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**J7947**

COMMERCE COMMISSION

**Decision No. 585**

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

**ORIX New Zealand Limited**

and

**Truck Leasing Limited**

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| **The Commission:** | David Caygill<br>Donal Curtin<br>Peter JM Taylor |
| **Summary of Application:** | The acquisition by ORIX New Zealand Limited of the business of Truck Leasing Limited trading as Esanda Fleetpartners. |
| **Determination:** | Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition. |
| **Date of Determination:** | 20 July 2006 |

**EXECUTIVE SUMMARY**

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 7 July 2006. The notice sought clearance for the acquisition by ORIX New Zealand Limited (Orix or the Applicant) of 100% of the shares of Truck Leasing Limited trading as Esanda Fleetpartners (Esanda) from UDC Finance Limited (UDC), a subsidiary of Australia and New Zealand Banking Group Limited (ANZ).
2. The Commission considers that the most likely counterfactual is that Esanda would be acquired by another company [ ].
3. The Commission considers that an alternative counterfactual is that Esanda is not sold, and remains operating in the New Zealand fleet leasing market.
4. The Commission considers the proposed acquisition would not result, nor would be likely to result, in a substantial lessening of competition in the national market for the provision of fleet leasing services or the national market for the provision of fleet management services due to the level of competition in those markets.
5. The Commission is therefore satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any affected market.

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 7 July 2006. The notice sought clearance for the acquisition by ORIX New Zealand Limited (Orix or the Applicant) of 100% of the shares of Truck Leasing Limited trading as Esanda Fleetpartners (Esanda) from UDC Finance Limited (UDC), a subsidiary of Australia and New Zealand Banking Group Limited (ANZ).

## PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. Accordingly, a decision on the application was required by 21 July 2006.

3. The Applicant sought confidentiality for specific aspects of the application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.

4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.[1]

## STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal would have, or would be likely to have, the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.[2]

6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held;

> We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgement is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance, has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.[3]

7. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not minimal.[4] Competition must be lessened in a considerable and sustainable way.

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[1] Commerce Commission, *Mergers and Acquisitions Guidelines, January 2004*.
[2] Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission (1992) 4 TCLR 713-722.
[3] *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.
[4] Fisher & Paykel Limited v Commerce Commission (1996) 2 NZLR 731, 758 and also Port Nelson Limited v Commerce Commission (1996) 3 NZLR 554.

For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any give case.

9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening, of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

## ANALYTICAL FRAMEWORK

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:

    - with the acquisition in question (the factual); and
    - in the absence of the acquisition (the counterfactual).

11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual, in terms of:

    - existing competition;
    - potential competition; and
    - other competition factors, such as the countervailing market power of buyers or supplies.

## THE PARTIES

### Applicant

*ORIX New Zealand Limited (Orix)*

12. Orix is a wholly-owned subsidiary of ORIX Australia Corporation Limited, which is in turn a wholly-owned subsidiary of the Orix Corporation of Japan, a major international finance company.

13. In New Zealand, Orix commenced business operations in 1994. Orix currently provides fleet leasing services for [ ] vehicles, including [ ] heavy commercial vehicles, throughout New Zealand.

**Target**

*Esanda Fleetpartners (Esanda)*

14. Esanda Fleetpartners is the trading name for Truck Leasing Limited, a wholly-owned subsidiary of UDC Finance Limited (UDC), which is in turn a wholly-owned subsidiary of ANZ National Bank.

15. Esanda primarily provides fleet leasing services for [ ] cars and light commercial vehicles and [ ] heavy commercial vehicles throughout New Zealand, from its offices in Auckland, Wellington, Palmerston North and Christchurch.

**OTHER PARTIES**

*GE Fleet New Zealand (GE Fleet) and Custom Fleet (NZ) Limited (Custom Fleet)*

16. GE Fleet refers to either GE Capital Fleet Services New Zealand Limited or that company together with GE Fleet New Zealand. GE Capital Fleet Services New Zealand Limited operates a fleet leasing and management business in New Zealand.

17. GE Fleet New Zealand and GE Capital Fleet Services New Zealand Limited are ultimately wholly-owned subsidiaries of General Electric Company (*GE*) in the United States. GE is listed on the New York Stock Exchange.

18. GE Fleet provides operating lease services for [ ] vehicles and management services for [ ] vehicles across New Zealand.

19. On 5 July 2006, the Commission granted clearance to GE Fleet to acquire the business of Custom Fleet from Bank of New Zealand Limited (BNZ), a wholly-owned subsidiary of National Australia Group (NZ) Limited.

20. Custom Fleet's main business functions are the funding and management of vehicle fleets to corporate customers. In New Zealand, Custom Fleet has approximately [ ] lease vehicles and provides management services for [ ] vehicles across New Zealand.

21. GE Fleet recently advised the Commission that it will proceed with the Custom Fleet acquisition as planned. [ ]. As such, for the purpose of this proposed acquisition, the Commission will consider GE Fleet and Custom Fleet as one entity, with a combined customer base comprising of [ ] lease vehicles and [ ] managed vehicles in New Zealand.

*Leaseplan New Zealand Limited (Leaseplan)*

22. Leaseplan was established in New Zealand in 1993, and is a wholly-owned subsidiary of Leaseplan Corporation in Holland.

23. Leaseplan provides both fleet leasing and fleet management services for [ ] cars and light commercial vehicles across New Zealand.

*Toyota Finance New Zealand Limited (Toyota Financial Services or TFS)*

24. TFS is a fleet leasing company that was incorporated in New Zealand in 1989, and is a subsidiary of Toyota Financial Services Corporation (Japan) and Toyota Finance Australia Limited.

25. TFS provides fleet leasing services for [ ] vehicles across New Zealand. [ ].

## INDUSTRY BACKGROUND

### Fleet Leasing

26. A fleet lease refers to an agreement entered into by a financier with a customer to fund the acquisition or use of motor vehicles. Financiers enter into this kind of arrangement with a customer to provide leases for all, or some, of the company's vehicles.

27. There are two types of leases available to customers in New Zealand, operating leases and finance leases. Typically, customers enter into a master contract under which any number of individual leases can be provided.

28. The choice between lease types is usually dictated by the customer's preferred accounting practices (balance sheet requirements, cash flow, and tax considerations) and willingness to accept residual value risk.

29. In addition to finance leases and operating leases, companies active in this sector may also offer a range of other finance products, such as chattel mortgages, factoring arrangements or commercial hire purchase.

*Operating Lease*

30. The individual vehicles provided under the master lease contract are provided to the customer for a specified lease period, for a fixed monthly rental and specified kilometre distance allowance.

31. The lease period for an operating lease is usually three years for a car, and six to ten years for heavy commercial vehicles[5].

32. In an operating lease, title to the vehicle remains with the lessor (the financier). The risk associated with any fluctuation over the residual value set at the commencement of the vehicle lease, and the vehicle's ultimate sale price at lease end, resides with the lessor.

33. Accounting rules allow this type of lease to be 'off balance sheet' for a customer, allowing it to maintain a better debt to equity ratio, granting the customer the ability to access greater borrowings.

34. There are variations on operating leases, for example the fully maintained operating lease (FMOL), where the monthly lease payment also contains a set charge for servicing and maintaining the vehicle based on the lessor's estimate of costs to service. Under an FMOL arrangement, in addition to assuming the residual value risk for the vehicle, the lessor also assumes the "maintenance risk" shortfall (or gain) between the set amount charged to the lessee and the amount actually spent in servicing a fully maintained vehicle.

*Finance Lease*

35. The main point of difference between an operating lease and a finance lease is the accounting principles involved: under a finance lease the vehicle is 'on

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[5] The length of time of an operating lease is determined by Inland Revenue's depreciation rules, which state that the maximum lease period is 75% of the vehicle's useful life.

balance sheet' for the lessee and the lessee takes the residual value risk[6] upon sale of the vehicle at lease end. Additionally, a finance lease contract period is generally longer than that for an operating lease.

36. As with an operating lease, the lessor retains title to the vehicle and the customer has the option to buy the vehicle[7] at the end of the lease.

37. Much like the master operating leases, finance leases can also be provided with a fully maintained option.[8]

**Fleet Management**

38. Fleet management refers to the provision of maintenance and the monitoring of a company's vehicle fleet.

39. A customer's decision to purchase fleet management services is separate from its decision on how to fund the vehicles (i.e. fleet management services can be provided regardless of whether the customer owns the fleet itself or whether the fleet is financed externally).

40. Fleet management services include the on-road vehicle maintenance services provided by fleet leasing companies under FMOL (vehicle registration, warrant of fitness, servicing and tyre replacement), as well as supplementary value-added services, including:

- vehicle acquisitions and disposal;
- accident management and breakdown services;
- insurance options and protection plans;
- comprehensive fleet management reporting, including fleet utilization and fuel consumption reports; and
- risk assessment and practical driver training.

41. Fleet management providers may also provide purchase card services (such as cards which may be used for the purchase of fuel and oil) and other specialist services, such as vehicle salary packaging services, on-line services and the re-marketing of ex-leased vehicles.

**PREVIOUS COMMISSION DECISIONS**

42. The Commission has examined the fleet leasing and fleet management services markets in Decision 478: *Custom Fleet (NZ) Limited and Hertz Fleetlease Limited* in October 2002, and more recently in July 2006, Decision 584: *GE Fleet and Custom Fleet (NZ) Limited*.

43. In Decision 478 and Decision 584 the relevant markets were defined as:

- the market in New Zealand for the provision of fleet leasing services; and

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[6] Residual value is the resale value of the vehicle at the end of its lease. The residual value is estimated at the time of lease commencement, and is estimated by the leasing company. The risk associated with residual value is that the estimate will not match the sale price of the vehicle at lease-end (residual value is subject to the volatile nature of the second-hand car market).

[7] At the end of a finance lease contract, the lessee is not obliged to purchase the vehicle from the lessor. This is in contrast to a hire purchase, where the customer is required to make a balloon payment (the residual value) of the vehicle at the end of the lease period, whereby ownership is then transferred to the customer.

[8] This is not a particularly common option in New Zealand as most finance leases (as opposed to operating leases) are for a single vehicle.

- the market in New Zealand for the provision of fleet management services.

44. The Commission granted clearance for both acquisitions on the basis that the combined entity would be constrained, within both the fleet leasing and fleet management markets, by existing competition within these markets.

## MARKET DEFINITION

45. The Act defines a market as:

> "… a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them."[9]

46. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of the market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

47. The Applicant submitted that the relevant markets are those that were defined by the Commission in Decision 478:

- the market in New Zealand for the provision of fleet leasing services; and
- the market in New Zealand for the provision of fleet management services.

### Product Market

48. The greater the extent to which one good or service is substitutable for another, on either the demand side or supply side, the greater the likelihood that they are bought and supplied in the same market.

49. Close substitute products on the demand side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.

50. Close substitute products on the supply side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.

51. In defining the relevant product market, the Commission assessed the degree of demand and supply-side substitution between the following:

- fleet leasing and fleet management;
- operating leases and finance leases; and
- the provision of fleet leasing services for heavy commercial vehicles and the provision of fleet leasing services for passenger/light commercial (passenger) vehicles.

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[9] S 3(1) of the Commerce Act 1986.

*Fleet Leasing and Fleet Management*

52. The Commission recently considered fleet leasing and fleet management, and the ability to substitute between the two in Decision 584[10].

53. The Commission considered supply-side switching between fleet management and fleet leasing was feasible and could occur within a reasonable timeframe. However, given that the investment required to acquire vehicles would be largely sunk, the Commission considered that there is only a limited degree of supply-side substitutability between fleet leasing and fleet management.

54. On the demand side, the Commission considered that there was some small overlap between the management services contained within a FMOL, and standalone fleet management services.[11] However, typically, leasing is a lending facility through which a customer acquires a vehicle for business purposes, which is essentially a different product from the value-added services offered through fleet management.

55. The Commission considers that, whilst there may be some degree of substitutability on the supply side, fleet management and fleet leasing are not substitutable on the demand side. Consequently, the Commission considers that fleet management and fleet leasing do not fall within the same market**.**

*Operating Leases and Finance Leases*

56. In Decision 478 the Commission concluded that operating leases and finance leases were substitutable on both the demand and supply side and therefore fell within the same market.[12]

57. More recently, in Decision 584[13], the Commission found that, because the provision of finance is the same for both lease types, there was high supply-side substitutability between operating leases and finance leases.

58. On the demand side, the Commission found that it is primarily the taxation and accounting rule differences that determine a customer's preference for, and ability to switch between, operating leases and finance leases.

59. In Decision 461, *GE Capital Finance Australasia Pty Limited/Australian Guarantee Corporation (NZ) Limited* the Commission concluded that on the demand side, consumers have the ability to switch easily between different lending formats, in terms of leases and other finance products in general.

60. In Decisions 478 and 584, the Commission found that ease of demand-side substitutability between lending and finance products also applied within the narrower context of lease types[14] within the fleet leasing services market[15].

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[10] Decision 584, Paras 59-68.

[11] Market participants indicated that a majority of lease customers opt for the FMOL over non-maintained leases. Many stipulated that the service included within a FMOL tends to be comparatively basic "on-road" services (such as warrant of fitness, servicing, tyres and registration) in contrast to the value-added fleet management services discussed in paragraph 42.

[12] Decision 478, Para 44.

[13] Decision 584, Paras 69-77.

[14] Decision 478, Para 41, the Commission found that fleet leasing is a subset of motor vehicle finance. Motor vehicle finance was found to be a subset, in Decision 461, Para 29 and 30, of the greater financial products market.

[15] Decision 478, Para 43.

61. The Commission concludes that there is high supply- and demand-side substitutability between operating leases and finance leases and therefore both fall within a single fleet leasing market.

*Passenger/Light Commercial Vehicle Leasing and Heavy Commercial Vehicle Leasing*

62. In Decision 584[16], the Commission viewed service or contract differences between passenger vehicle fleet leasing and heavy commercial vehicle fleet leasing as a function of asset value and the provision of financing those assets.

63. The Commission considered that, on the supply side, the provision of finance for a heavy commercial vehicle is considered to be the same as that for passenger vehicles, but on a larger scale. The Commission considered that a fleet leasing company which is capable of providing fleet leasing services to a customer that requires a fleet of ten or more passenger vehicles would likewise have sufficient magnitude to absorb the sunk costs associated with providing fleet leasing services for a heavy commercial vehicle. Consequently, the Commission considered that there is high supply-side substitutability between the provision of fleet leasing services for heavy commercial vehicles and the provision of fleet leasing services for passenger vehicles.

64. On the demand side, the Commission considered that the ability to substitute between fleet leasing for heavy commercial vehicles and passenger vehicles is very limited. The Commission considered that it is unlikely that a business that requires a piece of specialist heavy machinery for a particular operation can instead utilise a small passenger vehicle, and vice-versa for the corporate business that requires a small passenger vehicle for its day-to-day business activities.

65. In Decision 584, the Commission considered that the strong supply-side substitutability of the provision of fleet leasing services for heavy commercial vehicles and passenger vehicles outweighed the inability to substitute between the two on the demand side, and thus both fell within a single fleet leasing market.

66. For the purpose of assessing the current application, the Commission considers that the conclusions drawn in Decision 584 remain valid. The Commission considers that both the provision of fleet leasing services for heavy commercial vehicles and the provision of fleet leasing services for passenger vehicles fall within a single fleet leasing market.

*Differentiated/Undifferentiated Products*

67. Differentiated product markets are those in which the product offering of suppliers varies to some degree and in which buyers make their purchase decision on the basis of product characteristics as well as price. In such a market, suppliers’ products are imperfect substitutes for one another and less close substitutes impose a lesser competitive constraint than others.

68. In Decision 478, the Commission found that fleet leasing services are relatively standard across the industry, to the extent that a customer’s decision to lease vehicles with a particular supplier is usually driven by price. Although market participants often seek to differentiate themselves through brand reputation and

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[16] Decision 584, Paras 81-87.

customer service, leasing products are viewed as close substitutes for one another[17].

69. The Commission also considered, in Decision 478, that fleet management services tended to be differentiated in the same way that fleet leasing services were differentiated: by price, brand reputation and customer service[18].

70. The Commission concluded in Decision 478 that the fleet leasing and fleet management markets are largely undifferentiated, and do not warrant the special analysis associated with fully differentiated products[19].

71. For the purpose of assessing the current Application, the Commission considers that the conclusions drawn in Decision 478 remain valid in this case. The Commission considers that the fleet leasing and fleet management markets are largely undifferentiated products.

**Conclusion on Product Markets**

72. The Commission concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate product market is:

- the market for the provision of fleet leasing services (fleet leasing market); and
- the market for the provision of fleet management services (fleet management market).

**Functional Markets**

73. The production, distribution, and sale of a product typically occur through a series of functional levels, conventionally arranged vertically in descending order. Generally the Commission identifies separate relevant markets at each functional level affected by an acquisition, and assesses the impact of the acquisition on each.

74. The Commission considers, for the purposes of the present Application, that the appropriate functional level is the provision of fleet leasing services and fleet management services.

*Geographic Markets*

75. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

76. In Decisions 478[20] and 584[21], the Commission considered that the appropriate geographic market was a national market.

77. In Decision 584, the Commission found that fleet leasing and fleet management companies conduct financial provisioning and customer management activities from a centralised head office, and use a network of car dealerships and local mechanics to provide many of the customer-facing business operations[22]. This

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[17] Decision 478, Para 47
[18] Decision 478, Para 48
[19] Decision 478, Para 49
[20] Decision 478, Para 53
[21] Decision 584, Paras 97-104.
[22] E.g. A customer chooses and collects their new vehicle through a car dealership, and any vehicle maintenance will be done through a local mechanical service provider, arranged by the fleet leasing company.

removes the need to have fleet leasing and fleet management services located regionally.

78. The Commission also considered that the price uniformity throughout New Zealand supported industry participants' opinions that the market is a national market.

79. On the demand side, the Commission considered that, given that the majority of the fleet companies operate on a national basis without the need for a regional presence, there would be little difficulty for a customer to switch to a service provider in another geographic location.

*Conclusion on Geographic Markets*

80. For the purpose of assessing the current application, the Commission considers that the conclusions drawn in Decisions 478 and 584 remain valid in this case.

81. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the relevant geographic market is national in scope.

### Conclusion on Market Definition

82. The Commission concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate markets are the national markets for:

- the provision of fleet leasing services; and
- the provision of fleet management services.

## COUNTERFACTUAL AND FACTUAL

83. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgement considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (counterfactual).[23] The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

### Factual

84. In the factual scenario, Orix would acquire the Esanda business and [ ].

### Counterfactual

85. Malcolm Tillbrook, UDC, advised the Commission that it [ ] is possible that the Esanda business may not be sold, in which situation Esanda would continue to operate within the New Zealand fleet leasing and fleet management markets.

86. Esanda indicated to the Commission that other bidders involved in the sale of its business are:

- [ ].

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[23] Air New Zealand & Qantas Airways Ltd v Commerce Commission (No.6), unreported HC Auckland, CIV 2003 404 6590, Hansen J and KM Vautier, Para 42.

87. [

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88. The Commission considers the most likely counterfactual scenario is that Esanda is sold to a company
[ ].

## COMPETITION ANALYSIS

### Existing Competition

89. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).

90. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

91. A business acquisition is considered unlikely to lessen competition substantially in a market where, after the proposed acquisition, either of the following situations exists:

- The three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70% and the combined entity (including any interconnected persons or associated persons) has less than in order of 40% share; or
- The three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70% and the market share of the combined entity is less than in the order of 20%.

*Fleet Leasing Market*

92. In its application, Orix submitted that post-acquisition, the combined entity will continue to face competition in the fleet leasing market. In particular, the combined entity will face competition from the GE Fleet/Custom Fleet combined entity, and smaller competitors such as Leaseplan.

93. In Decision 584, the Commission measured market shares for fleet leasing in terms of number of vehicles leased, which industry participants stated was a common measure used within the industry.

94. The Commission also used the value of net earning assets[24] as a measure for market share. The purpose of using net earning asset value was to reflect the difference in asset types that particular fleet leasing companies differentiate themselves by (e.g. commercial vehicles versus passenger vehicles, luxury passenger vehicles versus standard passenger vehicles).

95. The Commission considers that it is appropriate to use the same measures of market share for the purpose of assessing the current Application. The market

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[24] This measure was also in Decision 478, but was termed "lease book value".

share figures in Table 1 are based on figures submitted by the Applicant and other major fleet leasing companies.

**Table 1: Fleet Leasing Services Market Shares as at July 2006**

| Operator | No. vehicles | Market Share (no. vehicles) (%) | Value of Net Earning Assets (millions) | Market Share (Net Earning Assets) (%) |
|---|---|---|---|---|
| Esanda | [ ] | [ ] | $[ ] | [ ] |
| Orix | [ ] | [ ] | $[ ] | [ ] |
| *Combined Entity* | *[ ]* | *[ ]* | *$[ ]* | *[ ]* |
| GE Fleet/Custom Fleet | [ ] | [ ] | $[ ] | [ ] |
| TFS | [ ] | [ ] | $[ ] | [ ] |
| Leaseplan | [ ] | [ ] | $[ ] | [ ] |
| MARAC | [ ] | [ ] | $[ ] | [ ] |
| Honda | [ ] | [ ] | $[ ] | [ ] |
| Other | [ ] | [ ] | $[ ][25] | [ ] |
| **Total** | **[ ]** | **100** | **$[ ]** | **100** |

96. Table 1 indicates that, based on fleet size, the combined entity would have a market share of [ ] %. The pre-acquisition three-firm concentration is [ ] %, whereas the three-firm concentration post-acquisition will be [ ] %. When the measures are based on Net Earning Assets, the combined entity would have a market share of [ ] %. The three-firm concentration increases from [ ] % pre-acquisition to [ ] % post-acquisition.

97. Both of these measures present post-acquisition three-firm concentration ratios that are outside the Commission's safe harbour guidelines.

98. However, the Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission assesses the behaviour of the businesses in a market.

99. Industry participants advised the Commission that the major competitors in the market are the big four – Custom Fleet[26], Esanda, Orix and Leaseplan.

100. In addition to the four large lease companies, there are a number of smaller companies that offer fleet leasing services. Financial branches of a number of the major car manufacturers also offer lease arrangements.

101. Industry participants advised the Commission that TFS was very competitive, especially on contracts for Toyota-only fleets. John Garland, Managing Director TFS, stated that TFS
[ ].

[25] The value of net earning assets for the 'other' category is based on average vehicle value of $[ ]. (This is calculated by dividing the total value of Net Earning Assets for all companies, by the total number of vehicles for all companies).

[26] In Decision 584, industry participants told the Commission that they consider Custom Fleet to be a major competitor. GE Fleet has since acquired Custom Fleet.

102. The major fleet leasing companies also face limited competition from other financial institutions (eg MARAC and Speirs Finance) and smaller lease companies (eg Driveline Finance Limited and Flexilease). Industry participants advised the Commission that these smaller companies do not usually have access to funding at the same interest rates as the major lease companies, and subsequently are often not as competitive on leases for large fleets of vehicles.

103. The Commission was advised by fleet leasing customers such as [ ] that it is not difficult to switch between lease providers. The Commission understands that it is quite common for customers to have a number of different lease providers for their fleet of vehicles. Each time a new lease is required, a customer will generally receive quotes from most of the major lease providers. [ ] advised the Commission that it currently uses three lease providers: Custom Fleet[27], Leaseplan, and Esanda.

104. Further, in Decision 584, the Commission noted that many large customers have fleet leasing contracts with more than one fleet leasing company:

- Tyco uses a panel of three different lease providers;
- Heinz Watties has a panel of providers bidding for fleet leasing contracts via an Internet-based live auction; and
- Transfield has a panel of four lease companies with which it has current lease agreements in place. Each lease company provides a quote on each new order of vehicles.

105. Industry participants advised the Commission that customers frequently compare the lease service provided against the option of owning vehicles themselves. For example, [ ], has a procurement manager who benchmarks the lessor’s price with the estimated cost of owning the vehicles themselves.

106. GSB Supply Corp (formerly the Government Stores Board, now a privately-owned consultancy) acts as a broker and runs tenders for the lease contracts of government bodies. Jack Gordon-Crosby, General Manager, GSB Motor Vehicles, advised the Commission that GSB Supply Corp frequently models the cost of ownership against the cost of leasing for all of its clients. It has successfully converted a number of government bodies, such as [ ], from leasing back to ownership.

<u>Conclusion on Competition in the National Fleet Leasing Market</u>

107. The Commission considers it likely that that the degree of existing competition would continue to constrain the combined entity in the factual, such that there would be little difference between the factual and the counterfactual. This is because of :

- the presence of other major competitors in the fleet leasing market in New Zealand, such as GE Fleet, Leaseplan and TFS; and
- a lesser degree of competition from a number of other small lease companies and finance companies (e.g. MARAC, Driveline, and Speirs Finance).

[27] Custom Fleet has since been acquired by GE Fleet.

*Fleet Management Market*

108. As stated above, fleet management services range from the standard maintenance and servicing of vehicles to specialised services such as fleet reporting, vehicle utilisation modelling and the acquisition and disposal of vehicles.

109. In Decision 584, the Commission considered that although fleet management and fleet leasing services can be provided as a holistic fleet services package to a customer, it is also the case that fleet management and fleet leasing exist as mutually exclusive products[28]. For ease of analysis, the Commission considered fleet management services as those provided extraneous to a lease product.

110. The Applicant submitted that industry participants view fleet management as being a standalone activity, and on this basis, neither Orix nor Esanda has any market presence in standalone fleet management services. As such, the proposed transaction would not appear to involve any overlap between Orix and Esanda in this market[29].

111. In Decision 584, the Commission used two units of measure to assess market shares within the fleet management services market: number of vehicles and revenue for the last financial year. These units of measure will also be used to quantify market share in the context of this Application.

112. Table 2 details the market share figures in the fleet management market based on number of vehicles. The figures obtained from each company relate to vehicles that are managed by each company but not leased (ie the figures do not include FMOLs which are offered by most major lease companies and which encompass some management services).

[28] Decision 584, Paras 44-47.
[29] Clearance Application, Para 16.2.5

**Table 2: Fleet Management Market Shares by Number of Vehicles as at July 2006**

| Operator | No. vehicles | Market Share (%) |
|---|---|---|
| Orix | [ ] | [ ] |
| Esanda | [ ] | [ ] |
| *Combined Entity* | *[ ]* | *[ ]* |
| Fleetsmart (Cardlink) | [ ] | [ ] |
| Custom Fleet/GE Fleet | [ ] | [ ] |
| Fleetwise | [ ] | [ ] |
| Leaseplan | [ ] | [ ] |
| Other | [ ] | [ ] |
| **Total** | **[ ]** | **100** |

113. Table 3 details the market share figures in the fleet management market based on revenue received from the last financial year.

**Table 3: Fleet Management Market Shares by Revenue as at July 2006**

| Operator | Revenue (Last Financial Year) | Market Share (%) |
|---|---|---|
| Esanda | [ ] | [ ] |
| Orix | [ ] | [ ] |
| *Combined Entity* | *[ ]* | *[ ]* |
| Fleetsmart (Cardlink) | [ ] | [ ] |
| Leaseplan | [ ] | [ ] |
| Fleetwise | [ ] | [ ] |
| Custom Fleet/GE Fleet | [ ] [30] | [ ] |
| Other | [ ] [31] | [ ] |
| **Total** | **[ ]** | **100** |

114. The tables above illustrate that market share figures for fleet management differ significantly depending on the measure used.[32] However, it remains apparent in both tables that neither Orix nor Esanda compete in the fleet management market to any great extent.

115. Orix advised the Commission that it does not provide fleet management services [ ].

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[30] GE Fleet introduced a Fleet Management service in March 2006. Figures are extrapolated to 12 months.

[31] Estimate based on average fleet management revenue per vehicle of $250 – [ ].

[32] This is because fleet management can encompass a variety of services, and while some fleet management specialists offer a fully comprehensive package of services, other companies offer a much narrower fleet management product. For instance, GE Fleet stated that its management of [ ].

116. Esanda advised the Commission that it provides fleet management services [ ].

Conclusion on Competition in the National Fleet Management Market

117. The Commission considers that, on the basis that neither Esanda nor Orix operate in the national fleet management market to any notable extent, there is no aggregation within the fleet management services market as a result of the proposed transaction.

118. In any case, the Commission considers that existing competition would be likely to constrain the combined entity in the factual, such that there would be little difference between the factual and the counterfactual. This is due to the presence of other major competitors in the fleet management market:

- leasing companies that provide fleet management services (eg. Leaseplan and GE Fleet/Custom Fleet); and
- companies that specialise in fleet management only (eg. Fleetwise and Fleetsmart).

**OVERALL CONCLUSION**

119. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the national market for fleet leasing services and the national market for fleet management services.

120. The Commission considers that the most likely counterfactual is that Esanda would be acquired by another company [ ].

121. The Commission considers that an alternative counterfactual is that Esanda is not sold, and remains operating in the New Zealand fleet leasing market.

122. The Commission considers that there would continue to be significant existing competition in the factual scenario, in the national fleet leasing market. Major competitors (eg. GE Fleet/Custom Fleet, Leaseplan and TFS) as well as a number of other small lease companies and finance companies would continue to constrain the merged entity in both the factual and counterfactual scenarios.

123. Further, the Commission considers that the proposed transaction would not result in any aggregation of business activity in the national fleet management market. In addition, there would continue to be significant existing competition in the factual and counterfactual due to major competitors such as Leaseplan, Fleetlease and Fleetsmart.

124. The Commission is therefore satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any market.

**DETERMINATION ON NOTICE OF CLEARANCE**

125. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by ORIX New Zealand Limited of 100% of the shares of Truck Leasing Limited trading as Esanda Fleetpartners (Esanda) from UCD Finance Limited (UDC), a subsidiary of Australia and New Zealand Banking Group Limited (ANZ).

Dated this 20 July 2006

David Caygill

Deputy Chair
Commerce Commission