

PUBLIC COPY

21 September 2007

**Notice
under s66 of the
Commerce Act 1986
A&R Whitcoulls Group Holdings Pty Limited in
relation to Borders New Zealand Limited**

PUBLIC COPY

21 September 2007

CONTENTS

GLOSSARY

EXECUTIVE SUMMARY

PART 1: TRANSACTION DETAILS

- 1 The business acquisition for which clearance is sought
- 2 The person giving this notice
- 3 Confidentiality
- 4 Participants
- 5 Interconnected and associated persons
- 6 Beneficial interests
- 7 Links between participants
- 8 Common directorships
- 9 Business activities of the participants
- 10 Reasons for the proposed acquisition

PART II: IDENTIFICATION OF MARKETS AFFECTED

- 11 Horizontal aggregation
- 12 Differentiated product markets
- 13 Differentiated product markets
- 14 Vertical integration
- 15 Other business acquisitions

PARTS III, IV AND V: CONSTRAINTS ON MARKET POWERS BY EXISTING AND POTENTIAL COMPETITION AND OTHER POTENTIAL CONSTRAINTS

- 16 Other market participants
- 17 Market Concentration
- 18 Competition and potential constraints
- 19 Conclusion

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

21 September 2007

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

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

Executive Summary

This is an application by A&R Whitcoulls Holdings Group Pty Limited ("**ARW**"), or an interconnected body corporate of ARW, for clearance to acquire 100% of the shares in Borders New Zealand Limited ("**Borders**"). ARW is an Australian proprietary company. Whitcoulls Group Holdings Pty Limited is a wholly owned subsidiary of ARW which in turn owns all of the shares in the New Zealand company Whitcoulls Holdings Limited. The New Zealand operations are within this division of ARW, which is described in this application as "Whitcoulls".

The acquisition will give rise to a limited aggregation in the retail book market in New Zealand. However, the retail book market is highly competitive and will remain competitive following the acquisition due to:

- the continued and increasing presence of established chain stores such as the Paper Plus Group, Dymocks and a large number of independent book stores, which will continue to exert competitive pressure and compete directly with Whitcoulls on price and range;
- the presence and growth of discount department stores such as The Warehouse, Warehouse Stationery and K-Mart as competitors to Whitcoulls. These outlets compete vigorously, particularly for sales of front list (i.e. new release and best seller titles), which are the high volume sales with lower holding costs than for backlist titles;
- the existence of low barriers to entry, evidenced by the recent and successful entry of Borders into the New Zealand retail book market and the recent expansion of the Paper Plus Group;
- the highly concentrated nature of the publishing industry and the countervailing power exercised by publishers through their copyright monopoly in titles, the role of recommended retail prices and publishers' support of independent retailers;
- the increasing competitive pressure coming from on-line book purchases over the internet through internet only and internet focussed retailers;
- the increasing trend worldwide for publishers to develop a direct to consumer sales channel which bypasses traditional retail channels; and
- the potential threat of supermarkets entering the market as evidenced by the market in the UK.

Further, the acquisition will not lessen competition due to competitive constraint which is exerted on book retailers by other forms of leisure and entertainment. If customers do not perceive books as offering good value for money, they will readily switch their discretionary leisure spend to other activities such as DVDs, cinema, pay television and other activities.

PART I: TRANSACTION DETAILS

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

1.1 Identify what is to be acquired and who is to acquire it

This is an application by ARW, or an interconnected body corporate of ARW, for clearance to acquire the shares in Borders.

The proposed acquisition by ARW of Borders involves the acquisition of the entire issued share capital in Borders.

A related transaction is the proposed acquisition by ARW of Borders Australia Pty Limited. ARW will be notifying the Australian Competition and Consumer Commission ("ACCC") of that transaction and does not believe that the proposed acquisition raises any competition concerns in Australia.

1.2 Attach a copy of any contract or agreement relating to the proposed acquisition

Not applicable. The detailed terms of the proposed transaction are still to be negotiated by the parties.

This notice is given by:

Ian Robert Draper
Company Director
Whitcoulls Holdings Limited
84A Allum Street, Kohimarama, Auckland
Phone: +64 9 984 5481
Mobile: +64 21 639 565
email: ian.draper@arwgroup.co.nz

3 Confidentiality

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? Why?

Yes. Confidentiality is sought in respect of the information contained in bold square brackets in this application (i.e. []), the financial information contained in **Confidential Annexure 2** and the expert report contained in **Confidential Annexure 4**. We have provided a copy of this application with such confidential information deleted for the assistance of the Commission.

Confidentiality is sought under section 100 of the *Commerce Act 1986* and under section 9(2) of the *Official Information Act 1982* on the grounds that:

- the information is commercially sensitive and contains valuable information which is confidential to Whitcoulls;
- disclosure is likely to give an unfair advantage to Whitcoulls' competitors, in particular other parties potentially interested in acquiring Borders, and prejudice unreasonably its commercial position; and
- some information has been provided to Whitcoulls by Borders on a confidential basis and Borders seeks confidentiality in respect of that information.

Whitcoulls also requests it is notified of any request made to the Commission under the Official Information Act for the confidential information, and that the Commission seeks Whitcoulls' views as to whether the information remains commercially sensitive at the time those requests are being considered. The foregoing applies equally to any further information that Whitcoulls provides to the Commission as part of its market enquiries.

The applicant is A&R Whitcoulls Group Holdings Pty Limited.

The target is Borders New Zealand Limited.

ARW requests that all correspondence to it in respect of the matter be addressed to:

Attention: John Horner
Quigg Partners
Level 7, The Bayleys Building
28 Brandon Street
Wellington 6140
New Zealand
Ph: (04) 474 0754
Email: johnhorner@quiggpartners.com

With a copy to:

Attention: Linda Evans/Kirsten Webb
Clayton Utz
Level 19
No. 1 O'Connell Street
SYDNEY
New South Wales 2000
Australia
Ph: +61 2 9353 4217
Email: levans@claytonutz.com ; kwebb@claytonutz.com

5.1 Acquirer Group/Associates**5.1.1 If the acquirer is a member of a group of interconnected bodies corporate, identify all members of the group.**

Please see the corporate structure diagram annexed as **Annexure 1**.

5.1.2 Identify all companies in which the acquirer or its interconnected bodies corporate own 10% or more of the shares.

Please see the corporate structure diagram annexed as **Annexure 1**.

ARW is an Australian proprietary company registered with the Australian Securities and Investments Commission. Whitcoulls Group Holdings Pty Limited is a wholly owned subsidiary company of ARW, incorporated in Australia which in turn owns all of the shares in the New Zealand company of Whitcoulls Holdings Limited. Whitcoulls Holdings Limited itself has various subsidiary companies as set out in **Annexure 1**.

There are no other companies in which ARW or its interconnected bodies corporate own more than 10% or more of the shares.

5.1.3 Identify any company which owns over 10% of the shares in the acquirer or any company of which the acquirer is a subsidiary.

ARW is owned by funds managed by Pacific Equity Partners Pty Limited ("**PEP**") and management employees of ARW. The following companies own more than 10% of the shares in ARW:

- (a) Pacific Equity Partners Fund II L.P.;
- (b) Pacific Equity Partners Supplementary Fund II L.P.; and
- (c) Pacific Equity Partners Fund II (Australasia) Pty Limited as trustee for the Pacific Equity Partners Fund II Unit Trust.

Funds managed by PEP also have interests in a number of other New Zealand businesses, including interests in Independent Liquor, Godfreys, Griffin's Foods, Tegel Foods and Startronics. For further information, please see www.pep.com.au/pages/content.asp?pid=3.

5.1.4 Identify all interconnected bodies corporate of any company identified under 5.1.3 and all companies in which it, to its interconnected bodies corporate, own over 10% of the shares.

Not applicable.

5.2 Target Company/Group Associates**5.2.1 Identify all subsidiaries of the target company and all companies in which the target company or any subsidiary owns 10% or more of the shares.**

To the best of ARW's knowledge the target company, Borders New Zealand Limited, does not have any New Zealand subsidiaries. Its parent company, Borders Group Inc. is listed on the New York Stock Exchange.

5.2.2 If any company owns over 10% of the shares in the target company and will continue to do so after the proposed acquisition, then identify all of the interconnected bodies corporate of that company and all companies in which it or its interconnected bodies corporate own over 10% of the shares.

If the acquisition proceeds by way of share purchase, ARW will own 100% of the shares in Borders post-acquisition.

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?

No. Neither ARW nor Borders, nor any interconnected body corporate of either, has an existing beneficial interest in or is beneficially entitled to, any shares or other pecuniary interest in another market participant.

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.

There are no such links. There are no links, formal or informal, between any participants including interconnected bodies corporate or other persons identified at Section 5 and their existing competitors in the market.

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 operates?

No director of ARW is also a director of any other company involved in the relevant markets other than companies directly or indirectly controlled by ARW as set out in **Annexure 1**.

ARW

The Whitcoulls Division of ARW has been operating in New Zealand for over a century dating back to the establishment of Whitcombe and Tombs in 1888 and Coulls Somerville Wilkie in 1871. It was acquired by its current management and funds managed by PEP in May 2004 from WH Smith plc. The company, ARW, was incorporated in Australia in April 2004 for the purposes of that acquisition. The location of its registered office is Melbourne, Victoria.

ARW operates a number of subsidiaries in New Zealand, all of which are wholly owned by the Australian parent company (except for Calendar Club New Zealand Limited, which is 75% owned by ARW and 25% owned by Calendar Club USA).

ARW has 182 stores in Australia (of which 119 are company owned and 63 are franchised) and 84 in New Zealand (66 Whitcoulls, 10 Bennetts and 8 airport stores). ARW does not operate any franchise businesses in New Zealand.

The retailing business currently operated under the Whitcoulls brand in New Zealand has had several changes of ownership since the early 1990s. In 1993, the operations were acquired by Whitcoulls Group Ltd, a New Zealand company, and were then purchased by Blue Star Group in 1996.

Whitcoulls operates a series of retail outlets for the sale principally of books, but which also sell stationery and DVDs. ARW and the Whitcoulls Group operate 4 divisions - the Whitcoulls Division which includes Bennetts Tertiary, the A&R Division, the Calendar Club Division and the recently acquired Supanews Division. The Whitcoulls Division is a nationwide New Zealand book and stationery chain. Within the Whitcoulls Division, Bennetts Tertiary sells text books and related course materials to students and other campus users. The Calendar Club Division operates its own chain of specialty calendar stores over the Christmas period (October to January) in major shopping centres and key retail precincts in Australia and New Zealand. The A&R Division is a nationwide book store chain in Australia. The Supanews Division is a joint venture business that operates newsagencies in Australia ("**Supanews Division**").

The Whitcoulls chain comprises 66 stores, 40 of which are located in Auckland, Wellington and Christchurch. In each of these cities Whitcoulls operates a major flagship store. A list of all Whitcoulls stores is at **Annexure 3**.

The Whitcoulls Division retails in 4 major product categories:

- (a) books - these account for a significant proportion of total sales;
- (b) stationery - Whitcoulls sells a range of stationery, games and toys, cards and gift wrap. Whitcoulls has an exclusive agreement to access WH Smith branded stationery;
- (c) DVDs and videos - Whitcoulls sells a full range of DVDs and entertainment software. According to market research conducted by the GfK Group, Whitcoulls has a 15 – 20% market share of DVD sales in New Zealand; and
- (d) newspapers and magazines - these are a relatively small proportion of total sales.

Whitcoulls operates an on-line store in New Zealand at: <http://www.whitcoulls.co.nz/>. The company launched its on-line store in 2002 operated by a third party. In May 2007, Whitcoulls brought control of its internet service in-house.

Borders

Borders is the wholly owned New Zealand subsidiary company of a company listed on the New York Stock Exchange in 1995 called Borders Group, Inc ("**Borders Group**"). The Borders Group is the parent company of two retail book chains in the United States, Borders Group and Waldenbooks.

In New Zealand, the Borders Group conducts its operations through one local Borders company, Borders New Zealand Limited.

Borders entered the New Zealand market in October 1999 with one store at Queen Street in Auckland. It opened a second store in the Westfield Shopping Centre in the suburb of Riccarton in Christchurch in March 2005. Within the last 6 months it has opened 2 further stores. Therefore Borders now operates 4 stores across New Zealand: 1 in Auckland (Queen Street), 1 in Sylvia Park (Sylvia Park Shopping Centre, Mount Wellington), 1 in Christchurch (Riccarton Mall) and 1 in Wellington (Capital on the Quay). Borders plans to open a fifth New Zealand store at Albany in November 2007.

Borders sells books, stationery, cards, magazines, DVDs and CDs. Borders stocks around 130,000 titles across an extensive range of books. The most popular book categories are business, travel, cooking, children's, history, fiction and bargain product. Borders offers the largest range of non-fiction titles in New Zealand. Based on figures from the 2007 financial year, approximately [] of Borders' total sales are books (excluding bargain books).¹

Borders stores market themselves as specialist and destination stores which offer a large format range and in-store experiences. Their stores are particularly attractive for browsing shoppers.

Borders do not operate an on-line store in New Zealand. However, its parent company Borders Group Inc. do offer an on-line store at www.borders.com. This on-line store is operated in association with www.amazon.com. New Zealand consumers can access this service and obtain delivery to New Zealand. The price is determined by the price of the item(s) plus a per order charge plus freight.

Borders do operate a website at www.borders.co.nz. At present, this website contains store information and some product recommendations. [

²]

¹ [

]

² [

]

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

10.1 Reasons for the proposed acquisition

The rationale for the proposed acquisition is to obtain increased advertising scale and to increase ARW's operational and infrastructure synergies particularly those relating to the use of information technology services, enabling the merged firm to better compete with established chain stores and discount department stores in the supply of books and other products to consumers.

10.2 Intentions in respect of the acquired business

If ARW acquires Borders, ARW intends to continue to operate the Borders brand and Borders stores. Borders targets a different demographic from that of Whitcoulls.³ Accordingly, ARW will continue to operate both brands and will maintain their current positioning in overlapping but distinct product spaces.

³ [

]

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?

Areas of overlap

There are several product markets in which there would be an aggregation of business activities as a result of the acquisition, however, there is only one which is of potential competitive significance, being that for the retail sale of books.

The product market is the retail market for fiction and non-fiction books (hard and soft cover). This is the primary business of ARW and Borders.

Both ARW and Borders sell DVDs and stationery as adjuncts to the primary product offering of books. Borders also sells CDs.

The chief product market in which ARW and Borders are in direct competition is the market for fiction and non-fiction books (hard and soft cover). The primary means of competition in this market are price, range, service level, "browsability" and loyalty programmes.

The markets in which there will be an aggregation of business activities are:

- (a) the national retail market for fiction and non-fiction books (hard and soft cover);
- (b) the national retail market for the supply of DVDs; and
- (c) the national retail market for the supply of stationery supplies. Borders is focused on social stationery through its Paper Chase relationship. Whitcoulls sells both social and commercial stationery.

In the second and third markets ARW and Borders each compete with a wide range of other suppliers of those products. In New Zealand the other major retailers of DVDs are The Warehouse, JB Hi-Fi and Sounds. The Warehouse is the market leader for DVD sales in New Zealand. The other major stationery retailers are Warehouse Stationery, The Paper Plus Group (Paper Plus and Take Note) and Officemax.

This approach to market definition focuses on the area of close competition between products. It is, however, important in analysing the competitive effects of a merger to recognise that market boundaries are not bright lines and that there will be significant levels of competition from products in adjacent product markets.

Book retailers face significant competition from other retailers who compete for consumers' leisure and entertainment spend. Consumer book purchases invariably involve discretionary spending which can readily be diverted to other products such as DVDs, CDs and cinema etc.

Retail book market - Product dimension

The product dimension of the market seems uncontroversial. Whilst there is a monopoly in any given book title⁴, in the same way that there is for CD or DVD titles, that does not lead to a position where in a

⁴ Arising from the copyright which subsists in the work.

matter of this kind there is a single title definition of the market. For the reasons discussed by both the High Court and the Court of Appeal in *Tru Tone Ltd v Festival Records Retail Marketing Ltd*⁵ ("**Tru Tone**"), in relation to the proposed acquisition on-line and mail order sales of books would form part of this market.

Retail book market - Geographic dimension

In Whitcoulls' submission the appropriate geographic scope of the relevant market for assessing the competitive effects of the proposed acquisition is a national one including on-line sales and mail order.

The market is national in scope because:

- (a) unlike some other products, such as groceries, proximity to home is not a key aspect of customer purchasing decisions;
- (b) national chains undertake pricing on a national basis. There is very little local pricing variation;
- (c) product range is consistent nationally except for maps which tend to be specific to the relevant region; and
- (d) books are frequently purchased by mail order or on-line and despatched to the customer by mail service. In this respect the book retail market is somewhat unique. The relatively high proportion of books purchased on-line, coupled with the high growth of this channel to market, distinguish the retailing of books from most other retail sales categories. These characteristics mean that the assessment of this market on a localised basis is not an appropriate method to examine the competitive effects of the merger.

A national market is consistent with the Court of Appeal's decision in *Tru Tone*.⁶ This national geographic dimension was not in issue between the parties and was accepted without opposition by the New Zealand High Court and the Court of Appeal.

It is also consistent with Australian decisions regarding recorded music, CDs and DVDs.⁷ In *Universal Music*, the relevant market for recorded music was accepted to be Australia-wide though it was accepted that regional differences could exist in how the market operates and that certain titles may have greater appeal in certain areas (e.g. country and western music may have more appeal in rural areas as opposed to urban areas).

In relation to the retail sale of CDs and DVDs, when Brazin Ltd acquired HMV Australia Pty Ltd in 2005, the ACCC assessed the proposed market on the basis of a national market for the retail sale of pre-recorded CDs and DVDs (including mail order sales and on-line sales of CDs and DVDs). The participants in this market included local independent retailers, State based chain stores, national CD and DVD chain stores, department stores, on-line outlets and discount department stores.

If the Commission were not to accept this approach and were to consider a localised regional approach to geographic market delineation to be more appropriate, then in Whitcoulls' submission, the relevant local market for fiction and non-fiction books (hard and soft cover) is delimited by a geographic radius of approximately 7 km around the Borders' stores the subject of the acquisition. The Commission has

⁵ (1988) 2 NZBLC 103,081 at 103, 089 (High Court); [1988] 2 NZLR 352 at 359-360 (Court of Appeal).

⁶ *ibid.*

⁷ *ACCC v Universal Music Australia Pty Ltd* (2003) 131 FCR 529 at [34] ("*Universal Music*"; *EMI Records (Australia) Limited, Festival Records Pty Ltd, CBS Records Australia Ltd, WEA Records Pty Ltd, Polygram Records Pty Ltd, RCA Ltd on their own behalf and on behalf of Phonographic Performance Company of Australia Limited* (1985) ATPR (Com.) 50-096 at para. [39]-[44] (Market in Australia for records).

previously used a geographic radius of approximately 5 km for supermarkets. In Whitcoulls' submission a broader geographic market is appropriate for retail book stores because:

- (a) grocery purchases typically include bulky products, which makes transport and distance a more critical factor; and
- (b) books are less frequently purchased by consumers than groceries, hence consumers will be more willing to travel further when purchasing a book.

In the context of supermarket acquisitions, the Commission has analysed the competitive effects of acquisitions in a geographic market in a radius of not less than 5 km around the store the subject of the proposed acquisition. In Decision 438⁸ and Decision 448⁹, the Commission defined the supermarket market as the market for the retailing of food, liquor and grocery items in supermarkets, incorporating regional markets of not less than 5 km in radius. The Commission has recognised that, in certain circumstances, the geographic market will be wider than 5 km. In Decision 448, for example, where there were high levels of concentration, the Commission recognised that there is not a uniform size of market that applies to all areas but a range of small sizes that reflect a variety of factors influencing how far consumers will be willing to travel to an alternative source of supply if faced with a small but significant price increase.¹⁰

In Whitcoulls' submission, if a more localised approach were to be taken a radius of not less than 7 km would be appropriate.

Whether the Commission concludes that the relevant market definition is the national or local market for fiction and non-fiction books (hard and soft cover), it will not be determinative of the competitive effects of the proposed acquisition. The key competitive impact is affected by the low barriers to entry and the ongoing competitive dynamics of the market.

⁸ Decision 438, Progressive Enterprises Limited and Woolworths (NZ) Limited (Outcome: Cleared on 13/7/01)

⁹ Decision 448, Progressive Enterprises Limited and Woolworths (NZ) Limited (Outcome: Declined on 13/12/01)

¹⁰ Ibid. at para. [69]-[71]

Differentiated Product Markets

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).

Books are not a homogenous product. They divide into categories or genres and from that into individual titles.

13 For differentiated product markets:

- Please indicate the principal characteristics of products that cause them to be differentiated one from another.**
- To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?**
- Of the various products in the market, which are close substitutes for the products of the proposed merged entity? - which are more distant substitutes?**
- 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?**

Product differentiation and substitutes

Retail book market offerings are differentiated based on titles and categories of publications. In addition, there is differentiation based on whether a book is hard cover book or a soft cover book.

There are economies of scope in the provision of a range of categories and a range of titles. Generally speaking, book sellers carry a broad range of titles and categories to maximise potential purchases by customers. Similarly publishers publish a range of titles and categories.

Books are not homogeneous and no book title is a perfect substitute for another.

There is some differentiation by retailers between "front list" and "back list". "Front list" refers to lead titles, including new releases and high selling popular titles. These titles form the majority of the range carried by The Warehouse and K-Mart (estimated at 65%), but a much smaller proportion (35%) of the range carried by most of the other retailers in New Zealand.

Market niches

Book retailers do not generally target market niches, preferring to stock a wide range of titles across a number of different genres. There are some specialist stores. These tend to be independent stores which have a particular focus. Nonetheless they tend to have a specific focus rather than being confined exclusively to one subject matter. They therefore carry a sufficient range to provide a competitive constraint to the activities of the merged firm. In addition, there are technical book shops dealing principally with tertiary educational materials. These are not the primary area of operation of the firms the subject of the proposed transaction.

Competitive constraints

The level of product differentiation does not impact the nature of competition which the merged firm will face given the characteristics of the market at issue.

The relevant market is very competitive. Customers are well-informed on price.

The range stocked by the Paper Plus Group, Dymocks and independent book retailers provides consumers with viable purchasing alternatives. The on-line/internet sales channel provides consumers with a further purchasing alternative, including (potentially) access to a broader range of titles and genres and an additional source of price competition.

A merged Whitcoulls/Borders will continue to be constrained by the Paper Plus Group and a large number of independents, all of which are constrained in their pricing by benchmarking of each others' prices and recommended retail pricing on front-list titles.

In line with overseas markets in Australia¹¹ and the United Kingdom¹², a merged Whitcoulls/Borders will also be increasingly constrained by discount department stores such as The Warehouse, Warehouse Stationery and K-Mart.

The Warehouse is already the leading seller of DVDs in New Zealand and The Warehouse and The Warehouse Stationery are likely to further expand their retail book businesses. As such, the threat of further prospective expansion by The Warehouse and The Warehouse Stationery do and will continue to function as a real competitive constraint on a merged Whitcoulls/Borders. This is because The Warehouse and the Warehouse Stationery both have the capacity to service a broad portion of the national market and have the ability to engage in aggressive discounting across a broad range in direct competition with a merged Whitcoulls/Borders.

¹¹ In Australia, the discount department stores (Myer, David Jones, K-Mart, Target and Big-W) compete with book retailers on both price and range and engage in discounting throughout the year (especially during seasonal periods such as Christmas). Whitcoulls expects the market in New Zealand to develop in a similar way and that The Warehouse, The Warehouse Stationery and K-Mart will not only continue to compete with Whitcoulls on price in relation to new lead release titles, but also on an increased range of titles.

¹² In the United Kingdom, supermarkets account for around 8% of the national book market and stock both lead new release titles and best sellers (See UK Competition Commission, HMV Group plc/Waterstone's plc/ Ottakar's plc.- Acquisition completed on 12 May 2006)). Anecdotal data suggests that Tesco is the largest channel for the sale of books in the UK (i.e. is the largest purchaser/customer for book publishers). Unlike the discount department stores in New Zealand, Tesco stock a range which matches that of Whitcoulls in New Zealand.

No vertical integration issues arise in respect of the proposed acquisition. The issues are purely horizontal.

There is only a very low level of vertical integration between the Borders Group and Borders in New Zealand. Approximately [] of Borders' products are sourced from locally based suppliers in Australia [] and New Zealand []. The remaining [] of merchandise purchased by Borders is sourced from the Borders Group. This includes books sourced from the United States (including bargain books), music, selected magazine titles, calendars and Paperchase branded products¹³.

[

] ¹⁴

¹³ The Borders Group Inc owns and operates Paperchase UK, a leading UK based specialty stationery retailer. Approximately [] of Paperchase product is sourced from the Borders Group Inc. (predominantly Paperchase branded items) and the remaining product is supplied locally (including a selection of pens, greeting cards and novelty items that are approved by Paperchase UK. Approximately [] of merchandise purchased from the Borders Group is books, with a further [] being calendars and bargain books.

¹⁴ []

- 15 In respect of each market identified in question 11 identify briefly:**
- 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 (e.g. cleared, authorised, declined, withdrawn)**
 - **Whether the proposed acquisition has occurred.**
 - any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

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.

There were none.

15.2 Any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.

- (a) ARW is unaware of any acquisitions by Borders in New Zealand within the last 3 years.
- (b) There have been no acquisitions by ARW in the last three years in New Zealand.

PARTS III, IV and V: CONSTRAINTS ON MARKET POWER BY EXISTING AND POTENTIAL COMPETITION AND OTHER POTENTIAL CONSTRAINTS

For the reasons detailed in Part II, the relevant market for the assessment of the competitive effects of the proposed transaction is the national retail market for the sale of books. On this basis, the proposed acquisition will have only a small impact on the market share of Whitcoulls. Borders is a relatively new entrant with few stores and a national market share of only about [

¹⁵] If, contrary to the submission put in Part II, the Commission adopts a more localised approach to the geographic scope of the market, the level of aggregation in Auckland and Christchurch is closer to 10% than 5%, however, there will not be any adverse competitive effect because of:

- low barriers to entry as illustrated by Borders' recent successful entry into the market;
- the number of remaining competitors give customers a ready ability to switch book stores, including to an increasing number of on-line book stores, in the event of a price increase;
- Whitcoulls and Borders are not closest competitors, they occupy distinct product spaces; and
- neither Whitcoulls nor Borders is a price leader. That role will continue to be played by discount department stores such as The Warehouse, The Warehouse Stationery and K-Mart.

16 Other market participants

Market participants can be divided into 4 broad categories - established chain stores, discount department stores, independents and internet/on-line retailers reflecting the different style of retail outlet used by each. The discount department stores aggressively discount on new release and best seller titles which are a key component of sales by Whitcoulls and Borders. The proposed acquisition will not affect this dynamic at all. Throughout New Zealand, there are a significant number of independent retailers.

A list of the independent retailers in close proximity (within a 7 km radius) to the Borders stores the subject of the proposed acquisition is provided (along with annual turnover figures) in **Confidential Annexure 2**.

(a) *Established Chain Stores*

Dymocks

- Dymocks has 5 stores in New Zealand, four of which are franchised (Newmarket, Napier, Queensgate and Wellington) and one of which is company owned (at Queen Street in Auckland). The Dymocks store at Queensgate in Lower Hutt opened in December 2006.
- Dymocks describes itself as a "large independent" which concentrates 95% on books.¹⁶
- Dymocks positions itself to target high income earners with a focus on "high end" titles and customers. In terms of product space, store layout and consumer demographic, Dymocks' is more closely aligned to Borders and the independents than to Whitcoulls.

¹⁵ []

¹⁶ See http://www.nzherald.co.nz/category/story.cfm?c_id=134&objectid=10431957

- Dymocks does not operate an on-line store out of New Zealand. However, Dymocks in Australia does operate an on-line store which delivers to New Zealand. This on-line store can be accessed by New Zealand consumers from the Dymocks New Zealand website at www.dymocks.co.nz/. The price is determined by the price of the item(s) plus a freight charge calculated according to weight.

Paper Plus Group

- The Paper Plus Group is a major book and stationery franchise, see <http://www.paperplus.co.nz/franchiseinfo/index.html>.
- The Paper Plus Group currently operates 193 stores throughout New Zealand (up from 161 stores in 2005¹⁷) and comprises two retail brands - Paper Plus and TakeNote. Both are run using a co-operative franchise business model. Of the 193 stores throughout New Zealand, there are 111 Paper Plus (including 6 specialist Paper Plus Books outlets) and 82 Take Note franchise stores. Paper Plus and Take Note stores are particularly well represented in provincial areas. The specialist Paper Plus Books outlets offer an extended book range equivalent in size to the book department in a Whitcoulls store.
- PaperPlus and TakeNote stores sell a variety of books, magazines, stationery, cards and gifts. In recent times, the Paper Plus Group's traditional focus on stationery has been replaced by a new focus on the books category, including in advertising. This has resulted in specific promotional activity for books and the introduction of Paper Plus Books formats in 6 stores (Coastlands, Porirua, Tauranga, Shirley, Dunedin and Lower Hutt).
- Paper Plus has an online retail outlet for books at <http://www.paperplusbooks.co.nz/>, which offers a range of over 800,000 books from across the world and offers free delivery in New Zealand.
- Whitcoulls views the Paper Plus Group as its closest chain competitor.

(b) *Discount Department Stores*

The Warehouse and Warehouse Stationery

- The Warehouse Group Limited is a New Zealand owned company listed on the New Zealand Stock Exchange.
- The Warehouse Group Limited describes itself as a "destination discount department store" and is the biggest general merchandise and apparel retailer in New Zealand (in terms of market share).
- The Warehouse Group Limited comprises of 85 "The Warehouse" stores (including 2 Warehouse Extra stores at Sylvia Park in Auckland and at Whangarei) and 43 Warehouse Stationery Stores in New Zealand.
- Both The Warehouse and The Warehouse Stationery engage in aggressive discounting on new release lead titles, especially during peak seasonal periods such as Christmas, and are strong in the children's and sports book segments of the book market.

¹⁷ This network growth is largely the result of the Paper Plus Group's acquisition of Books & More in 2006. All of the Books & More stores have been rebranded as either Paper Plus or Take Note.

- As The Warehouse and The Warehouse Stationery are particularly vigorous competitors on new release lead titles and best sellers, most of their market share is sourced from book sales in these categories. Whitcoulls estimates that The Warehouse and The Warehouse Stationery's combined share of the national retail book market is approximately 10%.
- The Warehouse Stationery also stocks an extended range of products including magazines, books and kids products.
- Since The Warehouse and The Warehouse Stationery began selling books, Whitcoulls has felt significant competitive pressure particularly on pricing of front list titles from these stores.

K-Mart

- K-Mart operates 5 stores in New Zealand and has an estimated book market share of 1.5%. Like The Warehouse and Warehouse Stationery, K-Mart engages in aggressive discounting on new release lead titles. It also stocks a limited range of backlist titles (i.e. older books kept in print by publishers) across a variety of genres. It is strong in the children's books segment of the market.

(c) *Independents*

Independents are the principal source of growth in the retail book market. Over the past 12 months, Whitcoulls believes that independent booksellers would have experienced growth in excess of the 1-2% experienced by Whitcoulls.

Real Groovy (over the counter and on-line)

- Real Groovy started its business as a retailer of music, selling CDs, LPs, DVDs etc. It has, however, now expanded into book sales and become a major book retailer. Real Groovy has both significant sales on-line, with estimated book sales of \$4 m per annum from its Auckland store alone, and a strong "street presence".
- Real Groovy operates a total of four retail stores in New Zealand - Queen Street (Auckland), Cuba Street (Wellington), Tuam Street (Christchurch) and Great King Street (Dunedin). It offers a selection of books, CDs, LPs, videos, DVDs, and magazines as well as a range of posters, t-shirts, streetwear (Auckland and Christchurch only), and console game hardware.
- Real Groovy has an on-line retail outlet for books at <http://www.realgroovy.co.nz/>, which contains 800,000 book titles sourced from local, British and American suppliers and offers free delivery in New Zealand. In terms of product space, Real Groovy's website states that its stores "carry an excellent range of books related to music, top 100 paperbacks and a selection of non-fiction."¹⁸

Other

- Nationally, there are a number of independent retailers operating stores in a number of locations (e.g. Unity Books, Parsons and Children's Books). There are also a number of smaller independent retailers which currently exercise and will continue to exercise competitive constraint on a merged Whitcoulls/Borders within their various geographic areas of operation.

¹⁸ See <http://www.realgroovy.co.nz/help/aboutus.htm>

(d) *Internet/On-line retailers*

Fishpond

- Fishpond is a private company that has operated in New Zealand for around 3 years. Its on-line outlet is located at: www.fishpond.co.nz/. It offers a range of almost 1.2 million book titles. It also sells CDs and DVDs.

Amazon

- Amazon has a huge range estimated at around 55-60 m titles and its estimated annual turnover (worldwide) is currently around US\$9.7 billion. While Amazon has no base or stores in Australia or New Zealand, it does deliver to Australia and New Zealand.
- Amazon's pricing strategy is based on discounting with pricing well below recommended retail price. Amazon does not deliver for free to New Zealand. In addition to freight charges, there is also a per order charge per book.
- Data from *Hitwise* for September 2006 shows that 60.5% of on-line/internet traffic for books in New Zealand visited the www.amazon.com site. This compares with 5.2% for Real Groovy, 3.6% for Whitcoulls, 2.3% for Paper Plus and 28.4% for "Other". This would suggest that a considerable proportion of books purchased in New Zealand are purchased on-line.

Nile

- Nile's online outlet is located at: www.thenile.co.nz/. Nile has been in the market for over three years and offers a similar range to www.fishpond.co.nz/.
- Nile sells books from Australia, New Zealand and the United States and stocks a range of 1 million titles. On its website, it promotes itself as the cheapest source in New Zealand for almost all books.¹⁹ Delivery in New Zealand is not free and incurs a charge of \$3 or \$5 depending on location. Nile also delivers to Australia and other international destinations from fulfilment centres at Kent in the United Kingdom and at New Jersey in the United States.

Ferrit

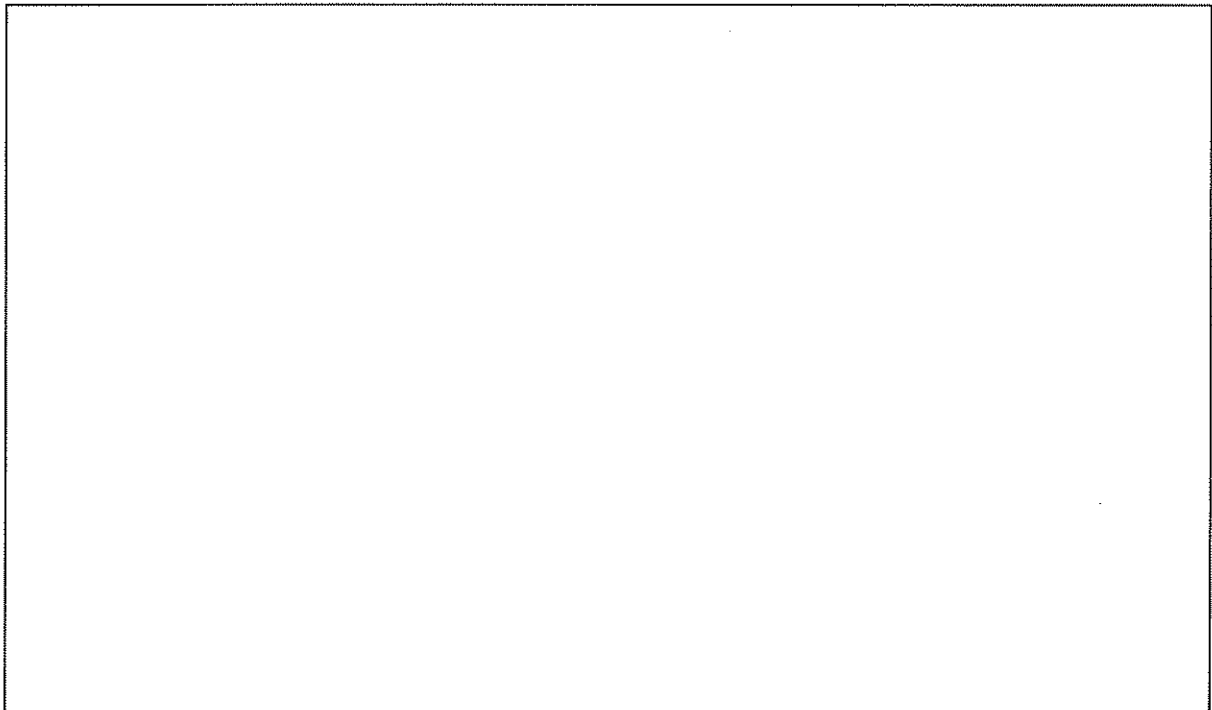
- Ferrit's on-line outlet is located at www.ferrit.co.nz. Since entering the market in November 2005, Ferrit has expanded rapidly.
- Ferrit is operated by NZ Telecom and acts as a "virtual shopping mall" bringing leading over the counter retailers together on-line. Ferrit promotes itself as "New Zealand's largest on-line shopping mall"²⁰. It offers a large range of other items in a variety of categories (e.g. music and movies, electronics, gaming, clothing and shoes, health and beauty, jewellery, toys and hobbies, sports and outdoors *etc*). In its book and magazines category, Ferrit offers fiction and non-fiction books as well as magazines. It offers books from Whitcoulls, Nile, and Real Groovy.

¹⁹ See <http://www.thenile.co.nz/static/about.html?sid=6e8d8d939170011a99172fcaaf5b94d1>

²⁰ See <http://www.ferrit.co.nz/>

National retail market for books

Consistent with Borders' management estimates in the Borders IM, Whitcoulls estimates that its current share of the national book market is approximately [] excluding internet/on-line sales and approximately [] including internet/online sales. Whitcoulls estimates that the post-acquisition national market share (including on-line/internet sales) of a merged Whitcoulls/Borders would be approximately [].



[Confidential]

Over the past [] months, Whitcoulls has seen a drop in market share of around []. It believes this has been a market share loss principally to the Paper Plus Group driven in large part by the additional advertising spend of The Paper Plus Group. Advertising by The Paper Plus Group in that period has had a very similar "look and feel" to that of Whitcoulls and their promotions have mirrored some of the standard Whitcoulls promotions. In relation to on-line sales, figures supplied by *Hitwise* for September 2006 suggest that on-line/internet sales in New Zealand are worth approximately \$24m. Whitcoulls estimates its share of total on-line/internet sales is [].

Local retail market for books

Contrary to our primary submission, if the geographic scope is defined on the basis of a 7 km radius, market concentration levels in two markets (at Queen St in Auckland and at Riccarton in Christchurch) would be higher than measured on a national basis. Outlined in **Confidential Annexure 2** are:

- (a) the retailers of fiction and non-fiction books in an area within approximately 7 km of the Borders stores the subject of the proposed acquisition; and

- (b) the estimated annual turnover figures of those retailers for the sale of books.²¹

These figures in **Confidential Annexure 2** exclude internet sales as it is not possible to track internet sales to a localised region. Internet sales are dominated by Amazon. Therefore the figures in **Confidential Annexure 2** overstate the market shares of the stores by some proportion.

At present, there are a total of 4 trading Borders stores in New Zealand (at Queen Street in Auckland, Riccarton in Christchurch, at Lambton Quay in Wellington and at Sylvia Park in Auckland). Of these, Sylvia Park opened on 26 March 2007 and Lambton Quay opened in April 2007. A further Borders store is scheduled to open at Albany in Auckland in November 2007.

Given that three Borders stores do not have a trading history (Sylvia Park, Lambton Quay and Albany), and the store at Albany has not yet opened, the annual turnover figures for these stores in **Confidential Annexure 2** are not based on any actual turnover figures. As such, the figures represent only estimates of Borders' projected annual turnover for those stores in their first year of operation. ARW management has made these estimates assuming that the Borders stores at Sylvia Park and Lambton Quay will be successful with no real risk element factored in. They are therefore the highest estimated sales figures likely to be achieved and sales may in fact be significantly lower. Given that the Borders store in Albany has not yet opened, no reliable estimates can be made by Whitcoulls of the projected annual turnover for this store.

Outlined below is Whitcoulls' analysis of market concentration levels for the four trading Borders stores the subject of the proposed acquisition. In the local area surrounding each of these stores, strong competition is already provided by The Warehouse and The Warehouse Stationery, who have more than one store in each geographic area (see **Confidential Annexure 2**).

Stores with a trading history

Queen Street

Within a 7 km radius, Borders is currently Whitcoulls' largest competitor in terms of sales revenue. However, strong competition is also provided by:

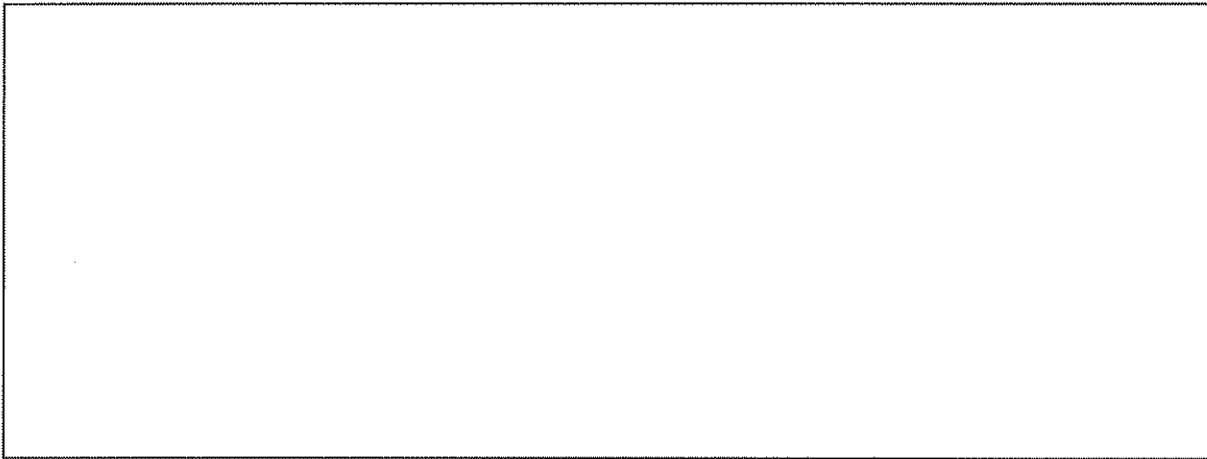
- (a) two Dymocks stores, one on Queen Street and one at Newmarket Broadway;
- (b) a strong independent, Unity Books;
- (c) Real Groovy; and
- (d) The Warehouse.

In that area, Whitcoulls' current estimated share of fiction and non-fiction book sales is []; Borders' share is []

After the acquisition a merged Whitcoulls/Borders will have an estimated [] share of fiction and non-fiction book sales in that market.²²

²¹ The figures in this analysis do not include sales of non-book items which are sold in Whitcoulls and Borders stores, for example, DVDs, music and magazines.

²² This estimate does not include internet sales (estimated at [] nationally). When internet sales are included the share of a combined Whitcoulls/Borders will be less than this estimate.

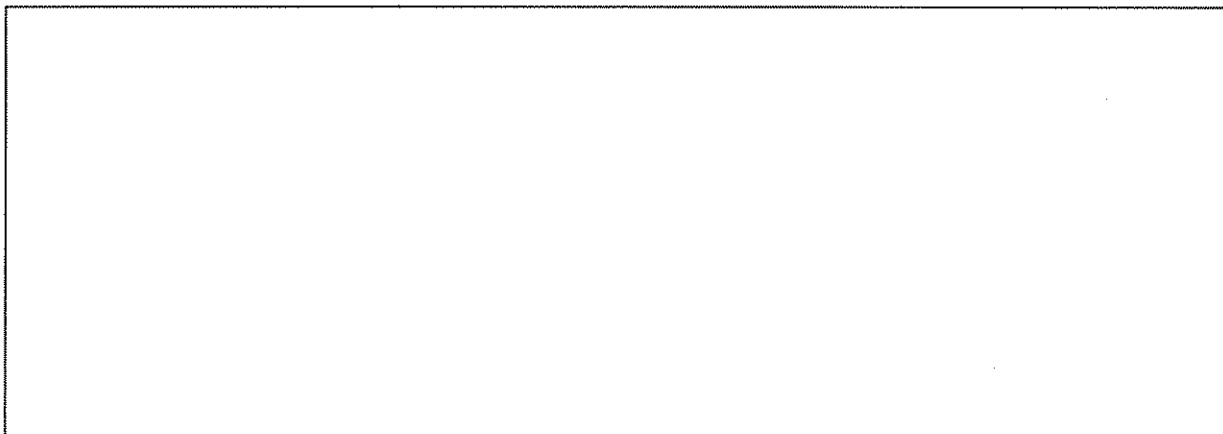


[Confidential]

Riccarton

[Within a 7 km radius, Borders and The Paper Plus Group are currently Whitcoulls' largest competitors in terms of sales revenue. In that area, Whitcoulls' current estimated share of fiction and non-fiction book sales is []; Borders' estimated share is [].]

[After the acquisition a merged Whitcoulls /Borders will have an estimated [] share of fiction and non-fiction book sales in that market.²³



[Confidential]

Stores without a trading history - recently opened stores

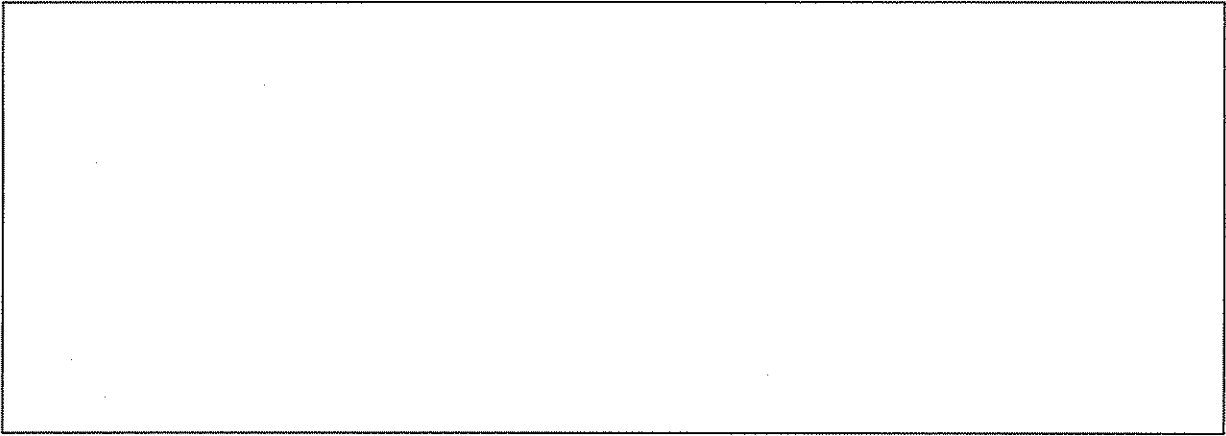
Lambton Quay

Within a 7 km radius, Dymocks, Borders and three independents (Unity Books, Parsons and Capital Books) are Whitcoulls' largest competitors in terms of sales revenue. In that area, Whitcoulls' current estimated share of fiction and non-fiction book sales is []; Borders' prospective share is [].

After the acquisition a merged Whitcoulls/Borders will have an estimated [] share of fiction and non-fiction book sales in that market.²⁴

²³ This estimate does not include internet sales (estimated at [] nationally). When internet sales are included the share of a combined Whitcoulls/Borders will be less than this estimate.

²⁴ This estimate does not include internet sales (estimated at [] nationally). When internet sales are included the share of a combined Whitcoulls/Borders will be less than this estimate.

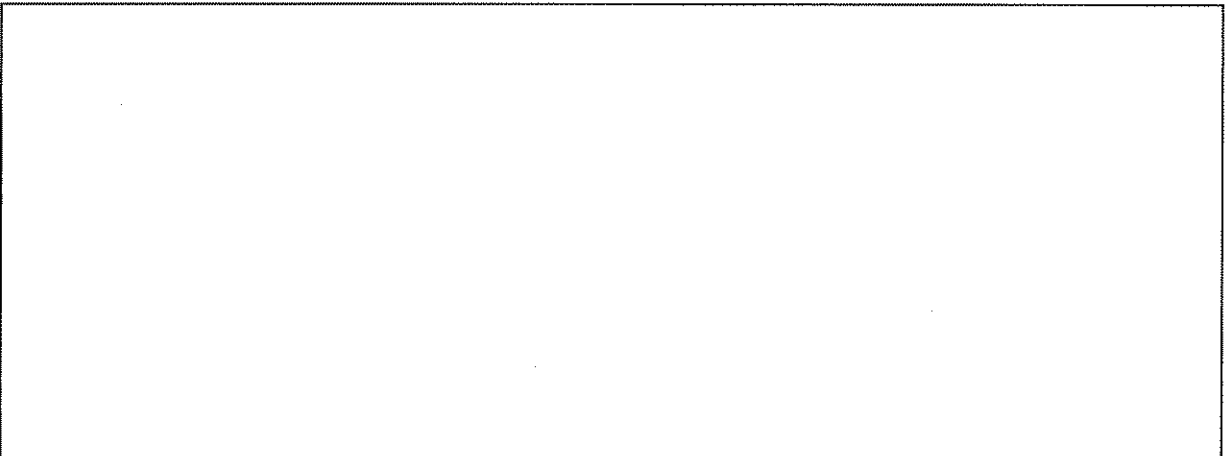


[Confidential]

Sylvia Park

Within a 7 km radius, Paper Plus, Borders and an independent (Tech Books) are Whitcoulls' largest competitors in terms of sales revenue. In that area, Whitcoulls' current estimated share of fiction and non-fiction book sales is []; Borders' prospective share is [].

After the acquisition a merged Whitcoulls/Borders will have an estimated [] share of fiction and non-fiction book sales in that market.²⁵



[Confidential]

Conclusion

No matter how the market is defined, Whitcoulls' closest and strongest chain store rival, The Paper Plus Group, will continue to exert competitive constraint post-merger, and will face no barriers to expansion. The Warehouse and The Warehouse Stationery will also continue to compete in each market, as will a large number of independent and internet retailers.

Additionally, other competitive factors, particularly low barriers to entry, mean that the proposed acquisition will not result in a substantial lessening of competition.

²⁵ This estimate does not include internet sales (estimated at [] nationally). When internet sales are included the share of a combined Whitcoulls/Borders will be less than this estimate.

(a) *Low barriers to entry*

Low barriers to entry are evidenced by Borders' recent successful entry into the market. In 1999, Borders entered the New Zealand market with its store in Queen Street, Auckland. Since then, it has opened a further 3 stores at Riccarton in 2004, Sylvia Park in April 2007 and Lambton Quay in March 2007. It also plans to open a further store in Albany in November 2007.

A number of TakeNote stores (part of the Paper Plus Group) have also been recently opened, providing further evidence that barriers to entry in the book retailing market are low and entry can be achieved with relative ease (see paragraph 19(b) below). New entrants are able to enter the market and compete without being impeded by incumbent firms.

Sunk and fixed costs for new entrants are not high, with purchases of stock representing the largest proportion of costs at around 70%.²⁶ Franchisees who buy into a Paper Plus Group or Dymocks franchise, have immediate access to the advertising and promotional channels of those franchise groups.

There are no substantial regulatory requirements to expansion or new entry into the relevant market. In circumstances where a new entrant or an existing competitor requires additional building capacity in order to expand, regional plans and zoning requirements would need to be considered. Compliance would be relatively straight forward.

Established chain stores and discount department stores with high turnover (e.g. Whitcoulls, Dymocks, The Paper Plus Group, The Warehouse and The Warehouse Stationery) do not enjoy substantially better buying terms compared to smaller independents. Purchasing on a large scale provides established chain stores with only limited extra buying power. Whitcoulls estimates that the price differential between established chain stores and independents is only about 5%.

Irrespective of size, established chain stores, independent book retailers and new entrants can purchase the same book titles on similar terms and at a similar price (i.e. there is no exclusivity in supply arrangements between publishers and existing book retailers), e.g. the recent and successful entry of The Warehouse and The Warehouse Stationery into the New Zealand retail book market. The only benefit that existing book retailers may enjoy is better lines of credit as a result of the relationship that they have built with suppliers over a period of time (e.g. extended payment terms).²⁷ This tends to be a function of the longevity of the relationship rather than size as such. In general, it is very difficult for book retailers to negotiate improved terms with publishers, be they major publishers or second-tier suppliers. Book publishing is highly concentrated with a relatively small number of publishers having rights to a large number of titles.

Furthermore, whilst retailers are theoretically able to source specific book titles from anywhere in the world to take advantage of more favourable pricing overseas, the reality is that the overseas publisher will invariably direct the retailer to their New Zealand based division. This situation means that publishers operate virtual monopolies for the supply of individual book titles. It is as a result of this unique strength in the supply chain that there is a narrow range in the terms of trade provided from one retailer to another.

²⁶ IBIS World Industry Report, *Newspaper, Book and Stationery Retailing in Australia: G5243*, January 2007, p. 21. Though this figure relates to the Australian market, the nature of the costs make it unlikely that these costs would be materially different in New Zealand.

²⁷ IBIS World Industry Report, *Newspaper, Book and Stationery Retailing in Australia: G5243*, January 2007, p. 17.

There are no market conditions that are considered likely to impede the business decision of any current competitor to Whitcoulls or Borders to increase supply other than limited demand and prevailing economic conditions in New Zealand.

(b) Low barriers to expansion

Competitors can readily expand by adding to existing product lines using existing capacity. Additional capacity could be easily achieved by expanding existing premises, relocating or opening and operating additional retail store premises. This could be expected to take approximately three to six months. Finding suitable space for a book store is far easier than for a supermarket. Book stores require less space and do not face the resource management issues faced by supermarkets.

Some recent examples of such expansion include:

- **Borders:** Borders has opened three new stores since May 2005 - Borders Riccarton (May 2005), Borders Lambton Quay (March 2007) and Borders Sylvia Park (26 April 2007).
- **The Paper Plus Group:** In addition to the rebranding of the Books & More stores it acquired in 2006, Paper Plus has opened new stores at Tower Junction in Christchurch (approximately November 2005), at Hornby in Christchurch (approximately November 2005), Riccarton in Christchurch (approximately November 2005) and at Rototuna in North Hamilton (approximately November 2006). It has also opened new airport stores at Dunedin, Queenstown and Hamilton.
- **Dymocks:** Dymocks recently opened a new store at Queensgate in Lower Hutt in Wellington in December 2006.
- **The Warehouse and The Warehouse Stationery:** The Warehouse recently opened a new store at Sylvia Park in June 2006.

A number of existing businesses could also expand. The Warehouse and The Warehouse Stationery are both recent entrants to the retail book market. The Warehouse and The Warehouse Stationery could easily expand their range and offer a wider variety of book genres and titles. Media reports have also reported that the Paper Plus Group is looking to further expand its retail book operations.²⁸ Over the past year, the Paper Plus Group has established 6 specialist retail stores branded as "Books Plus". These stores are located at Coastlands, Porirua, Tauranga, Shirley and Lower Hutt and stock a range comparable to Whitcoulls and more extensive than the ordinary Paper Plus and Take Notes stores.

There is also evidence that on-line/internet sales are expanding. Anecdotal evidence obtained by Whitcoulls suggests that in the US and UK "entertainment markets" (i.e. encompassing books, DVD, music etc), around 5-10% is sold on-line. In New Zealand, this is closer to 2%, however over time it is likely that the US and UK experience will be replicated in the retail book market in New Zealand. The principal reason for the current difference in figures is likely to be due to the greater penetration of broadband internet services in the US and UK (as compared to New Zealand), thus making on-line shopping a simpler and more satisfactory exercise for many than in New Zealand. However, there is evidence that this is changing and on-line shopping is becoming more popular in New Zealand, which is discussed further in paragraph 19(e) below.

Furthermore, books (as a sub-category of "entertainment markets") sold on-line, already account for 5% of total book sales in New Zealand. This channel is estimated to be growing at 25% per annum whilst growth of the traditional bricks and mortar channel is much more modest at an estimated 1-2%. Whilst the merged entity would currently have an estimated 33.4% of this market, if the internet channel continues to grow at these rates, this share will have fallen to less than 30% within 5 years.

²⁸ New Zealand Herald, "Retailers Plot a New Course", 1 April 2007, viewed at http://www.nzherald.co.nz/category/story.cfm?c_id=134&objectid=10431957 on 11 May 2007.

Many over the counter book retailers in New Zealand have also launched internet/on-line outlets (e.g. Whitcoulls, The Paper Plus Group and Real Groovy). This is in addition to specialist on-line/internet book retailers like Nile.

Moving forward, Whitcoulls expects the number of internet/on-line retailers to continue increasing. Whitcoulls estimates that the on-line book sales are growing at approximately 25% per year across Australia and New Zealand and that the competition is intensifying with more retailers coming into the online space.

(c) Countervailing power

As publishers own the copyright in particular book titles, retailers must purchase particular book titles from particular publishers (i.e. cannot switch to an alternative source of supply for that title). In order to offer a particular title for sale in the retail market, book retailers must purchase that specific title from particular publishing house which owns the copyright to that title.

In addition publishing is a highly concentrated industry with a small number of participants stocking a large proportion of the titles which book retailers need to stock. This is particularly so in relation to front-list titles. It is common in the industry for book retailers to source product with a small number of key suppliers. For example, Borders top five book suppliers account for nearly [] of total purchases, the majority of which are sourced from local suppliers in Australia and New Zealand.²⁹

Publishers actively support independent retailers as a way of ensuring they have a range of distribution outlets to minimise potential monopsony power on the part of book retailers and to expand their total sales in the marketplace. Independent book retailers are particularly important in ensuring sales for publishers across a broad range of titles. Discount department stores and major book retail chains are often disinclined to stock titles which have low turnover levels. In order to incentivise independent book retailers to stock a wide range of titles, publishers will support them by:

- providing discounts comparable to those of the larger volume purchasers as described in section 18(a); and
- providing in-store events such as book signings.

New release lead and front list titles are key elements of the range stocked by the established chain stores and discount department stores. However, whilst these elements are supplemented by "back list" ranges by the major retailers, publishers also stock many titles which do not sell in the same quantities in chain stores or discount department stores. The established sales channel for these types of books is independent book stores. The need for a channel for these titles provides a strong incentive for publishers to support independents.

Each book has a recommended retail price ("RRP") provided by the publisher, who owns the copyright to the specific book title. For some titles this is printed on the book. In such cases, the RRP in effect represents the maximum price that a book retailer may charge for that particular book.

(d) No ability to significantly and sustainably increase prices or profit margins post-acquisition

There is strong price competition in relation to new lead release titles and front list titles, particularly from discount department stores. This creates a highly competitive environment which often results in significant discounting and weekly specials in relation to that segment of the market. This price competition is particularly strong during peak seasonal periods such as Christmas, though the discount department stores (e.g. The Warehouse and The Warehouse Stationery) aggressively discount throughout the year to increase foot traffic. This has an impact on Whitcoulls' prices.

²⁹ []

Suppliers dictate the purchase price of a particular title to retailers and given the monopoly in individual titles have significant countervailing power. Buying terms are expressed as a percentage discount from the recommended retail price and while the discount level will vary to some extent between retailers, Whitcoulls' experience is that the range of difference in price is not significant.

The existence of the concept of the RRP is a highly unusual feature in any supply chain and greatly enhances the publishers' power, consequently diminishing the ability of retailers to increase prices.

In relation to the margins earned by retailers, the main variance in margin is likely to come from how the product is purchased (i.e. whether it is purchased on a sale or return basis or firm sale terms). The reality for all book retailers is that the margin is usually lower on new release lead titles and best sellers since price competition forces retailers to discount despite the cost price for the item being fixed. This suggests that there is strong price competition between competing retailers.

Retailers purchase the overwhelming majority of book titles directly from the publishers (rather than through wholesale distribution networks). Given that the book publishing market is highly concentrated³⁰ (including in New Zealand), book publishers exert a substantial degree of countervailing power on the supply side. As the owners of the copyright to titles published by particular authors, publishers essentially set the prices at which individual book titles across all genres are purchased by retailers. In New Zealand, while not every book is printed with a RRP, each book does have a RRP which is known to retail purchasers. This is the price at which retail book prices are generally set or "benchmarked" by competing book retailers.

At present, discount department stores such as The Warehouse, Warehouse Stationery and K-Mart compete directly with Whitcoulls and Borders on lead new release titles, where their adoption of discount pricing strategies operates as a competitive constraint. This will act as a significant constraint on the merged entity's ability to significantly and sustainably raise prices above competitive levels.

(e) Dynamic characteristics of the market

Consumer demand in the retail book market is generally strong and growing, providing an incentive for new entrants to enter the market and for competitors to expand.³¹ The Warehouse, The Warehouse Stationery and K-Mart are recent entrants and will exert considerable competitive pressure on a merged Whitcoulls/Borders, as will an increase in on-line/internet sales.

In recent times, there has been an increased growth in the sale of books through the internet. Recently, Whitcoulls has invested in the development of an on-line/internet sales service to complement over the counter sales and service the needs of their customers, as have The Paper Plus Group. There is also increasing evidence that broadband penetration is increasing in New Zealand. A recent report released by Nielsen/Net Ratings on 31 May 2007 found:

- *"that 94% of adult New Zealand internet users researched goods or services via the internet, 61% made a purchase online in the month of March 2007, which is also the average over the period December '06 to March '07."³²; and*

³⁰ See Final Report by the Intellectual Property and Competition Law Committee, *Review of Intellectual Property Legislation Under the Competition Principles Agreement*, September 2000, <http://www.ipaustralia.gov.au/pdfs/ipcr/finalreport.pdf>

³¹ According to *Statistics New Zealand*, New Zealand households spend \$16 to \$17 a week on publications and stationery. In a recent survey conducted by *Booksellers New Zealand*, New Zealand consumers voted reading as their favourite activity. This would indicate that demand in the retail book market in New Zealand is, and will remain, strong: See http://www.nzherald.co.nz/category/story.cfm?c_id=134&objectid=10431957&pnum=2

³² See http://www.netratings.com/pr/pr_070530_NZ.pdf

- *"that on-line shopping has gone mainstream and reveals a continuous strong trend and a very high satisfaction level in on-line purchasing."*³³

In addition, as consumers begin to favour the convenience of on-line purchase and delivery to their home or business, sales by on-line/internet orders will be an increasingly popular option for consumers and will provide a real competitive constraint on the prices book retailers are able to charge for books over the counter.

There is also an emerging trend toward the digitisation of books by publishers. The chief advantage of this sales channel for consumers is that *"eBooks can be purchased and downloaded immediately by customers anywhere in the world at prices that are cheaper than printed books, with no postal charges and no waiting for delivery."*³⁴ This is expected to have an increasing impact on the competitive dynamic of this national retail book market moving forward. While the development of digital books is currently in its infancy, sales of digital books over the longer term are likely to increase.³⁵

Publishers are also increasingly using the internet as a channel to sell directly to consumers. For example, *"Random has just launched a new direct-to-consumer site, www.rbooks.co.uk, which offers discounts of up to 20% and signed copies. HarperCollins is poised to start selling directly by Christmas, while Penguin has just relaunched its site and will discount titles by up to 25%."*³⁶

³³ See http://www.netratings.com/pr/pr_070530_NZ.pdf

³⁴ See <http://www.ebooks.com/information/about.asp>

³⁵ Examples of e-book websites are www.ebooks.com with 69,000 titles available and www.ereader.com, *"the world's largest e-book store"*.

³⁶ See www.bookseller.com

In Whitcoulls' submission, the proposed acquisition will not result in a substantial lessening of competition in the retail book market in New Zealand. The national retail book market is highly competitive and will remain competitive following the acquisition.

The acquisition will not lessen competition because of the existence of low barriers to entry, as evidenced by Borders recent successful entry into New Zealand and the expansion of other operators within New Zealand. The threat of effective entry and expansion will continue to act as a constraining threat on a merged Whitcoulls/Borders.

Competitive constraints will continue to be exerted by:

- (a) discount department stores such as The Warehouse, The Warehouse Stationery and Kmart;
- (b) established chain stores such as the Paper Plus Group and Dymocks;
- (c) independent book retailers;
- (d) sales from on-line retailers; and
- (e) the unique power of publishers through their monopolistic supply of individual titles, their support of independent retailers and their ongoing use of RRP.

SIGNED NOTICE

THIS NOTICE is given by Ian Robert Draper, Managing Director, A&R Whitcoulls Group Holdings Pty Limited.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to A&R Whitcoulls Group Holdings Pty Limited which is relevant to the consideration of this notice has been supplied;
- all information supplied is correct as at the date of this notice.

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

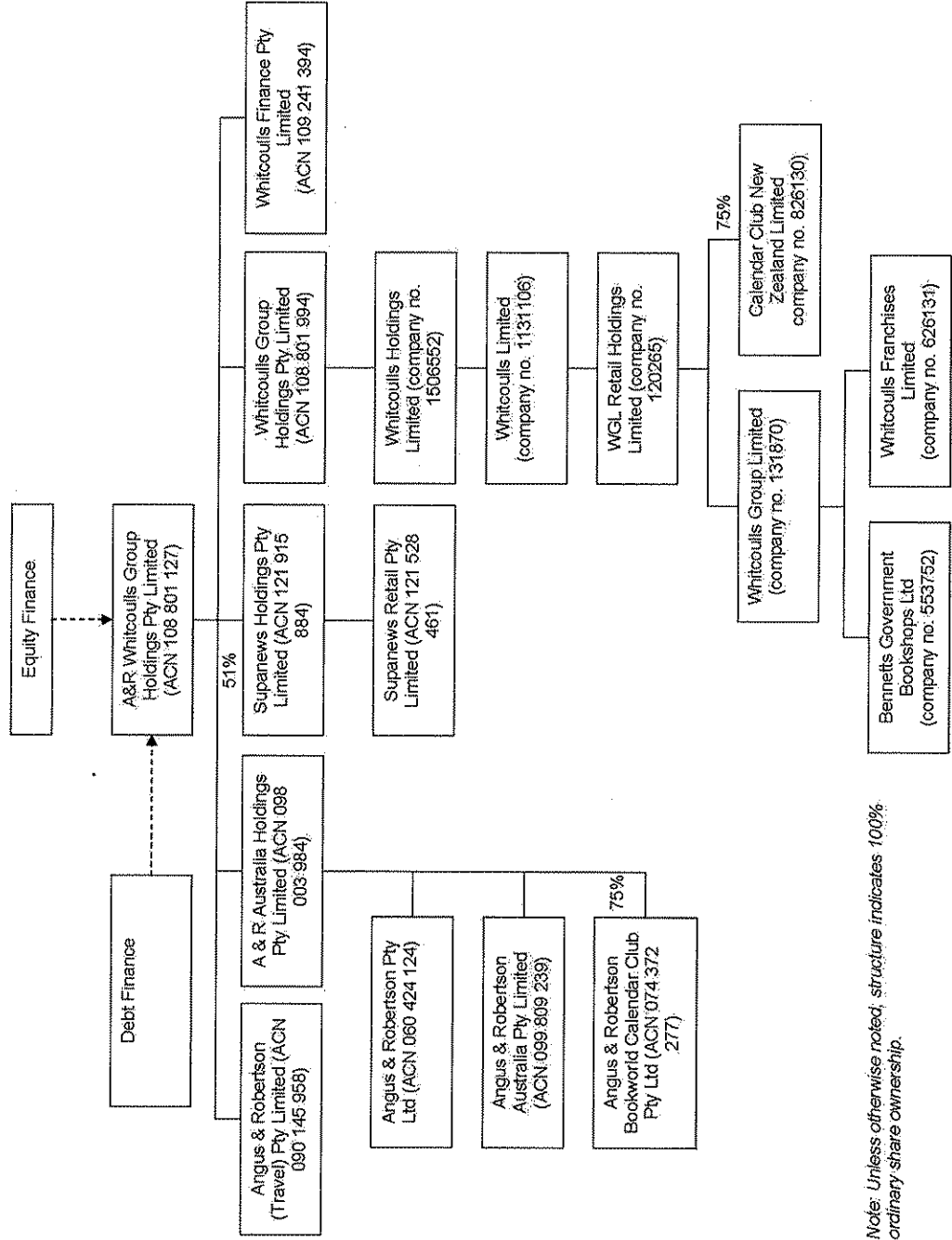
Dated this 21st day of September 2007.

Signed for and on behalf of
A&R Whitcoulls Group Holdings Pty Limited

Ian Robert Draper
Managing Director

I am an officer of the company and am duly authorised to make this notice

Annexure 1 - ARW Corporate Structure Diagram



Note: Unless otherwise noted, structure indicates 100% ordinary share ownership.

Confidential Annexure 2 - Annual turnover figures of the Borders stores the subject of the proposed acquisition and competing stores (excluding internet sales)

Annexure 3 - List of Whitcoulls stores in New Zealand

Branch Address List - 2 April 07		
CODE		ADDRESS
WHITCOULLS		
ABY	Albany	Unit 10a Mega Centre, Don McKinnon Drive, Albany Nth Shore 0632
BBY	Browns Bay	Cnr Clyde & Anzac Rds, Browns Bay
DTA	Downtown	Shop 9, Downtown Shopping Centre
GAL	Galleria	Shop G31, Shore City Galleria, Takapuna
GLF	Glenfield	Glenfield Mall, Shop 321
MLF	Milford	Shop 155, 24 Milford Road, Milford
MNK	Manukau City	Shop 28, Manukau City Centre
MSC	Manukau Super Centre	Tenancy "O" Cavendish Drive
PAP	Papakura	179-181 Great South Road, Papakura
WEI	Whangarei	The Strand, Cameron St. Whangarei
WPA	Whangaparaoa	Pacific Plaza, Whangaparaoa Rd
BEN	Bennetts on B/Way	34 Broadway Ave. P/Nth
BOD	Botany Downs	Shop 38, Town Centre Drive, Botany Downs
CHW	Chartwell	Shop 217, Chartwell Sq, Hukanui Rd. Hamilton
CPH	Centreplace	Shop 40, Centreplace, Victoria St. Hamilton
MAT	Matamata	53 Arawa Street, Matamata
MTM	Mt Maunganui	Shop 2, Bayfair, Girven Road.
FLA	Plaza P/North	Shop 21/22a The Plaza, Church Street
PPM	Papamoa	Shop T901, CentralMax, 22 Gravatt Road, Papamoa
ROT	Rotorua	1238 Tutanekei Street, Rotorua
TEA	Te Awamutu	16 Alexandra Street, Te Awamutu
TEY	Tauranga	17-19 Devonport Rd, Tauranga
TPO	Taupo	31 Horomatangi Street, Taupo
TRP	Te Rapa	The Base, Maahanga Drive, Te Rapa
WHK	Whakatane	111 The Strand, Whakatane
COR	Whitcoulls Corner	210 Queen Street, Auckland
GIS	Gisborne	182 Gladstone Road, Gisborne
HAS	Hastings	108 West Heretaunga Street, Hastings
HEN	Henderson	Shop 102, WestCity Shopping Centre
KRD	K'Road	136 Karangahape Road Auckland
LUK	St Lukes	Shop 516, St Lukes Shopping Centre
NLY	New Lynn	Lynn Mall, New Lynn
NPL	New Plymouth	Shop 1&2, Centre City Shopping Centre
NPR	Napier	165 Emerson Street, Napier
PAK	Pakuranga	Shop 198, Pakuranga Town Centre
RYK	Royal Oak	Shop 17, Royal Oak Mall
TSS	277 Newmarket	Shop 1, 277 Centre, Mortimer Pass
WAG	Wanganui	115 Victoria Avenue, Wanganui
BLN	Blenheim	65 Market Square, Blenheim
CQG	Sentiments	Sentiments, Shop 130A, Q/Gate Shopping Centre LH
CTL	Paraparaumu	Coastlands Shopping Centre, Main Rd
CRT	Courtenay Place	Shop T7 Courtenay Central 80 Courtenay Place PB 92098 Ak
CUB	Cuba Street	91 Cuba Mall, Wellington
GEO	Dunedin	143 George Street, Dunedin
HVQ	Queensgate	Shop S206 Westfield Shopping Centre
JON	Johnsonville	Johnsonville Shopping Centre, Wellington
KCS	Kirkcaldie	In Kirkcaldie & Stains, Brandon Street, Wgtn
LAQ	Lambton Quay	312 Lambton Quay, Wellington
MER	Dunedin	Shop 116, Meridian Shopping Centre, George St
NCP	Porirua	Shop 213 North City Plaza, Titahi Bay Rd
NEL	Nelson	232 Trafalgar Street, Nelson
RCH	Richmond	Shop 66 Richmond Mall, Richmond, Nelson
UPH	Upper Hutt	141 Main Street, Upper Hutt
CAS	Cashel Street	111 Cashel Street, ChCh
QTN	Queenstown	Shop G 7 Stratton House, Beach Street, Queenstown
RIC	Riccarton	Shop 55, Riccarton Mall, ChCh
ASH	Ashburton	238-240 East Street, Ashburton
BOL	Bishopdale	Shop 48, Bishopdale Mall, ChCh
BUN	Bush Inn	Bush Inn Shopping Centre, Riccarton Rd, ChCh
COL	Colombo	764 Colombo St, Victoria Fare, ChCh
CSC	South City	Shop 95, South City Centre, Colombo St
EAS	Eastgate	Shop 305, Eastgate Shopping Centre, ChCh
ESK	Invercargill	52-54 Esk Street, Invercargill
HBY	Hornby	Shop 11, Hornby Mall, ChCh
NOR	Northlands	Northlands Shop Centre, Main North Rd, Papanui, ChCh
SHY	Shirley	'The Palms' Marshland Road, ChCh
TIM	Timaru	Shop 1, Stafford Mall, Stafford Street
New Zealand Airport Stores		
AIR	Air NZ Dom. Terminal	Air NZ Domestic Terminal
IAA/P/IGF	Aklid Int. Terminal	Auckland International Terminal
IAB	Aklid Int. Bennetts	Auckland International Terminal
WDT	Wellington Dom. Airport	Domestic Terminal, Wellington Airport
WIT	Wellington Int. Airport	International Terminal, Wellington Airport
BENNETTS CAMPUS		
AAU	AUT, Akoranga Campus	Gate 1 AB Block Akoranga Drive, Northcote
AKU	Massey Uni. Aby	Massey Uni Albany Campus
CHP	ChCh Polytech	Bennetts, Madras Street, Christchurch
GBS	Bowen House G/B	Cnr Lambton Quay & Bowen St, Wgtn
MKP	Manukau Inst. Tech.	Bennetts, Gate 11, NP Block, Otara Road,
MSU	Massey Uni. PNth	Bennetts, Commercial Complex Massey Uni
WAU	AUT, Wellesley St	C Block, Wellesley St (Del to Gate 7 Lorne St) GBS
WGP	Massey Uni. Well	Bennetts, Gate E, Taaman Street, Wgtn
WKP	Waikato Inst. Tech	Bennetts, Gate 5 Tristram Street, Hamilton
WKU	Waikato Uni.	Bennetts, Gate 5 Hillcrest Rd Waikato Uni

Confidential Annexure 4 – CRA International Report

This page is intentionally blank. The CRA International Report is produced in the 11 pages which follow this page 43.