**Estimated Total Number of Vehicles under Management**	**Estimated % of Market Sales (by total no of vehicles)**
Fleetsmart	Cardlink	[ ]	[ ]	[ ]	[ ]%
ORIX NZ	ORIX Japan	[ ]	[ ]	[ ]	[ ]%
Custom Fleet	NAB	[ ]	[ ]	[ ]	[ ]%
GE Capital Fleet Services	GE Corp	[ ]	[ ]	[ ]	[ ]%
Leaseplan	ABN Amro	[ ]	[ ]	[ ]	[ ]%
Fleetwise	Interests associated with Simon and Belinda Taylor	[ ]	[ ]	[ ]	[ ]%
Toyota Finance	Toyota	[ ]	[ ]	[ ]	[ ]%
TLL	ANZ/UDC	[ ]	[ ]	[ ]	[ ]%
Other	Various	[ ]	[ ]	[ ]	[ ]%
Total		[ ]	[ ]	[ ]	100%

*This refers to vehicles where fleet leasing and fleet management are bundled.
**This refers to vehicles where fleet management is provided without fleet leasing.
The Applicant has based the above information on management estimates but notes that accurate market share data is difficult to obtain for fleet management.

16.2.7 On the basis of the above market share data, the Applicant would have a post acquisition market share of approximately [ ]% in a market where the largest three participants would have a combined market share of [ ]%, which would clearly fall within the Commission's prescribed safe harbours. Even if the proposed acquisition is viewed in context of the proposed acquisition by GE of Custom Fleet, the largest three participants post acquisition would have a combined market share of [ ]% and the Applicant would still fall within the prescribed safe harbours.

16.2.8 In these circumstances, the Applicant does not propose to provide further detailed information specifically on market conditions in relation to the fleet management market but would be happy to do so if required by the Commission.[5]

16.3	Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

Please refer response to question 16.2.

16.4	Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

Historical market share data is not readily available

16.5	Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

Please refer response to question 28.

16.6	Estimate the productive capacity that such near entrants potentially could bring to the market.

Each of these entrants could expand reasonably quickly and to such an extent that they are capable of supplying the entire market.

16.7	Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?

Fleet leasing and fleet management services are not capable of being imported.

[5] Although the Applicant notes that, because of the high degree of overlap between the supply of fleet leasing services and the supply of fleet management services, many of its comments in relation to the competitive environment for fleet leasing will also be of relevance to fleet management.

16.8 To what extent is the product exported?

Fleet leasing and fleet management services are not capable of being exported.

16.9 Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

The Applicant believes that all market participants in the fleet leasing and fleet management markets compete vigorously but does not believe that TLL can be described as a participant that competes in an atypical manner.

Conditions of Expansion

17. The following listing gives different types of market conditions that may affect the ability of existing firms to expand:

- Frontier entry conditions

  eg tariffs, quarantine requirements, international freight costs.

- Legislative/regulatory conditions

  eg meat licensing, Resource Management Act requirements, health and safety standards.

- Industrial/business

  eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.

- Other

  eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

17.1 The Commission considered in Decision 478 that:

> Existing market participants and new entrants are not limited in their ability to expand, subject to securing vehicles and finance and economical rates, and could do so within a one year timeframe. Participants face no binding capacity constraints and additional capacity is not significantly more expensive to operate. As such, the market could be entered to a significant extent within a reasonable timeframe.[6]

17.2 The Applicant agrees that there are no identifiable barriers to expansion by existing competitors. There are no mandatory legislative or regulatory requirements specific to the supply of fleet leasing or fleet management services. Nor does the Applicant believe there are any material industrial or business barriers to entry or expansion. As the Commission notes, there are no capacity constraints on expansion subject to securing vehicles and finance at economical rates which the Applicant does not believe would be problematic (especially given that vehicles in particular are not in short supply and manufacturers and dealers are keen to increase sales volumes).

17.3 Nor does the Applicant believe there are any material constraints around access to customers. The services supplied by existing participants are largely homogenous and brand loyalty is not significant as reflected by larger firms routinely retaining more than one service provider. There are no significant costs to customer switching, the only costs being the requirement to pay out the lease for finance leases and novated leases or those costs which are administrative in nature. And customers tend not to enter into long-term supply contracts. Where specific supply contracts are entered into (for a specific number of vehicles), they are typically for 2 to 3 years and generally only provide obligations or incentives for customers to acquire services exclusively from the supplier where the contracts have been let by competitive tender.

17.4 An example of recent expansion by existing competitors can be seen in Toyota and Ford who have utilised their dealerships as a distribution channel for expansion and, the Applicant understands, have doubled their market shares within the past few years.

18. Please name any business which already supplies the market – including overseas firms – which you consider could increase supply of the product concerned in the geographic market by any of the following means:

- diverting production into the market (e.g. from exports)
- increasing utilisation of existing capacity
- expansion of existing capacity.

Specify in each case which of the above three points applies.

The Applicant believes that all existing competitors in the fleet leasing market are capable of increasing supply by expansion of existing capacity.

[6] At paragraph 117.

19.	Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

The Applicant refers the Commission to its response at section 17.

20.	How long would you expect it to take for supply to increase in each case?

The Applicant believes that expansion could take place very rapidly, certainly within the one year timeframe referred to by the Commission in Decision 478, and probably considerably less.

21.	In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?

The Applicant refers the Commission to its responses in sections 16 to 20.

22.	Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

The Applicant refers the Commission to its responses in sections 16 to 20.

Coordinated Market Power

23.	Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.

23.1 Any increase in market concentration in a market could be seen as possibly facilitating coordination effects. However the Applicant believes that the following fleet leasing market conditions exist which render coordination unlikely:

(a) low barriers to entry and expansion mean that new entrants can enter the market very quickly and can quickly expand to take market share away from any existing competitors who engage in co-ordinated market behaviour;

(b) there is strong competition from outside the market and customers have the option of owning their own fleets or using other financing options should existing competitors engage in co-ordinated behaviour; and

(c) customers are generally price conscious and have a high degree of countervailing power.

23.2 In these circumstances the Applicant agrees with the Commission's previously stated view that "the defined markets are unlikely to facilitate collusion".[7]

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[7] Decision 478 at paragraph 92.

24.	Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

The Applicant considers that because coordination behaviour is unlikely at the distribution level, it is not strictly necessary to address monitoring and enforcement. However the Applicant would be happy to provide further details on this if required.

25.	Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participation.

The Applicant is not aware of price co-ordination, price matching or price following by any market participant. The Applicant believes the market is highly competitive.

26.	Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant market(s).

The Applicant refers the Commission to its response at section 23 and 24.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27. The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

- Frontier entry conditions
  eg tariffs, quarantine requirements, international freight costs.

- Legislative/regulatory conditions
  eg entry licensing, Resource Management Act requirements, health and safety standards.

- Industrial/business conditions
  eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.

- Other conditions
  eg responses to expansion by major firms.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

27.1 The Commission has previously formed the view that:

> …there are no significant barriers to entry likely to deter expansion or new entry. Potential competition, in addition to the strength of existing competition in the fleet leasing market, is likely to provide a constraint on the merged entity, and the industry as a whole.[8]

27.2 The Applicant agrees that there are no significant barriers to entry in the market for fleet leasing. There are no mandatory legislative or regulatory requirements specific to the supply of fleet leasing or fleet management services. The costs associated with establishing a fleet leasing business, including supply chain and technology set up costs, costs of attracting staff and customers, costs of vehicle acquisition and costs of funding, are not significant and do not involve a high degree of sunk costs.

27.3 Furthermore, new entrants can obtain supply of vehicles as readily as existing participants and there are no significant economies of scale available to existing participants. For example existing participants cannot necessarily acquire vehicles at more competitive prices than new entrants, particularly where the new entrant has access to global arrangements or is involved in the manufacture and supply of vehicles.

[8] Decision 478 at paragraph 121.

27.4 The Applicant does not believe there are any other significant barriers to entry.

28. Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:

- investing in new production facilities to produce the product;
- overseas companies diverting production to New Zealand;
- domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment)

Specify for each named business which of the above three might apply.

28.1 The following firms currently not operating in the market could enter the market quickly:

(a) FleetAustralia;[9]

(b) Summit Auto Lease;

(c) Macquarie Bank; and

(d) major financial institutions.

28.2 Even though there has been no entry in the past few years, this has been the direct result of the level of competitiveness in the market, which has resulted in low margins and the need for undercutting or loss leading to gain market share. Even if the merged entity could raise prices (and the Applicant does not believe it could given existing levels of competition), the Applicant believes that new entry would be much more likely in that event.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

The Applicant does not believe there are any significant barriers to entry which would influence the business decision of any new entrant to enter.

Likelihood, Sufficiency and Timeliness of Entry

30. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?

The Applicant believes new entry could occur well within the one year timeframe contemplated in Decision 478 for any new entrant.

[9] Formerly a wholly-owned subsidiary of the Commonwealth Bank of Australia which was sold to Super Group Limited in 2004. Super Group owns 70% of FleetAustralia through the subsidiary S.G. Fleet Services with the remaining shareholding being controlled by a private Australian consortium.

31.	Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?

Yes, although the Applicant believes it may be up to two years before a new entrant could become profitable.

32.	Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?

The Applicant believes that the capability of a new entrant to expand, as discussed in section 17, means that it is likely to cause a significant reaction among existing participants.

33.	What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie de novo entry?

The Applicant refers the Commission to its response at section 27.

34.	How long would you expect it to take for de novo entry to occur?

The Applicant believes new entry could occur well within the one year timeframe contemplated in Decision 478 for any new entrant.

35.	In your opinion, to what extent would the possibility of de novo entry constrain the merged entity?

The Applicant considers that the threat of de novo entry would provide a significant constraint on the ability of the merged entity to price above competitive levels.

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

36. Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?

Not applicable.

37. Who owns them?

Not applicable.

38. In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?

The Applicant does not believe suppliers of goods or services would provide a material constraint post acquisition.

Constraints on Market Power by the Conduct of Acquirers

39. Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?

Large corporates and SMEs.

40. Who owns them (where appropriate)?

Not appropriate.

41. In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

41.1 The Applicant believes that acquirers have a significant degree of countervailing power. They can switch suppliers easily and without significant cost and as discussed above have a number of options available to them in terms of alternative vehicle financing.

41.2 The Applicant believes that acquirers provide a significant competitive constraint on market participants through competitive tendering processes, through retaining more than one service provider (the Applicant now expects that for any fleet size above about 50 vehicles the acquirer will retain at least two service providers) and through benchmarking of leasing costs against other similar financial instruments. Acquirers are also increasingly demanding that lease payments be more transparent in terms of the various components of the leasing fee, with service providers being required to break down fees, giving acquirers more information about, for example, the amount budgeted for maintaining the vehicle, the interest margin and the assumptions about resale value.

THIS NOTICE is given by Chris Briggs and **ORIX NEW ZEALAND LIMITED**

I am the Acting General Manager of ORIX New Zealand Limited and am duly authorised to make this application.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to the Applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of this application.

ORIX New Zealand Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

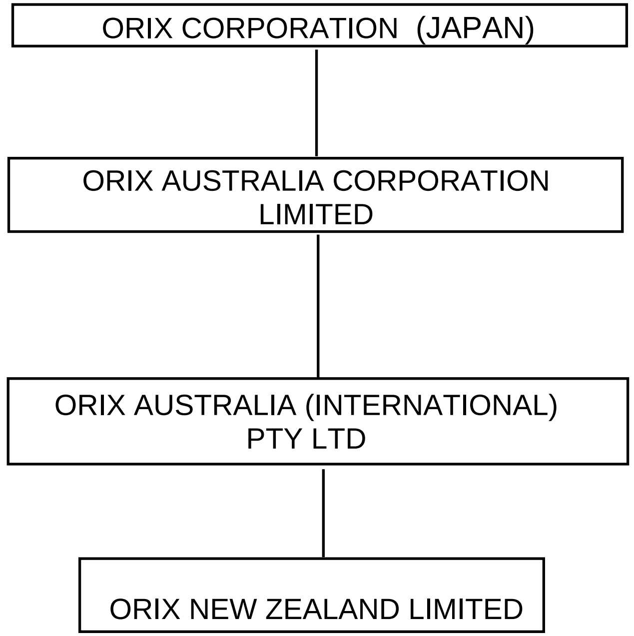
Dated this day of 2006

Signed by :

Chris Briggs
Acting General Manager
ORIX New Zealand Limited

APPENDIX I

Corporate Structure – ORIX



ALL SHAREHOLDINGS ARE 100% UNLESS OTHERWISE INDICATED;

INCLUDES ONLY COMPANIES RELEVANT TO NEW ZEALAND MARKET

APPENDIX II

Corporate Structure – Esanda