



COMMERCE COMMISSION

Decision No. 734

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

ISITE LIMITED

and

O.T.W. ADVERTISING LIMITED

The Commission: Dr Mark Berry
Sue Begg
Anita Mazzoleni

Summary of Application: The acquisition by Infratil Outdoor Media Limited, the owner of iSite Limited, to acquire up to 100% of the billboard assets of O.T.W. Advertising Limited.

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

Date of Determination: 29 September 2011

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THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 25 August 2011. The Notice sought clearance by Infratil Outdoor Media Limited to acquire up to 100% of the billboard assets of O.T.W. Advertising Limited (OTW). The Application was submitted by iSite Limited (iSite or the Applicant), as the nominee of Infratil Outdoor Media Limited.

THE DECISION

2. The Commission considers the relevant markets for this application are regional markets for the provision of billboard services.
3. The Commission considers that competition from existing billboards providers, along with some constraint from other advertising media, is likely to be sufficient to constrain the combined entity. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

ANALYTICAL FRAMEWORK

4. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined markets. Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
5. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
 - existing competition;
 - potential competition; and
 - other competition factors, such as the countervailing market power of buyers or suppliers.

KEY PARTIES

The Applicant - iSite

6. Infratil Outdoor Media Limited owns iSite. iSite provides outdoor and out of home (OOH) advertising services throughout New Zealand. Both iSite and Infratil Outdoor Media Limited are subsidiaries of Infratil Limited, a publicly listed company based in Wellington. iSite's OOH offering includes regional billboard services, displays and billboards at Wellington and Queenstown airports, and signage on buses.

The Target – OTW

7. OTW is a private company that provides billboard services in regions throughout New Zealand. The majority of OTW's billboard assets are in the Auckland region.

Other Parties

8. The billboard industry is characterised by two large competitors, iSite and APN Outdoor Limited (APN). APN operates in Auckland, Wellington, Christchurch, and other regional areas in New Zealand.
9. iSite, OTW, and APN compete with a number of other companies for the provision of billboard services in regions throughout New Zealand. These companies include (but are not limited to):
 - Media 5 Limited (M5) – operates in Auckland and Wellington;
 - Roadside Attractions Limited (Roadside) – operates in Auckland, Wellington, and Christchurch, but focuses on other regional areas in New Zealand; and
 - Ad-Vantage Media Limited (Advantage) – operates in Auckland only.

INDUSTRY BACKGROUND

10. Appendix A illustrates the advertising industry in New Zealand with respect to billboards.
11. Billboard providers negotiate with site owners to lease billboard sites. A lease to a billboard site gives the billboard provider the right to sell advertising space on that site.
12. Advertising customers are typically either media buyers, who purchase advertising on behalf of their clients, or companies who purchase advertising directly for themselves.
13. Customers decide which form(s) of media, and how much of that media, they want to purchase. If the customer chooses to use OOH advertising formats they will then choose which formats of OOH to use. If billboards are chosen, the customer will either:
 - decide which billboards they want to use and contact the billboard provider(s) who have the leases to those billboards; or
 - send a brief to billboard providers outlining the types and locations of billboards needed.
14. Customers advised that this can be a complicated process as there are a number of different billboard providers in the different regions. However, there has been a period of consolidation, primarily through acquisitions, which has tended to simplify the process for customers.

MARKET DEFINITION

15. Both iSite and OTW provide a number of billboards located across the country. The Applicant submitted that both iSite and OTW compete with a number of different advertising media and that the relevant market should be the national market for the provision of OOH advertising services.

16. All industry participants interviewed said that billboards were used as part of an OOH advertising strategy that, in turn, is typically part of an overall advertising campaign. At present, OOH advertising accounts for approximately 3% of the total advertising spend in New Zealand. As such OOH advertising, including billboards, normally supports or ‘supplements’ a wider advertising campaign.
17. In this respect, billboards were just one of a number of different OOH advertising formats advertisers could use. Typically, OOH advertising formats includes the following:
 - advertisements on billboards;
 - advertisements on bus shelters or ‘street furniture’;
 - advertisements on the outside of buses;
 - advertisements in airports and railway stations; and
 - other niche areas such as displays in malls and taxi signs.
18. However, the Commission was unable to get any clear feedback or data from industry participants about the extent to which these types of OOH advertising formats compete with one another¹. All industry participants advised that the types of OOH advertising formats listed above compete with one another “to a degree” and that they also compete “to a degree” with other types of advertising media (TV, radio, print etc).
19. These types of responses are not uncommon in cases where products are differentiated. It can be difficult to know where to draw the line between products that are in the market and those that are not. What is of main importance is to identify those products that are each other’s closest competitors in that they have a real and significant price constraining effect.
20. All parties interviewed, particularly customers, emphasised that the purchasing decision comes down to the particular requirements of the advertising campaign (and the client). Nevertheless, most campaigns did contain a mix of different advertising media. Typically, the decision around the ‘media mix’ of a campaign is made well before any service provider is approached for advertising space.

Product market – focus on billboards

21. On the demand-side, all industry participants considered there to be some substitutability between billboards and the other types of OOH advertising formats, and also between billboards and other general advertising media. However, no party could articulate this substitutability with any degree of accuracy.
22. On the supply-side, many parties stated that the number of billboards located around the country was relatively stable and most of the popular sites were now taken. Further, the consenting process had become more restrictive in recent years, particularly in the main metropolitan areas. This means that, on the supply-side, it is becoming more difficult for a provider of one type of OOH advertising format to readily switch to providing billboards. This suggests that

¹ Other jurisdictions have also had similar issues with the media industry. For example, see Bundeskartellamt: “Clearance of outdoor advertising merger – acquisition of Wall AG by JCDecaux” B6-123/09 and Office of Fair Trading UK: “Completed acquisition by JC Decaux UK Limited of Titan Outdoor Advertising Media” ME/4470/10.

- there are few supply-side substitutes for billboards and so relevant market definition in regard to billboards will rely strictly on demand-side substitution.
23. Other than billboards, the two most commonly used OOH advertising formats are:
 - advertisements on the outside of buses (approximately 95% of the bus advertising is currently provided by iSite); and
 - advertisements on bus shelters (the only supplier of these is Adshel Limited, which is partially owned by APN News Media Limited, the parent company of APN²).
 24. Accordingly, with iSite providing billboards and buses, and APN providing billboards and bus shelters, no additional competitors would be introduced by extending the relevant market from billboards to include the other commonly used OOH advertising formats.
 25. While the Commission recognises some constraint is imposed from other OOH advertising formats, for the purposes of the present application, it has limited the relevant product market to the provision of billboard services. If there are no competition issues highlighted in this narrow assessment, there are unlikely to be any in a wider assessment.

Geographic market – focus on the main cities

26. The Applicant submitted, and many industry participants agreed, that billboards are often used to support national advertising campaigns. In this respect, once the customer decides that it requires a billboard strategy, it looks at the availability of multiple billboard sites throughout the country.
27. Billboard providers have responded accordingly and some provide billboards across all main metropolitan centres, particularly in Auckland, Wellington, and Christchurch. However, advertisers requiring a national presence often contract with multiple billboard providers, depending on providers varying regional presence and the availability of sites. This indicates that providers do not have to be national to compete effectively.
28. Moreover, not all campaigns require a national presence. For example, a billboard in the Auckland central business district clearly has a different audience than one in New Plymouth. This is because in different regions, there are different demographics and population sizes. Customers are unlikely to view such different billboard locations as close substitutes.
29. The Commission considers that competition in billboard markets tends to take place on a regional basis and assessing the relevant market at a national level would not highlight any regional differences. Accordingly, for the purposes of the present application, the Commission considers the most appropriate geographic markets for analysis are regional markets for the provision of billboard services, with a particular focus on the main metropolitan centres.

² Adshel Limited is a joint venture between APN News Media Limited and Clear Channel Inc. Clear Channel Inc is one of the world's largest outdoor advertisers. Given this, for the purposes of this analysis, the Commission will treat Adshel Limited and APN as one entity.

Conclusion on Market Definition

30. The Commission considers the relevant markets are regional markets for the provision of billboard services, with a particular focus on the main metropolitan centres of Auckland, Wellington and Christchurch. This is because:
- the degree to which billboards compete with other OOH advertising formats, and other advertising media more generally, is uncertain;
 - widening the product market to include additional OOH advertising formats is unlikely to significantly change the outcome of the competition assessment;
 - narrow regional markets for the supply of billboards are most likely to highlight any competitive impacts from the proposed acquisition; and
 - the main metropolitan centres account for approximately 80% of the billboards in New Zealand.

COUNTERFACTUAL AND FACTUAL

31. In the factual, iSite would acquire OTW's billboard portfolio of approximately 70 sites. iSite advised that the proposed acquisition would increase its presence in the Auckland region. [

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32. The likely counterfactual would be the status quo. [

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COMPETITION ASSESSMENT

Regional markets for the provision of billboard services

33. Table 1 below shows the estimated the number of billboards and market shares in each of the main metropolitan markets, and a combined total for the remaining regions.

Table 1: Estimated market shares for the provision of billboards

Parties	Auckland		Wellington		Christchurch		All Other Regions		New Zealand	
	Total	Market Share	Total	Market Share	Total	Market Share	Total	Share	Total	Share
iSite	156	28%	82	27%	88	30%	82	29%	408	29%
OTW	42	8%	8	3%	6	2%	14	5%	70	5%
<i>Combined Entity</i>	198	36%	90	30%	94	32%	96	34%	478	34%
APN	254	46%	107	35%	145	49%	97	35%	603	42%
M5	24	4%	69	23%	-	-	-	-	93	7%
Advantage	31	6%	-	-	-	-	-	-	31	2%
Roadside	4	1%	31	10%	20	7%	50	18%	105	7%
Other	37	7%	5	2%	38	12%	37	13%	117	8%
Total	548	100%	302	100%	297	100%	280	100%	1427	100%

Source: Commission estimates based on information provided by industry participants as of September 2011.

34. All industry participants stressed that iSite and APN are the main competitors in each of the markets identified above. Other than APN, each of the competitors in each region would each provide a small degree of constraint. This would continue to be the case in the factual scenario.
35. Competition between billboard providers occurs in two main areas, namely:
 - competition for sites (billboard providers compete for leases when they come up for renewal or when a new billboard site is approved); and
 - revenue from customers from the rental of billboards.
36. Smaller providers advised that they were able to compete with the larger providers because competition was not all about the number of sites each provider has. Rather, billboard providers noted that the quality of each particular billboard site was important. Quality was predominately determined by location, with high quality sites able to charge premium rates because they had the largest target audience.

Auckland billboard market

37. Auckland is the largest billboard market in New Zealand by number of sites and by revenue earned from site rentals. As such, most billboard providers have a presence in the Auckland market and this would continue to be the case in the factual.
38. Other than APN, there are a number of smaller players that, individually, are likely to provide a degree of constraint on the combined entity. These include Advantage, M5, Roadside, Eye Corp NZ Holdings Limited, Big Picture Media Limited, and Jam Communications Limited.

Wellington billboard market

39. Wellington is the second largest billboard market in New Zealand. Other than APN, there number of smaller players that, individually, are likely to provide a degree of constraint on the combined entity. These include M5, Roadside, Big Picture Media Limited, and BacBou Billboards Limited.

Christchurch billboard market

40. Christchurch is the third largest billboard market in New Zealand. Other than APN, there number of smaller players that, individually, are likely to provide a degree of constraint on the combined entity. These include Roadside, Big Picture Media Limited, and Aidemedia Limited.

Other competition factors

41. Overall, industry parties noted that there were a number of different providers throughout the different markets in New Zealand and did not express any significant competition concerns to the Commission in respect of the proposed acquisition.
42. Some parties noted that entry in some markets was becoming more difficult. This is due to an increase in regulations for new sites and because the incumbent provider typically has a strong advantage when negotiating lease renewals. However, the Commission notes that, as above, there are a number of existing competitors in the markets identified above.
43. In any event, customers advised that, in the face of a price increase in the factual, they would have a number of different alternatives. This includes using

the existing competitors listed above. It also includes using other advertising media because billboards, in general, are used only as support for a larger campaign. In this respect, the Commission notes that there would likely be a degree of constraint on the combined entity from outside the relevant markets.

44. In addition, the Commission considers that the proposed acquisition is unlikely to enhance the potential for coordination because:
- factors that could lead to coordination already exist, and the acquisition of OTW will unlikely alter these conditions;
 - there are a number of smaller competitors with high quality sites; and
 - customers can switch between other forms of advertising media (i.e. there is some constraint from outside the market).

Conclusion on Competition Assessment

45. The Commission considers that the proposed acquisition is unlikely to raise significant competition concerns because of:
- the strong existing constraint from APN;
 - some constraints from a number of smaller players; and
 - some price-constraints from other advertising media in the event of a significant exercise of market power.

OVERALL CONCLUSION

46. The Commission has considered the probable nature of competition that would exist subsequent to the proposed acquisition in the regional markets for the supply of billboard services.
47. The Commission considers that the competition from existing participants, along with some constraints from other advertising media, is likely to be sufficient to constrain the combined entity.
48. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

DETERMINATION ON NOTICE OF CLEARANCE

49. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to Infratil Outdoor Media Limited to acquire up to 100% of the billboard assets of O.T.W. Advertising Limited.

Dated this 29th day of September 2011

Dr Mark Berry
Chair

APPENDIX A – THE ADVERTISING INDUSTRY IN RESPECT TO BILLBOARDS

