

Statement of Preliminary Issues

Wilson Parking / Tournament

25 August 2015

Introduction

1. On 14 August 2015, the Commerce Commission registered an application from Wilson Parking New Zealand Limited (Wilson Parking), seeking clearance to acquire the leases of ten car parking sites currently operated by Tournament Parking Limited (Tournament).¹
2. This Statement of Preliminary Issues outlines the key competition issues we currently consider will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication and may change as our assessment of the application for clearance progresses. Therefore, the issues highlighted in this statement are not binding on us.
3. We invite interested parties to comment on the likely competitive effects of the proposed acquisition, and request that parties who wish to make a submission do so by **8 September 2015**.

The transaction and the parties

4. Wilson Parking, a privately owned company, is New Zealand's largest parking provider, operating approximately 270 facilities nationwide. It is part of the wider Wilson Group, which operates parking sites throughout Australia and Asia.
5. Tournament is a privately owned company that currently operates 13 car parks in Auckland and Wellington. In 2013, it sold the leases and management agreements for most of its other parking operations to Wilson Parking.
6. Wilson Parking seeks clearance to acquire the leases for the following ten car parks:
 - 6.1 the Airedale Street car park (central Auckland);
 - 6.2 the Nelson Street car park (central Auckland);
 - 6.3 the St Benedict's Street car park (Eden Terrace, Auckland);
 - 6.4 the Upper Queen Street car park (Eden Terrace, Auckland);

¹ The public version of the application is available on our website at:
<http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/detail/868>

- 6.5 the Rialto car park (Newmarket, Auckland);
- 6.6 the Khyber Pass car park (Newmarket, Auckland);
- 6.7 the Leftbank car park (Te Aro, Wellington);
- 6.8 the Marion Street car park (Te Aro, Wellington);
- 6.9 the Lombard car park (Te Aro, Wellington); and
- 6.10 the Plimmer Tower car park (Boulcott Street, Wellington).

Our framework

- 7. Wilson Parking applies for clearance of the acquisition under section 66 of the Commerce Act 1986 (the Act).
- 8. As required by the Act, we assess whether the acquisition is likely to result in a substantial lessening of competition. How we assess this is set out in our Mergers and Acquisitions Guidelines.²
- 9. Our assessment of this clearance application is separate and distinct from our prior investigation into Wilson Parking's July 2013 acquisition of 63 car park leases and management agreements from Tournament. In that investigation, which was conducted under section 47 of the Act, we did not consider the ten car parks that are the subject of the current clearance application.
- 10. Wilson Parking submits that, as parking is a highly differentiated product, we should depart from our usual framework for assessing the proposed acquisition. We disagree. We will analyse the proposed acquisition in the usual way, as described in the Mergers and Acquisitions Guidelines.
- 11. We will consider whether the acquisition is likely to substantially lessen competition in each of the relevant car parking markets, by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).³
- 12. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely face.⁴ A market is defined in the Act as a market in New Zealand for goods or services, as well as other goods or

² Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013. Available on our website at www.comcom.govt.nz

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁴ *Commerce Commission v New Zealand Bus Limited* (2006) 11 TCLR 679 (HC), at [123]. *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) at [137].

services that are substitutable for them as a matter of “fact and commercial common sense”.⁵

13. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases, this may not require us to precisely define the boundaries of a market.
14. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.⁶ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.⁷
15. When making that assessment, we consider, among other matters:
 - 15.1 existing competition – the degree to which existing competitors compete;
 - 15.2 potential competition – the extent to which existing competitors would expand their sales or new competitors would enter and compete effectively if prices were increased; and
 - 15.3 the countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchaser’s ability to exert substantial influence on negotiations.

Preliminary issues

16. We will investigate whether the proposed acquisition is likely to substantially lessen competition in the relevant markets by focusing on the unilateral and coordinated effects that might result from this acquisition. In particular, we will consider:
 - 16.1 whether there are separate markets for casual, daily and monthly parking;
 - 16.2 the scope of the geographic markets;
 - 16.3 the closeness of competition between the merging parties in each area affected by the acquisition;
 - 16.4 the degree to which competing car parks, on-street parking and public transport provide competitive constraints;
 - 16.5 the amount of spare parking capacity in each market affected by the acquisition;

⁵ Similarly, the courts have said that “[t]he boundaries of the market are defined by substitution between one product and another and between one source of supply and another, in response to changing prices”. See *Commerce Commission v New Zealand Bus Limited* (HC), above n 4 at [123] citing *Re Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,247.

⁶ Commerce Act 1986, s 66(1).

⁷ In *Commerce Commission v Woolworths Limited* (CA), above n 3 at [98], the Court held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”. However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

- 16.6 the extent to which the structure of car park leases affects the incentives of operators;
- 16.7 whether the acquisition is likely to increase the ability of Wilson Parking and all or some of its remaining competitors to coordinate their behaviour on price or any other dimension of competition; and
- 16.8 the ability for new suppliers to enter or for existing suppliers to expand in each market affected by the acquisition.

Market definition

Product markets

- 17. Wilson Parking submits that there are no restrictions on supply side substitutability, except for on-street parking. In other words, Wilson Parking submits that car park operators can and do switch their supply between casual, daily and monthly parking.
- 18. We will consider whether there are any restrictions on competing car parks that would prevent car park operators from quickly and easily switching between different parking products. We will also consider whether private car parks place competitive constraints on public car parks.

Geographic markets

- 19. Wilson Parking submits that the relevant markets are comprised of overlapping zones of substitution affecting Auckland Central, Newmarket and Wellington Central.
- 20. Our analysis of Wilson Parking's 2013 acquisition noted that this approach was inconsistent with observed price variations across Auckland's central business district. We will assess the geographic markets relevant to this acquisition, including whether they are narrower than those identified by Wilson Parking.

Existing and potential competition

- 21. Wilson Parking submits that, among other things, constraints on its ability to raise prices or reduce the quality of its services, with the acquisition, will come from:
 - 21.1 car parks in close physical proximity to the car parks to be acquired;
 - 21.2 more distant "iconic" parking sites;
 - 21.3 public transport; and
 - 21.4 the influence of landlords.
- 22. Our investigation will focus on the closeness of competition between Wilson Parking's car parks, the car parks to be acquired and other competitors. In particular, we will consider whether competing car parks possess sufficient spare capacity to absorb additional customers, were they to switch away from Wilson Parking's parking operations.

23. We will also consider the impact of on-street parking, public transport and landlords on constraining Wilson Parking's ability to raise prices above the existing levels or reduce the quality of its services.
24. We will consider whether the typical lease structure disincentives aggressive pricing policies, by placing the majority of the revenue risk on the operator, rather than on the landlord.

Coordinated effects

25. We will consider whether the transaction increases the potential for Wilson Parking and its competitors to coordinate their behaviour and collectively exercise market power, such that prices increase across the relevant markets. Specifically, we will consider whether there are features of these markets that may facilitate coordinated conduct, and whether the acquisition would enhance these features.

Entry and expansion

26. Wilson Parking submits that barriers to entry for car park operators are low and entry or expansion would be timely. More specifically, it submits that competition for contracts in the leased and managed sector, particularly in Auckland, is strong.
27. We will assess whether entry by new competitors or expansion by existing competitors is likely, of sufficient extent and would occur in a sufficiently timely fashion to prevent a substantial lessening of competition.
28. Of particular consideration will be whether being an incumbent lease holder provides a competitive advantage such that entry or expansion, by way of successfully bidding for a lease, is unlikely to constrain any increase in market power by the merged entity.
29. We will also assess entry through the creation of new car parks, giving consideration to the likelihood, extent and timeliness of entry in this form.

Next steps

30. We are currently aiming to make our decision by **8 October 2015**. However, this date may change as the investigation progresses.
31. To keep up to date with any changes to our deadline and to find relevant documents, visit our clearance register on our website at <http://www.comcom.govt.nz/clearances-register/>
32. As part of our investigation, we will identify the parties we believe will provide the best information to help us assess the preliminary issues identified above. We will be contacting those parties over the next few weeks.
33. We also invite submissions from any other parties who consider they have information relevant to our consideration of this matter. If you wish to make a submission, please email it to us at registrar@comcom.govt.nz with the reference Wilson Parking/Tournament in the subject line of your email, or post it to us at The Registrar, PO Box 2351, Wellington 6140 by close of business **8 September 2015**.

Please clearly identify any confidential information contained in the submission and provide contact details.

34. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA. For example, if disclosure would unreasonably prejudice the supplier or subject of the information.