

## Determination

### Mainland Print Limited and Inkwise Limited [2019] NZCC 6

- The Commission:** Anna Rawlings  
Dr Jill Walker  
Dr John Small
- Summary of application:** An application from Mainland Print Limited seeking clearance to acquire the heatset and coldset web offset printing assets of Inkwise Limited.
- Determination:** Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the Proposed Acquisition.
- Date of determination:** 26 June 2019

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

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## The proposed acquisition

1. On 18 March 2019, the Commerce Commission registered an application (the Application) from Mainland Print Limited (Mainland) seeking clearance to acquire the heatset and coldset web offset printing assets of Inkwise Limited (Inkwise) (Proposed Acquisition).

## Our decision

2. The Commission gives clearance to the Proposed Acquisition as it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

## Our framework

3. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).<sup>1</sup>

## The substantial lessening of competition test

4. As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.
5. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>2</sup>
6. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.

## When a lessening of competition is substantial

7. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.<sup>4</sup> Some courts have used the word 'material' to describe a lessening of competition that is substantial.<sup>5</sup>

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019).

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

<sup>4</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

<sup>5</sup> *Ibid* at [129].

8. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.<sup>6</sup>
9. A lessening of competition or an increase in market power may manifest itself in a number of ways, including higher prices or reduced services.<sup>7</sup>
10. While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.<sup>8</sup>

### **When a substantial lessening of competition is likely**

11. A substantial lessening of competition is 'likely' if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.<sup>9</sup>

### **The clearance test**

12. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>10</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

## **The parties**

### **The applicant**

13. Mainland is a recently established joint-venture company owned in equal shares by Blue Star Group (New Zealand) Limited (Blue Star) and Allied Press Limited (Allied Press).
14. Blue Star supplies a range of commercial printing services including heatset web offset printing to magazine publishers and retail catalogue customers (heatset printing), provided through a division called Webstar. It has heatset printing operations in Masterton and Auckland.
15. Allied Press is a South Island-based publisher of daily and community newspapers and a publisher of a small number of magazines. Allied Press has interests in newspaper printing operations in Dunedin, Alexandra and Greymouth. Allied Press also provides coldset printing services to other newspaper publishers.

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<sup>6</sup> *Mergers and Acquisitions Guidelines* above n1 at [2.23].

<sup>7</sup> *Ibid* at [2.21].

<sup>8</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [131].

<sup>9</sup> *Ibid* at [111].

<sup>10</sup> Section 66(3)(a).

### **The target**

16. Inkwise, which is 50% owned by Ashburton Guardian Limited, uses the subject assets (located in Rolleston) to provide heatset printing services to magazine publishers and retail catalogue customers, and coldset printing services to newspaper publishers.

### **Other parties**

17. Major competitors in the provision of heatset and coldset printing are:
- 17.1 Ovato NZ (formerly PMP) which has heatset printing operations in Auckland and Christchurch; and
- 17.2 Stuff Limited (Stuff) which (relevant to the Proposed Acquisition) has a coldset printing operation in Christchurch.

### **Late submissions**

18. As part of our process of considering Mainland's application for clearance, on 20 May 2019 we issued and published a letter of issues outlining matters that we were still investigating. Mainland and other interested parties were invited to provide any submissions and evidence in response to the Letter of Issues by 4 June 2019, with an opportunity to provide cross submissions commenting on other parties' submissions by 11 June 2019. The only submission we received on 4 June 2019 was from Mainland. We received no third-party submissions on that date nor on 11 June (as cross submissions), and no third parties sought extensions of time in which to make submissions.
19. Two and three days before making our decision, we received two late third-party submissions. The lateness of these submissions affected the weight we were able to place on these submissions when making our decision on Mainland's application.<sup>11</sup>

### **Industry background**

20. The Proposed Acquisition relates to the printing industry, specifically, the printing of newspapers, magazines and retail catalogues. We set out below key background in terms of three aspects of the printing industry.

### **Web-fed and sheet-fed printing**

21. The types of printing equipment operated by printers in the industry varies based on how paper is fed into a printer. Some printing presses are web-fed, where the press operates by printing on a continuous roll of paper, with the paper then being cut to size and folded by the press. Other printing presses are sheet-fed, where the press operates by printing onto individual sheets of paper. Sheet-fed printing presses are uneconomic in runs of greater than 20,000-25,000 copies.

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<sup>11</sup> The Commission may place less weight on submissions received after a stated deadline. Parties wishing to make a submission that is unlikely to meet a stated deadline should let us know before the deadline that they require an extension of time and explain why. We will only grant extensions to a deadline in exceptional circumstances.

### Digital and offset printing

22. A second way that the types of printing equipment operated by printers varies is how material is printed onto paper. Digital printing (even on a large commercial scale) works the same as a small home printer whereby a document is formatted using software on a computer and electronically sent to the printer to print. With offset printing, the material to be printed has to be imprinted onto physical printing plates, which are used to stamp the image onto paper. Offset printing is faster for large print runs than digital printing.

### Coldset and heatset printing

23. A third way that the types of printing equipment operated by printers in the industry varies is how the ink is set (or dried) onto the paper. There are two methods, coldset and heatset, which we discuss in turn below.

#### *Coldset printing*

24. Coldset printing is mainly used for the printing of newspapers. It has also been used in the past to print lower quality catalogues or property papers, but the printing of these publications has over time switched to heatset printing (at the request of retailers and advertisers).<sup>12</sup>
25. Table 1 summarises the suppliers of coldset printing services in the South Island.

**Table 1: Coldset suppliers in the South Island**

Supplier	Capacity
Allied Press	Printing press operations in Dunedin, Alexandra and Greymouth (via partial ownership of Greymouth Star).
Stuff	Printing press operations in Christchurch.
Inkwise	Coldset printing press in Rolleston.

26. Two of the three suppliers of coldset printing services in the South Island (Allied Press and Stuff) are also the major newspaper publisher customers, with those two customers collectively accounting for around 85% of the demand for coldset printing in the South Island.<sup>13</sup> Inkwise is the only independent coldset printer in the South Island. A material proportion of the printing that Allied Press and Stuff do is for their own newspapers; however, they also provide (and compete to provide) coldset printing services to third parties.

<sup>12</sup> The process of coldset printing involves ink being absorbed into newsprint and air dried by evaporation, although it never completely dries (ie, ink can come off on hands as read). In contrast, the process of heatset printing involves ink being dried in the printer, as a result of hot air being applied onto coated, higher quality, paper (including glossy paper).

<sup>13</sup> Application at [107].

### Heatset printing

27. Heatset printing is mainly used for the printing of magazines and retail catalogues. The majority of printing is done on large scale, web-fed printing presses.
28. Table 2 summarises the major suppliers of heatset printing services in New Zealand, excluding smaller scale sheet-fed printers such as Image Centre Group and Caxton.

**Table 2: Heatset suppliers**

Supplier	Capacity
Blue Star	Webstar has web printing press operations in Auckland and Masterton. Blue Star also has multiple sheet-fed printing presses, including one at Webstar's Auckland site and others at various locations within Blue Star group (including Spectrum Print in Christchurch).
Ovato	Printing press operations in Auckland and Christchurch, with both web and sheet-fed presses.
Inkwise	Two heatset web printing presses in Rolleston.

29. All three suppliers of heatset printing services are independent printers. None are currently vertically integrated with customers. However, we note that Allied Press (one of the shareholders of Mainland) is a magazine publisher.

### Market definition

30. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
31. We define markets in the way that best isolates the key competition issues that arise from a merger.<sup>14</sup> In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services which fall outside the market but which still impose some degree of competitive constraint on the merged entity.

### Applicant's view of the relevant markets

32. Mainland submitted in its application that the relevant markets are:<sup>15</sup>
  - 32.1 the market for the supply of coldset web offset printing in the South Island;
  - and

<sup>14</sup> *Mergers and Acquisitions Guidelines*, above n 1, at [3.10]-[3.12].

<sup>15</sup> Application at [73].



- 32.2 the national market for heatset offset printing services (with web-fed and sheet-fed printing included in the same market), or in the alternative:
- 32.2.1 the national market for the supply of printing for national retail catalogues;
  - 32.2.2 the national market for the supply of heatset printing to magazine customers with print runs less than 20,000-25,000 copies; and
  - 32.2.3 the national market for the supply of heatset printing to magazine customers with print runs greater than 20,000-25,000 copies.
33. In summary, Mainland's submissions in support of these definitions were:
- 33.1 customers of coldset printing services (newspaper publishers) cannot realistically use heatset printing, while heatset customers (retailers and magazine publishers) cannot use coldset printing;
  - 33.2 newspaper publishers often need delivery within short timeframes, and so need their coldset printer to be located in the same island;
  - 33.3 retailers and magazine publishers often work to longer timeframes and can use heatset printers located anywhere in New Zealand;
  - 33.4 the publishers of magazines with shorter runs can use sheet-fed printing as an alternative to web-fed printing but it is less clear that the publishers of magazines with larger runs can use sheet-fed printing in place of web-fed:
    - 33.4.1 the key issue is that sheet-fed printing is slower than web-fed, and so more costly for large runs due to the extra labour time involved;
    - 33.4.2 the Applicant submitted that this could be considered either as part of market definition or in the competition analysis; and
  - 33.5 retailers typically need large runs of their catalogues, and so can only use heatset printers with web-fed presses.
34. In a later submission, Mainland suggested that the geographic scope of any market for the supply of coldset printing services might, for some customers, be broader or narrower in scope than the South Island. This is because daily newspapers need to be printed close to where they are distributed, so that suppliers outside a certain area are not an option for the publishers. By contrast, monthly newspapers can be printed anywhere within New Zealand due to the longer timeframes involved.<sup>16</sup>

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<sup>16</sup> Submission from Mainland to the Commerce Commission (4 June 2019).

### Previous decisions

35. The Commission has previously considered an acquisition in the provision of heatset web offset printing services in *PMP/APN*.<sup>17</sup> In this case, the relevant market was defined as a national market for the provision of heatset printing services.
36. The Australian Competition and Consumer Commission has also recently considered a merger between suppliers of heatset printing services, PMP and IPMG.<sup>18</sup> In that case, the ACCC defined the relevant printing market as the national market for the supply of heatset web offset printing services.
37. The Commission has not previously considered markets for the supply of coldset printing services.

### Our view of the relevant markets

38. We consider that the relevant markets in which to assess the impact of the Proposed Acquisition are:
  - 38.1 the market for the supply of coldset printing services in the South Island (the coldset market);
  - 38.2 the national market for the supply of heatset printing services (the heatset market); and
  - 38.3 downstream reader and/or advertiser markets for daily and community newspapers and magazines in areas of the South Island where Allied Press competes with other publishers (downstream markets).

### *Separate coldset and heatset markets*

39. As suggested by Mainland in its application for clearance, we consider that there are separate markets for coldset and heatset printing services. This is because heatset printing services are not a close substitute for coldset printing services (and vice versa) and customers are unlikely to switch from one type of printing to the other in response to a small, but significant, non-transitory increase in price.
  - 39.1 Newspaper publishers are unlikely to switch to having their papers heatset printed in response to a small increase in the price of coldset printing. This is because while there would be no difference in the cost of paper or ink, printing newspapers on heatset printers would be more expensive due the higher energy cost involved in operating the oven on a heatset printer.<sup>19</sup>
  - 39.2 Retailers and magazine publishers are unlikely to switch from heatset to coldset printing in response to a small increase in the price of heatset printing because the quality of the printing finish of the latter is not high enough.

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<sup>17</sup> PMP Print Limited and APN Print NZ Limited (Commerce Commission Decision 708, 16 December 2010).

<sup>18</sup> PMP Limited and IPMG Group (ACCC Public Competition Assessment, 28 March 2017).

<sup>19</sup> We acknowledge that, from a technical standpoint, heatset printers could be used to print newspapers.

*Coldset printing*

40. We agree with how Mainland has defined the relevant coldset printing market in its application.
41. For the majority of customers, the geographic scope of the relevant market for coldset printing services is not national. Evidence indicates that publishers of the various daily and weekly newspapers in the South Island need to have papers printed and delivered within short timeframes (typically overnight). South Island publishers of such newspapers only have the option of using South Island based coldset printers because it is not feasible to have papers printed in the North Island and delivered to the South Island within such short timeframes. However, we note that publishers of monthly newspapers may have more options, including having papers printed in the North Island.
42. We considered whether the relevant geographic dimension of the coldset market is narrower than the South Island on the basis that some publishers require local printing so newspapers can be distributed on time (or whether we needed to define distinct customer markets for different types of publishers). Evidence indicates that publishers of daily metropolitan newspapers have a strong preference for using printers closest to a newspaper's circulation area, meaning that for some papers there is only one coldset printer practically able to print that paper.<sup>20</sup> However, we also obtained evidence indicating that for publishers of community newspapers, this was less of an issue, with most publishers considering supply from coldset printers around the South Island, not just those closest to them. We also noted that suppliers of coldset printing services compete to provide printing services across a large part of the South Island.
43. We have found it unnecessary, in this decision, to reach a definitive view on the geographic scope of the coldset market. For the purposes of considering the Proposed Acquisition, we have defined the geographic scope of the relevant coldset printing market as the South Island. We consider, as part of our competition analysis, any differences in competition between suppliers to print newspapers in different parts of the South Island and any requirements of specific customers that may impact on competition for those customers. We also note that defining the geographic scope of the relevant coldset market more narrowly would not change our competition analysis in this case.

*Heatset printing*

44. We agree with one of the proposed heatset printing market definitions suggested by Mainland in its application (being that cited at [32.2] above. We note that defining the heatset market in this way is consistent with previous decisions.<sup>21</sup>

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<sup>20</sup> For example, The Southland Times, which is printed by Allied Press for Stuff.

<sup>21</sup> PMP Print Limited and APN Print NZ Limited (Commerce Commission Decision 708, 16 December 2010) and PMP Limited and IPMG Group (ACCC Public Competition Assessment, 28 March 2017).

45. Mainland suggested in its application that there could be distinct customer markets for heatset printing. It submitted that there could be grounds for delineating the market in this way because the printing requirements of magazine publishers and retailers (in terms of catalogue printing) differ and/or there are more supply options (including sheet-fed printers) available to customers with smaller print runs.
46. However, it is not clear that taking this approach would change our analysis. This is because all three suppliers of heatset printing services are able to print both catalogues and magazines (and a hybrid product, magalogues), and compete nationally to supply customers. We consider, as part of our competition analysis, any differences in competition between suppliers to print magazines versus catalogues, as well as the level of competition provided from sheet-fed printers and any requirements of specific customers that may impact on competition for those customers.
47. We consider that the geographic scope of the relevant market for heatset printing services is national. Evidence indicates that all suppliers of heatset printing services can provide services to customers throughout New Zealand, regardless of the location of their printing plants. However, we note that delivery timeframes from Auckland to the South Island mean that the days on which some weekly magazines appear on retailer shelves is different in the North Island versus the South Island. In addition, some customers prefer to use a heatset printer with a plant in the South Island to print (within a short timeframe) catalogues and magazines destined for consumers in the South Island.

#### *Downstream markets*

48. We defined downstream reader and/or advertiser markets for daily and community newspapers and magazines in areas of the South Island where Allied Press competes with other publishers in relation to our assessment of any vertical effects that may arise from the Proposed Acquisition.

#### **With and without scenarios**

49. To assess whether a merger is likely to substantially lessen competition in a market, we compare the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>22</sup>

#### **With the Proposed Acquisition**

50. The Proposed Acquisition would see Mainland acquiring the heatset and coldset web offset printing assets of Inkwise.

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<sup>22</sup> *Mergers and Acquisitions Guidelines*, above n 1, at [2.29].

51. Mainland submitted that its rationale for the Proposed Acquisition is that Blue Star wants to have a heatset printing operation in the South Island to better compete with Ovato, and Allied Press wants to diversify its offering into heatset printing.<sup>23</sup> Mainland and its shareholders also expect to realise a number of commercial benefits from the Proposed Acquisition, including from:<sup>24</sup>

51.1 [ ];

51.2 [ ]; and

51.3 [ ].

52. In both the factual and the counterfactual, we consider that Stuff is likely to remain in the coldset market as a competitor and an alternative supplier for the foreseeable future<sup>25</sup> and that Ovato is likely to remain in the heatset market as a competitor and an alternative supplier.

53. In the factual, both the coldset market and the heatset market would become more concentrated. This is because the Proposed Acquisition:

53.1 would reduce the number of suppliers of coldset printing services in the South Island from three to two, due to Allied Press and Inkwise becoming associated entities with the only major remaining supplier and competitor being Stuff; and

53.2 would reduce the number of major suppliers of heatset printing services from three to two, due to Blue Star and Inkwise becoming associated entities – Ovato would be the major remaining supplier and competitor, and the only other supplier with web printing presses.

**Without the Proposed Acquisition**

54. If the Proposed Acquisition does not proceed, Mainland submitted that [ ].<sup>26</sup> This is because (consistent with the rationale for the Proposed Acquisition) Blue Star wants to have a heatset printing operation in the South Island to better

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<sup>23</sup> Application at 3.

<sup>24</sup> Application at [26]-[27].

<sup>25</sup>

[

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<sup>26</sup> The Application at [51].

compete with Ovato, and Allied Press wants to diversify its offering into heatset printing.<sup>27</sup>

55. We consider that the likely counterfactual scenario is the status quo, where there would continue to be three suppliers in the coldset market and the heatset market. This is because:

55.1 there is no evidence to indicate that Inkwise would exit the market in the counterfactual;<sup>28</sup> and

55.2 the shareholders of Mainland, Allied Press and Blue Star, have between them a presence in each of the coldset market and the heatset market. While there is a possibility that Mainland could expand in the counterfactual by [ ], we consider that this is unlikely. This is because evidence from interviews with the shareholders of Mainland (as well as their internal documents) indicates that:<sup>29</sup>

55.2.1 [ ];

55.2.2 [ ]; and

55.2.3 [ ].

56. Even if the Mainland joint venture were to dissolve, we consider that the status quo would prevail in the coldset market and the heatset market. This is because it is unlikely that either of Mainland's shareholders would on their own enter the relevant market in which they are not currently a supplier.<sup>30</sup> While there is a real chance that [ ],<sup>31</sup> this would not change the number of competitors in the heatset market.

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<sup>27</sup> The Application at 3.

<sup>28</sup> Commerce Commission interview with Inkwise (17 April 2019).

<sup>29</sup> Commerce Commission interview with Allied Press (12 April 2019) and Commerce Commission interview with Blue Star (10 April 2019).

<sup>30</sup> In other words, it is unlikely that Allied Press would enter the heatset market and it is unlikely that Blue Star would enter the coldset market.

<sup>31</sup> Application at Attachment D and Commerce Commission interview with Blue Star (10 April 2019).

## How the Proposed Acquisition could substantially lessen competition

57. We have considered whether the Proposed Acquisition could have the effect of substantially lessening competition in any of three ways.
58. First, we have tested whether the Proposed Acquisition could give rise to “unilateral effects”. Unilateral effects may occur when a firm acquires a current or potential competitor that would otherwise provide a competitive constraint. The Proposed Acquisition may mean that any existing or potential competition between the shareholders of Mainland and Inkwise is lost. We have tested whether this means that Mainland, or its shareholders independently, would be able to profit from raising prices (or reducing quality) to customers in the coldset market or the heatset market. We have assessed:
- 58.1 whether the firms impose a strong constraint on one another now (or would do in the future);
  - 58.2 whether there are other strong competitors in the market that could replace the lost competition; and
  - 58.3 whether the barriers to entry and expansion are high.
59. Secondly, we have tested whether the Proposed Acquisition could increase the potential for “coordinated effects”. Coordinated effects can occur when a merger or acquisition makes it significantly more likely that the remaining firms can collectively exercise market power to increase prices (or reduce quality). Coordinated effects are more likely when a market is characterised by certain features, which make it easier to reach, and then to sustain, an agreement or understanding.<sup>32</sup> These include:<sup>33</sup>
- 59.1 the firms can reach an understanding on how to moderate their competitive behaviour, which may be more likely where:
    - 59.1.1 there are few firms;
    - 59.1.2 there are similar products, so there are not too many prices in the market to agree on;
    - 59.1.3 firms have similar costs and market shares so they share the same incentives on what the price should be; and
    - 59.1.4 regular interactions so the firms can test price increases without the risk of losing too much volume;
  - 59.2 there is transparency of the dimension that the firms are coordinating so the firms can check the other firms are adhering to the understanding; and

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<sup>32</sup> See *Mergers and Acquisitions Guidelines* above n1 at [3.89].

<sup>33</sup> Not all of these need to apply to make a market vulnerable to coordination.

- 59.3 there is a low risk to external parties disrupting the understanding, which is more likely where:
- 59.3.1 there are no aggressive players in the market;
  - 59.3.2 there are high barriers to entry; and
  - 59.3.3 buyers do not have countervailing power.
60. Our approach was to test whether the coldset or heatset market was vulnerable to coordination (by looking at whether the characteristics above apply) and then consider how the Proposed Acquisition might change the likelihood of coordination.
61. Thirdly, we have tested whether the Proposed Acquisition could give rise to “vertical effects”. Vertical effects can arise where the merging firms operate at different levels in the supply chain (for example, a wholesaler and a retailer). A merger between such firms might give the merged entity the ability and incentive to refuse to supply a downstream rival (or only supply at high prices), which could adversely affect competition (this is known as input foreclosure).<sup>34</sup> In this case, we have tested whether the Proposed Acquisition might give Mainland, or its shareholders, the ability and incentive to foreclose newspaper and magazine publishers rivalling Allied Press by refusing to print their publications.

### **Competition analysis – coldset printing**

62. For the reasons set out below, we are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in the coldset market due to unilateral, vertical or coordinated effects. This is, in summary, because:
- 62.1 unilateral effects: Mainland and its shareholders would not be likely to have the ability to unilaterally raise prices and/or reduce the quality of coldset printing services given the presence of existing competitors (primarily Stuff, but also Ovato and North Island coldset printers at the margins) which have significant excess capacity;
  - 62.2 coordinated effects: the Proposed Acquisition would be unlikely to facilitate coordination because:
    - 62.2.1 we do not consider the coldset market is particularly vulnerable to coordination; and
    - 62.2.2 the Proposed Acquisition is unlikely to increase the likelihood of coordination because there is no evidence that Allied Press has been a particularly disruptive competitor, or would be in the counterfactual; and

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<sup>34</sup> See *Mergers and Acquisitions Guidelines* above n1 at [5.5]. Other mergers may raise customer foreclosure concerns.



- 62.3 vertical effects: Allied Press would have no ability to foreclose competing newspaper publishers or to raise their costs to render them less competitive in downstream markets due to the presence of alternative suppliers. We note that Allied Press is also unlikely to have any incentive to foreclose rivals due to the declining nature of downstream markets for the publication of newspapers.

### **Unilateral effects**

63. The Proposed Acquisition would combine two of the three suppliers in the coldset market.
64. Mainland submitted that the Proposed Acquisition will not substantially lessen competition due to horizontal unilateral effects, because:<sup>35</sup>
- 64.1 customers will retain the option of using Stuff as an alternative supplier of coldset printing services; and
- 64.2 given significant declines in printing volumes, suppliers are incentivised to compete strongly to win customer contracts to utilise their printing presses.
65. For the reasons set out below, we consider that the Proposed Acquisition is unlikely to substantially lessen competition in the coldset market due to unilateral effects.

### *Existing competition*

66. Table 3 sets out estimates of market shares in the coldset market, based on 2018 revenue figures and the maximum spare capacity of suppliers (with spare capacity being measured in terms of unutilised press/labour hours).
67. An important point to note is that Table 3 only shows revenue for the printing that suppliers undertake for external customers. Table 3 shows Inkwise's total revenue from printing newspapers. For Allied Press and Stuff, the revenues shown in Table 3 excludes internal transfer costs for printing that each does for its own newspapers.

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<sup>35</sup> The Application at 3-5.

**Table 3: Coldset market share estimates**

Suppliers	Revenue from external customers (\$m)	Revenue share (%)	Total capacity (pages, b) <sup>36</sup>	Capacity share (%)	Own spare capacity (%) <sup>37</sup>
Allied Press	[ ]	[ ]	[ ]	[ ]	[ ]
Inkwise	[ ]	[ ]	[ ]	[ ]	[ ]
Stuff	[ ]	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100</b>	<b>[ ]</b>	<b>100</b>	<b>N/A</b>

Source: Allied Press, Inkwise and Stuff.

68. Table 3 shows that Inkwise has the largest share of the coldset market in terms of revenue. This is because Inkwise currently prints a large proportion of the South Island newspapers that have their printing outsourced. By contrast, Allied Press and Stuff both print large volumes of their own publications. However, these revenues do not reflect capacity in the coldset market. Stuff is much larger than Inkwise in overall scale and capacity. Table 3 also shows that Stuff has the largest share of printing capacity (and spare capacity). This is because, while both Inkwise and Stuff [ ], the materially larger scale of the presses operated by Stuff means that it has a much larger share of spare capacity across the coldset market, in terms of pages that can be printed. We note that the spare capacity of coldset printers has increased over time as coldset printing volume has declined.
69. In terms of rivalry between Allied Press and Inkwise, the evidence indicates that even though the printing operations of Allied Press are distant from Inkwise (compared to the close proximity of Stuff's coldset printing plant in Christchurch), Allied Press and Inkwise still compete to supply coldset printing services to some customers, although their main area of rivalry is the central South Island.<sup>38</sup> This rivalry between Allied Press and Inkwise would be lost with the Proposed Acquisition.
70. However, while the Proposed Acquisition would mean a loss of existing competition between Allied Press and Inkwise, we consider that Stuff would provide sufficient constraint to compensate for any loss of competition between Allied Press and Inkwise as a result of the Proposed Acquisition across the South Island. This is because:
- 70.1 Stuff is aggressively competing, and is likely to continue to aggressively compete, to win coldset customers to utilise the spare capacity at its Christchurch printing facility. There are examples of customers recently

<sup>36</sup> Total capacity is based on a calculation of the billions of pages of tabloid newspapers that each coldset printer can print in a year.

<sup>37</sup> Each printer's spare capacity is calculated as the percentage of hours in the year when its coldset presses were not used for internal or external printing work.

<sup>38</sup> The evidence for this comes, in general, from Commerce Commission interviews with coldset printers and newspaper publishers, and information request responses from coldset printers.

switching suppliers on the basis of price, and existing suppliers reducing prices to retain volume;<sup>39</sup> and

70.2 Stuff's Christchurch printing facility [ ], and this is unlikely to change with the Proposed Acquisition.

71. In addition to the constraint that Stuff would provide on the pricing and quality of service offered by combined Allied Press and Inkwise post-acquisition, we consider that additional constraint would be provided (at the margins) by:

71.1 Ovato, which has a heatset printing operation in Christchurch that could technically be used to print newspapers. Customers do not tend to use heatset printers to print newspapers because it would be more expensive, but it remains an option for customers in response to price rises; and

71.2 in the case of publishers of monthly community newspapers, coldset printers located in North Island (eg, NZME and Beacon Print).

#### *Other considerations*

72. In terms of other considerations relevant to our assessment of unilateral effects in the coldset market, we note that:

72.1 given significant declines in printing volumes, we consider that there is unlikely to be new entry into the coldset market. This means that the threat of entry would provide no constraint on a combined Allied Press and Inkwise; and

72.2 with the exception of Allied Press and Stuff (which as well as being suppliers of coldset printing services are the major newspaper publisher customers in the South Island), other customers are small and have no ability to self-supply. Given this, we consider that such customers may not be able to exercise any countervailing power. Countervailing power would therefore provide a weak constraint on a combined Allied Press and Inkwise.

#### **Coordinated effects**

73. Mainland submitted that the Proposed Acquisition will not substantially lessen competition due to coordinated effects, arguing that:<sup>40</sup>

73.1 Inkwise is not an atypically vigorous or strong competitor;

73.2 given significant declines in printing volumes, suppliers have incentives to compete strongly to win customer contracts; and

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<sup>39</sup>

[ ]

<sup>40</sup> The Application at [184]-[191].

73.3 suppliers compete by bidding for customer contracts that come up irregularly and have bespoke, non-transparent terms.

74. For the reasons set out below, we consider that the Proposed Acquisition is unlikely to substantially lessen competition in the coldset market due to coordinated effects.

*Is the coldset market vulnerable to coordination?*

75. The coldset market has some features that could make it vulnerable to coordination. Coldset printing is a commodity service with little innovation, suppliers have some information on each other's prices and volumes, and the market is concentrated. As a result, the three major suppliers in the coldset market may have a fair degree of insight into each other's businesses. In some contexts, this could assist suppliers to coordinate.

76. However, we consider that other features of the coldset market make coordination unlikely. In particular, most volumes are vertically integrated, due to the newspapers of Allied Press and Stuff collectively accounting for around 85% of the demand for coldset printing in the South Island. There is no incentive for suppliers to coordinate over these volumes, which are largely self-supplied. Competition is confined to the smaller volumes supplied to third parties. With significant excess capacity and scope to secure economies of scale to reduce the costs of vertically integrated supply, the incentive to compete is likely to prevail.<sup>41</sup>

*Would the Proposed Acquisition be likely to facilitate coordination in the coldset market?*

77. The Proposed Acquisition would reduce the number of suppliers in the coldset market from three to two. However, we do not consider that it would materially increase the likelihood of coordination. This is because the nature of the coldset market should continue to encourage competition between a combined Allied Press/Inkwise and Stuff. The two remaining suppliers are both vertically integrated with significant excess capacity. Because Allied Press and Stuff largely print their own newspapers, they have an incentive to maximise the efficiency of their own presses by utilising excess capacity to do coldset printing for third parties.

78. Furthermore, the Proposed Acquisition would not eliminate a particularly disruptive competitor since Allied Press [ ].<sup>42</sup>

79. [ ]

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<sup>41</sup> Suppliers in the coldset market each have economies of scale, enabling them to reduce their costs by expanding production. The economies of scale would be likely to reinforce each supplier's incentives to bid competitively for contracts. Not only are suppliers encouraged to compete for contracts to survive in a declining market, but each supplier could also improve its overall profitability by expanding, even when offering sharp prices.

<sup>42</sup> Based on analysis undertaken by the Commission of information provided by coldset printers in response to requests for information.

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**Vertical effects**

80. As noted earlier, Allied Press (one of the shareholders of Mainland) is also a major newspaper publisher and customer of coldset printing services in the South Island. Allied Press competes with Stuff and some other independent newspaper publishers in downstream markets.
81. Mainland submitted that the Proposed Acquisition will not substantially lessen competition due to vertical effects because it will not increase the prospects of Allied Press foreclosing any independent community newspapers by withholding printing services. Mainland submitted that:<sup>43</sup>
- 81.1 there is very limited overlap between Allied Press' community newspapers and those of independent publishers which may limit Allied Press' incentive to attempt foreclosure;
- 81.2 Allied Press is unlikely to be able to implement a foreclosure strategy given that its joint venture partner, Blue Star, could lose printing revenue for no gain (as it lacks a publication business) and so may block the strategy; and
- 81.3 the continued existence of Stuff as alternative suppliers of printing services would limit Allied Press' ability to foreclose, even if Blue Star were to support such an attempt.
82. We consider that the Proposed Acquisition is unlikely to substantially lessen competition due to vertical effects. This is because:
- 82.1 Allied Press would have no ability to foreclose competing newspaper publishers or raise their costs to render them less competitive in downstream markets. This is because Stuff will remain as an alternative supplier and an effective competitor in the coldset market; and
- 82.2 Allied Press is also unlikely to have any incentive to foreclose rivals due to the declining nature of downstream markets for the publication of newspapers.

**Competition analysis – heatset printing**

83. For the reasons set out below, we are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in the heatset market due to unilateral, vertical or coordinated effects. This is, in summary, because:

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<sup>43</sup> Application at [115]-[117].

- 83.1 unilateral effects: Mainland and its shareholders would be likely to have no ability to unilaterally raise prices and/or reduce the quality of heatset printing services given the presence of existing competitors (Ovato and sheet-fed printers at the margins) which have excess capacity;
- 83.2 coordinated effects: the removal of Inkwise as a competitor would not make coordination more likely, complete or sustainable because Ovato is driving competition and is the main disruptor in the heatset market. By contrast, Inkwise is a smaller supplier [ ];  
and
- 83.3 vertical effects: Allied Press would have no ability to foreclose its competitors due to the presence of alternative suppliers.

### **Unilateral effects**

- 84. The Proposed Acquisition would combine two of the three suppliers in the heatset market.
- 85. Mainland submitted that the Proposed Acquisition will not substantially lessen competition due to horizontal unilateral effects, because:<sup>44</sup>
  - 85.1 customers will retain the option of using other competing suppliers of heatset printing services, including (but not limited to) Ovato;
  - 85.2 given significant declines in printing volumes, suppliers are incentivised to compete strongly to win customer contracts to utilise their printing presses;
  - 85.3 Ovato is Blue Star's closest competitor, not Inkwise (which is a minor participant and not a particularly disruptive competitive force), and the Proposed Acquisition can be expected to increase competitive tension between Ovato and Blue Star; and
  - 85.4 heatset printing customers are large and sophisticated, and able to exert pressure on suppliers to constrain price increases.
- 86. For the reasons set out below, we consider that the Proposed Acquisition is unlikely to substantially lessen competition in the heatset market due to unilateral effects.

### *Existing competition*

- 87. Table 4 sets out estimates of market shares in the heatset market, based on 2018 revenue figures and the maximum spare capacity of suppliers (with spare capacity being measured in terms of unutilised press/labour hours).<sup>45</sup>

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<sup>44</sup> Application at 3-5 and [121].

<sup>45</sup> The spare capacity shares shown in Table 4 are overstated slightly because we do not have data on the spare capacity of all sheet-fed printers.

**Table 4: Heatset market share estimates**

Suppliers	Revenue (\$m)	Revenue share (%)	Total capacity (pages, b) <sup>46</sup>	Capacity share (%)	Own spare capacity (%) <sup>47</sup>
Blue Star	[ ]	[ ]	[ ]	[ ]	[ ]
Inkwise	[ ]	[ ]	[ ]	[ ]	[ ]
Ovato	[ ]	[ ]	[ ]	[ ]	[ ]
Sheet-fed printers	[ ]	[ ]	N/A	N/A	N/A
<b>Total</b>	<b>[ ]</b>	<b>100</b>	<b>[ ]</b>	<b>100</b>	<b>N/A</b>

Source: Blue Star, Inkwise and Ovato.

88. Table 4 shows that Blue Star and Ovato are the two largest suppliers in the heatset market, and Inkwise is a much smaller, third competitor. This reflects the differences in printing capacity of the three suppliers. Inkwise has a small share of the heatset market in terms of both revenue and capacity. While [ ], the materially larger scale of the presses operated by Blue Star and Ovato mean that they have a much larger share of capacity (and spare capacity) across the heatset market, in terms of pages that can be printed. We note that the amount of spare capacity that heatset printers have has increased over time as heatset printing volume has declined, but there has always been spare capacity to cope with seasonal peaks in printing volumes (eg, catalogue printing in the lead up to Christmas).
89. Evidence indicates that the heatset market is currently competitive and that prices have reduced as a result of competition between Blue Star, Inkwise and Ovato to secure volume to utilise their presses.<sup>48</sup> There are numerous examples of customers recently switching suppliers on the basis of price, and existing suppliers significantly reducing prices to retain volume, particularly in the catalogue segment of the heatset market (but also in magazines).<sup>49</sup>
90. While the Proposed Acquisition would mean a loss of existing competition between Blue Star and Inkwise, we consider that Ovato would provide sufficient constraint to compensate for any loss of competition between Blue Star and Inkwise. There is a lot of evidence to support Mainland’s argument that Ovato would constrain unilateral price rises in heatset printing.

<sup>46</sup> Total capacity is based on a calculation of the billions of pages of A4 printing that each heatset printer can print in a year.

<sup>47</sup> Each printer’s spare capacity is calculated as the percentage of hours in the year when its heatset presses were not used for printing work.

<sup>48</sup> The evidence for this comes, in general, from Commerce Commission interviews with heatset printers and customers, and information request responses from heatset printers.

<sup>49</sup>

[ ]

90.1 Evidence from multiple sources confirmed that Ovato is Blue Star's major and closest competitor in heat set printing (both web and sheet-fed).<sup>50</sup>

90.2 [ ]<sup>51</sup> Price competition between Ovato and Blue Star was also confirmed by parties we interviewed.

91. Ovato is aggressively competing, and is likely to continue to aggressively compete, to win heatset customers to maximise the utilisation of its printing capacity.

92. In addition to the constraint that Ovato would provide on the pricing and quality of service offered by a combined Blue Star and Inkwise post-acquisition, we consider that additional constraint would be provided (at the margins) by independent sheet-fed printers. For magazines with smaller print runs, sheet-fed printers are an effective alternative to web printers like Blue Star, Ovato and Inkwise.

#### *Other considerations*

93. We also note that given significant declines in printing volumes, we consider that there is unlikely to be new entry into the heatset market. This means that the threat of entry would provide no constraint on a combined Blue Star and Inkwise.

#### **Coordinated effects**

94. Mainland submitted that the Proposed Acquisition will not substantially lessen competition due to coordinated effects, arguing that:<sup>52</sup>

94.1 Inkwise is not an atypically vigorous or strong competitor;

94.2 given significant declines in printing volumes, suppliers are incentivised to compete strongly to win customer contracts to utilise their printing presses;

94.3 suppliers compete by bidding for customer contracts that come up irregularly and have bespoke, non-transparent terms; and

94.4 in heatset printing, Blue Star and Ovato are likely to have different costs to serve different customers.

95. For the reasons set out below, we consider that the Proposed Acquisition is unlikely to substantially lessen competition in the heatset market due to coordinated effects.

#### *Is the heatset market vulnerable to coordination?*

96. As for our assessment of the coldset market above, the heatset market has some features that can make coordination easier. Suppliers' products are homogenous,

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<sup>50</sup> The evidence for this comes, in general, from Commerce Commission interviews with heatset printers and customers.

<sup>51</sup> [ ]

<sup>52</sup> Application at [184]-[191].



there is little innovation, suppliers have some information on each other's prices and volumes, and the market is concentrated. Further, in heatset, there are also more customers and interactions.

97. However, we consider that other features of the heatset market make coordination unlikely. This means that suppliers may find it hard to reach an understanding to coordinate their behaviour due to divergent incentives. This is borne out by [ ].

*Would the Proposed Acquisition facilitate coordination in the heatset market?*

98. The Proposed Acquisition would reduce the number of major suppliers in the heatset market from three to two. However, we do not consider that this is likely to facilitate coordination. This is because the nature of the heatset market should continue to encourage competition between a combined Blue Star/Inkwise and Ovato, and because the evidence indicates that Inkwise has not been a disruptive force in the market.
99. We saw no evidence to indicate that Inkwise is a particularly disruptive competitor, or that it has the underlying potential to become one. In particular, it [ ].<sup>53</sup> It has also behaved conservatively.<sup>54</sup> In contrast, as discussed above, [ ].

**Vertical effects**

100. Mainland did not make submissions about the potential for vertical effects in the heatset market, but we have considered its submissions with respect to coldset, as outlined at [80] above.
101. As noted earlier, none of the suppliers in the heatset market are also customers of heatset printing services. However, Allied Press (one of the shareholders of Mainland) is a magazine publisher and heatset customer.
102. We consider that the Proposed Acquisition is unlikely to substantially lessen competition due to vertical effects. This is because Allied Press would have no ability to foreclose competing magazine publishers or raise their costs to render them less competitive in downstream markets. This is because Ovato will remain as an alternative supplier and an effective competitor in the heatset market.

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<sup>53</sup> Based on analysis undertaken by the Commission of information provided by heatset printers in response to requests for information.

<sup>54</sup> Ibid.

### **Determination on notice of clearance**

103. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
104. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Mainland Print Limited to acquire the heatset and coldset web offset printing assets of Inkwise Limited.

Dated this 26<sup>th</sup> day of June 2019

Anna Rawlings  
Chair