

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

Date: 5 December 2006

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

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

## PART I: TRANSACTION DETAILS

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

**1.1** The business acquisition for which clearance is sought is the acquisition by Elite Truck Rentals Limited (**Applicant**) of 100% of the assets of ORIX Truck Rental (**ORIX TR**), a division of ORIX New Zealand Limited (**ORIX**).

**1.2** [ ]

### The Person Giving Notice

### 2. Who is the person giving this notice?

**2.1** This notice is given by:

Elite Truck Rentals Limited  
781 Great South Road  
Penrose, Auckland

Telephone: (09) 526 0779  
Facsimile: (09) 579 3313  
Attention: Blair Walter  
Email: blair@trgroup.co.nz

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

Simpson Grierson  
88 Shortland Street  
Private Bag 92518  
AUCKLAND

Telephone: (09) 358 2222  
Facsimile: (09) 307 0331  
Attention: Peter Hinton/Olivia Sanderson  
Email: peter.hinton@simpsongrierson.com

olivia.sanderson@simpsongrierson.com

## Confidentiality

### 3. Do you wish to request a confidentiality order?

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

No.

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

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

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

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

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

**3.2.4** Confidentiality is sought under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:

- (a) the information is commercially sensitive and its disclosure would be likely to unreasonably prejudice the commercial position of the parties;
- (b) the Applicant believes that there are no other considerations which render it desirable in the public interest to make the information available under the Official Information Act 1982.

## Details of the Participants

### 4. Who are the participants?

**4.1** The acquirer is:

Elite Truck Rentals Limited  
781 Great South Road  
Penrose, Auckland

Telephone: (09) 526 0779  
Facsimile: (09) 579 3313  
Attention: Blair Walter  
Email: blair@trgroup.co.nz

**4.2** The vendor is:

ORIX New Zealand Limited  
32 Manukau Road  
Newmarket, Auckland

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

**5.** Who is connected to or associated with each participant?**5.1 Applicant group/associates:**

The Applicant has never traded. It is an entity which will at the time of acquisition be affiliated with, and substantially influenced by, Andrew Carpenter. Andrew Carpenter is also affiliated with, and substantially able to influence, TR Group Limited (**TRG**). Interests affiliated with Andrew Carpenter own approximately 15% of the shares in TRG and he is the Managing Director of TRG. A corporate structure diagram for TRG and for the Applicant is set out in Appendix 1.

For commercial reasons, the Applicant intends to operate the ORIX TR business independently of other businesses with which the Applicant is affiliated. However, the Applicant accepts that the application will be processed on the same basis as would apply if TRG were the Applicant and that there is an intended aggregation of the businesses of TRG and ORIX TR, even though the different shareholding interests promote competition.

While not legally the case, where this application refers to the Applicant and/or to any interconnected body corporate of the Applicant, the Applicant intends such terminology to include TRG and any interconnected body corporate of TRG.

**5.2 Target company group/associates:**

Refer Appendix II for corporate structure diagram.

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

**6.1** Except as set out in section 5, the Applicant is not aware of any participant or any interconnected body corporate of any participant holding any beneficial interest in any other market participants.

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

**7.1** Except as set out in section 5, the Applicant is not aware of any links between either participant or any interconnected body corporate of either participant and any other market participants.

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

**8.1** Except as set out in section 5, the directors of the Applicant are not directors in any other companies that are involved in the markets in which ORIX TR operates.

**9.** What are the business activities of each participant?

**9.1** The Applicant is a shell company. TRG is an entity substantially involved in truck and trailer leasing and rental services.

**9.2** The ORIX Australia Group provides vehicle lease and fleet management services in Australia and New Zealand with ORIX New Zealand running the New Zealand operations. The proposed transaction is for the New Zealand Truck Rental division of the business, which comprises truck and trailer rental services. The ORIX Truck Rental division does not include any truck lease or truck management services. The term "lease" is discussed later in this application.

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

**10.1** The Applicant believes that it can make a success of ORIX TR as a stand alone operation despite ORIX's experiences.

**10.2** The acquisition of ORIX TR will enable the Applicant to expand its operations and service offerings. The ORIX TR business would complement strongly the capabilities and existing resources of TRG and the quality and efficiency of services provided to customers would subsequently be enhanced. The Applicant also anticipates that the acquisition would result in synergies between TRG and ORIX TR, including fleet pooling, utilisation efficiencies and efficiencies from shared administration services.

## PART II: IDENTIFICATION OF MARKETS AFFECTED

### Horizontal Aggregation

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

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

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

are both engaged?

**11.1.1** TRG and ORIX TR are both engaged in the New Zealand market for the provision of vehicle rental services.

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

**11.2** Please identify for each market:

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

### Product Market

#### *Introduction*

**11.2.1** The Applicant believes the relevant product market is the market for the provision of heavy commercial and light commercial/passenger vehicle leasing and rental services, where such terms have the meanings generally adopted by the Applicant. However, for the purposes of this application the Applicant is prepared to proceed on the basis of a narrower product market being that for the provision of heavy commercial and light commercial/passenger vehicle rental services, where that term has the meaning generally adopted by the Applicant.

#### *Commission's Previous Decisions*

- 11.2.2** The Commission considered the issue of product market definition in the fleet leasing industry in Decisions 478, 584 and 585 (collectively, **Decisions**). In Decision 478, the Commission considered the proposed acquisition of Hertz Fleetlease by Custom Fleet (NZ) Limited. Decision 584 considered the proposed acquisition of Custom Fleet (NZ) Limited by GE Fleet New Zealand and in Decision 585 the Commission considered the acquisition by ORIX New Zealand Limited of the business of Truck Leasing Limited trading as Esanda Fleetpartners.
- 11.2.3** In the Decisions the Commission found that the relevant product market was the market for the provision of fleet leasing services.
- 11.2.4** In the context of the Decisions, fleet leasing services referred to agreements entered into by financiers with customers to fund the acquisition **or use** of one or more motor vehicles by providing lease solutions in relation to all or any of the customers' requirements. The Commission adopted the term "fleet leasing". The word "fleet" has connotations which might exclude leases of single vehicles. However, it is clear that this was not intended as many participants in the market considered by the Commission were engaged in the leasing of single vehicles. The Applicant will refer to "vehicles" instead of "fleet".
- 11.2.5** Whilst it is not necessary for it to be so, the Applicant believes that the Decisions are likely to be positively determinative of the present application. There are two probable reasons for this. The first is that, when the Commission was referring to "leasing" it was using the term in a manner which included renting. By and large the distinction was not considered relevant. The Commission treats the lease market as comprising finance leases and operating leases, the distinction being that the user takes a residual value risk under a finance lease. The Commission has never indicated that operating leases must be of some minimum terms and nor are they as a matter of fact. [ ]
- 11.2.6** The Applicant is unaware of any reasons why the Commission would have determined that leasing services were in a different market to rental services. The same supply-side substitutability considerations which resulted in operating and finance leases being in the same market would apply to rental services also being in the same market.
- 11.2.7** The second possible reason is that, even if rentals are not in the same market as leases, for reasons noted below, the same circumstances which caused the Commission to determine that there was a leasing market embracing services for both heavy commercial and light commercial/passenger vehicles are present

in the market for vehicle rental services such that there is a rental market which embraces as a minimum services for both heavy commercial and light commercial/passenger vehicles.

*Market Includes Leasing and Rental*

**11.2.8** The Applicant does not believe that, for the purposes of this application, the relevant product market is as narrow as the market for vehicle rental services. The Applicant believes that the relevant product market is the market for the provision of heavy commercial and light commercial/passenger vehicle leasing **and** rental services. However, as noted, the Applicant is prepared, whilst reserving the necessary rights, to accept that the Commission may wish to proceed conservatively on the basis of a separate market for rental services. However, it might assist the Commission if we elaborate on this and we do so below.

*Supply-side Substitutability between Leasing and Rental*

**11.2.9** From a commercial perspective, the Applicant regards vehicle leasing and rental services as a single market because it and others operate seamlessly in both segments and because of the high supply-side substitutability. Supply-side switching is more than feasible. It is a reality. There is little, if any, sunk cost involved with switching between vehicle leasing and rental services. The provision of finance is the same for vehicle leasing and rental services. Presently, there are a number of market participants that provide both vehicle leasing and rental services. Indeed, ORIX is currently operating a vehicle leasing business as well as rental services.

**11.2.10** In the Decisions the Commission considered the substitutability of operating and finance leases (the key distinguishing factor being the duration of the lease<sup>1</sup>). The Commission found high supply-side substitutability<sup>2</sup> and that consequently vehicle leasing services generally involve both operating and finance leases. Similarly, the key differentiating factor between vehicle leasing services and rental services is the term of the contract. If profitable, supply-side switching would occur within a short timeframe and the Applicant therefore submits that there is high supply-side substitutability between vehicle leasing and rental services.

*Demand-side Substitutability*

**11.2.11** On the demand side in Decision 585, 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

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<sup>1</sup> Paragraph 31 Decision 584

<sup>2</sup> Paragraph 57 Decision 584

substitute between the two on the demand side, and thus both fell within a single fleet leasing market.<sup>3</sup>

**11.2.12** Although many customers' requirements when renting a vehicle may differ from other customers' requirements when leasing a vehicle, there is considerable demand-side substitutability. Many operators consider the option of both leasing and renting. The Applicant submits that the high supply-side substitutability, as well as the demand-side substitutability, of vehicle leasing and rental services indicates that vehicle leasing and rental services fall within the same market. Furthermore, even if there were no demand side substitutability, the same circumstances which caused the Commission in the Decisions to conclude 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 market, would apply equally in the context of the vehicle rental services market.

*Vehicle Rental Only*

**11.2.13** Whilst reserving the necessary rights, in order to assist the Commission, the Applicant proceeds with the application on the basis that the market is the market for the provision of vehicle rental services (excluding vehicle leasing services).

*Vehicle Includes Heavy Commercial and Light commercial/passenger vehicles*

**11.2.14** In Decision 585 the Commission considered that:

... both the provisions 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.<sup>4</sup>

**11.2.15** The Commission reached this conclusion on the premise of strong supply-side substitutability between the provision of fleet leasing services for heavy commercial vehicles and the provision of fleet leasing services for light commercial/passenger vehicles.<sup>5</sup>

**11.2.16** The Applicant believes that there is the same level of supply-side substitutability between the provision of rental services for heavy commercial vehicles and the provision of rental services for light commercial/passenger vehicles in the context of the vehicle rental market.

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<sup>3</sup> Paragraph 65 Decision 585

<sup>4</sup> Paragraph 66 Decision 585

<sup>5</sup> Paragraph 65 Decision 585



**11.2.17** The Applicant therefore considers that both the provision of vehicle rental services for heavy commercial vehicles and the provision of vehicle rental services for light commercial/passenger vehicles fall within a single market.

*Conclusion on Product Market*

**11.2.18** While reserving the necessary rights, the relevant product market "accepted" by the Applicant for the purposes of this Application is the provision of heavy commercial and light commercial/passenger vehicle rental services.

### **Geographic Extent**

**11.2.19** The Commission previously indicated in the Decisions that the geographic extent of the market for fleet leasing services is national. The Applicant concurs with this approach and considers that the same reasoning from those Decisions applies in the market for the provision of vehicle rental services. Vehicle rental companies conduct financial provisioning from a centralised head office, and use a network of bases/agents to provide many of the customer-facing business operations. Both the Applicant and ORIX TR operate nationally and their experiences are that whilst branch offices provide undeniable benefits customers are not bound by geographic considerations. In any event competitors are easily able to establish branch offices and/or agencies should they wish to do so.

### **Functional Level**

**11.2.20** The Commission considered in Decision 585:

...the appropriate functional level is the provision of fleet leasing services...<sup>6</sup>

**11.2.21** Similarly, the appropriate functional level for this application is the provision of vehicle rental services.

### **Conclusion On Market Definition**

**11.2.22** Whilst reserving necessary rights (and whilst encouraging the Commission, if time permits, to proceed on the basis of a wider vehicle leasing and rental market which is consistent with previous decisions), the Applicant has no objection to the Commission proceeding on the basis of a narrower market. This is the national market for the supply of vehicle rental services.

### **Differentiated Product Markets**

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6 At paragraph 74.

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

**12.1** The Commission considered the issue of product differentiation in the market for fleet leasing in Decision 478 and concluded that:

...the fleet leasing market [is] largely undifferentiated given that customers have multiple contracts with various fleet leasing firms and consumption decisions are based predominantly on price.<sup>7</sup>

**12.2** The same factors are present in the market for vehicle rental services. The Applicant suggests that, if anything, vehicle rental is becoming even more commoditised, with an increasing emphasis simply on price rather than other characteristics as the differentiating factor between suppliers.

**13.** For differentiated product markets:

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

### Vertical Integration

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

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

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<sup>7</sup> Decision 478 at paragraph 49.

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

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

TRG owns TCL Isuzu Limited, which is one of eight Isuzu Master Truck Retailers and sells to TRG. TCL Isuzu Limited holds the franchise to Isuzu trucks in the Auckland, North Auckland and Bay of Plenty regions. Clearly Isuzu trucks compete with a considerable number of other manufacturers' trucks in all regions. ORIX TR is only engaged in the provision of heavy commercial vehicle rental services as outlined in section 11.2.8.

The proposed acquisition will not result in any further vertical integration between the firms at different product levels.

**14.2** Please identify for each market:

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

**14.2.2** the specific parties involved;

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

Not applicable.

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

Not applicable.

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

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

The Applicant is aware that on 7 July 2006 ORIX formally notified the Commission of a proposed acquisition involving the fleet leasing and the fleet management markets. This notification was cleared on 20 July 2006. However, the acquisition did not take place. The target company

which was the object of that clearance was acquired by an unrelated entity.

Except as outlined in the preceding paragraph, the Applicant is not aware of any occasion during the previous three years where either participant or any interconnected body corporate thereof has formally notified the Commission of any proposed acquisition involving the vehicle rental or leasing market.

<p><b>15.2</b> Any other acquisition of assets of a business or shares in the last three years which either participant (or any interconnected body corporate) has undertaken in the last three years.</p>
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The Applicant is not aware of any occasion during the previous three years where either participant or any interconnected body corporate proceeded with any acquisitions involving the vehicle rental or leasing market.

**PART III: CONSTRAINTS ON MARKET POWER BY  
EXISTING COMPETITION**

**Existing Competitors**

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

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

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

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

**Vehicle rental**

**16.2.1** The Applicant estimates that the market shares for the market for heavy commercial and light commercial/passenger vehicle rental services are as follows:

<b>Vehicle rental (term &lt;52 weeks)</b>				
<b>Supplier</b>	<b>Estimated No. of Vehicles Rented</b>	<b>Estimated % of Market (by no. of vehicles)</b>	<b>Estimated value of net earning assets (millions)</b>	<b>Estimated % of Market (by net earning assets)</b>
Avis/Budget Rentals	[ ]	[ ]	[ ]	[ ]
Hertz	[ ]	[ ]	[ ]	[ ]
TR Group	[ ]	[ ]	[ ]	[ ]
Europcar (National)	[ ]	[ ]	[ ]	[ ]
Apex	[ ]	[ ]	[ ]	[ ]
Ezy Rentals	[ ]	[ ]	[ ]	[ ]
ETL	[ ]	[ ]	[ ]	[ ]
Nationwide	[ ]	[ ]	[ ]	[ ]
ORIX Truck Rental	[ ]	[ ]	[ ]	[ ]
ORIX Other	[ ]	[ ]	[ ]	[ ]
Henderson Rentals	[ ]	[ ]	[ ]	[ ]
North Harbour Rentals	[ ]	[ ]	[ ]	[ ]
Esanda New Zealand	[ ]	[ ]	[ ]	[ ]
Metropolitan Rentals	[ ]	[ ]	[ ]	[ ]
Others	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	[ ]	[ ]	[ ]

**16.2.2** The Applicant based the market share information (by number of vehicles) on a combination of published LTSA rental car

numbers, informal verification from the rental car companies and management estimates. The market share information (by net earning assets) is based on management estimates only. The Applicant believes such information to be reasonably accurate.

**16.2.3** The Applicant considers that the appropriate measure for market share is the value of net earning assets, which reflect varying unit costs.

**16.2.4** The Applicant would have a post acquisition market share of approximately [ ] in a market where the largest three participants would have a combined market share of [ ] These figures fall within the Commission's prescribed safe harbours.

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

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

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

Historical market share data is not readily available.

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

The Applicant refers the Commission to its response at section 28.

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

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

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

Vehicle rental services are not traditionally imported.

**16.8** To what extent is the product exported?

Vehicle rental services are not traditionally exported.

**16.9** Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing

behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

The Applicant believes that all market participants in the vehicle rental market compete vigorously and the Applicant believes that ORIX TR competes in a typical manner. The Applicant considers that ORIX TR's position has become untenable and this has noticeably reduced ORIX TR's competitive effects. The focus of ORIX's core business is the provision of passenger/light commercial rental and leasing services as well as heavy commercial leasing services. Its heavy commercial rental services are a distraction from this core business and it is not providing a high enough return. ORIX is therefore exiting the heavy commercial rental services segment of the market.

### Conditions of Expansion

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

- Frontier entry conditions  
eg tariffs, quarantine requirements, international freight costs.
- Legislative/regulatory conditions  
eg meat licensing, Resource Management Act requirements, health and safety standards.
- Industrial/business  
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- Other  
eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

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

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

**17.1.1** There are no identifiable barriers to expansion by existing competitors.

**17.1.2** The Commission considered barriers to expansion in the context of the fleet leasing market in Decision 478:

Existing market participants and new entrants are not limited in their ability to expand, subject to securing vehicles and finance at economical rates, and could do so within a one year timeframe. Participants face no binding capacity constraints and additional capacity is not significantly more expensive to operate. As such, the market could be entered to a significant extent within a reasonable timeframe.<sup>8</sup>

**17.1.3** These conditions which exist in the fleet leasing market also exist in the vehicle rental market.

**17.1.4** There are no capacity constraints on expansion, subject to securing vehicles and finance at economical rates. The Applicant believes that securing vehicles and finance at economical rates would not be problematic (especially given that vehicles are not in short supply and manufacturers and dealers are keen to increase sales volumes).

**17.1.5** Except for a Rental Service Licence, which is easy to obtain, there are no mandatory legislative or regulatory requirements specific to the supply of vehicle rental services.

**17.1.6** Nor are there any material industrial or business barriers to entry or expansion.

**17.1.7** The Applicant believes there are no material constraints around access to customers. The services supplied by existing competitors are largely homogeneous. Brand loyalty is not typically maintained as it is common for customers to obtain quotes from more than one competitor. There is no cost to a customer associated with switching between competitors unless the customer switches during a rental period. Where a customer switches during a rental period that customer may be required to retrospectively pay a higher rental rate associated with the shorter rental period.

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

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

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

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<sup>8</sup> At paragraph 117.



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

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

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

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

The Applicant believes that expansion could take place rapidly, certainly within the one year time frame referred to by the Commission in Decision 478, and probably considerably less (possibly as short as one week).

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

The Applicant refers the Commission to its responses in sections 16 to 20 and particularly section 22 below.

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

**22.1** Existing competition will continue to provide a substantial constraint on the Applicant's ability to exercise unilateral market power following the proposed acquisition. In respect of the heavy commercial segment in which the Applicant and ORIX TR operate:

- (a) The Applicant believes that the competition between businesses in the market that already supply heavy commercial vehicle rental services, and those businesses in the market that could readily do so by adjusting their product mix to include heavy commercial vehicles, would provide a considerable constraint on the Applicant. For example, in the United States of America there are several vehicle rental businesses, for example Hertz and Budget, which include heavy commercial vehicles in their product mixes. National Rental Cars in Canada also include heavy commercial vehicles in their product mix.
- (b) The Applicant would continue to face a number of competitors that provide a significant competitive constraint given the low barriers to expansion that have already been recognised by the Commission in the Decisions and discussed in greater detail in sections 17 and 18 above. Companies such as [ ] in particular are major global suppliers of vehicle rental and leasing services and the Applicant believes they would be in a strong position to rapidly expand in response to any attempt to exercise market power.

- (c) The Applicant would continue to operate in a competitive environment where customers can and do play competitors off against each other. It is not difficult to switch between rental providers including smaller suppliers. This is common practice. Each time a customer requires a new rental vehicle, the customer will generally receive quotes from most of the major rental providers.
- (d) Some of the Applicant's competitors retain ex-lease vehicles for sale as well as maintaining those vehicles as part of their rental fleet. They are therefore able to price rental services near to the marginal cost of the service. Conversely, the Applicant must factor the sunk cost of the vehicle as well as the marginal cost of the service into its pricing. Competitors commonly use this practice to price their services below the Applicant's prices, thereby providing a significant competitive constraint on the Applicant.

**22.2** The above dynamics are the every-day realities of the heavy commercial vehicle market segment in which the Applicant and ORIX TR operate. Clearly, they apply in a wider sense throughout the whole of the rental market. Every participant in the wider vehicle rental market is able to compete with the Applicant. So too is every participant in the vehicle leasing market (which, as noted above, the Applicant believes is part of the same market).

### Coordinated Market Power

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

- 23.1** The Applicant believes that the following vehicle rental market conditions exist which render coordination unlikely:
- (a) low barriers to entry and expansion mean that new entrants can enter the market quickly and can quickly expand to take market share away from any existing competitors who engage in co-ordinated market behaviour;
  - (b) there is strong competition from outside the market and customers have the option of owning their own vehicles or using other financing options should existing competitors engage in co-ordinated behaviour; and
  - (c) customers are generally price conscious and have a high degree of countervailing power.
- 23.2** In these circumstances the Applicant agrees with the Commission's previously stated view that the market is unlikely to facilitate collusion.<sup>9</sup>

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<sup>9</sup> Decision 478 at paragraph 92.

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

The Applicant considers that because coordinated behaviour is unlikely, it is not strictly necessary to address monitoring and enforcement. However, the Applicant will provide further details on this if required.

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

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

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

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

## PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

### Conditions of Entry

- 27.** The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:
- Frontier entry conditions  
eg tariffs, quarantine requirements, international freight costs.
  - Legislative/regulatory conditions  
eg entry licensing, Resource Management Act requirements, health and safety standards.
  - Industrial/business conditions  
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
  - Other conditions  
eg responses to expansion by major firms.
- Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

**27.1** The Commission has previously formed the view that:

...there are no significant barriers to entry likely to deter expansion or new entry. Potential competition, in addition to the strength of existing competition in the fleet leasing market, is likely to provide a constraint on the merged entity, and the industry as a whole.<sup>10</sup>

**27.2** The Applicant agrees that there are no significant barriers to entry in the market for vehicle rentals. Except for a Rental Service Licence, which is easy to obtain, there are no mandatory legislative or regulatory requirements specific to the supply of vehicle rental services. The costs associated with establishing a vehicle rental business, including supply chain and technology set up costs, costs of attracting staff and customers, costs of vehicle acquisition and costs of funding are not significant and do not involve a high degree of sunk costs.

**27.3** Furthermore, new entrants can obtain supply of vehicles as readily as existing participants and there are no significant economies of scale available to existing participants. For example, existing participants cannot necessarily acquire vehicles at more competitive prices than new

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<sup>10</sup> Decision 478 at paragraph 121.

entrants, particularly where the new entrant has access to global arrangements.

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

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

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

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

- (a) Other major lease organisations; and
- (b) Major financial institutions.

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

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

### **Likelihood, Sufficiency and Timeliness of Entry**

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

The Applicant believes entry by a new competitor could occur well within the one year timeframe contemplated in Decision 478.

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

Yes, but the potential entrant would need to maximise vehicle utilisation (which is the key driver to profitability).

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

Yes.

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

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

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

The Applicant believes new entry could occur well within the one year timeframe contemplated in Decision 585 for any new entrant.

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

The Applicant considers that the threat of de novo entry is one of many significant constraints on the ability of the merged entity to price above competitive levels. However, existing competition, countervailing power and demand-side alternatives provide sufficient constraint in themselves.

## PART V: OTHER POTENTIAL CONSTRAINTS

### Constraints on Market Power by the Conduct of Suppliers

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

Not applicable.

**37.** Who owns them?

Not applicable.

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

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

### Constraints on Market Power by the Conduct of Acquirers

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

Large corporates, SMEs and private individuals, including transport operators and manufacturers.

**40.** Who owns them (where appropriate)?

Not appropriate.

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

**41.1** The Applicant believes that customers have a significant degree of countervailing power.

**41.2** The Applicant believes that customers provide a significant competitive constraint on market participants, generally through obtaining quotes from at least two service providers and "playing competitors off against each other". Customers can switch suppliers easily and without significant cost.

**41.3** Customers can also benchmark rental costs against other options. Vehicle rental services are only one option available to Applicants. Other options include:

- (a) purchasing a vehicle and disposing of it after a short term;
- (b) retaining older vehicles as spare capacity rather than selling them;

- (c) (particularly for heavy commercial vehicles) subcontracting an owner/driver to carry out the required works;
- (d) leasing a vehicle; and
- (e) (particularly for heavy commercial vehicles) contracting a freight/cargo company.



THIS NOTICE is given by Blair Walter and **ELITE TRUCK RENTALS LIMITED**

I am the representative for the shareholders of Elite Truck Rentals Limited and am duly authorised to make this application.

I hereby confirm that:

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

Elite Truck Rentals Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this                      day of                      2006

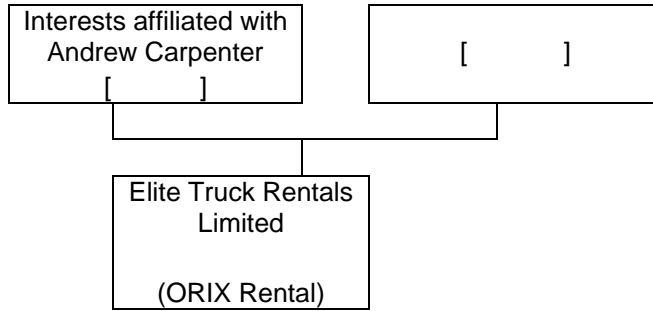
Signed by                      :

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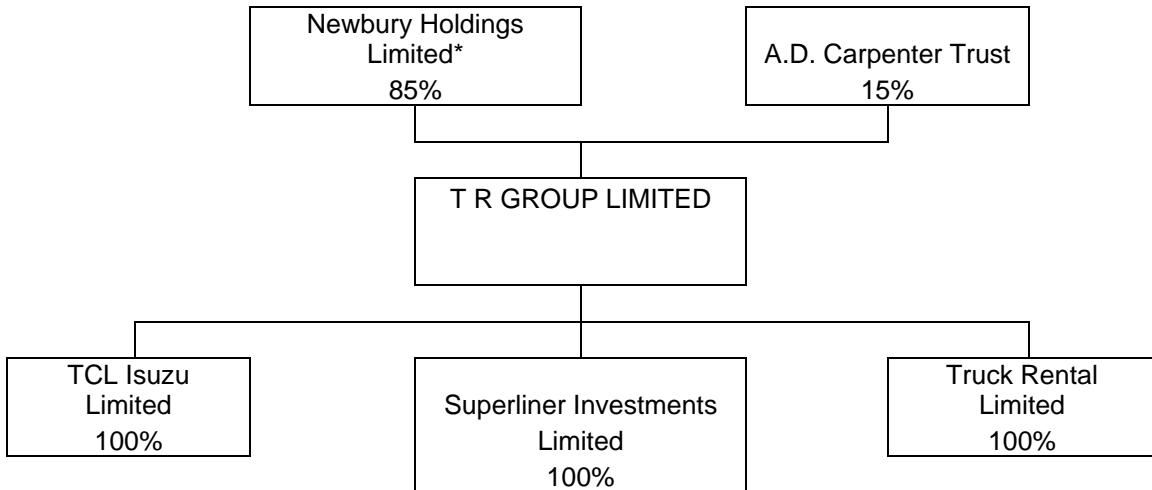
Blair Walter  
Shareholders' Representative  
Elite Truck Rentals Limited

**APPENDIX I**

Corporate Structure – Applicant



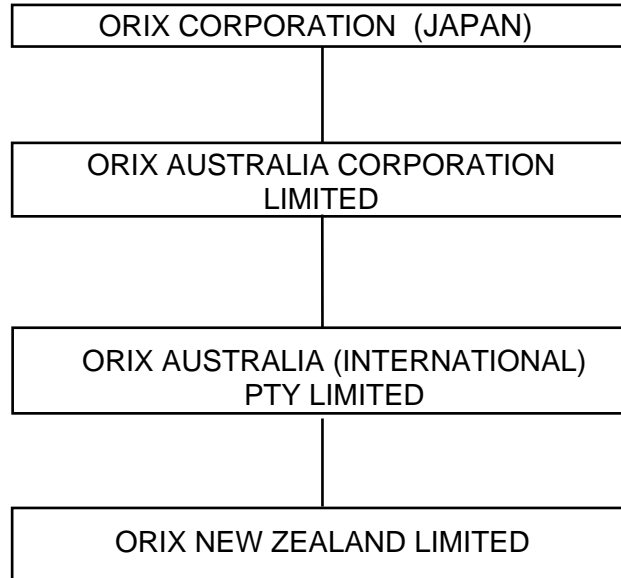
Corporate Structure – T R Group Limited



\*Newbury Holdings Limited is affiliated with interests associated with Ron Carpenter, father of Andrew Carpenter.

## APPENDIX II

### Corporate Structure – ORIX



ALL SHAREHOLDINGS ARE 100%

INCLUDES ONLY COMPANIES  
RELEVANT TO THE NEW ZEALAND  
MARKET