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COMMERCE COMMISSION

Decision No. 370

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

On Road New Zealand Limited

and

Vehicle Testing New Zealand Limited

The Commission: M N Berry

Summary of Proposed Acquisition: The acquisition by On Road New Zealand Limited of all of the shareholding in Vehicle Testing New Zealand Limited.

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

Date of Determination: 30 August 1999

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CONTAINED IN SQUARE BRACKETS []**

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THE PROPOSAL

- 1 Pursuant to section 66(1) of the Commerce Act 1986 (the Act), On Road New Zealand Limited (On Road NZ) gave notice to the Commission dated 17 August 1999 (the application) seeking clearance for it to acquire all of the shareholding in Vehicle Testing New Zealand Limited (VTNZ).

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 the notice agree to a longer period. No extension was sought by either party. Accordingly, a decision on the application is required by 31 August 1999.
- 3 On Road NZ sought confidentiality for the fact of the application, and a confidentiality order was made in respect of the fact of the application for a period of 20 working days from the Commission's determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply.
- 4 The Commission's determination is based on an investigation conducted by its staff and their subsequent advice to the Commission.

THE PARTIES

On Road New Zealand Limited (On Road NZ)

- 5 On Road NZ, a private company based in Auckland, is engaged in the business of providing vehicle testing services, and administrative services associated with the motor vehicle and transport industries.
- 6 On Road NZ is currently accredited to carry out the delivery of certain transport services on behalf of the Land Transport Safety Authority. On Road NZ provides the following services; Warrant of Fitness inspections (operations at North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier, and Nelson), drivers licence functions (North Shore), registration and fiscal services (North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier, and Nelson) and compliance certification services (North Shore, Napier, and Nelson). These services are discussed further below.

Vehicle Testing New Zealand Limited

- 7 VTNZ is a state owned enterprise established in 1994 under the State Owned Enterprises Act 1986. The shareholding in VTNZ is held by the Crown.
- 8 VTNZ operates a nation-wide network of independent vehicle testing stations, primarily focusing on the issuing of Certificates of Fitness and Warrants of Fitness. VTNZ is also involved in a range of other vehicle services including vehicle registration, relicensing, and the processing of change of ownership.
- 9 VTNZ performs its functions through a nationwide network of approximately 50 testing stations, and a large number of "outwork locations", which are essentially smaller scale facilities located in rural areas.
- 10 VTNZ is accredited by the Land Transport Safety Authority to provide certain transport service functions on its behalf. These services are Warrant of Fitness and Certificate of

Fitness inspections, drivers licence functions, registration and fiscal services, and compliance certification services.

OTHER RELEVANT PARTIES

Land Transport Safety Authority (LTSA)

- 12 The LTSA, a Crown Entity, is the regulatory authority responsible for ensuring the safe operation of motor vehicles in New Zealand. The LTSA provides road safety policy campaigns and education, and is also responsible for railway safety. The LTSA has a further obligation to deliver land transport safety services to the public, and the LTSA achieves this by appointing agents to perform certain functions on its behalf. These agents are referred to as Transport Services Delivery agents (TSD agents).

Vehicle Identification New Zealand (VINZ)

- 13 VINZ is a private company, originally set up by the Imported Motor Vehicles Dealers Institute, to provide inspection and certification services for the large number of vehicles that were imported into New Zealand, beginning in the late 1980's. VINZ operates in a number of locations around New Zealand. VINZ is an accredited TSD agent.

Automobile Association (AA)

- 14 The AA, established in 1902, is an organisation representing members and motorists interests to parties such as the Government, and other motoring sector and industry groups.
- 15 AA is also involved in the provision of a range of services and facilities for both its members and the public, including technical services, insurance, travel services and driver education programmes. The AA is an accredited TSD agent, and carries out certain service delivery functions on behalf of the LTSA. The AA provides services through a national network of offices.

BACKGROUND

- 16 A brief description of the business activities that are the focus of this application is provided below. The activities fall into two main categories: vehicle inspection services, and "other" services.

Vehicle Inspection Services

- 17 All vehicles using the roads must be inspected regularly to ensure their mechanical and structural fitness. They are inspected every six months but vehicles first registered since 1 August 1987 and less than six years old may be inspected every 12 months. Since 1994 both Warrants of Fitness and Certificates of Fitness can be issued by a person who meets certain requirements specified by the LTSA.

Warrants of Fitness (WOFs)

- 18 Most lightweight vehicles are required to have a "Warrant of Fitness" (WOF) which can be issued at approved garages, or at testing stations operated by local authorities.

- 19 Principally, the accreditation criteria used by the LTSA for WOFs cover such matters as technical competence and experience, and appropriate business premises and facilities. There is no fee involved when seeking to be accredited, and the application (in the normal course) takes 4-6 weeks. A large number of operators throughout New Zealand, including most local garages, now issue WOFs.

Certificates of Fitness (COFs)

- 20 All heavy vehicles (over 3.5 tonnes), with minor exceptions, undergo a more exacting examination for a “Certificate of Fitness” (COF). Taxicabs and rental vehicles also require a COF.
- 21 At present, COFs are issued by VTNZ stations throughout New Zealand, VINZ (operations in Auckland, Christchurch and Timaru), and an independent operator, Lichfield Street Vehicle Testing Station Limited, in Christchurch. The Commission understands that these parties issuing COFs were contracted as “agents” by the LTSA in 1998, following a tender. The contracts are for a five year period.

Other Services

Various Motor Vehicle Registration and Fiscal Services

- 22 Registration is the initial recording of a vehicle on the Motor Vehicle Register, and the issuing of registration plates (number plates). Registration services are provided by agents appointed by LTSA. Following registration a licensing fee is payable so that the vehicle may be used on the roads. Licences are obtained from agents appointed by the LTSA.
- 23 The LTSA also collects monies through Road User Charges. Certain types of vehicles are required to pay road user charges, and these vehicles must display current road user licences while operating on public roads. Licences are available from LTSA agents. Change of ownership procedures also involve appointed LTSA agents.
- 24 These functions are administrative in nature and are performed by accredited LTSA agents around New Zealand, including NZ Post, Automobile Association (AA), VTNZ, VINZ, and On Road NZ. In the case of road user charges, additional LTSA agents include BP service stations and BP Truckstops, and AMI Insurance Limited.

Drivers Licences

- 25 Testing for drivers licences is administered through LTSA agents. Driver Licensing New Zealand, a private company, is contracted by the LTSA to provide such a service in all regions south of Taupo. North of Taupo, the service is contracted to Driver Testing New Zealand, a subsidiary of the AA. Both contracts are for a term of five years.
- 26 Administrative functions associated with driver licences, such as taking bookings for tests, licence photos, and receipt of fees, are handled by LTSA agents. The accredited agents for these services are the AA, VTNZ, VINZ, and On Road NZ. These agents operate throughout New Zealand.

Compliance Certification

- 27 Lightweight vehicles imported into New Zealand must go through a compliance certification process before they can be legally driven on New Zealand roads. The process involves:
- establishing the vehicle met the required vehicle standards when it was manufactured; and
 - inspecting and testing the vehicle to determine if its structure, components and systems have deteriorated, been modified or repaired in a way which means that it does not meet the required vehicle standards.
- 28 Vehicles are imported through New Zealand ports, and must then undergo a compliance check before being registered and licensed. Generally, vehicles are transported off the wharves to a party authorised to provide compliance certification services (an approved LTSA agent). Currently these agents are the AA, VTNZ, VINZ, and On Road NZ.

THE MARKETS

Introduction

- 29 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 s 47(1) of the Act.
- 30 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.”
- 31 Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*¹ and in the Commission’s *Business Acquisition Guidelines* (“the Guidelines”)². A brief discussion of the methodology follows.
- 32 Markets are defined in relation to product type, geographical extent, and functional level. 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, in response to a change in relative prices of the products concerned. A market is the smallest area in which all such substitution possibilities are encompassed. It is in this area that a hypothetical monopoly supplier could exert market power.
- 33 A properly defined market will include products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension). A market defined in these terms is one within which a hypothetical profit-maximising sole supplier of a product could impose at least a small yet significant and non-transitory increase in price (the “*ssnip*” test), assuming other terms of sale remain unchanged. It will also include those suppliers currently in production who are likely, in

¹ (1991) 4 TCLR 473.

² Commerce Commission, *Business Acquisition Guidelines*, 1999, 11-16.

the event of such a *ssnip*, to shift promptly to offer a suitable alternative product, or offer their product to alternative acquirers.

- 34 Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products proceeds through a series of vertical 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”.

Product/Function Market

Vehicle Inspection Services

- 35 The Commission considers that the market for WOF inspection services is a separate market from the market for COF inspection services. As discussed earlier, a vehicle either needs a WOF or a COF, and one cannot be obtained when the other is required. As such, there is no substitutability in demand between the two, and a *ssnip* for a WOF would not result in a vehicle owner choosing to obtain a COF, or vice versa.
- 36 Further, there appears to be no supply side substitutability from WOFs to COFs. This is because the specifications for premises for WOFs and COFs are different. The differences include such factors as the minimum turning radius required, minimum access way width, minimum inspection area, and floor capacity requirements. The Commission also understands that there is a limited “pool” of COF inspectors, with COF inspectors required to meet higher qualification and experience standards than those required for the issuing of WOFs. It is noted that there is a degree of supply side substitutability from COFs to WOFs, as a business issuing COFs can also issue WOFs. However, the Commission understands that, for issuers of COFs, the issuing of WOFs represents only a small proportion of their business.

Other Services

- 37 The Commission notes that the other services provided by LTSA agents, and discussed at paragraphs 22 to 28, are primarily administrative in nature. From a demand side perspective however, one service cannot be substituted for another. For example, registration services are not substitutable when drivers licence services are required. Similarly, compliance certification is not substitutable for motor vehicle licensing. Each of these services relates to a specific “product” required by a vehicle owner, and cannot be substituted with another product.
- 38 For the purposes of assessing this application, the Commission has adopted the following “product” definitions:
- various motor vehicle registration and fiscal services (hereinafter referred to as “administrative services”);
 - driver licences; and
 - compliance certification.

Geographic Market

Vehicle Inspection Services

- 39 The Commission considers that the geographic markets for WOF and COF inspection services are “local” markets.
- 40 Vehicle owners at all locations in New Zealand require WOF and COF inspection services. From a demand perspective, the vehicle owner would likely (and all else being the same) have a preference for having the vehicle inspected in the locality where they reside. The extent to which a WOF inspection service in another locality would provide a close substitute would depend upon the extra costs in using the alternative. The major extra cost is likely to be the transport (eg. petrol) cost between the locations.
- 41 The scope for a hypothetical monopolist, in for example Wellington, to impose a *ssnip* (ie. raise the price by at least 5% for at least a year) would depend upon whether vehicle owners could more cheaply switch to alternative inspection providers in, for example, Levin.
- 42 Commission staff understand that the cost throughout the country of obtaining a WOF varies between \$25-\$35. Imposition of a *ssnip* in these circumstances is highly unlikely to result in vehicle owners switching to alternative providers. Therefore, the application of the *ssnip* test in this instance suggests that the geographic market is a narrow “local” market.
- 43 Heavier goods vehicles have some flexibility as to where to obtain a COF, as they are regularly travelling between centres, and therefore have a choice of COF services between regions. However, despite this degree of flexibility, the Commission considers that vehicle owners are likely to make their decision on where to obtain a COF principally on the basis of convenience and proximity to work or home. The Commission recognises that there may be overlapping local markets for the provisions of WOFs and COFs (with these local markets having similar characteristics) which may amount to a wider, regional market. However, it is considered that the geographic boundary that is most appropriate for consideration of this proposed acquisition is a local market.

Other Services

- 44 Similarly, with regard to those other services that are the focus of this application, the Commission considers that the appropriate geographic markets are “local” markets. The services required are sought by vehicle owners and it is unlikely that, from a demand perspective, vehicle owners will go beyond their immediate locality in seeking these services. Generally, the services are relatively inexpensive and the customer’s decision on where to purchase these services is likely to be made based upon the convenience to work or home. The imposition of a *ssnip* is unlikely to result in vehicle owners switching to alternative providers in neighbouring locations.
- 45 On Road NZ submitted that compliance certification is a more specialised business, and customers are not as confined to the particular geographic location in which the services are provided. As vehicles are imported through the Port of Auckland, On Road NZ submits that the alternative facilities in other parts of the metropolitan Auckland area should be taken into account (as opposed to a geographic market of North Shore only).

- 46 The Commission recognises that there are some arguments available to support defining a wider geographic market. However, due to the confidential nature of the application the Commission has not made specific market inquiries in order to accurately define the market boundaries. Given that On Road NZ operates in the North Shore region, and has provided market estimates for that region, the Commission proposes to adopt a “narrow” geographic definition with respect to compliance certification services. In doing so it is noted that if there are no dominance concerns arising out of this narrow market, there are unlikely to be any dominance concerns within any wider market.
- 47 On Road NZ operates in seven locations only. Therefore, the likely competitive effects of the proposed acquisition will be assessed for the regions of; North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson.

Conclusion on Market Definition

- 48 The Commission concludes that the relevant markets for consideration of this application are:
- the market for WOF inspection services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the WOF markets);
 - the market for COF inspection services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the COF markets);
 - the market for various motor vehicle registration and fiscal services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the administrative services markets);
 - the market for drivers licence services in North Shore (the drivers licence market); and
 - the market for compliance certification services in North Shore, Napier and Nelson (the compliance certification markets).

ASSESSMENT OF DOMINANCE

Competition Analysis Overview

- 49 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.
- 50 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 ...
- 51 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.
- 52 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.*
- 53 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 share³.
- 54 However, as Tipping J stated in the High Court decision of *New Zealand Magic Millions Limited & Anor v Wrightson Bloodstock Limited* (1990) 3 NZBLC 99-175:
- [M]arket 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 substantial market share but all the other relevant factors must be brought to account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.*
- 55 Accordingly, before a conclusion on dominance is reached, it is necessary to consider all factors listed in s 3(9) and any other relevant factors.

The WOF Markets

- 56 There are seven local markets for WOF inspection services where the proposed business acquisition will result in the aggregation of market share. The markets are those in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson. As these markets have similar characteristics, and as the combined market shares of the post-merger entity in all of them appear to be within the Commission’s “safe harbours”, the dominance analysis will treat them as a group and analyse them together.
- 57 On Road NZ submitted estimations of market share for each of the regions that it operates in. The Commission has also received market share information from the Transport Registry Centre (TRC), the central recording agency of transport-related services. The TRC has provided national market share data only. Given that the proposed acquisition relates to a number of specific regions, the Commission is prepared to accept On Road NZ’s figures as a starting point for an analysis of the acquisition. On the basis of the information provided to the Commission by On Road NZ, an estimation of the market shares of the combined entity in the WOF markets is shown in Table 1.

³ Commerce Commission, *Business Acquisition Guidelines*, 1999, p 17.

TABLE 1
Estimated Market Shares of the
Combined Entity in the WOF Markets

Market	Estimated Market Shares (%)
North Shore	[]%
Mt Maunganui	[]%
Tauranga	[]%
New Plymouth	[]%
Wanganui	[]%
Napier	[]%
Nelson	[]%

- 58 The data provided by the TRC records On Road NZ as having a national market share of []%, and VTNZ having a market share of []%. On the basis of either set of figures, the combined entity is unlikely to attain a market share that exceeds the Commission’s “safe harbours” (refer para 53).
- 59 As submitted by On Road NZ, VTNZ has a minimal market share in the WOF market. On Road NZ estimates that VTNZ has less than []% at each location where On Road is operating, except at Nelson []% and Wanganui []%.
- 60 The Commission notes that the WOF market is characterised by the presence of numerous competitors, including privately owned testing stations, small independent garages, and the AA. The Commission understands that there are approximately 3,100 accredited vehicle inspectors nationwide who can inspect vehicles and issues WOFs. This group of independent operators has a national market share, based upon data from the TRC, of []%. These figures suggest that the independent operators share the bulk of the WOF work, and continue to exercise significant competitive constraint upon any other operator.
- 61 Further, the Commission understands that entry into the WOFs market is not particularly onerous. As stated earlier, potential entrants must be accredited according to various criteria set by the LTSA. The capital cost involved is principally made up of lease of premises, and mechanical and office equipment. The accreditation period is generally between 4-6 weeks.

Conclusion on the Local Markets for WOF Inspection Services

- 62 The proposed acquisition will result in minimal aggregation of market share in the locations identified. The current nature of the WOF market suggests that there is competitive activity between all participants. The Commission considers that it is likely that this competitive behaviour will continue, should the proposed acquisition proceed.

The COF Markets

- 63 COF inspection services are currently provided by VTNZ at approximately 53 testing stations around New Zealand. COFs are also provided by VINZ (operating in Auckland, Christchurch and Timaru), and Lichfield Street Vehicle Testing Station Limited (Christchurch). These services are provided under contract to the LTSA, for a period of five years.

- 64 The Commission understands that a condition of the VTNZ contract is that it must undertake “universal service”, which includes providing COF inspection services in rural areas of New Zealand.
- 65 On Road NZ does not provide COF inspection services, at any locality.

Bare Transfer of Market Power

- 66 On Road NZ has estimated VTNZ’s market share in the relevant locations at between []% and []%. Given this high market share, the expanded coverage that VTNZ can offer over its competitors, and the five year term restricting entry into this market, it may be argued that VTNZ has a dominant position with respect to COF inspection services. For the purposes of this application, the Commission considers VTNZ has such a dominant position.
- 67 Given that On Road NZ does not operate in the COF inspection market, the Commission notes that the proposed acquisition may constitute a bare transfer of market power, and therefore does not give rise to an aggregation of business activities.
- 68 Section 48 of the Act provides for an exclusion from section 47 of the Act, in the case of a “bare transfer of market dominance”.
- 69 The Commission considers that it is appropriate, for the purposes of this application, to invoke section 48 on the basis that there is no aggregation of market share, but rather a transfer of that share to an entity not currently operating in the market.

Conclusion on the Local Markets for COF Inspection Services

- 70 There is no aggregation of business activities resulting from the proposal. The Commission concludes that the acquisition is likely to result in a bare transfer of market power.

The Administrative Services Market

- 71 VTNZ currently provide administrative services in the seven locations that On Road NZ operates in (North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson). The proposed acquisition will therefore result in some degree of market share aggregation in those regions.
- 72 In each of the relevant regions, On Road NZ has submitted that VTNZ’s market share would be between []% and []% of the total market and that On Road NZ’s market share []. On that basis, On Road NZ estimates that the combined entity’s market share would be no greater than [] in any of the markets. Given the large number of transactions effected in this market, the TRC was unable to provide market share information. The Commission will therefore consider On Road NZ’s figures as a starting point for analysis.
- 73 A market share in the order of 60% places the combined entity at risk of falling outside the Commission’s “safe harbours” (paragraph 53). In such a situation, the Commission considers that dominance is unlikely to result if the merged entity faces competition from at least one other market participant with a market share no less than in the order of 15%. In this case, the Commission is unsure of the respective market shares of competitors, due in the main to the difficulty in assessing the market shares for this particular market.

- 74 However, notwithstanding this market share, the Commission notes that these services are provided by a number of accredited LTSA agents at locations throughout New Zealand. These agents include NZ Post, the AA, and VINZ. As stated earlier, in the case of registration and road user charges, BP service stations and AMI Insurance are also accredited to provide such services.
- 75 The presence of a number of large national operators, particularly the AA and NZ Post, is likely to effect a significant constraint upon the behaviour of the merged entity. Further, the Commission understands that accreditation from the LTSA is essentially all that is required before a prospective entrant can provide these services. In these circumstances therefore, the combined entity is likely to continue to face effective competition from current competitors, as well as the threat of potential entry from prospective entrants, given the relatively low barriers to entry into this market.

Conclusion on the Administrative Services Market

- 76 Given the above factors, the Commission concludes there is effective competition provided by a number of other services providers, particularly large national operators such as NZ Post and the AA. The Commission considers that this level of competitive activity is likely to continue, should the proposed acquisition proceed.

The Drivers Licence Market

- 77 On Road NZ provides drivers licence services at North Shore only. On Road NZ estimates that it has a []% market share, and that VTNZ has a [] market share. The AA currently has two drivers licence facilities operating at North Shore. On Road NZ estimates AA has a market share of []%.
- 78 The proposed acquisition is therefore likely to result in a minimal aggregation of market share, and falls safely within the Commission's "safe harbours". In addition, the combined entity will continue to face effective competition from existing providers of driver licensing services at North Shore, particularly the AA.

Conclusion on the Drivers Licence Market

- 79 The proposal is unlikely to result in any significant aggregation of market share. Further, it is likely that effective competition from the AA will continue. Given these factors, the Commission concludes that the proposed acquisition is unlikely to alter the market circumstances to any significant extent.

The Compliance Certification Market

- 80 There are three local markets for compliance certification services where the proposed business acquisition will result in the aggregation of market share. These markets are North Shore, Napier and Nelson. As with the previous markets, the similar characteristics of these markets means that they will be treated as a group and analysed together.
- 81 On the basis of information provided to the Commission by On Road NZ, an estimation of the market shares of the combined entity in the compliance certification market is shown in Table 2.

TABLE 2
Estimated Market Share of the Combined Entity
in the Compliance Certification Market

Market	Estimated Market Shares (%)
North Shore	[]%
Napier	[]%
Nelson	[]%

- 82 On the basis of these above figures the combined entity would have a strong market share of between []% and []% in these regions. Competition is provided mainly by the AA, which has an estimated market share of between []% and []% in the identified regions.
- 83 On Road NZ submits that in the case of the North Shore (where it has an estimated market share of []%), there are other facilities available in the Auckland metropolitan area. Therefore, as all the vehicles are sourced at the port, On Road NZ submits that the relevant market may properly be considered to be the Auckland area. If that was the case, On Road NZ estimates that VTNZ's market share is []%, resulting in an estimated market share for the combined entity of []%.
- 84 The TRC was unable to provide market share data for compliance certification services. However, the LTSA commented that VINZ was likely to have a larger market share than the AA. The LTSA estimated that, in the regions where VINZ operated, it has a market share of approximately []%, and the AA approximately []%. This suggests that VINZ is considered to be a significant competitor in this market.
- 85 On Road NZ submitted that [] The LTSA advised that an accredited compliance provider can operate at any location, following LTSA approval of its facilities. The facilities required do not constitute a significant barrier to entry. It is therefore possible for []
- 86 The Commission considers that there is effective current competition provided by both VINZ and the AA, in the markets affected. Moreover, the Commission considers that it is likely that the threat of likely expansion by existing compliance service providers will effect a constraint on the combined entity.

Conclusion on the Compliance Certification Market

- 87 On the basis of information provided to the Commission, it is likely that the combined entity will continue to face effective competition in the identified markets. Further, the threat of potential expansion from current operators is likely to provide an effective constraint upon the combined entity.

OVERALL CONCLUSION

88 The Commission has considered the impact of the proposed acquisition in the following markets:

- the market for WOF inspection services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the WOF markets);
- the market for COF inspection services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the COF markets);
- the market for various motor vehicle registration and fiscal services in North Shore, Mt Maunganui, Tauranga, New Plymouth, Wanganui, Napier and Nelson (the administrative services markets);
- the market for drivers licence services in North Shore (the drivers licence market); and
- the market for compliance certification services in North Shore, Napier and Nelson (the compliance certification markets).

89 Having regard to the factors set out in section 3(9) of the Commerce Act and all other relevant factors, the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

DETERMINATION ON NOTICE OF CLEARANCE

90 Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by On Road New Zealand Limited of all the shareholding in Vehicle Testing New Zealand Limited.

Dated this 30th day of August 1999

M N Berry
Acting Chairman