



**COMMERCE COMMISSION**

**Decision No. 660**

Determination pursuant to the Commerce Act 1986 in the matter of an application for a merger transaction between

**ISS Holdings NZ Limited**

**and**

**Chubb New Zealand Limited**

**The Commission:** Denese Bates QC  
Peter JM Taylor

**Summary of Application:** The acquisition of a portion of the manned guarding business of Chubb New Zealand Limited by ISS Holdings NZ Limited.

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

**Date of Determination:** 6 November 2008

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## THE PROPOSAL

1. On 29 September 2008, the Commission received a notice pursuant to s 66(1) of the Commerce Act 1986 (the Act). The notice sought clearance for the acquisition of a portion of the assets of the business of Chubb New Zealand Limited (Chubb), by ISS Holdings NZ Limited (ISS or the Applicant).

## DECISION

2. The Commission is satisfied that the current high level of existing competition in relevant markets is likely to constrain the combined entity post-acquisition. Consequently, the Commission is satisfied that the proposed acquisition is unlikely to result in a substantial lessening of competition in any of the relevant markets.

## PROCEDURE

3. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 26 November 2008.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.

## STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal will have, or would be likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal would not have, or would not be likely to have the effect of substantially lessening competition in a market then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline the application. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.<sup>1</sup>

6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held;

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgement is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.<sup>2</sup>

7. In determining whether there is a change along the spectrum which is significant, the Commission must identify a real lessening of competition that is not more than

<sup>1</sup> *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-721.

<sup>2</sup> *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

nominal and not minimal.<sup>3</sup> Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition. These also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

## **PARTIES**

### **ISS**

10. ISS is a wholly owned subsidiary of ISS Global A/S, a company incorporated in Denmark. ISS Global A/S is ultimately owned by the private equity groups EQT and Goldman Sachs Capital Partners.
11. ISS entered the New Zealand market in 2005 and, in addition to security services<sup>4</sup>, also provides cleaning, hygiene cleaning and ground maintenance services in New Zealand. ISS' security services in New Zealand are provided through its subsidiary First Security Guard Services Limited. First Guard Security Services has a presence in Auckland, Wellington and Christchurch.

### **Chubb**

12. Chubb is a subsidiary of United Technologies Luxembourg and Chubb International (Netherlands) BV and is ultimately owned by United Technologies Corp, which is listed on the New York Stock Exchange.
13. Chubb has been operating in New Zealand since 1952 and provides a wide range of services including manned guarding services, heating, air ventilation and air conditioning services, fire protection services, installation of electronic security systems, cash handling and alarm monitoring services. Chubb has 19 offices throughout New Zealand and employs 1,300 people.

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<sup>3</sup> *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

<sup>4</sup> The types of security services provided by industry participants are described in detail from paragraph 18.

### **Other Competitors in the Supply of Manned Security Services**

14. A number of other parties currently supply manned security services either nationwide or in the Auckland, Wellington or Christchurch regions. Notable competitors in the relevant markets include:
  - ADT Armourguard (ADT) is a significant supplier of manned security services. Other than Chubb, ADT is the only market participant to offer nationwide uniformed coverage. In addition to manned security services ADT provides a full suite of security services including cash handling, alarm monitoring, lock and safe services and electronic security services;
  - Matrix Security Group Ltd (Matrix) is a significant industry participant in the Auckland market [ ]. Matrix provides alarm monitoring, response, mobile patrol and static guard services;
  - Triton Patrols Ltd (Triton) is the largest privately owned security company in Christchurch and provides static guard, mobile patrol and alarm response services. Triton Patrols is a standalone legal entity, however operates closely with the alarm monitoring business of Triton Security Services Ltd;
  - Recon Security Ltd (Recon) is a medium sized privately owned security company based in Wellington. Recon provides a full suite of manned security services as well as in-house alarm monitoring.
15. Other sizeable regional competitors include ICON Security Ltd (ICON), Harbour City Guard Services Ltd, Sub5 Security Ltd and Simply Security Ltd (Simply Security).

## **INDUSTRY BACKGROUND**

### **Regulatory Framework**

16. Pursuant to the Private Investigators and Security Guards Act 1974, security companies and anyone employed as security guard (including alarm installers) are required to be licensed. An individual's licence moves with the individual irrespective of the company that individual is engaged by.
17. Currently, individual guards need to obtain a Certificate of Approval (CoA). A criminal record is not necessarily an obstacle to obtaining a CoA. It depends on the nature of the crime and extent of the criminal record. The cost to obtain a CoA is \$80.
18. The Private Security Personnel and Private Investigators Bill is currently before the House and proposes to increase the minimum training required before applicants can become licensed security personnel. Applicants will need to meet a New Zealand Qualifications Authority standard before a licence is issued. There is a general concern in the industry with the poor standard of guard training and the amendments proposed by the Bill have wide support.

## Services

### *Static Guards*

19. As the name would suggest, static guards are stationed at a customer's premises and remain there for a set period of time. Examples include gate guards at large industrial facilities, museum or bank guards and train guards. Event management, such as guarding sporting events or concerts, is a subset of static guarding.
20. Typically static guards require only one shift with a supervisor at the site they are guarding to be considered fully trained.

### *Mobile (Patrol) Guards*

21. Mobile guards typically travel to a range of sites during a shift checking premises are secure, escorting staff offsite after hours or responding to alarm activations.
22. Training provided to mobile guards varies from company to company and appears to mainly consist of on the job training over 3-5 shifts.<sup>5</sup> Mobile guards are paid slightly more than static guards. Most industry participants concede that theoretically, if an employee can be a static guard, it is likely that he or she can undertake mobile patrol.
23. Although there appears to be limited difference in the training provided to static and mobile guards, industry participants submit that there is a significant difference in the type of person likely to succeed or be attracted to the different types of guarding and that not all static guards have the capability or temperament to succeed as mobile guards<sup>6</sup>.
24. Dispatch for alarm response can be provided in-house by the responding guard's company, a competitor or a specialist alarm monitoring company<sup>7</sup>.

### *Alarm Monitoring*

25. Alarm monitoring services are closely linked to the alarm response services provided by mobile guards. Although they can be, alarm monitoring and response services are not always supplied by the same company, with a number of mobile guard service providers contracted by alarm monitoring companies to provide response services<sup>8</sup>. Mobile guard companies in Auckland and Wellington informed the Commission that three or more monitoring companies regularly used their response services. While alarm monitoring services do not form part of the manned guarding services analysed in this report, the interplay between alarm monitoring companies and manned guarding providers is relevant to the manner in which manned guarding providers acquire work.

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<sup>5</sup> [ ] informed the Commission that it requires its mobile guards to sit examinations prior to sending them on patrol.

<sup>6</sup> It is noted that in some specialist roles, such as static guarding at corporate functions the appearance and communication skills of a guard have increased relevance.

<sup>7</sup> Signature Security Group Ltd (Signature Security) is a specialist alarm installation and monitoring company that sub-contracts the Applicant (among other companies) to respond to alarm activations nationwide.

<sup>8</sup> Harbour City Guard Services is an example of a guarding service provider with no internal monitoring company.

26. Establishing an alarm monitoring company is relatively straight forward and a number of industry participants have expanded into alarm monitoring after entering the industry as either static or mobile guard providers.<sup>9</sup>

### **Customers**

27. The relevant markets are characterised by large and small customers. Large customers typically require a suite of services including static guards, mobile patrols, alarm monitoring and response as well as services outside the scope of manned guarding, such as electronic security services, cash handling services and lock and safe services. Small customers may only require alarm monitoring and response.

#### *Large Customers*

28. Large customers make up a significant proportion of the major suppliers' revenue in each of the relevant markets. The loss of a large contract to a competitor will significantly alter revenues and positions in the market.
29. Large customers can be located in one region,<sup>10</sup> or across several.<sup>11</sup> Large single region customers may choose to acquire a full suite of security services from one company, or acquire separate services from a number of different companies. Where a large customer has sites across more than one region, that customer may also choose to acquire a full suite of services from one supplier, or different services from different suppliers. A multi-regional customer may also contract with different suppliers for the same service in different regions.
30. Some large customers place importance on the convenience and lower administration costs of using one security provider for all services.<sup>12</sup> Others consider that specialist security providers provide better service in the areas they specialise in, and maintain multiple contracts.<sup>13</sup>
31. Many large customers demand services such as a single account manager as a point of contact across all services and the provision of specialised reporting or accounting information. Industry participants informed the Commission that there are no significant differences between the services provided to large multi-regional customers and those provided to large single region customers.
32. Large customers such as District Health Boards, tertiary institutes and city councils put manned security work out for tender. It is not uncommon for the limited number of large contracts in a region to be spread relatively evenly amongst

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<sup>9</sup> [ ] informed Commission that alarm monitoring is not complicated to set up and simply requires a computer, a suitable room to operate it, the appropriate software and a staff member to dispatch responses.

<sup>10</sup> Examples of large single region customers include; The Auckland Regional District Health Board, Victoria University of Wellington and the Christchurch City Council.

<sup>11</sup> Examples of large multi-regional customers include: Fonterra, Westfield Group Ltd (Westfield) and the Ministry of Social Development.

<sup>12</sup> [ ].

<sup>13</sup> [ ].

competitors.<sup>14</sup> Large contracts make up a significant proportion of the total business available in the market.

33. Industry participants informed the Commission that there are relatively low margins available on predetermined mobile patrols and static patrols. Companies make significantly higher margins on ad hoc (or casual) work that may be needed by their customers as events occur and for which they are typically the preferred supplier under their existing contract.

*Small customers*

34. Smaller customers can include residential or commercial premises and are less likely than large customers to acquire regular patrol or static guarding services. Typically these services will only be acquired in response to a threat or an event (such as a burglary). Small customers typically rely on electronic security solutions; in the most part alarm monitoring.
35. For the most part, providers of manned guarding will only have contact with a small customer when an alarm is activated. Acquiring the alarm response work is reliant on the provider establishing a relationship with the customer's alarm monitoring company (where this company is separate to the response company). Alarm response companies look to maintain relationships with several alarm monitoring companies.
36. Industry participants informed the Commission that acquiring ad hoc (or casual) work from small customers also relies, in part, on establishing a relationship with an alarm monitoring company and being recommended by that company.

**PREVIOUS DECISIONS**

37. The Commission examined the state of competition in the provision of manned guarding services in Decision 419.<sup>15</sup> In that decision, the Commission defined regional markets for the supply of manned services. However, at paragraph 47 of the reasons it was noted:

“Although on the face of it there is an argument for separate markets for the three types of manned services, the skills and capital costs required for static guards, mobile services and retail security are very similar and many security companies supply all three services.”

38. In Decision 419 Armourguard was given clearance to acquire Group 4 Security on the basis that existing competition within the market would provide considerable constraint on the merged entity. Barriers to entry were also considered to be very low.

**MARKET DEFINITION**

39. The applicant submitted that the relevant markets are:

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<sup>14</sup> Some industry participants consider this to be due, in part, to concerns on the part of acquirers over the ability of providers to service more than one large contract, rather than a desire to spread work evenly throughout the market.

<sup>15</sup> Armourguard Security Limited / Inacro Limited (Group 4 Security), 2001.



- separate Auckland, Wellington and Christchurch markets for the provision of static guarding services;
- separate Auckland, Wellington and Christchurch markets for the provision of mobile guarding services; and
- a national market for the provision of mobile and static guard services to large multi-regional customers.

### **Product Market**

40. Close substitute products or services on the supply-side are those between which suppliers can shift production or supply easily and in the short-run, using largely unchanged production facilities and little or no additional investment (including investment that would be sunk), when they are given a profit incentive to do so by a small change in relative product / service prices.
41. The Commission considers the extent to which other suppliers can and would modify their product, service or distribution arrangements to switch quickly, within one year, to supply the product or service in question, even though they do not do so at the time of the acquisition. Factors the Commission considers in assessing supply-side substitutability include:
  - the time needed to effect the shift in supply;
  - the technical feasibility of switching products/supply, and the associated costs;
  - the marketing effort and expense involved in establishing a credible (and profitable) position as a supplier to the market;
  - the degree (if any) to which investments of a tangible or intangible nature (including elements that would be sunk) are involved; and
  - the degree to which any supply-side substitution has occurred in the past.

### *Wide or Narrow Market(s) for Manned Guarding*

42. Industry participants generally consider mobile and static guarding to form distinct product markets. The distinction appears to be based on:
  - customer need; and
  - the temperament and capability of staff available for guarding work.
43. A customer's decision on the type of security service to acquire is ultimately based on the customer's need and level of security risk. Mobile patrols will not provide the level of continuous security that a static guard stationed at a customer's premises will. However in combination with electronic security solutions such as CCTV or motion sensor alarms, mobile patrols could be adequate to provide an acceptable level of security for some customers. On premises where a static guard is employed there is typically a reason such as high traffic flow through the site (such as premises employing a gatehouse guard or concierge), or a specific security risk identified (such as a guarding a crime scene overnight while police investigations continue). Mobile patrols will not be substitutable for these tasks.

44. On the face of it, other than limited training, there appears to be little required to substitute a static guard for a mobile guard. However, industry participants note, almost uniformly, that the majority of staff employed as static guards are unlikely to be suitable for mobile guarding (obviously, with exceptions at the fringes to personnel who are identified and promoted to mobile guards). It was also widely noted that, although capable of doing so, mobile guards are likely to be reluctant to switch to static guarding due to their higher abilities, the often tedious nature of the work and lower pay. Industry participants inform the Commission that the industry has a highly mobile workforce and that guards “*are driven by pay scales.*”<sup>16</sup>
45. Other than additional labour, vehicles and communications equipment, there are likely to be few costs associated with the expansion by an existing mobile or static guarding services provider into static or mobile guarding. On the supply-side, the Commission considers that expanding an existing static or mobile business into the provision of both static and mobile services is relatively easy. There are numerous examples of such expansion.<sup>17</sup>
46. Despite the Applicant’s submission of a narrow market definition, the Commission considers that a strong case exists for a combined *manned services* market based on evidence from current industry participants on the relatively high degree of supply-side substitutability between mobile and static guarding. This being the case the Commission sees no compelling reason to alter from its market definition in Decision 419 and defines a broad market for the provision of manned security services.
47. Whilst defining a broad market for manned guarding the Commission notes the proposed acquisition is unlikely to give rise to significant competition concerns whether the relevant markets are defined as separate static and mobile guarding markets, or a broader market encompassing both.

*Whether a Multi-Regional Market or Differentiated Markets (by Customer Size) Exist*

48. A number of industry participants compete on a nationwide basis for large security contracts. The applicant has submitted that these contracts form a distinct customer market.
49. It appears that other than the ease of contracting with one security provider across multiple sites, there are no obvious price or service advantages for large multi-regional customers who choose to contract with one provider. Indeed, there are many customers who prefer to contract with security providers on a regional basis. Industry participants inform the Commission that prices are relatively uniform across the industry and there are no price incentives for customers to contract either regionally or nationwide.
50. The Commission notes that the Applicant’s submission on a market for multi-regional customers is based on a similar market definition in Decisions 604 and 622-625 (TPI / Envirowaste). The Commission noted the following in Decision 604:

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<sup>16</sup> [ ].

<sup>17</sup> [ ]

“It became apparent during this investigation that since 1999, EnviroWaste had emerged as a national, rather than regional, player in waste markets. This has meant that it has been able to compete with TPI to supply waste management services to national customers with sites in several or many regions. These customers demand a national waste management service, which includes much more than the mere collection of waste.”<sup>18</sup>

51. Examples of the additional services demanded by national customers in Decision 604 included (inter alia):
- the introduction of waste monitoring /minimisation programmes including staff training;
  - offsetting waste costs through the sale of recyclables;
  - a single centralised point of contact with their waste management provider;
  - amalgamation of invoices from multiple business sites;
  - collation and presentation of waste and recyclables volume data from those sites; and
  - liability protection; and employee safety training.
52. The Commission notes that security providers provide extra services to large customers such as:
- monthly reporting tailored to the customer’s needs;
  - rationalised accounting procedures; and
  - centralised points of contact across business groups.
53. It is noted, however, that in contrast to Decision 604, these services are demanded by, and provided to, many large customers, regardless of whether they have a single region or multi-regional presence.
54. It is also noted that many larger customers prefer to contract with providers within the regions they operate due to a perception of higher quality service provision from local companies.
55. This being the case, the Commission does not accept the Applicant’s submission that a national market exists for the contracts to provide manned security services to large multi-regional customers.
56. Given the observation however, that security providers may provide extra services to large customers as listed in paragraph 52, this begs the question of whether or not a differentiated product market exists for large versus small customers.
57. The Commission is of the view that, on the demand side, the extra services provided to large customers are unlikely to be sufficient on their own to prevent any customer switching in the event of a *SSNIP*. On the supply side the Commission notes that most security service providers (particularly the larger ones) can, and do, supply both large and small customers. Further, the Commission is aware that a number of security service providers which started out small made the transition to supplying larger customers.

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<sup>18</sup> Decision 604 *Transpacific Industries / EnviroWaste*, para 176.

58. For these reasons the Commission is satisfied that differentiated product markets for large and small customers do not exist.

*Conclusion on Product Market*

59. The Commission concludes that for the purpose of assessing the competitive effect of the proposed acquisition the relevant product market is a single market for the provision of manned guarding services.

**Geographic Dimension**

60. In assessing the geographic scope of the affected markets, the Commission has considered whether it remains appropriate to define regional markets for manned guarding, as was the case in Decision 419.
61. Decision 419 noted that several firms compete in manned services in each of the urban and provincial centres. It was concluded that in the face of a small yet significant and non-transitory increase in price (ssnip) in a given region, a security company from outside that urban centre would not be able to economically supply that service.<sup>19</sup>
62. The Commission considers this conclusion remains appropriate and for the purposes of considering the proposed acquisition, the relevant geographic markets are Auckland, Wellington and Christchurch regional markets.

**Conclusion on Market Definition**

63. The Commission considers that for the purposes of assessing this application, the relevant markets are:
- the Auckland market for the provision of manned security services (the Auckland Market);
  - the Wellington market for the provision of manned security services (the Wellington Market); and
  - the Christchurch market for the provision of manned security services (The Christchurch Market).

**FACTUAL AND COUNTERFACTUAL**

64. In reaching a conclusion about whether an acquisition is likely to lead to substantial lessening of competition, the Commission makes a with and without comparison rather than a before and after comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).<sup>20</sup> The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

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<sup>19</sup> Decision 419, Para 51.

<sup>20</sup> *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

## **Factual**

65. In the factual scenario, the Applicant would acquire the following aspects of Chubb's business:
- static guarding ( including event management); and
  - mobile guarding.
66. In the factual, Chubb would subcontract the Applicant to provide manned guarding services. [ ]

## **Counterfactual**

67. The Applicant has submitted that should the proposed acquisition not go ahead it would seek to acquire other existing security operators to obtain scale for its security arm. The Applicant has provided evidence that it is actively seeking to acquire other manned security businesses. [ ].
68. Chubb informs the Commission that should the proposed acquisition not proceed it will [ ]
69. The Commission considers that the likely counterfactual is that Chubb would find an alternative purchaser for its manned security business [ ]. Based on the available evidence, that party is likely to have a limited presence or not currently be present in the manned security market.

## **COMPETITION ANALYSIS**

### **Existing Competition**

70. The Commission considers that in each of the relevant markets, the Applicant and Chubb compete against each other. Consequently, the proposed acquisition would result in a reduction in the number of competitors in each of the markets.
71. There are over 100 security companies providing manned security services in New Zealand. 11 of these have more than 100 employees. Each of the relevant markets is characterised by the existence of the two nationwide providers (ADT and Chubb), strong medium sized regional players and a large number of smaller regional players. Many of these medium-sized players started out as small niche operations and have expanded in size and scope of service over time.
72. Although industry participants inform the Commission that competition does occur on price, the extent to which large suppliers can offer bulk discounts is tempered by the fact that the majority of the service is made up of fixed labour costs, with limited scope for economies of scale, in particular in static guarding. Large customers informed the Commission that smaller and medium sized firms compete with larger firms for significant contracts and are regularly successful.<sup>21</sup>
73. Tables 1 to 3 provide estimated market shares for the relevant markets.

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<sup>21</sup> Examples include: [ ] Allied Security winning a nationwide contract to provide manned security services to Fonterra.

**Table 1: Auckland Market Shares, based on revenues (\$m)**

| Security Firm          | Mobile Revenue | %           | Static Revenue | %           | Combined Revenue | %           |
|------------------------|----------------|-------------|----------------|-------------|------------------|-------------|
| First Security         | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Chubb NZ               | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| <b>Combined Entity</b> | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| ADT                    | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Matrix Security        | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| ICON Security          | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Other                  | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| <b>TOTAL</b>           | [ ]            | <b>100%</b> | [ ]            | <b>100%</b> | [ ]              | <b>100%</b> |

**Table 2: Wellington Market Shares, based on revenues (\$m)**

| Security Firm          | Mobile Revenue | %           | Static Revenue | %           | Combined Revenue  | %           |
|------------------------|----------------|-------------|----------------|-------------|-------------------|-------------|
| First Security         | [ ]            | [ ]         | [ ]            | [ ]         | [ ] <sup>22</sup> | [ ]         |
| Chubb NZ               | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| <b>Combined Entity</b> | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| ADT                    | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| Recon Security         | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| Simply Security        | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| Harbour City           | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| Other                  | [ ]            | [ ]         | [ ]            | [ ]         | [ ]               | [ ]         |
| <b>TOTAL</b>           | [ ]            | <b>100%</b> | [ ]            | <b>100%</b> | [ ]               | <b>100%</b> |

**Table 3: Christchurch Market Shares, based on revenues (\$m)**

| Security Firm          | Mobile Revenue | %           | Static Revenue | %           | Combined Revenue | %           |
|------------------------|----------------|-------------|----------------|-------------|------------------|-------------|
| First Security         | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Chubb NZ               | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| <b>Combined Entity</b> | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| ADT                    | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Sub5 Security          | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Triton Security        | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| Other                  | [ ]            | [ ]         | [ ]            | [ ]         | [ ]              | [ ]         |
| <b>TOTAL</b>           | [ ]            | <b>100%</b> | [ ]            | <b>100%</b> | [ ]              | <b>100%</b> |

74. Based on the figures in Tables 1 to 3, the combined entity will initially in the factual have estimated market shares of [ ] in Auckland, [ ] in Wellington and [ ] in Christchurch. The three-firm concentration ratios in each market will increase by [ ]

<sup>22</sup> This figure includes revenue from its Wellington City Council contract which ceases in January 2009.

], but will probably not exceed 70%. In calculating these market shares, the Commission has adopted the Applicant's estimates of the combined revenue of the numerous *other* suppliers. Based on these figures, the proposed acquisition is within the Commission's safe harbour guidelines.

75. The Commission notes that even if the Applicant's estimates overstate the combined revenues of the *other* suppliers, such that the proposed acquisition breaches safe harbours, the combined entity will still be constrained by the existing competition, which is analysed below.

*Expansion of Existing Competitors*

76. While there are firms that only operate in one of the three relevant geographic markets currently, the Commission is informed that expanding from one region to another is relatively straight forward. Typically companies look to obtain a significant contract in the target region before expanding, but expansion does not occur exclusively in this way.<sup>23</sup> There are a number of examples of regional expansion between markets.<sup>24</sup>
77. The Commission also notes that many large customers view security services as critical areas and do not base their choice of provider purely on price. Public sector agencies, for example, have detailed assessment processes for selecting candidates based on a wide range of criterion, of which price is but one.
78. The majority of customers spoken to in the course of this investigation contract with manned security providers on 2-3 year terms and have clauses worked into their contracts for early termination based on service levels not being achieved. There are little or no barriers to customers switching providers in the relevant markets and customers and industry participants alike have provided numerous examples of switching based on poor service levels. The ease with which customers can switch providers in response to issues with service quality is not expected to change post-acquisition. Consequently, the Commission considers that post-acquisition in the factual, service levels will be a key basis upon which companies can compete and expand.

**Conclusion on Existing Competition**

79. Based on the foregoing, the Commission is satisfied that the current high level of existing competition in relevant markets is likely to constrain the combined entity post-acquisition. Consequently, the Commission is satisfied that the proposed acquisition is unlikely to result in a substantial lessening of competition in any of the relevant markets.

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<sup>23</sup> [ ].

<sup>24</sup> For example, [ ]. The Applicant began as an Auckland based company and has expanded into the Wellington and Christchurch markets.

**DETERMINATION ON NOTICE OF CLEARANCE**

80. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by ISS Holdings NZ Limited of a portion of the manned guarding business of Chubb New Zealand Limited.

Dated this 6<sup>th</sup> day of November 2008

Denese Bates QC  
Division Chair