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24 December 2002

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

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking **clearance** of a proposed business acquisition.

REGISTRATION DETAILS

Registration Number/Date	Transferee/Transferor	File Number
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PART I: TRANSACTION DETAILS

1. Business acquisition for which clearance is sought

- 1.1 The acquisition for which clearance is sought is a proposal by Wakefield Hospital Limited ("Wakefield") to acquire:
- 1.1.1 all of the shares on issue in Bowen Hospital Limited ("Bowen"); and
 - 1.1.2 all of the land and buildings situated at 114 Churchill Drive, being all the land and buildings (including plant, fixtures and fittings) on the Bowen site, including any undeveloped areas.
- 1.2 This application seeks clearance for the proposal.
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PERSON GIVING NOTICE

2. The person giving notice

- 2.1 This notice is given by:
- Wakefield Hospital Limited
Florence Street
Private Bag 7909
Newtown
Wellington
- Attention: Richard Barnes
Telephone: 0-4-381 8119
Facsimile: 0-4-381 8102
- 2.2 Correspondence and inquiries should in the first instance be addressed to:
- Buddle Findlay
Law Offices
State Insurance Tower
BNZ Centre
PO Box 2694
Wellington
- Attention: Susie Williams
Telephone: 0-4-498 7356
Facsimile: 0-4-462 0856
Email: susie.williams@buddlefindlay.com

CONFIDENTIALITY

3. Requests for confidentiality

- 3.1 Wakefield does not request confidentiality for the fact of the proposed acquisition.
- 3.2 Wakefield seeks confidentiality for the information in this application included in square brackets and highlighted. A copy of this notice with the confidential information deleted is provided to assist the Commission.
- 3.3 Wakefield requests that the Commission make a confidentiality order under section 100 of the Commerce Act 1986 in respect of the confidential information in this application.
- 3.4 Wakefield requests that, on expiry of any confidentiality order that the Commission makes, the information continue to be withheld under section 9 of the Official Information Act 1982. Wakefield also requests that it be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.
- 3.5 These requests are made because the information is commercially sensitive or valuable information that is confidential to either or both of the participants. Disclosure would unreasonably prejudice the participants.

DETAILS OF THE PARTICIPANTS

4. The participants

- 4.1 The acquirer is:

Wakefield Hospital Limited. Wakefield's address and contact details are set out in paragraph 2.1 above.
- 4.2 The target company is:

Bowen Hospital Limited
114 Churchill Drive
Crofton Downs
Wellington

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Correspondence and inquiries should in the first instance be addressed to:

Morrison Kent
Barristers & Solicitors
Morrison Kent House
105 The Terrace
PO Box 10035
Wellington

Attention: Andrew Stewart
Telephone: 0-4-472 0020
Facsimile: 0-4-472 7017

5. Interconnected or associated parties

5.1 Wakefield

5.1.1 Members of the Wakefield Group:

Wakefield Hospital Limited
Wakefield Properties Limited

5.1.2 Wakefield Hospital Limited owns 10% or more of the shares in:

Wakefield Properties Limited (100%)
Wakefield Back Institute Limited (33.33%)
Boulcott Clinic Limited (10%)

5.1.3 No company owns over 10% of the shares of Wakefield.

5.1.4 Not applicable.

5.2 Bowen

5.2.1 Bowen Hospital Limited does not have any subsidiaries and does not own 10% or more of the shares of any company.

5.2.2 No company will continue to hold over 10% of the shares of Bowen Hospital Limited after the proposed acquisition.

6. Participants' interests in each other

- 6.1 No participant, and no interconnected body corporate of any participant, already has a beneficial interest in or is beneficially entitled to, any shares or other pecuniary interest in another participant.

7. Links between participants

- 7.1 Both Wakefield and Bowen are members of the New Zealand Private Hospitals Association ("NZPHA") and the Employers and Manufacturers Union.
- 7.2 Wakefield and Bowen both commission MD Kennedy, Energy and Business Consultant, to organise and run tenders for the supply of electricity to each hospital.

8. Directors

- 8.1 No director of Wakefield holds directorships in any other companies which are involved in the relevant markets.

9. Business activities of each participant

9.1 Wakefield

Wakefield is a leading private hospital situated in Newtown, Wellington. Wakefield provides hospital facilities for secondary and tertiary elective surgery to patients from throughout the greater Wellington region. Specifically, Wakefield provides facilities for the following services:

- 9.1.1 cardiology;
- 9.1.2 cardiothoracic surgery;
- 9.1.3 general elective secondary procedures, comprising:
- endoscopy;
 - arterial surgery;
 - other vascular surgery;
 - gastrointestinal surgery;
 - gynaecology;
 - orthopaedic surgery;
 - plastic surgery;

- urology;
- ENT; and
- other general surgery.

9.2 Bowen

Bowen is a private hospital situated in Crofton Downs, Wellington. Bowen provides facilities for:

9.2.1 a specialist sleep disorder clinic;

9.2.2 general elective secondary procedures, comprising;

- endoscopy;
- vascular surgery;
- limited gastrointestinal surgery;
- gynaecology;
- orthopaedic surgery;
- plastic surgery;
- ENT; and
- other general surgery.

REASON FOR THE PROPOSAL AND THE INTENTIONS IN RESPECT OF THE ACQUIRED BUSINESS

10. Wakefield's reasons and intentions in respect of Bowen

10.1 Wakefield views the purchase of Bowen as an opportunity to utilise Bowen's excess capacity. This will result in improved efficiency as surgical services are reconfigured across two sites.

[REDACTED]

10.2 [REDACTED]

10.3 Wakefield seeks to improve the efficiency and quality of services provided at the Wakefield and Bowen sites.

[REDACTED]

10.4 [



PART II: IDENTIFICATION OF MARKET AFFECTED

HORIZONTAL AGGREGATION

11. Markets in which there would be an aggregation of business activities

11.1 In *Decision 449* the Commission, in the context of the Auckland market, concluded that Ascot's proposal to acquire Mercy Hospital required assessment of competitive implications in the following markets:

- the provision of hospital facilities and related non-specialist services for elective secondary surgery to private patients in the Auckland region;
- the provision of hospital facilities and related non-specialist services for elective tertiary surgery to private patients in the Auckland region;
- the provision of elective secondary surgery for publicly funded patients in the Auckland region;
- the provision of angiography services to private patients in the Auckland region; and
- the provision of endoscopy services to private patients in the Auckland region.

11.2 For the purposes of this application, Wakefield has accepted the Commission's categorisation of separate secondary and tertiary elective surgery markets and agrees that services provided by hospitals can be bundled together to form one aggregate market for surgical services/facilities, rather than constituting separate markets for nursing services, surgical equipment and so on.

11.3 However, Wakefield disagrees with the Commission's view in *Decision 449* that the market is limited to private patients or private hospitals. Wakefield believes that public hospitals present a significant constraint and are appropriately considered as a part of the same market.

11.4 Of the range of procedures that Wakefield and Bowen provide hospital facilities for in the relevant market, similar facilities are available in public hospitals.

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- 11.5 Wakefield accepts that the nature of substitution between private and public hospital facilities may be difficult to quantify precisely as the “prices” involved in moving from one to the other are expressed differently. Access to private hospital services is paid for in dollar terms (through out of pocket expenditure or through insurance).
- 11.6 In comparison, the price of obtaining hospital facilities for elective secondary surgery in a public hospital is expressed in terms of delay and uncertainty.
- 11.7 It is Wakefield’s submission that, when a patient is advised that he or she requires secondary elective surgery, the patient will consider public and private hospital facilities together. Whether that patient eventually receives surgery in a public or private hospital will depend on how they value timeliness/availability of the facility, whether they have insurance (and if so, how much of the procedure will be covered by insurance), and the opinion of the relevant surgeon.
- 11.8 In addition, the conduct of the government (through its DHBs) indicates that the government considers private and public facilities together as equal alternatives. When waiting lists for procedures at state-owned hospitals get too long, the government (through DHBs) either increases capacity within the relevant state-owned hospital(s), or contracts out work to private facilities like Wakefield.
- 11.9 The bundling of services in the public and private sectors also differs. The elements of services obtained in the private sector are generally separated (facilities, surgeons’ time, consumables etc are charged for separately), whereas in the public sector the funder purchases these items as one, and in bulk.
- 11.10 These factors obscure the nature of substitution but do not eliminate it.
- 11.11 The substitutability of public hospital facilities for private is also greatly affected by Government policies and funding of public hospitals. Wakefield accepts that the degree of substitutability between public and private hospital facilities can vary significantly over time.

11.12 Nevertheless, when the appropriate medium term view is taken, the degree of substitutability is such that public hospitals are participants in the market for provision of hospital facilities for elective secondary, and elective tertiary, surgery. At the very least the public hospital system must be recognised as a very significant constraint on the actions of all private hospital facilities.

Angiography and endoscopy

11.13 Unlike in the Ascot/Mercy situation, neither Wakefield nor Bowen have separate businesses relating specifically to endoscopy or angiography. Instead, these services are provided alongside other secondary and tertiary procedures.

11.14 Accordingly, Wakefield considers that the provision of angiography and endoscopy services are part of the tertiary and secondary markets respectively for the purposes of this application.

Market for the provision of hospital facilities and related non-specialist services for elective secondary surgery

11.15 The proposal will result in an aggregation in the market for the provision of hospital facilities and related non-specialist services for elective secondary surgery.

11.16 Wakefield considers that the geographic extent of this market is the greater Wellington region, being the region consisting of Wellington (including Porirua and the Hutt Valley) and the Wairarapa.

Market for the provision of hospital facilities and related non-specialist services for elective tertiary surgery

11.17 Wakefield provides hospital facilities and related non-specialist services for elective tertiary surgery. Bowen does not provide such services, and significant additional investment would be required to equip Bowen to undertake this activity. This is highly unlikely to occur.

11.18 Accordingly, there will be no aggregation in the market for the provision of hospital facilities and related non-specialist services for elective tertiary surgery (including angiography). This application therefore does not discuss this market further.

DIFFERENTIATED PRODUCT MARKETS

12. Differentiated or standardised product markets

12.1 Wakefield agrees with the Commission's statement in paragraph 59 of *Decision 449* that there is some degree of differentiation within the relevant markets.

12.2 In particular, hospital services provided in public hospitals and private hospitals can be differentiated, but the level of differentiation between these facilities is not so strong as to support separate market definitions.

13. Characteristics of differentiation

13.1 The main characteristics differentiating Wakefield and other hospitals are the timeliness of services, and physical attributes of the hospital.

13.2 Depending on the length of waiting lists, communication of waiting list length to the public, costs of private surgery and insurance costs, public hospitals are close substitutes for Wakefield/Bowen. The mix of these factors determines how close in the chain of substitution public hospital facilities and services are for Wakefield's facilities.

13.3 After the acquisition Wakefield will continue to be constrained to a large extent by its closest competitors; DHBs, Boulcott Hospital, and Southern Cross.

VERTICAL INTEGRATION

14. Vertical integration between firms involved at different functional levels

14.1 Not applicable.

PREVIOUS INVOLVEMENT IN ACQUISITIONS

15. Previous involvement by Wakefield and Bowen in acquisitions

15.1 Wakefield is not aware that any proposed acquisitions involving either participant (or any interconnected bodies corporate) have been notified to the Commission in the past 3 years.

15.2 Wakefield has not undertaken any other acquisitions in the past 3 years.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

EXISTING COMPETITORS

16. Existing competitors

Hospital facilities for elective secondary surgery

- 16.1 Suppliers in the market for the provision of hospital facilities and related non-specialist services for elective secondary surgery to patients by theatre numbers are as follows:

Hospital	Theatre numbers	% of market
Wellington public ¹	3	14.3
Hutt public ¹	1	4.8
Kenepuru public ¹	1	4.8
Wairarapa public ¹	1	4.8
Wakefield ²	4	19.0
Bowen	3	14.3
Boulcott	3	14.3
Southern Cross – Wellington	2	9.5
Selina Sutherland	3	14.3
Total	21	100.0

¹ The public theatre estimates are a proportion of the total number of theatres, based on the proportion of secondary elective surgical procedures carried out in each public hospital.

² Excludes 1 theatre exclusively used for cardiology.

- 16.2 The same suppliers, by bed numbers, have the following market shares:

Hospital	Bed numbers	% of market
Wellington public ¹	144	30.9
Hutt public ¹	70	15.1
Kenepuru public ¹	73	15.8
Wairarapa public ¹	20	4.4
Wakefield ²	53	11.4
Bowen ³	42	9.0
Boulcott	27	5.8
Southern Cross – Wellington	30	6.5
Selina Sutherland	5	1.1
Total	464	100.0

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1. *To estimate the total number of public hospital beds used for secondary services, the total number of beds were reduced by the proportion of elective secondary surgical procedures.*
2. *Excludes 17 hospital beds used specifically for cardiology.*
3. *Excludes 3 beds used specifically for the sleep disorder clinic.*

16.3 Hospital bed numbers were derived from 2001 Ministry of Health statistics and were supplemented with information from Wakefield.

Other considerations

16.4 Wakefield considers that public hospitals are appropriately included as participants in the market for the provision of hospital facilities for elective secondary surgery because they have facilities that can and are used to provide such facilities.

16.5 With the decreasing cost of airfares and a general trend for surgical procedures to be undertaken as day surgery operations, Auckland and Christchurch hospitals are near entrants.

16.6 Improvements in surgical technology have enabled once complex surgical procedures that required several days of monitored recovery to be undertaken as day, or one night only surgical procedures. The increasing popularity (and technical capabilities) of “keyhole” surgery means that surgical operations place much less stress on patients than previously. This trend is likely to continue.

16.7 [



16.8 The itinerant nature of surgeons is also a factor making private hospitals in other centres realistic near entrants. For example, two of Wakefield’s surgeons operate in the Wairarapa. Two other surgeons consult in Auckland, and one of those surgeons also operates there. Another has consultation rooms in both Wellington and Christchurch. All but seven surgeons who operate at Wakefield also operate at a public hospital, and all but two operate at Southern Cross, Bowen or both. This amounts to approximately 60 surgeons who do not exclusively use Wakefield as a provider of facilities.

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16.9 If prices increased at Wakefield, it would be open to the relevant surgeon to book a patient who may have received surgery at Wakefield into, for example, Southern Cross, St George's Hospital and/or Southern Cross in Christchurch, or Selina Sutherland in the Wairarapa. Wakefield would also be vulnerable to the entry of existing Auckland hospitals, such as MercyAscot.

Is Bowen a vigorous and effective competitor?

16.10 Wakefield considers that Bowen cannot be described as a particularly vigorous and effective competitor.

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16.11 On the other hand, Wakefield has demonstrated that it is an effective and innovative competitor. For example, Wakefield has introduced to the private hospital sector in the greater Wellington region the following procedures/services:

- Laparoscopic urology;
- Obesity surgery;
- Cardiology;
- Cardiac vascular stenting;
- Cardiac surgery;
- Cardiac rehab unit;
- Vascular laboratory;
- Cancer surgery;
- Endometriosis clinic;
- The Wakefield Back Institute.

CONDITIONS OF EXPANSION

17. **Market conditions relevant to the ability of existing firms to expand**

17.1 Capacity

17.1.1 Where there is spare capacity in the market, this is a disincentive for existing competitors to expand their operations.

[REDACTED]

17.2 Surgeons

17.2.1 The success of any expansion by existing competitors will depend on the ability to secure surgeons to perform surgery at the relevant hospital.

17.3 Referrals

17.3.1 Referrals from general practitioners to surgeons are an essential part of securing business for a hospital. However, the ability of a private hospital to influence the decision of GPs in this context is limited.

17.3.2 In addition, the roll-out of Primary Health Organisations (“PHOs”) adds another variable. PHOs are required to ensure that their services are co-ordinated around the needs of their enrolled populations. This is stated to involve:

“Co-ordination between primary and secondary care. *Hospital and specialist services play an important part in best care of many patients. Good co-ordination and support is required to enable people with ongoing conditions to be cared for in the community, to best manage referrals to specialist care and to ensure that episodes of hospitalisation are well linked in with care in the community to take account of people’s home and work circumstances. Primary health care providers and PHOs will be well placed to play a leading role in joining up hospital and community services. Links may be needed with assessment and rehabilitation services, palliative care, diabetes teams, emergency services and other specialist areas.”¹*

17.4 Resource Management Act 1991

17.4.1 Wakefield does not consider that the Resource Management Act constitutes a barrier to expansion for existing competitors.

¹ Ministry of Health, April 2002 “A Guide for Establishing PHOs”, Page 10.

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17.5 Prices

17.5.1 The level of prices charged by Wakefield and other comparable competitors would influence the decision of other competitors to expand.

17.6 Government Policy

17.6.1 Government Policies regarding health will influence existing competitors' decisions to expand. This is particularly the case, for example, if the Government indicates a push to reduce hospital waiting lists.

18. Existing businesses which could expand

18.1 Capital Coast DHB has already commenced its Regional Hospital project, a \$300 million upgrade and expansion of existing facilities.

18.2 As discussed above, Wakefield considers that both Southern Cross and Boulcott could expand their existing businesses by performing more procedures utilising existing excess capacity.

18.3 [

[REDACTED]

18.4 In addition, any of Wakefield's competitors could expand their day surgery capabilities. This requires less capital expenditure (on both building and equipment) than an entirely new theatre.

18.5 Finally, in a recent survey by the NZPHA, 29% of respondents expected to invest more over the next year compared to last year, and 21% of hospitals expected to employ more staff.²

19. Conditions influencing expansion

19.1 Wakefield considers that, of the conditions of expansion discussed in paragraph 17, access to surgeons would be influential on existing competitors' decisions to expand their businesses.

19.2 Decisions of surgeons to make their services available, however, is often driven by the other factors discussed in paragraph 17. For example, if Wakefield changes its prices to patients, a surgeon, in combination with the patient, may decide that he or she could perform the surgery in the public hospital, paid for by public funds, or in Southern Cross or Boulcott at lower total cost to the patient.

² New Zealand Private Hospitals Association, Private Hospitals Survey, August 2002, page 4.

20. **Expected timeframe for supply to increase**

20.1 Wakefield considers that its competitors could expand their existing businesses relatively quickly – particularly where there is existing capacity.

20.2 Where existing competitors have to build additional capacity, Wakefield would expect the timeframe for expansion to be approximately 6 – 12 months.

21. **Extent to which the possible competitive response of existing suppliers would constrain Wakefield**

21.1 Given that there is limited differentiation between Wakefield and its competitors, and the lack of influence that Wakefield has over referral of patients by GPs to surgeons, and on surgeons as to where they operate, Wakefield is constrained to a large extent in its conduct in the relevant markets.

21.2 For example, if one of Wakefield's competitors was able to secure the services of prominent surgeons, to the exclusion of Wakefield, Wakefield would find it extremely difficult to compete in the market.

22. **Extent that Wakefield would be constrained in its actions by the conduct of existing competitors**

22.1 Wakefield considers that it is constrained in its actions by the conduct of existing competitors, particularly where its competitors can secure the services of key surgeons, and where its competitors can offer a more competitive “package”. This package involves a combination of surgeon, price, and timeliness of the procedure/surgery.

CO-ORDINATED MARKET POWER

23. **Market characteristics facilitating or impeding co-ordinated behaviour**

Testing for co-ordinated conduct

Factors conducive to collusion	Presence of factors in all relevant markets
High seller concentration?	No
Undifferentiated product?	Degree of differentiation, especially between public and private facilities
New entry slow?	No

Factors conducive to collusion	Presence of factors in all relevant markets
Lack of fringe competitors?	No
Price inelastic demand curve?	No
Industry's poor competition record?	No
Presence of excess capacity?	Yes
Presence of industry associations/for?	Yes, but not all market participants are members

24. Market characteristics facilitating or impeding monitoring and enforcement of co-ordinated behaviour

Testing for discipline

Factors conducive to discipline	Presence of factors in all relevant markets
High seller concentration?	No
Sales small and frequent?	No
Absence of vertical integration?	Yes
Demand slow growing?	Variable across specialities and depending on government policy and insurance premiums
Firms have similar costs?	Variable
Price transparency?	Somewhat

25. Details of any price co-ordination, price matching or price following by market participants

25.1 Wakefield is not aware of any price co-ordination, price matching, or price following by market participants.

26. Acquisition of Bowen will not increase the risk of co-ordinated behaviour in the relevant market

26.1 The acquisition of Bowen by Wakefield will not increase the risk of co-ordinated behaviour in the relevant markets because Wakefield and its competitors remain constrained, to a large extent, by the preferences/behaviour of surgeons, and government policies.

26.2 For example, it is a common occurrence for a surgeon that performs operations at Wakefield to also perform operations at Wellington Hospital, and even also at Boulcott. In fact, all except seven surgeons who operate at Wakefield also operate at a public hospital - i.e., approximately 60 surgeons.

26.3 If a change of government policy meant that more funding would be allocated to the Wellington Hospital to reduce surgery waiting lists, it is likely that the public hospital would secure the services of surgeons, and therefore that those surgeons' availability to perform surgery at Wakefield would be greatly reduced.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

CONDITIONS OF ENTRY

27. Market conditions relevant to the ability of new firms to enter the market

27.1 Capacity

27.1.1 The existence of spare capacity may influence new firms' decisions to enter the relevant markets. In particular, the location of the spare capacity will influence the physical location of any possible new hospital.

27.2 Surgeons

27.2.1 The ability of a new entrant to establish a new hospital depends on support from surgeons. If surgeons refuse to contract with the new hospital, then the new hospital will fail.

27.3 Referrals

27.3.1 Referrals from general practitioners to surgeons are an essential part of securing business for a hospital. However, the ability of a private hospital to influence the decision of GPs in this context is limited.

27.3.2 As described in paragraph 17.3.2, PHOs must be added to the factual mix. It is unclear at this point the nature and extent of the influence PHOs will have on the market for the provision of secondary elective surgery.

27.4 Prices

27.4.1 Prices charged by existing competitors are an influential condition of entry.

27.5 Government policy

27.5.1 Government health policy will influence potential new entrants, particularly if, as a result of government policy, the public system is failing to deliver timely services of a high standard.

27.6 Resource Management Act

27.6.1 Consent under the Resource Management Act may not necessarily be needed where, for example, a GP's rooms are converted to a day surgery. However, a new development (whether day surgery or hospital) will require resource consents.

27.7 Nature of surgery/technological advances

27.7.1 With technological advances, surgery that once required a week's stay and monitoring in a hospital, now only requires an overnight stay or no stay at all.

27.7.2 The increasing capabilities of telemedicine also means that the physical location of a hospital is becoming less important.

28. Identity of any businesses not currently supplying, but able to supply the relevant market

28.1 Wakefield considers that there is a significant possibility that a new entrant could enter the Wellington market to provide specific secondary elective services. This has occurred in the Auckland regional market where several day surgeries have commenced business over the past few years. A potential market entrant could come from within the Wellington market (for example, an existing surgeon setting up a day surgery), or from outside the region.

28.2 Wakefield considers that there are opportunities for new surgeons to either create new allegiances with existing hospitals or, significantly, establish day clinics to offer services in competition with the likes of Wakefield, Boulcott, and Wellington Hospital.

28.3 Wakefield considers that, given the reduced cost of travelling by air between the major cities, if private hospitals in the greater Wellington region increase their prices, by even a small amount, there is scope for hospitals in other regions, in particular Auckland, to enter the market and provide services to patients that would otherwise have received services from Wellington-based private hospitals.

29. Influential conditions of entry

29.1 Wakefield considers that the most influential conditions of entry will be the prices charged by existing competitors and whether there is spare existing capacity in the relevant markets.

LIKELIHOOD, SUFFICIENCY AND TIMELINESS OF ENTRY

30. **Timeframe for entry to occur, and for market supply to increase, in respect of each of the potential entrants**

30.1 In respect of the entry of public hospitals, or private hospitals in other regions (for example, Auckland and Christchurch) the timeframe for entry is a matter of months, or even weeks.

30.2 In respect of day surgeries, Wakefield estimates that a day theatre with equipment and a recovery room would cost a minimum of \$500,000 to establish, and take approximately 6-12 months depending on any consents that may be required, whether the facilities are converted from existing facilities or whether they are a greenfields venture.

31. **The degree of likelihood a potential entrant would consider entry profitable at pre-acquisition prices**

31.1 Wakefield considers that entry is likely in day surgery at existing prices.

32. **The degree the threat of entry is likely to cause market participants to react in a significant manner**

32.1 Public hospitals are a strong constraint on Wakefield. Wakefield's success is, to a large extent, a function of the public hospitals' waiting lists (i.e., timeliness of operations) and, importantly, the signals given by DHBs and/or the government about waiting lists.

32.2 In Wakefield's experience, a change in government policy in respect of specific specialties (for example, orthopaedic) involving waiting list "catch ups" results in a decrease in Wakefield's business.

33. **Conditions of entry considered influential on *de novo* entry**

33.1 The price of services, existence of spare capacity, and nature of surgery (and technology required) are influential conditions of entry for *de novo* entry.

34. **Timeframe for *de novo* entry**

34.1 The timeframe for *de novo* entry would be 6 – 12 months for a new day surgery and 18-24 months for an entirely new hospital.

35. Extent of the possibility of de novo entrant constraining the merged entity

35.1 Wakefield considers that de novo entry is a strong constraint.

PART V: OTHER POTENTIAL CONSTRAINTS

CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

36. Suppliers of goods or services to the merged entity in each identified market

36.1 Surgeons can be considered suppliers to Wakefield – they supply an integral part of the package of services provided to patients.

37. Owners of suppliers

37.1 Surgeons are private individuals.

38. Extent the conduct of suppliers of goods or services to the merged entity could constrain the merged entity in each relevant market

38.1 Surgeons are essentially “gatekeepers” for patients. Wakefield’s business can be affected by a decision by relatively few surgeons not to refer patients to Wakefield’s facilities.

38.2 Wakefield is extremely vulnerable to the conduct of surgeons. If, for example, Wakefield increased the prices it charges patients for use of its facilities, surgeons could simply refuse to book their patients into Wakefield Hospital.

38.3 By way of example, over a 2-3 year period Wakefield kept its prices at the previous year’s rates, and Southern Cross undercut those prices by only a nominal amount. Wakefield progressively lost its business relating to ophthalmology to Southern Cross as a result, to the extent that ophthalmology procedures are no longer performed at Wakefield.

CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS

39. Acquirers of goods or services supplied by the merged entity in each market identified

- Public health funders, for example, DHBs.
- Insurers.
- Accident Compensation Corporation (ACC).

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- Patients.

40. Owners of acquirers

40.1 Insurers are privately owned. ACC is a Crown corporation. DHBs are owned by the Crown. Patients are individuals.

41. Extent the conduct of acquirers of goods or services to the merged entity would constrain in each affected market

41.1 Wakefield is constrained to a significant extent by acquirers. In particular, a change in policy or DHB funding can have a large impact on Wakefield. This is evidenced by the impact of Capital Coast DHB's decision to cease contracting out cardiac surgery to Wakefield.

41.2 DHBs also tender or contract some services to private health providers. In the event of a change in public health funding policy, public health providers would compete alongside private hospitals for those tenders and contracts.

41.3 Wakefield is constrained by health insurers. Over [] of Wakefield's business is funded through private insurance. Southern Cross constitutes approximately [] of that funding. Private health insurers benchmark prices across private hospitals to determine preferred suppliers. Insurers also levy co-payments to patients where surgery is undertaken by a non-preferred private hospital. This is extremely unpopular with patients. Wakefield faces considerable pressure from insurers.

41.4 Southern Cross, New Zealand's largest health insurer, is also involved in provision of hospital facilities. [This gives it access to important information regarding operating costs that can be used in negotiations with other providers.

[
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41.5 ACC work constitutes approximately []. ACC uses competitive tenders to determine private hospital suppliers.

[
] In addition, a change in policy could mean that procedures funded by ACC could be performed in public hospitals.

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THIS NOTICE is given by Richard Barnes.

I am the Chief Executive of Wakefield Hospital Limited and am duly authorised to make this application/notice.

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/notice has been supplied;
- all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of 2002

Signed by Richard Barnes

Chief Executive Officer