

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

Thursday, 8 May 2003

**COMMENCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE**

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

The Business Acquisition

1. The business acquisition for which **clearance** is sought:

1.1 **What:** Certain business assets being:

- a. hire contracts;
- b. fleet of portable buildings; and
- c. intellectual property of and owned by Peter McGrath and Malcolm Lowrie of Nelson.

The business assets includes the trade name, "*Transportables*", used by Messrs McGrath and Lowrie.

1.2 **By who:** Portacom New Zealand Limited at Auckland ("Portacom").

The Person Giving Notice

2. This notice is given by:

- a. Martin McLeod
Managing Director
Portacom New Zealand Limited
2 O'Rorke Road
Penrose
Auckland

Phone: (09) 525 5321
Fax: (09) 525 0340

b. Legal Counsel:

Geoff Hosking
 Partner
 Hesketh Henry
 Private Bag 92093
 Auckland 1030

Phone: (09) 375 8693
 Fax: (09) 375 8774

Confidentiality

3. Portacom does not request a confidentiality order.

Details of Participants

4. The participants:

a. The acquirer:

Portacom New Zealand Limited. The contact details of the acquirer are as specified in paragraph 2.a. above.

b. The owner of the assets being acquired:

Peter McGrath	and	Malcolm Lowrie
41 Saxton Road		4 Rosebank Tce
Stoke		Stoke
Nelson		Nelson

Phone:	0800 600 660	021 361 210
Fax:	(03) 547 1007	

Who is interconnected to or associated with each participant?

5. **Who is interconnected to or associated with each participant?**

5.1 Acquirer Group/Associates

Portacom is a member of a group of interconnected bodies corporate.

Portacom a wholly owned subsidiary of WACO International Limited.

Portacom is only one of a number of subsidiaries of WACO International Limited. All of the other subsidiaries of WACO International Limited operate outside New Zealand and include Ausco Building Systems Pty Limited in Australia and Premier Transportable Buildings in the United Kingdom. We have not included the details of these interconnected companies as they are not relevant to this application.

The relevant market is the New Zealand market for the sale and hire of modular transportable buildings. The market is not limited to companies that operate solely in New Zealand. Portacom has offices located in Auckland, Hamilton, New Plymouth, Wellington, and Christchurch.

The basic Portacom modular portable building measures 6 x 3 m. It has "sandwich" panel walls and roof. The panels are manufactured by third party companies eg Long Insulation, James Hardie Building Systems, Insulated Panel & Doors, and Lanwood Industries. The building is manufactured in a Portacom warehouse, then transported by truck, rail, helicopter or barge to where it is required.

Portacom currently has no physical operation in the Nelson area.

There is the opportunity for competition from Australian based companies wishing to expand into New Zealand (following the successful expansion of Australian construction companies, eg. Multiplex).

No subsidiary of WACO International Limited, other than Portacom, competes in the New Zealand modular transportable building market.

5.2 Individual Selling Assets

"Transportables" is the trading name of the business owned and operated by Peter McGrath and Malcolm Lowrie in Nelson. Messrs McGrath and Lowrie have been operating the Transportables business for approximately 4 years.

At the date of this application the Transportables business has a total of 17 portable buildings for hire/sale.

6. Beneficial Interest

6.1 No participant has a beneficial interest in or is beneficially entitled to any shares or other pecuniary interest in another participant.

7. Business Activities

7.1 The business activities of each participant are as follows:

a. Portacom

Portacom has **been** operating in the modular portable building market since the late 1970's and operate nationwide.

Portacom manufactures for sale and hire modular portable buildings of predominantly sandwich panel construction.

b. Transportables

Transportables has an established position in the modular portable building sale and hire market in the Nelson area. Transportables has very few customers outside the Nelson area.

Transportables does not manufacture any modular portable buildings following the divestment by Mal Lowrie of his Coolstore Construction

business. Transportables has no formal storage facilities available to it outside of the Nelson area.

8. Reasons for the proposed acquisition

- 8.1 The purpose of the acquisition by Portacom is to compliment its existing business in the expanding modular portable building market and to allow the post-acquisition entity to compete and operate effectively in the modular portable building market in the Nelson area.

Identification of Markets Affected

9. Horizontal Aggregation

- 9.1 The area of activity that Portacom and Transportables have in common is the sale and hire of modular portable buildings.

Participants in the market commonly have their own range of buildings of set designs and also the ability to design buildings to customers specifications and designs.

- 9.2 Participants in the portable building market include the following:

Portacom
Rhino
Hirecom
Leisurecom
Modcom
Fleetmac
PortaBuild
Contract Coolstores
Kiwi Hire
Boyd Cranes
Construction companies
Paneltech

- 9.3 Based on general industry knowledge, Portacom's own data and the perceived strengths of other participants, we estimate that:

- a. Portacom's current market share of the national portable building hire market is approximately **55%** and Portacom's market share of the national temporary or instant accommodation market is approximately **18%**.
- b. Transportable's current market share of the portable building hire market is approximately **2%**.

10. Vertical Integration

- 10.1 The proposed acquisition will not result in the vertical integration between firms involved at different functional levels within any New Zealand market.

Previous Commerce Commission Applications

11. Within the last 3 years:

- a. Portacom sought clearance from the Commerce Commission under section 66 of the Commerce Act 1986 in relation to the acquisition of the business assets of Portable Buildings Limited (trading as Quickspace) located in Christchurch. Clearance was granted by the Commerce Commission on 2 November 2002;
- b. there have been no proposed acquisitions of assets of a business or shares involving Messrs McGrath and Lowrie or any company entity owned by them.

Constraints on Market Power by Existing Competition

12. In paragraph 9.2, we have set out the main suppliers of competitive and substitutable products in the New Zealand market.
13. We are not aware of any formal or informal links between any of the competitors identified in paragraph 9.2.
14. None of the directors of Portacom hold directorships in any other companies which are involved in the portable modular building market in New Zealand.
15. Portacom will be constrained in its actions to a considerable extent. The post acquisition entity will not substantially lessen competition in any market based on the market share analysis in paragraph 9 above. The following market factors are also relevant in the markets affected:
 - 15.1 **Raw materials:** The raw materials for producing the different types of portable buildings are all readily available from a number of sources and therefore there is no restriction, on any existing or potential supplier of portable buildings, as to their levels of production.
 - 15.2 **Number of suppliers:** There are a large number of suppliers of portable buildings in the industry. It is not dominated by one or two leading companies. See paragraph 9.2.
 - 15.3 **Industry Capacity:** There is spare capacity within the industry and room for suppliers, individually and the market collectively to expand.
 - 15.4 **Low Barriers to Entry:** There are low barriers to entry of competitors and to competitor expansion due to the ready availability of raw materials.
 - 15.5 **Purchaser's Power:** Market power is held by the purchasers and hirees of portable buildings as there is substantial competition at the supplier level. Portacom cannot increase prices or reduce the quality of its services without supplying a considerable drop in profitability from competitors "*filling the gap*" and taking market share.
 - 15.6 **Conventional Buildings:** Suppliers of portable building face competition from suppliers of conventional buildings.

This notice is given by **Portacom New Zealand Limited**

We **hereby confirm** that:

- All information specified by the Commission has been supplied.

- All information known to the applicant which is relevant to the consideration of this application/notice has been supplied; and
- All information supplied is correct as at the date of this application/notice.

Portacom **undertakes** to advise the Commission immediately of any material change in circumstances relating to this application.

Signed for **PORTACOM NEW ZEALAND LIMITED** by:

Director

I am a director of Portacom New Zealand Limited and am duly authorised to make this application.