ISSN no. 0144-2720
Project no. 11.04/13991

Public version

Determination

Hamilton Radiology Limited and Medimaging Limited [2013] NZCC 7

The Commission:	Dr Mark Berry Anita Mazzoleni Pat Duignan
Summary of application:	The application relates to the formation of a joint venture between Hamilton Radiology Limited, Midland MRI Limited and Medimaging Limited. The joint venture will acquire the radiology assets of Medimaging Limited.
Determination:	Under section 66(3)(b) of the Commerce Act 1986, the Commission declines to give clearance for Medimaging Radiology Limited (a new company whose shareholders will be Hamilton Radiology Limited, Midland MRI Limited and Medimaging Limited) to acquire the assets of Medimaging Limited.
Date of determination:	27 March 2013

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

The proposal

1. A notice under s 66(1) of the Commerce Act 1986 (the Act) was registered on 30 November 2012. The Notice seeks clearance for Medimaging Radiology Limited (a new company whose shareholders will be Hamilton Radiology Limited, Midland MRI Limited and Medimaging Limited) to acquire the assets of Medimaging Limited.

Procedure

2. Section 66(3) of the Act requires the Commission to either clear or 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. An extension of time was agreed between the Commission and the applicants. Accordingly, a decision on the application was required by 28 March 2013.

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

Statutory framework

4. Any person who proposes to acquire the assets or shares of a business, and considers that the acquisition may breach s 47 of the Act, can apply for clearance under s 66.

5. If the Commission is satisfied under s 66(3)(a) of the Act that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, the Commission must give clearance for the proposed acquisition.

6. The Court of Appeal in *Port Nelson v Commerce Commission*[2] held that for something to be "likely" it must be "above the mere possibility but not so high as more likely than not and is best expressed as a real and substantial risk that the stated consequence will happen".

7. The High Court in *Woolworths & Ors v Commerce Commission*[3] observed that "a substantial lessening of competition is one that is "real or of substance" as distinct from ephemeral or nominal. Accordingly a substantial lessening of competition occurs if it is likely that there will be a reduction in competition that is real or of substance".

8. If the Commission is not satisfied that the proposed acquisition will not have or would not be likely to have the effect of substantially lessening competition in a

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[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004. The Commission has recently published for consultation revised Mergers and Acquisitions Guidelines. Until the revised Guidelines are adopted by the Commission, the Commission will continue to have regard to the 2004 Guidelines. The broad analytical framework proposed in the revised Guidelines remains the same as that outlined in the current Mergers and Acquisitions Guidelines.

[2] *Port Nelson v Commerce Commission* (1996) 5 NZBLC 104, 150; (1996) 3 NZLR 562-563.

[3] *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC).

market or it is 'in doubt' as to whether that is the case, it must decline the application under s 66(3)(b) of the Act.[4]

9. The burden of proof lies with the applicants, to satisfy the Commission on the balance of probabilities that the acquisition is not likely to substantially lessen competition.[5] The decision to grant or refuse clearance is to be made on the basis of all the evidence.[6] The Commission will sometimes have before it conflicting evidence from different market participants and must determine what weight to give to the evidence of each party.[7]

Analytical framework

10. The Commission's analytical framework for assessing whether an acquisition is likely to result in a substantial lessening of competition is described in the Commission's Mergers and Acquisitions Guidelines. The specific manner in which the Commission applies this framework depends on the facts in each case.

11. In any assessment, the determination of the relevant market or markets may be an important tool. To define markets, the Commission identifies the areas of overlap between the businesses of the acquirer and the target, and then considers what, if any, products and geographic regions, constitute relevant close substitutes from both a customer's and a supplier's point of view.

12. The Commission uses a forward-looking analysis to assess whether a substantial lessening of competition is likely. This exercise "requires a comparison of the likely state of competition if the acquisition proceeds (the factual) against the likely state of competition if it does not (the counterfactual)."[8] That assessment is dependent on the facts revealed during the Commission's investigation of the application.

13. In framing a suitable counterfactual, the Commission bases its view on a pragmatic and commercial assessment of what is likely to occur in the absence of the proposed acquisition.[9]

14. The High Court in *Air New Zealand v Commerce Commission (No.6)*[10] accepted that an absence of market power would suggest there had been no substantial lessening of competition in a market but did not see this as a reason to forsake an analysis of the counterfactual as well as the factual. Justice Rodney Hansen stated that "a comparative judgment 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, that is, dominance has been attained".

4 *Commerce Commission v Woolworths Ltd* (2008) 8 NZBLC 102,336 (CA).
5 *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7] and *Commerce Commission v Woolworths Ltd* (CA) above n 4 at [97].
6 *Commerce Commission v Woolworths Ltd* (CA) above n 4 at [101].
7 *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 at [64].
8 *Commerce Commission v Woolworths Ltd* (CA) above n 4 at [63].
9 New Zealand Electricity Market (Commerce Commission Decision 277, 30 January 1996) at 16.
10 *Air New Zealand v Commerce Commission (No.6)* (2004) 11 TCLR 347 at [42].

15. In addition to an analysis of existing competitors, the assessment may include an analysis of potential competitors. Potential competitors can act as a constraint on a business or businesses that might otherwise be able to exert market power. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints from actual, or threatened, market entry.

16. If entry is to act as an antidote to what otherwise might be a substantial lessening of competition in a market, that entry must be likely, timely and of sufficient extent to constrain market participants. However, the central question is whether or not a merged firm would be constrained in a timely way by likely market entry (or expansion) in the event it increased prices or reduced services.

Parties

Hamilton Radiology Limited & Midland MRI Limited

17. Hamilton Radiology Limited (Hamilton Radiology) and Midland MRI Limited (Midland MRI) provide low tech (ie, x-rays and ultra-sound) and high tech radiology services (ie, CT scans and MRI) in the Waikato region.

18. Hamilton Radiology has seven shareholding radiologists and Midland MRI has twelve shareholding radiologists. The shareholding radiologists who own Hamilton Radiology are also shareholders in Midland MRI and vice versa. The cross shareholding exceeds 60% in both directions.

19. Midland MRI currently holds the Waikato District Health Board (DHB) contract to provide all MRI services to the DHB. Midland MRI has held this contract for 14 years.

20. Midland MRI has two MRI machines. One MRI machine is located in Waikato hospital and services the DHB's requirements. The other MRI machine, located at the Anglesea Imaging Centre in Hamilton, is used for any DHB overflow work, Accident Compensation Corporation (ACC) work and for private medical insurance work.

21. Some shareholders in Midland MRI also hold management positions in the Radiology Department of Waikato DHB.

Medimaging Limited

22. Medimaging Limited (Medimaging) also provides low tech and high tech radiology services in the Waikato region. In respect of high tech services, Medimaging only provides MRI services (it does not provide CT scans or any other high tech services).

23. Medimaging was formed in 2006 [ ], another MRI machine and extra low tech equipment were acquired and located at Southern Cross' private hospital in Hamilton. TRG exited the Hamilton market in 2010, [ ]. Following TRG's exit from the Hamilton market, Dr Gilbert acquired the Southern Cross branch and its MRI machine.

24. Dr Gilbert is the sole radiologist at Medimaging.[11]

Association

25. The Commission must determine if the applicant is associated with any other person in the relevant markets. Section 47(2) of the Act provides that, for the purposes of s 47(1), a reference to a person includes two or more persons that are interconnected or associated.

26. Sections 47(3) and (4) state that two or more corporate entities are associated if one, either directly or indirectly, is able to exert a substantial degree of influence over the activities of the other. The Commission is of the view that, in this context, a substantial degree of influence means being able to bring real pressure to bear on the decision making processes of the other.[12] The Commission assesses the ability to substantially influence in terms of the nature and extent of communications between relevant persons, and the apparent influence of one person on the key strategic decisions of the other.[13]

27. Companies Office records show that Midland MRI and Hamilton Radiology have seven shareholders in common. Further, Midland MRI and Hamilton Radiology have a single chief executive responsible for the administration and management of both companies. The Commission considers that Midland MRI and Hamilton Radiology are likely to be associated persons for the purpose of section 47(2) of the Act.

Other parties

Low tech radiology services providers in Hamilton

28. Other than Hamilton Radiology and Medimaging, there are two other providers of low tech radiology services in Hamilton, namely:

    28.1 Horizon Radiology Limited (Horizon); and

    28.2 River Radiology Limited (River Radiology).

High tech radiology services providers outside the Waikato region

29. There are no other providers of high tech radiology services in the Waikato region, although there are a number of large providers operating outside the Waikato region, namely:

    29.1 TRG (Northland, Auckland, Taupo, Rotorua and Hawke's Bay);

    29.2 Ascot Radiology Limited (Auckland);

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11 The Commission
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12 Air New Zealand Limited and Ansett Holdings Limited & Anor (Commerce Commission Decision 278, 3 April 1996) at para 180.

13 New Zealand Seafood Investments Limited and Basuto Investments Limited (Commerce Commission Decision 388, 23 March 2000) at paras 16-24.

29.3 Mercy Radiology Limited (Auckland);

29.4 Specialist Radiology and MRI Limited (Auckland);

29.5 Bay Radiology Limited (Tauranga); and

29.6 Pacific Radiology Limited (Wellington and throughout the South Island).

Purchasers of radiology services

Waikato DHB

30. Waikato DHB contracts out 100% of its MRI requirements to Midland MRI. In 2012, Midland MRI performed around [ ] MRI scans for Waikato DHB at a total cost of approximately $[ ] million.

31. Waikato DHB intends to release a request for proposal (RFP) to the market for the provision of radiology services in 2013. Waikato DHB advised the Commission that "[ ]".[14] However, Waikato DHB also advised the Commission [ ].[15]

32. Waikato DHB employs a number of radiologists from Midland MRI. Dr Gilbert also works one day a week at the hospital.

The ACC

33. The ACC is a Crown agency responsible for the administration of the statutory insurance scheme for accident-related injuries and disabilities.

34. The ACC purchases primary health care, emergency transport, community and referred services and ancillary services for people with injuries from accidents, and non-urgent ('elective') medical treatment for those who require follow-up procedures. ACC purchases these directly from hospitals and private providers.

35. The ACC contracts with private radiology providers for the provision of both low tech and high tech procedures. In order to contract with ACC in respect of high tech services, a provider must first be IANZ accredited.[16] The ACC precludes radiology providers with which it has contracted from charging co-payments (ie, amounts over and above the funded portion of the procedure) in respect of ACC funded high tech procedures.

Health insurance providers

36. There are a number of private health insurance providers in New Zealand. The three main providers of private health insurance in New Zealand are:

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14 Email from [ ], Waikato District Health Board, 11 January 2013.

15 ibid

16 International Accreditation New Zealand (IANZ) – New Zealand's accreditation body.

36.1 Southern Cross Healthcare Medical Care Society (Southern Cross);

36.2 Tower Limited (Tower);[17] and

36.3 Sovereign Services Limited (Sovereign).

37. There are two main ways in which health insurance provider's contract for or pay for radiology services. Tower and Sovereign operate on a reimbursement basis whereby the insured patient meets the upfront cost of the procedure, and submits the invoice for reimbursement from the insurance provider. Southern Cross on the other hand, also operates an Affiliated Provider Scheme (APS) whereby it contracts with (and pays) the radiology provider direct. Further discussion of Southern Cross' APS is located at paragraphs 167 to 171 below.

Industry background

38. In New Zealand, radiology services are provided by both public hospitals and by private providers.

39. Typically, public hospitals provide a full range of radiology services to cater for both elective and acute[18] patients. However, demand for radiology services in the public system generally outstrips supply so provision is rationed.

40. Private radiology providers cater to those patients who would not otherwise receive treatment in the public system, patients who require non acute ACC funded treatment, or who would prefer private treatment for reasons such as timeliness or convenience.

41. Private radiology services are funded, in part, by a number of different organisations including the ACC, local DHBs and insurance companies. In addition, some patients pay the full cost of the service themselves.

42. Each radiology procedure can be categorised into two broad industry classifications: either a low technology radiology service, commonly referred to as 'low tech' or a high technology (high tech) radiology service.[19]

43. Low tech radiology services are considered to be routine procedures that can be performed by all qualified radiologists with standardised equipment and no specialised training. Low tech radiology services include:

43.1 plain film x-rays, where an x-ray is used to penetrate the body and produce 'shadows' of bones on photographic film;

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17 Tower recently sold its health insurance business to NIB Health Funds Limited.

18 Elective treatment is defined as non-emergency treatments (including diagnostic services) where the condition is not life threatening and does not require immediate treatment. Acute services are required more urgently than elective surgery and there is little or no control over their volume.

19 All parties interviewed by the Commission advised the terms 'low tech' and 'high tech' are the common nomenclature used by industry participants to describe these types of services.

43.2 general screening, which can be used to demonstrate structures in the body using contrast agents with x-ray techniques;

43.3 mammography, which is an x-ray examination of the breast;

43.4 venography, which is the use of contrast agents that are injected into a vein, in conjunction with x-ray techniques; and

43.5 ultrasound imaging, which is the use of high frequency soundwaves to produce real-time images of the body.

44. High tech radiology services include more complicated, or non-routine, radiology procedures. Each high tech service is performed by a specialist radiologist who has undergone extensive training in each particular procedure. Further, high tech radiology equipment is significantly more expensive than that required for low tech services. High tech services include:

44.1 Magnetic Resonance Imaging (MRI) scanning, which combines a powerful magnet, radio waves and a sophisticated computer to create highly detailed anatomical images of the body;

44.2 Computer Assisted Tomography (CT) scans, which produces x-ray pictures as transverse (crosswise) slices of the body. This allows radiologists to see details of the brain, spine, liver or other internal organs not visible on regular x-ray films;

44.3 nuclear medicine (or scintigraphy) which enables a reliable, painless and efficient examination of the physiological functions in various parts of the body by using medical radioisotopes for imaging; and

44.4 interventional radiology, which includes procedures such as abscess drainage and angiography. Radiologists are able to perform a range of procedures under local anaesthesia, without the need for surgical incisions or general anaesthesia. X-ray, ultrasound or CT scanning may be utilised to guide interventional procedures such as needle biopsy and catheter placement.

Relevant markets

45. Market definition provides a potentially useful framework to assess the competitive effects of a merger. It focuses the competition assessment on the key competitive alternatives available to buyers. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial commonsense.[20]

46. For the purposes of this decision the Commission considers that the relevant markets are for the provision of:

46.1 privately funded low tech radiology services in Hamilton (Hamilton low tech market); and

[20] Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

46.2 non-DHB funded MRI services in the Waikato region (Waikato non-DHB MRI market).

The applicant's view of the relevant market

47. The applicant submitted that the product markets should be for the provision of private low tech radiology services and the provision of private high tech radiology services with separate discrete markets for distinct procedures (such as MRI and CT scans).

48. This is consistent with previous Commission decisions[21] and there is broad industry consensus that these are the appropriate product markets.

49. The applicant submits that the geographic market for the low tech market is Hamilton/Cambridge. The Commission agrees. Patients appear unlikely to travel outside of Hamilton/Cambridge for an x-ray or an ultra-sound scan. This more localised dimension is also consistent with previous Commission decisions.

50. The applicant submitted that the relevant MRI market is likely to be wider than the Waikato region, at least for non-acute patients.The applicant submitted that the market could encompass other centres such as Auckland, Tauranga and Rotorua.

The Commission's view of the relevant markets

51. As indicated above, the Commission agrees that the provision of low-tech radiology services and the provision of MRI services form separate product markets. It further agrees that the geographic market for low-tech services does not extend beyond Hamilton.

52. However, the Commission considers the geographic market for MRI services is unlikely to include centres outside the Waikato region.

53. The information provided to the Commission indicates that very few patients travel outside of their region for a MRI scan. If there is such travel, it is typically due to a patient's specialist referring them to a specific radiology specialist.[22]

54. There may be a number of reasons for this. [ ]. All health insurance companies spoken to by the Commission stated that their members expect the relevant service to be available in their area and only consider sending patients out of region if it is medically necessary, or as a last resort.

55. While the Commission acknowledges that travel to locations such as Auckland or the Bay of Plenty is possible, the Commission considers that even if people did switch in response to a price increase, the significantly increased travel time required to travel

21 Pacific Radiology Limited and Wakefield Radiology Limited (Commerce Commission Decision 518, 26 February 2004).

22 For example, the Commission understands that Mercy Radiology in Auckland has the only MRI capable of accommodating patients over a certain weight.

to Rotorua or Auckland, for example, would decrease an element of the 'quality' of the MRI service provided to patients, because that service would be less convenient.

56. This service degradation is likely to be particularly acute in this instance since health considerations are likely to limit patients desire to travel outside of their home region for a MRI scan. This is likely to be a key reason why very few patients would travel to obtain MRI services even if prices increased.

57. Moreover, the Commission notes that prices for MRI scans in Auckland (the most likely alternative service location to Hamilton) are higher than they are in the Waikato region. This would make it even less likely that patients would switch to Auckland MRI services in the event of a price increase in Waikato.

58. The Commission therefore considers that the appropriate geographic dimension for the MRI services market is the Waikato region.

The Waikato DHB contract (publically funded MRI scans)

59. The Commission has assessed whether there are separate customer dimensions to the MRI services market. Separate customer markets may arise when different sets of customers face different competitive alternatives.

60. The Commission considers that it is appropriate to consider MRI services funded by the DHB as a separate market from MRI services funded by the ACC, health insurance companies, or the individual patient. While the applicant includes the DHB's publically funded procedures in both the low tech and MRI markets, the Commission considers that the Waikato DHB constitutes a separate customer market in which Medimaging does not participate. This is consistent with previous Commission decisions, in which public and privately funded procedures were considered to constitute separate markets.

61. The Waikato DHB contracts out 100% of its acute and elective MRI work to the applicant, a contract it has held for 14 years. In 2012, the applicant performed approximately [ ] MRI scans under its contract with the DHB. Waikato DHB advised that it would re-tender the contract during 2013.

62. [

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63. Waikato DHB intends to send its RFP to a number of large radiology practices in Auckland, Wellington, Tauranga and Christchurch, as well as to the applicant. The DHB informed the Commission
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64. [ ]there is no need to consider this market any further because there would be no change in the competitive environment.

65. However, the DHB contract is relevant to the extent that it could provide guaranteed volume to a new entrant into the MRI market. This is further discussed in the competition analysis below.

66. The Commission does not consider that MRI services funded by the ACC are in the same market as DHB funded MRI services. Notwithstanding the quasi public nature of the ACC's funding arrangements, the Commission is of the view that the provision of ACC funded MRI services should not be treated any differently to those funded by private health insurance companies. The same MRI providers engage in competition with each other for ACC funded procedures as those that compete for MRI services funded privately or by health insurance. As noted above, this set of competitors is typically different from those that compete for DHB funded services.

67. The Commission therefore considers that it is appropriate to treat DHB-funded MRI services as being in a separate market to MRI services funded by the ACC, health insurance companies, or private patients.

Conclusion on market definition

68. The Commission considers that the relevant markets within which to assess the competition effects of the proposed acquisition are:

    68.1 the provision of privately funded low tech radiology services in Hamilton; and

    68.2 the provision of non-DHB funded MRI services in the Waikato region.

With and without Scenarios

With the acquisition

69. In the factual, a joint venture company would be formed which would acquire all of Medimaging's radiology assets. The joint venture would be the only supplier of MRI services in the Waikato region.

Without the acquisition

70. The applicants submitted
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75. In assessing the likely without scenario the Commission has assessed whether or not in the absence of the transaction, Medimaging's assets (or some of them) would likely exit the market. The Commission has published failing firm guidelines which set out the factors the Commission considers in making such an assessment. These include the following factors.:

    75.1 Does the firm have a trend of negative cash flows over a sustained period of time?

    75.2 Have there been ongoing and serious, but unsuccessful, attempts by the owner to rescue the business?

    75.3 On closure, will the firm's assets exit the market (either by becoming scrap or being put to an alternative use)?

    75.4 If not, is there a real chance of a third party acquiring the assets of the failing firm and using them to compete in the relevant markets?

    75.5 Have reasonable efforts been made by the failing firm to find a third party purchaser?

76. The Commission has applied this framework in a previous case involving high tech radiology services.

77. In Decision 631,[23] the Commission cleared Pacific Radiology Limited's purchase of Wellington Radiology Limited despite that acquisition leaving only one provider in the market post acquisition.

[23] Pacific Radiology and Wellington Radiology Limited (Commerce Commission Decision 631, 20 December 2007).

78. Critically, the Commission considered that Wellington Radiology was likely to exit the market on the basis that:

78.1 Wellington Radiology's sole radiologist was about to retire;

78.2 there was a need for Wellington Radiology to invest to significantly upgrade its equipment; and

78.3 Wellington Radiology had demonstrated to the Commission that despite its efforts it had been unable to attract another radiologist or partner other than Pacific Radiology.

79. As a result, the Commission concluded that regardless of whether the acquisition proceeded, Pacific Radiology was likely to be the only provider in the market such that the acquisition would cause no change in competition in the market.

80. Based on the information provided by the applicants, the Commission considers that Medimaging's situation is different from Wellington Radiology's.

81. While the Commission acknowledges that Dr Gilbert's workload is heavy and that he has concerns about the future viability of the business, on the evidence provided to the Commission:

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81.3.1

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[25]

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82. For these reasons the applicant has not satisfied the Commission that in the absence of the proposed acquisition, Medimaging (either as a whole or in part) would exit the market.

83. The Commission considers, therefore, that without the acquisition, [

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Competition analysis

Hamilton low tech market

84. In a merger between competitors, the Commission considers whether the merger would be likely to substantially lessen competition either through the merged entity:

    84.1 having the ability to unilaterally raise its product prices or lower the quality or service of its offering; and/or

    84.2 all other competitors in a market, collectively being able to increase market prices as a result of the accommodating responses of all market participants to a price increase.

85. For the reasons explained below, the Commission is satisfied that the proposed joint venture is unlikely to substantially lessen competition in the low tech market. The proposed joint venture would likely be prevented from raising prices or reducing the quality of its services because of:

    85.1 existing competition from Horizon Radiology and River Radiology;

    85.2 the countervailing power of ACC and public funding arrangements; and

    85.3 the ease of new entry.

[25]

[26] The Commission notes [
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The applicant's submissions

86. The applicant submitted that post acquisition the merged entity would be unable to increase prices due to:

    86.1 competition from Horizon and River Radiology;

    86.2 countervailing power from ACC and health insurance companies; and

    86.3 low barriers to entry.

Existing competition

87. Hamilton Radiology and Medimaging are the two largest providers of low tech radiology services in Hamilton. Industry participants noted that Hamilton Radiology and Medimaging compete directly with one another on a number of factors including price and service levels.

88. Table 1 shows the current estimated market shares in the Hamilton low tech market.

Table 1: Estimated market share for Hamilton low tech market 2012

Low Tech	CY 11/12			
	Revenue	Market share %	Volumes	Market share %
Hamilton Radiology	$ [ ]	[ ]	[ ]	[ ]
Medimaging	$ [ ]	[ ]	[ ]	[ ]
Combined entity	$ [ ]	[ ]	[ ]	[ ]
Horizon Radiology	$ [ ]	[ ]	[ ]	[ ]
River Radiology	$ [ ]	[ ]	[ ]	[ ]
Total	$ [ ]	100	[ ]	100

89. Table 1 shows that the proposed joint venture would have a market share of [ ] and the three-firm concentration ratio would increase from [ ]% to [ ]%.

90. The Commission considers that while the proposed joint venture would have a significant share of the low tech market in Hamilton, it would face significant competition from existing low tech providers in the market, both of whom have the ability to expand.

91. Also, the Commission notes that conditions of entry and expansion into the low tech market are low, as evidenced by the recent successful entry by River Radiology. River Radiology entered the Hamilton market in mid 2012 and has been in operation for approximately six months. It offers both ultrasound and x-ray services. In the short time it has been in the market it has gained a market share of [ ]%. River Radiology does not charge a co-payment for ACC funded procedures.

92. The Commission considers that River Radiology would be likely to provide constraint on the merged entity. The owner of River Radiology, Dr Peter Gendall, considers that

[ ]. Dr Gendall has an established referral base of specialists, GPs and midwives.

93. Horizon Radiology entered the Hamilton Market in 2008 offering ultrasound services. Horizon stated that one of the key drivers behind its entry into Hamilton was [ ]. Horizon opened a second Hamilton Branch in September 2012; it has two Hamilton branches and does not charge any co-payment for its services. Horizon advised the Commission that it has had a "good response" to its entry. [ ].

94. Horizon's [ ]give it the ability to expand relatively quickly.

Countervailing power of purchasers

95. Approximately [ ]% of Hamilton Radiology's low tech procedures are funded by the ACC, with [ ]% funded by the DHB or other public agencies. ACC funded procedures account for approximately [ ]% of Medimaging's low tech procedures, with DHB or other publicly funded procedures accounting for approximately [ ]%.

96. Post acquisition, privately funded low tech procedures (funded either by health insurance companies or by the patient), would account for approximately [ ]% of the merged entity's low tech procedures with ACC funded procedures accounting for approximately [ ]%, the remaining [ ]% of procedures are DHB or otherwise publicly funded.

97. As with high tech imaging procedures, low tech services such as x-rays paid for by ACC are covered under a nationwide price stipulated by ACC. However, unlike high tech services, low tech providers are able to charge a co-payment to patients.

98. Medimaging currently charges a co-payment to certain patients.[27] Hamilton Radiology charges a co-payment for all patients. However, it does not charge a co-payment at its recently opened St Andrews Clinic. [ ]

99. Maternity ultrasounds account for approximately [ ]% of the merged entity's remaining publically funded low tech services. Maternity services are administered by the Ministry of Health under a nationwide agreement and providers are unable to charge a co-payment. The remaining services are provided to the DHB as 'overflow' work for when the public hospital low tech facilities face capacity constraints.

100. The Commission considers that through ACC's nationwide pricing arrangements, low tech imaging providers are to some extent price takers. As previously noted, as ACC does not face competition, it is better placed than the insurance companies to make

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27 Medimaging does not charge a co-payment to patients under 5, over 65, school students, and tertiary students.

take-it-or-leave-it offers to radiologists since it does not risk losing its customers should the radiology services that it funds be delayed. However, providers can (and do) apply a co-payment, which must be borne by the patient. The Commission notes however that patients who require an ACC funded procedure can go to either River Radiology or Horizon and obtain the procedure without paying this co-payment.

101. The Commission considers that ACC is likely to be able to substantially influence the price it pays providers of low tech services through its national pricing arrangements. Therefore it is likely to have countervailing power. Likewise, the national set pricing for maternity low tech services is likely to give purchasers of these services similar countervailing power.

Conditions of entry

102. Consistent with the Commission's previous decisions, entry and expansion are likely to be straight forward in the Hamilton low tech services market.

102.1 The recent entry of Horizon and River Radiology demonstrates the ease of entry. The Commission notes that both Horizon and River Radiology have ceased charging a surcharge on ACC funded procedures.

102.2 The capital cost of equipment to establish a low tech practice is low – $200,000-$300,000 – relative to expected revenues. Evidence gathered by the Commission indicates that the installation of a single x-ray and ultrasound facility can return revenue of approximately $[ ]per year.

102.3 It is not necessary to have a qualified radiologist on site at all times (although some practices prefer this, for example [ ]), as scans can be read and reported on remotely ([ ]).

Conclusion

103. The Commission considers that despite its high post acquisition market share, the proposed joint venture would not likely have the market power to unilaterally increase prices in the Hamilton low tech market. Therefore the proposed acquisition is unlikely to have the effect of substantially lessening competition in the Hamilton low tech market. A substantial proportion of patients would be insulated from price increases due to nationwide funding arrangements, and those patients who are not, would have a choice of providers who actively compete on price. The proposed joint venture would also be constrained by straightforward conditions of entry.

Waikato Non-DHB MRI market

104. Following the acquisition the proposed joint venture would be the sole provider of MRI services in the Waikato region.

105. The applicant must satisfy the Commission that there would not be a likely substantial lessening of competition if the acquisition proceeds, compared to the situation if the acquisition does not proceed. As explained above, the likely situation without the acquisition involves [ ].

106. For the reasons explained below, the applicant has failed to satisfy the Commission that there is no likely substantial lessening of competition in the Waikato non-DHB MRI market.

The applicant's submissions

107. The applicant submitted that post acquisition, the merged entity would be unable to increase prices due to:

107.1 substantial countervailing power from Waikato DHB, ACC and health insurance companies;

107.2 the ability of privately funded individuals to travel outside of the Waikato region for their MRI scan;

107.3 few barriers to entry as evidenced by Medimaging's entry in 2006; and

107.4 the low barriers to expansion faced by, for example, River Radiology to expand from low tech to high tech equipment and purchase a MRI machine.

108. The applicant submitted that despite the common ownership between Hamilton Radiology, Midland MRI and Medimaging as a result of the joint venture, the two MRI providers would continue to operate separately, with independently set prices, referral bases, and customers.

109. The applicant further submitted that, in any event, there is little price competition between Midland MRI and Medimaging for the provision of MRI scans. It stated that price differences between competing providers are not taken into consideration by specialists who refer on quality and relationship grounds.

Incentive on parties to compete

110. As indicated above, the applicant has informed the Commission that the newly formed joint venture would continue to be run independently of Midland MRI, with its existing management and decision making structures.

111. However, the Commission considers that due to the extensive shareholding that Hamilton Radiology and Midland MRI (hereafter 'Midland MRI') would have in the joint venture, they would be able to bring real pressure to bear on the decision making process of the joint venture. Further, the Commission notes that [ ]. This suggests that the parties to the joint venture are not envisaged as being in competition with each other.

112. Further, if Midland MRI and the joint venture are run as independent entities, the Commission considers that Midland MRI would face less incentive to compete with the joint venture as it would continue to receive the revenue from any patients which were treated at the joint venture.

113. A purchaser of MRI services would therefore be unable to play Midland MRI and the joint venture off against one another as the parties to the joint venture would be unlikely to act in a way that would disadvantage either the joint venture, or any of the shareholding parties.

Existing competition

114. As outlined in Table 2, the proposed joint venture would be the sole provider of MRI services in the Waikato region post acquisition.

Table 2: Estimated market share for Waikato Non-DHB MRI market 2012 by number of procedures performed

	ACC	%	Health Insurance	%	Privately funded	%	Total	%
Midland MRI	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Medimaging	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Merged entity	[ ]	100	[ ]	100	[ ]	100	[ ]	100
Totals	[ ]	100%	[ ]	100%	[ ]	100%	[ ]	100%

115. The applicant submitted that there is currently limited competition between Medimaging and Midland MRI and that this will not change post acquisition. Rather, those specialists who currently refer to Medimaging will continue to do so (and vice versa) in the factual.

116. The Commission accepts that the professional relationships between referring specialists and radiologists play an important role in determining which MRI provider a patient is sent to. Also, the particular medical issues facing the patient may dictate which radiologist performs or reports the MRI scan.

117. The Commission considers that while price may not be the primary consideration which determines which provider is chosen, it is not irrelevant. For instance, Southern Cross seeks to encourage its customers to use particular service providers by, for example, providing them such benefits as direct payment of bills. Moreover, competing MRI providers are likely to invest in non-price elements of competition such as the quality of the MRI machines (1.5 tesla v 3.0 tesla) and the range of sub-specialities offered.

118. The Commission also notes that patients who fund the cost of their MRI procedure themselves, price is likely to be an important consideration in the choice of MRI provider. While the volume of privately funded MRI procedures performed by the parties is not large (around [ ] scans), the cost of an MRI procedure can be high.

119. The Commission considers that post acquisition there would be a loss of existing competition for the provision of non-DHB funded MRI procedures. Post acquisition, both Midland MRI and Medimaging would not be incentivised to compete for

patients as either would benefit from any patients that are treated by the joint venture.

Potential competition

120. The Commission considers that with the acquisition, the potential for competition from new entrants is unlikely to provide sufficient competitive constraint on the combined entity.

121. In order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other display of market power must be likely in commercial terms; sufficient in extent to cause market participants to react in a significant manner; and timely – feasible within two years from the point at which market power is first exercised.

122. The Commission is also not satisfied that timely entry of a sufficient scale is likely to occur within the next two years. While it is possible that a new provider may win the DHB contract, given the length of time before the contract is to be let and the uncertainty about its outcome we cannot be satisfied that timely entry will occur.

Conditions of entry

123. In Decision 518[28], the Commission considered that the conditions of entry into the high tech radiology market in the Wellington region were "moderate to high". The Commission has found that similar conditions of entry apply in respect of this proposed acquisition. Each is discussed below.

Cost of entry

124. Industry participants have stated that entry into MRI has a high capital cost and potentially risky return on investment (a portion which would be sunk) given the demand in the Waikato region.

125. In terms of cost, the Commission estimates that the cost of installing and operating a standalone MRI practice would be in the order of $3 million to $5 million in capital costs, with annual running costs of approximately $750,000.

126. One industry participant said that a population of at least 50,000 people is necessary to justify the investment in a MRI machine. Other industry participants either said that the population required is much higher than 50,000 per machine or is too difficult to estimate.

127. Currently, the Waikato region has four MRI machines servicing a population of approximately 250,000 to 300,000.

128. The Commission has also been informed that the number of MRI scans performed is growing, and that spare capacity in the market will quickly be taken up as demand for the procedure increases.

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[28] Pacific Radiology Limited and Wakefield Radiology Limited above n 21.

129. The MRI to population ratio in the Waikato region (along with growth in the demand for MRI services) suggests scope for viable entry; however, there is the further consideration of actually being able to access demand, the bulk of which is DHB work. This is considered in the next section.

Access to DHB work

130. As stated above, all of the DHB funded MRI work in the Waikato region is currently carried out by Midland MRI, under an exclusive contract with the Waikato DHB. The DHB has informed the Commission that this contract will be put out to tender late in 2013, in part to coincide with the expansion of the Waikato Hospital campus.

131. The Commission interviewed a number of radiology providers (both Waikato based low tech providers, and high tech/low tech providers based in other regions) to ascertain whether or not they would consider entering MRI markets in the Waikato.

132. River Radiology is a competitor in the low tech market. [ ].

133. TRG operates a number of low tech and high tech practices around the North Island. [[29]].[30]

134. [ ] also highlighted that having access to DHB MRI work provides important volumes which underpin the investment in a MRI facility.

135. The Commission considers that DHB funded MRI work provides a guaranteed volume of patients which would help to justify the investment in a MRI practice. Further, the Commission has been informed [ ].

136. The Commission considers that [ ].

137. While the Commission acknowledges that Medimaging has been able to build up a successful MRI practice without having access to the DHB funded work, Medimaging specialises in Musculoskeletal (MSK) MRI services, which constitute a large volume of

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30 [ ].

ACC funded procedures. Subsequently, a large amount of Medimaging's volumes come from ACC. The Commission notes that Dr Gendall of River Radiology is also a MSK specialist.

138. As noted at paragraphs 145 to 148, the Commission considers that access to a referral base of specialists is an important condition of entry. The Commission considers that Dr Gilbert of Medimaging is likely to keep the majority of his referral base due to his expertise and experience. A new entrant would therefore need to acquire some DHB work to justify the investment.

139. The Commission notes that the Waikato DHB has signalled its intention to seek competitive tenders for its MRI volumes in the next 12 months. The DHB has stated that its preference is to have a single point of contact for this contract and it also requires that the successful provider has radiologists who are working in the Hospital. The applicant fits these conditions and the Commission notes that the applicant has held this contract for 14 years.

140. Accordingly, the Commission cannot be satisfied that a new entrant would win the contract, either in full or as part of a consortium bid, given the length of time before the contract is to be let and the uncertainty about its outcome. The Commission considers that access to DHB volumes by a new entrant or a low tech provider looking to expand would be difficult post acquisition.

Availability of radiologists

141. A number of industry participants highlighted the importance (and difficulty) of attracting a suitably qualified and experienced radiologist to a new MRI practice. Unlike for low tech procedures, it is much more important for a radiologist to be on site for MRI procedures.

142. In Decision 518, the Commission concluded that the lack of radiologists is likely to represent a moderate barrier to entry.

143. The information about the number of radiologists available provided to the Commission suggests that there is still a shortage of radiologists.[31] However, there is some suggestion that the shortage may ease in future years, although that is far from conclusive.

144. Overall, the Commission continues to be of the view that while there may be some easing of the radiologist shortage, it is likely to be a moderate barrier to entry.

Importance of referral relationships

145. In Decision 518, the Commission considered that the need to establish an adequate referral base is likely to be an impediment to entry.

[31] [ ], an Auckland based provider of MRI services stated that while there is a lot of interest in radiology positions, there is a lack of quality applicants.

146. A number of parties informed the Commission that referral relationships are formed early in professional careers, are localised and are often formed in the public hospitals.

147. A number of industry participants spoken to by the Commission highlighted the importance of the relationships with referring specialists as the key competitive differentiator of MRI providers and one of the main reasons why entry into the Waikato is not feasible.[32]

148. The Commission considers that the need to establish an adequate referral base is likely to present an impediment to entry.

Potential expansion by existing low tech radiology providers

149. Horizon, a competitor in the low tech market, [ ].

150. As stated earlier, [ ].

Potential expansion by large high tech practices outside the Waikato region

151. During the course of its investigation, the Commission questioned a number of radiology providers located throughout New Zealand on their intentions regarding the Waikato MRI market including [ ].

152. The Commission notes that no radiologist apart from Dr Gilbert has left Hamilton Radiology or Midland MRI in the past 10 years, [ ]. The Commission considers that a radiologist who did leave the applicant to start their own MRI practise would face the same problems as Dr Gilbert of Medimaging with a lack of collegial support and work/life balance.

153. The Commission cannot be satisfied that entry by an existing Hamilton Radiology or Midland MRI shareholder is likely.

Conclusion on potential competition

154. The Commission cannot be satisfied that potential entry into the Waikato non-DHB MRI market would be sufficient to constrain the merged entity. The combination of

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32 [ ].

high capital costs, uncertainty over access to the DHB contract, and the shortage of radiologists with established referral relationships are likely to deter entry.

155. Furthermore, [ ], the Commission has been unable to identify any existing low or high tech radiology providers who would consider entering into the Waikato MRI market.

Countervailing power of customers

156. A merged firm's ability to increase prices profitably may be constrained by the ability of certain customers to exert substantial influence on negotiations. However, in order for a customer to have countervailing power it must have more than the ability to switch from one supplier of a product to another (as this is considered when assessing effective remaining competition). Similarly, a customer's size and commercial importance is not sufficient in itself to amount to countervailing power.

157. Instead, countervailing power exists when a customer possesses special characteristics that give that customer the ability to substantially influence the price the merged firm charges. These special characteristics can include the threat of switching to suppliers of the same product in different geographic markets, the threat of switching to suppliers of other products it acquires from the merged firm, or if the customer is able to self supply the product or to sponsor new entry.

158. The applicant submits that ACC and health insurance companies (in particular Southern Cross) are able to exert a significant degree of countervailing power and that the cumulative effect of these customers would be sufficient to constrain the ability of the merged entity to increase prices for MRI scans.

Countervailing power of the ACC

159. The Commission considers that the ACC is likely to be able to substantially influence the price that the joint venture charges for these MRI procedures. The ACC's ability to set fixed, national prices for the MRI services it funds, coupled with the inability of providers to impose any form of co-payment on MRI scans limits any price setting ability the joint venture is likely to have post acquisition.

160. As with low tech services, ACC sets national prices that are the same across all geographic regions. ACC reviews its prices each year and makes adjustments based on changes in the Consumer Price Index (CPI) and the Labour Cost Index (LCI). Under ACC's contracts with MRI providers, providers cannot charge a co-payment or surcharge to the patient for the procedure.

161. Industry participants considered that the ACC is likely to have a significant degree of countervailing power. ACC sets a national price on a 'take it or leave it' basis and has recently[33] imposed a 20% reduction in its contracted prices.

[33] In the period from December 2009 to August 2010, ACC progressively lowered the prices paid to high tech imaging providers by 20%, ACC media release dated 09 November 2009.

162. ACC expressed no concerns regarding the proposed acquisition due to its ability to set prices at a national level.[34]

163. The Commission considers that post acquisition, the proposed joint venture would have no ability to impose a price increase for ACC funded procedures. The Commission considers that ACC has special characteristics that give it bargaining power even when faced with a sole provider. As previously noted, ACC itself does not face competition in the provision of its services and, as such, is well-placed (and better placed than the insurance companies) to make take-it-or-leave-it offers to radiologists since it does not risk losing its customers should the radiology services it funds be delayed. It follows that ACC providers are largely 'price takers' and must accept the ACC national price.

Countervailing power of health insurance companies

164. The applicant submitted that without the acquisition, Southern Cross would be unable to credibly threaten to contract solely with Medimaging in the face of a price increase by Midland MRI. This is because [ ].

165. While the Commission recognises that [ ], Southern Cross is nonetheless positioned to play the two service providers off each other by way of the portion of work it guarantees each of them.

166. Southern Cross accounts for around [ ]% of the health insurance market in New Zealand. The applicant submitted that due to its size, Southern Cross would be able to exert significant negotiating strength over the combined entity, preventing it from increasing prices.

167. Currently, Southern Cross funds MRI procedures (and other high tech imaging procedures) in two ways. The first of these is on a 'fee for service' basis, whereby the insured patient attends the imaging provider of their choice, pays the resulting invoice, and then submits that invoice to Southern Cross for reimbursement. Under this model, Southern Cross has no visibility over either the cost or the provider chosen until the reimbursement is lodged by the patient.

168. Southern Cross also operates a Affiliated Provider Scheme (APS). Under this scheme, Southern Cross negotiates set contract rates with treatment providers and awards them affiliated provider status. Patients insured by Southern Cross are then able to be pre-approved for treatment at affiliated providers and Southern Cross is billed directly by the provider for the cost of the treatment, removing the need for reimbursement.

169. Generally, in its APS, Southern Cross sets a negotiated price that is fixed for a particular term, but effectively guarantees a radiologist significant volumes (through

[34] Interview with ACC, 18 December 2012.

Southern Cross' large share of the health insurance market) and upfront payment, reducing some of the business risk the radiologist faces.

170. Southern Cross informed the Commission that it seeks to have contracts with as many providers in a region as possible and that it sees a benefit in having multiple providers in a region to provide healthy competition. Having multiple providers gives referring specialists (and therefore patients) the choice of providers and accommodates the particular preferences and relationships of specialists.

171. In the Waikato non DHB MRI market, Southern Cross has an APS contract with both Midland MRI and Medimaging. Medimaging offers [ ]. However, Southern Cross considers that it would be unable to prevent price increases post acquisition given that it would no longer have the choice of two MRI providers when negotiating the terms of the APS contract.

172. Southern Cross advised the Commission [ ]. Post acquisition, Southern Cross considers that it would lose this ability. Overall, Southern Cross considers that having two providers is more advantageous than one. Southern Cross further noted that the proposed joint venture would result in it losing its current ability to 'price check' between Midland MRI and Medimaging.

173. Sovereign accounts for approximately [ ]% of the private health insurance market in New Zealand. Sovereign considers that [ ].

174. Sovereign operates on a wholly 'fee for service' basis and all MRI scans undertaken for its policy holders are reimbursed post procedure. As a consequence, Sovereign has no visibility over the cost or provider of a MRI procedure until the patient submits the invoice for reimbursement. Sovereign stated that its policies are generally subject to a 'reasonable cost' threshold. This means that if the invoice is too high (relative to prices charged for similar procedures) and if this is not due to the particular medical circumstances, Sovereign will only reimburse part of the invoice.

175. Sovereign noted that [ ].

176. NIB Health Funds Limited, owner of Tower Health Insurance, stated that [

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Do health insurance companies have countervailing power?

177. In 2011, health insurance funded MRI procedures accounted for [ ]% of the applicants' non DHB funded MRI work, and [ ]% of Medimaging's non DHB funded MRI work. Post acquisition, health insurance funded MRI procedures would account for approximately [ ]% of the joint venture's non DHB MRI work.

178. As outlined above, in order for a customer to have countervailing power, it must be able to exert substantial influence on the price charged by the merged firm. The Commission does not consider that any of the health insurance companies (including Southern Cross) has special characteristics that would enable them to have such an influence.

179. The applicants submitted that Southern Cross has substantial influence over the price it is charged for MRI services, through its sizeable number of policy holders and its ability to aggressively negotiate lower prices through its affiliated provider scheme.

180. Further, the applicants submitted that if faced with a price increase for MRI procedures in the Waikato, Southern Cross has the option of sending patients to Auckland for MRI procedures.

181. The Commission considers that through its size and the volume of work it provides to MRI providers, Southern Cross negotiates from a position of strength when entering into affiliated provider contract negotiations with MRI providers. However, the Commission does not consider that Southern Cross would be able to substantially influence the prices charged by the joint venture post acquisition.

182. Medimaging informed the Commission that [ ]. This may indicate that Southern Cross' countervailing power may not be as high as it imagines even in a market where it has a choice of providers and the ability to price check between them. [ ].

183. [ ] Southern Cross would only be able to respond to any price increases by imposing a higher price on its members through premiums or co-payments, or requiring patients to travel. Southern Cross informed the Commission that [ ]. The Commission considers that if it were to increase its reliance on

such a policy in the face of price increases in the Waikato, it would simply be passing on the cost of any price increase to its members.

184. Health insurance providers informed the Commission that accessibility of service is a key driver of health insurance sales. This means that they are incentivised to provide its policy holders with access to MRI services in the city in which they reside. Justin Vaughan, Clinical Director of Southern Cross Medical Care Society, informed the Commission that
[[35]].

185. As noted above, the Commission considers that the proposed acquisition would be unlikely to lead to a substantial lessening of competition in the market for low tech imaging services in the Waikato, with a number of alternative competitors and relatively low barriers to entry. The Commission does not consider that Southern Cross would be able to credibly threaten to switch to other providers of low tech services in the event that the joint venture increased the price of MRI scans in order to attempt to discipline a price increase in MRI services.

186. This is because for low tech services, Southern Cross has no affiliated provider or other contract arrangements with radiology providers. All low tech procedures are carried out on a fee for service basis with the patient seeking reimbursement from Southern Cross for the cost of the procedure. Southern Cross therefore only has visibility on the cost and provider of the service once the procedure has been carried out and the patient charged.

187. The Commission also does not consider that Southern Cross would be able to facilitate new entry into the Waikato MRI market, either through sponsoring a new entrant or investing in a MRI facility itself.

188. In 2011/12, Southern Cross funded [ ]MRI procedures across the applicants and the target, with a total cost to Southern Cross of $[ ].

189. As discussed further above, the estimated capital cost of investing in a standalone MRI facility is in the order of $3 – 5 million. The Commission does not consider that Southern Cross volumes alone would be sufficient to encourage new entry and any attempt by Southern Cross to sponsor entry would face similar difficulties to a de novo entrant in attracting a sufficiently qualified and experienced radiologist. Further,
[ ].

190. Contrary to Southern Cross, other health insurance providers such as Tower and Sovereign do not have an affiliated provider or similar scheme. All MRI services funded by these providers are done so on a reimbursement basis with patients meeting the upfront cost of the procedure and being reimbursed by the insurance

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provider. These health insurance providers have no visibility over the price (or provider) of the MRI procedure until they receive the request for reimbursement.

191. As a result, health insurance companies such as Tower and Sovereign cannot play competing providers against each other as they are unable to direct where their policy holders go.

Conclusion on countervailing power

192. The Commission considers that health insurance companies are unlikely to have sufficient countervailing power to ensure that their bargaining position is materially unaffected by the removal of Medimaging as a competitive alternative. In the case of Southern Cross, the Commission considers that it does not have either the ability to discipline a price increase through the use of countervailing power in a related market, nor the ability to sponsor entry.

193. The Commission therefore considers that it cannot be satisfied that health insurance companies would be able to exert substantial influence on the price charged by the joint venture for MRI procedures and as a result are unlikely to have sufficient countervailing power to constrain the merged entity.

Privately funded MRI scans

194. While the majority of MRI procedures carried out in the Waikato region are funded by a third party (either ACC, the DHB or health insurers), the Commission recognises that there are a number of procedures that are funded by the patient themselves. While this number is not large (approximately [ ] procedures in 2012), the cost of each procedure can be significant, ranging from approximately $[ ]to $[ ] per procedure.

195. The Commission considers that with the acquisition, those patients who fund the cost of their MRI procedure themselves would be least able to respond to an increase in MRI prices. Without the acquisition, these patients would have a choice as to which MRI provider they went to.

Conclusion on competition analysis – Waikato non-DHB MRI market

196. The proposed acquisition would result in the number of MRI providers in the Waikato region decreasing from two to one for non-DHB funded MRI procedures.

197. The Commission is satisfied that ACC, by its national pricing framework, is able to exert substantial influence over the price it is charged for MRI procedures. The Commission therefore considers that the joint venture would be unable to increase prices for ACC funded MRI scans post acquisition.

198. The Commission is not satisfied that health insurance companies such as Southern Cross and Sovereign have the special characteristics necessary for them to be able to influence the price they are charged by the joint venture for MRI procedures. The Commission considers therefore that for health insurance funded procedures

(approximately [ ]% of non-DHB funded procedures), the joint venture would face no constraint from customers.

199. Further, and for similar reasons, the Commission considers that privately funded MRI procedures would also face no constraint from customers as patients who are meeting the full cost of the procedure themselves will have no alternative provider in the region.

Overall Conclusion

200. The Commission is not satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the market for the provision of non-DHB funded MRI services in the Waikato region.

201. Under section 66(3)(b) of the Commerce Act 1986, the Commission declines to give clearance for Medimaging Radiology Limited (a new company whose shareholders will be Hamilton Radiology Limited, Midland MRI Limited and Medimaging Limited) to acquire the assets of Medimaging Limited.

Dated this 27th day of March 2013

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Dr Mark Berry

Chair