

Notice seeking clearance for
Juice Technologies Pty Limited
to acquire the shares of
APT Business Solutions Limited

PUBLIC VERSION:
Confidential information redacted

13 December 2019

SECTION 66 COMMERCE ACT 1986: NOTICE SEEKING CLEARANCE FOR BUSINESS ACQUISITION

12 December 2019

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON
New Zealand

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition in which Juice Technologies Pty Limited (**Juice Technologies**) intends to acquire 100% of the shares in APT Business Solutions Ltd (**APT**).

PART 1: APPLICANT AND OTHER PARTY DETAILS

Applicant for clearance

- 1 This notice seeking clearance is given by the Juice Technologies/Infocare group. The applicant can be contacted through the details set out below.

c/o Sean Collins (Managing Director/Owner)

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- 2 All correspondence and notices in respect of this application should be directed in the first instance to:

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Other party to the acquisition

- 3 Contact details for APT are set out below.

APT Childcare

c/o Shane Ogier (Managing Director/Co-Owner)

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Palmerston North 4414

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www.aptchildcare.co.nz

PART 2: TRANSACTION DETAILS

The proposed acquisition

- 4 Juice Technologies is seeking clearance to acquire 100% of the shares of APT (**proposed acquisition**). The eventual effect of the acquisition will be to facilitate the development of a new back end system to support the business activities of both APT and Infocare Systems Limited (**Infocare**). Infocare is Juice Technologies' wholly owned New Zealand subsidiary.
- 5 Juice Technologies and APT signed a sale and purchase agreement on 15 August 2019. The purchase price is [REDACTED]. The agreement is conditional on Commerce Commission clearance. The agreement was also conditional on "no objections" from the Ministry of Education. The Ministry of Education has expressed that it is comfortable with the acquisition.¹ The sale and purchase agreement (and a deed of variation) is attached as **Confidential Appendix 1**.

Commercial rationale

- 6 Infocare and APT both service the New Zealand child care industry through providing Student Management System software (**SMS**).
- 7 Both firms are pioneers of the industry, and were amongst the first software companies to enter the education sector at a time when most providers of child care services were still using pen and paper. APT entered the industry in 1995, and Infocare in 2003.
- 8 Significant developments since Infocare and APT began operating mean that the technology of both parties is now outmoded compared with more modern offerings.
- 9 In the last 24 months the industry has undergone significant change, with numerous new competitors entering the market offering superior technology. Since 2017, four new competitors have entered the market and others have significantly expanded their business, all offering cloud-based, highly functional and competitively priced SMS. Infocare and APT's software is falling behind in almost every aspect, from appearance to functionality.
- 10 We have included at **Appendix 2** screenshots of Infocare and APT's software compared to their more modern counterparts. These screenshots demonstrate the stark difference between Infocare and APT's offerings and offerings of competitors, and illustrate the competitive disadvantage both firms face operating legacy technology. We have also provided at **Appendix 13** a table setting out the functionality of all competitors' software.
- 11 As a result of their superior technology, recent entrants have been able to secure significant market share quickly, at the expense of both Infocare and APT. Discover has been particularly successful, rapidly securing a similar market presence to each of Infocare and APT (previously the only providers). These new entrants are discussed in more detail in the competition analysis section of this application.
- 12 Due diligence reviews have been carried out of both Infocare and APT, provided at **Confidential Appendix 3**. The financial due diligence was performed by KPMG. The technology and operational due diligence was carried out by Adrian Karzon, Chief Technology Officer of an Australian SMS provider (Kidsoft). These reviews

¹ The Ministry expressed that it is comfortable with the transaction in a meeting with Infocare. The relevant contact at the Ministry is Tanya Harvey (Tanya.Harvey@education.govt.nz, 0212801213).

identified three main factors which present significant challenge to both businesses in successfully competing with new entrants in the market:

- 12.1 *Finance*: neither company is currently adequately resourced to fund the investment required to rebuild and update its software. We provide at **Confidential Appendix 4** Infocare's financial statements from FY17 – FY19.
 - 12.2 *Technology*: both companies' software is coming to the end of its life. In particular, APT's software is developed using a code that is designed for Desktop Application use. It is not suitable for use in Web Applications, which is where most customer demand lies. APT is currently using an emulator style extension to allow their application to be deployed as a web version, but this architecture is not suitable in the long term.
 - 12.3 *Market*: aggressive competitors have recently entered the market, providing newer and more agile technology that neither Infocare nor APT can compete with effectively in the long term.
- 13 Competing in this market requires significant investment from legacy providers to update their technology. Without updating its software, Infocare will be unable to provide stable and effective software for its customers.
 - 14 The business case for Infocare or APT undertaking that investment individually would be challenging. Both parties therefore consider the acquisition is the best way to compete effectively in this market. In particular, the acquisition results in a larger customer base to improve the business case for incurring the substantial capital costs of the required upgrades.
 - 15 Infocare intends to create a single "back-end" platform that will support two highly functional "front-end" platforms. Infocare and APT will continue to offer separate products for customers, but these products will be supported by the same underlying technology. The merged entity's post-acquisition plans are discussed further at paragraphs 47 - 50.
 - 16 Infocare estimates that the technology upgrade will cost \$2-3 million in capital expenditure and an outgoing cost of approximately \$150,000 in monthly software management costs including upgrades, updates and modernisation.
 - 17 We have provided at **Confidential Appendix 5** an overview of the updated technology post-acquisition.

PART 3: BUSINESS ACTIVITIES

Business activities

Juice Technologies – the Applicant

- 18 Juice Technologies is an Australian proprietary company limited by shares, incorporated and registered on 9 April 2019 (company number 632801711). Juice Technologies operates only as a holding company for Infocare; it does not undertake any business activities on its own.

Infocare – the Applicant’s subsidiary

- 19 Juice Technologies is active in New Zealand only through its wholly-owned subsidiary, Infocare. Infocare is a technology company that was established in 2003 to provide SMS.
- 20 Infocare’s SMS is designed specifically for the child care industry. The system provides functionality for recording all child enrolment details, attendance details and demographics. The system is also used to store staff/teacher information and staff rosters and worked hours.
- 21 The system has full invoicing and receipting functionality, as well as the ability to record and process fund raising projects and donations. There are some additional modules that allow clients to send and receive text messages to parents and staff, and a parent portal module that allows parents to log on and keep up to date with their child’s learning and development.
- 22 Customers can also use the SMS to provide government funding information and to calculate funding rules and compliance. Relevant statistical information is sent to the Ministry of Education daily.

APT – the Target

- 23 APT also provides SMS to the child care industry. APT began operating in 1995, and now supports over 1,100 Ministry of Education approved child care service providers.
- 24 APT’s SMS is designed to assist with the administrative aspects of running a child care centre. Its features include managing child enrolment details, child attendances, staff/teacher information and staff rosters. Invoicing and receipting functionality are provided, along with a communication module to send text messages and emails directly from the system. The system is also used to provide government funding information and to calculate funding rules and compliance.

Ministry of Education Early Learning Information System

- 25 All SMS providers must be integrated with the Ministry of Education’s Early Learning Information (**ELI**) system. The ELI system collects and stores information on enrolment and attendance in early childhood education for approximately 200,000 children in New Zealand. The Ministry of Education uses the data collected through ELI to monitor and forecast early childhood education expenditure and design new policies.
- 26 When a child is enrolled in early childhood education, they are allocated a National Student Number (**NSN**). The NSN remains with the child for the duration of their primary, secondary and tertiary education.

- 27 As the NSN number is given by the Ministry, all child care providers must use one of the Ministry-approved ways of providing information to ELI:
- 27.1 through the Ministry of Education’s ELI Web Portal; or
 - 27.2 through SMS.
- 28 Most early childhood education providers choose to use SMS rather than the Ministry’s own ELI Web Portal, as the SMS are typically higher functioning and can be used for other administrative aspects of running a child care service.
- 29 In order to become Ministry-approved, an SMS provider must apply to the Ministry demonstrating that their software meets the following criteria:²
- 29.1 The SMS must already be developed with all intended functionality including the NSN and ELI requirements such as:
 - (a) child creation;
 - (b) child enrolment;
 - (c) child booking schedule;
 - (d) 20 hours ECE;³
 - (e) attendance marking;
 - (f) annual ECE Return data (e.g. staff details and qualifications); and
 - (g) RS7 Return⁴ (e.g. calculation for funding periods).
 - 29.2 The developed SMS must be capable of supporting:
 - (a) centre-based (includes all Education & Care and Kindergarten) and Home-based services);
 - (b) sessional and all-day licensed services (e.g. both OSCAR and Education & Care/Kindergarten services);
 - (c) A minimum of 50 services; and
 - (d) early learning services to meet funding and regulatory requirements.

² All information about the steps required to gain Ministry of Education approval can be found on the Ministry of Education’s website at the following link:
<http://services.education.govt.nz/eli/information-for-student-management-systems-sms-integration/information-for-sms-integration/>.

³ 20 Hours ECE is a funding subsidy for early childhood education. Some child care providers offer 20 Hours ECE, which means that a child attending that service can be fully subsidised for up to 6 hours a day and up to 20 hours a week.

⁴ The RS7 Return is the main funding return for early childhood education services. Early childhood education providers complete an RS7 return three times a year, to tell the Ministry of Education the number of funded child hours that are funded for each service, and the rate at which each funded child hour will be funded.

29.3 Once accepted by the Ministry, the SMS must be able to be developed to include the National Student Index and ELI integration components.

PART 4: MARKET DEFINITION

- 30 Infocare considers the relevant market for assessing the acquisition is the national market for the provision of SMS to child care providers. In practice, the market may be broader, but from an analytical perspective, this definition allows the competition impact of the acquisition to be robustly assessed.

Product dimension

- 31 On the demand side, the child care industry features a range of service providers, including:
- 31.1 *Education and Care Centres:* Education and Care Centres are all-day centres that cater for children from infants to age six. The person responsible for operating an Education and Care Centre must be a qualified and registered teacher. Education and Care Centres are usually run for profit. Education and Care Centres are heavily dependent on SMS. These centres use SMS to provide information to the Ministry of Education in order to obtain funding. The Ministry requires comprehensive records of information in order to fund a service. Funding rates vary depending on the type of service provider, the hours each service operates, the total number and age of the children in the centre and the ratio of registered staff hours. The Education (Early Childhood Services) Regulations 2008 contain minimum staff to children ratios. Service providers must meet these ratios to obtain funding, and are not funded for staff that are not legally required to be present. Education and Care Centres require SMS that can record staff to child ratios every 15 minutes in order to be able to provide accurate information to secure funding.
- 31.2 *Kindergartens:* Kindergartens are chartered and licensed child care services that employ qualified and registered teachers. Funding is calculated in the same way as Education and Care Centres (on a teacher to child ratio, every 15 minutes). Most kindergartens cater for children between two and a half to six years old, and do not charge fees, which limits the Kindergartens' ability to pay high SMS fees.
- 31.3 *Home-based Care:* Home-based Care services provide young children with early childhood education either in the child's own home or in the home of an educator. Home-based care services are managed by chartered home-based care network organisations, and have different rules of operation to both Education and Care Services and Kindergartens. Licenses to operate are issued to a provider for a total number of children, but this license is split over a number of homes (e.g. a provider may have a license for 80 children, but each home is limited to 8 children). Qualified and registered teachers are employed as coordinators to support the educators in home-based networks. There are two funding rates for Home-based Care services. Standard funding rates apply to licensed Home-based Care services that meet the requirements in the Education (Early Childhood Services) Regulations 2008. A higher funding rate applies to licensed Home-based Care services that meet additional requirements. SMS provided to Home-based Care services need to address the different information required for these different funding models.
- 31.4 *Out of School Care and Recreation (OSCAR):* OSCAR services provide care for children (up to 14 years old) outside of normal child care hours, and include holiday programmes and before/after school care. OSCAR services have a different funding model to the other services, and are not required to use Ministry-approved SMS. OSCAR services use SMS for enrolment, timetable and billing functions, rather than for reporting to the Ministry.

- 32 We provide at **Appendix 12** a table setting out the competitors operating in each segment of the market.
- 33 All of the segments described above use SMS for a number of functions in addition to reporting to the Ministry of Education for funding purposes, including:
- 33.1 keep records of attendance;
 - 33.2 communicate with parents;
 - 33.3 track learning and development updates;
 - 33.4 maintain health details and immunisation records of children;
 - 33.5 bill and invoice;
 - 33.6 provision of information to ELI;
 - 33.7 create and maintain staff rosters and timesheets; and
 - 33.8 assist with other day to day administration.
- 34 Providers must be certified by the Ministry of Education to supply SMS to Education and Care Centres, Kindergartens and Home-based Care services; these services are required to use only Ministry-approved SMS. OSCAR services can use SMS that is not Ministry-approved.
- 35 As noted above, SMS providers must be able to support all different types of child care services in order to obtain Ministry of Education approval. As a result, all SMS providers are able to service all components of the market. This is evidenced in the table at **Appendix 12** which shows competitors operating across different market segments.
- 36 On the supply side, SMS providers typically supply SMS to multiple customer types within the early childhood education sector and the software is largely the same regardless of customer type, as the requirements for SMS do not vary significantly across segments.
- 37 Some providers currently operate in only one segment of the market (as shown in the market share tables included in Part 6 of this application). Providers typically begin operating in one segment, focusing their attention solely on that segment until they grow their customer base. Having established a customer base in one segment, providers will then expand to other segments. An example of this growth trajectory is Aimy Plus, who initially focused on the OSCAR segment before expanding their focus to the Education and Care segment in 2019.
- 38 SMS is used in all parts of the education sector, from early childhood to tertiary. SMS providers that target one education level could readily switch or expand to target others. Nevertheless, there is little day-to-day crossover between levels, as the features customers require vary between education levels.
- 39 For these reasons, Infocare considers it appropriate to define the relevant product market as a single market for the supply of SMS to child care providers.

Geographic dimension

- 40 Infocare considers the relevant geographic market to be national. Suppliers of SMS can and do supply their product to child care services around New Zealand. Infocare is based in Auckland but supplies child care services all around New Zealand, as

does APT from its base in Palmerston North. All other SMS providers are located in Auckland, and supply services around New Zealand.

- 41 The modern SMS product is typically cloud-based, allowing users to purchase and log in online, with no need for the suppliers to physically install software on desktops. This allows child care services to purchase a product from any supplier regardless of where they are located.
- 42 Some child care service providers are still on desktop-based software and have not switched to cloud-based. In these instances SMS providers do not need to physically access the customers' computers, as customers are able to download and install the product from the supplier's website.
- 43 All ongoing support is provided either online or via telephone. For example, Infocare provides support via a free phone number between 8.30am – 5pm on business days. In addition, Infocare provides support via email, online help modules in the product itself, and via online video modules.
- 44 SMS providers do not need to be located in the same region as a client to provide support. As technology develops this aspect of SMS provision will become more pronounced, with the increase in cloud-based services allowing for greater flexibility.

Conclusion on market definition

- 45 In conclusion, Infocare considers that the relevant market for assessing the competitive effects of the acquisition is the national market for the provision of SMS to early childhood education providers.

PART 5: COUNTERFACTUAL

The factual

- 46 As explained above, Infocare intends to acquire APT for [REDACTED]. Infocare intends to invest in new technology and the business case for doing so is greatly enhanced by the expanded customer base resulting from the acquisition. Specifically, Infocare intends to build one "back-end" software programme that supports two "front-end" platforms, one for each Infocare and APT.
- 47 [REDACTED]
- 48 [REDACTED]
- 49 [REDACTED]
- 50 Even without combining the products, there is a risk that some customers of both Infocare and APT will continue to switch to existing alternatives prior to the new platform being made available.
- 51 Despite the risk of losing customers, the enhanced business case of the additional APT customers will allow the merged entity to invest in the technology required to compete effectively in the market. The merged entity will then be able to act as an effective constraint on the new entrants that are rapidly gaining market share and power.

The counterfactual

- 52 The counterfactual is that APT and Infocare remain separate entities and will continue with their respective business activities as they do today. In this scenario, APT and Infocare will have limited ability to compete effectively with new entrants offering superior technology.
- 53 [REDACTED]
- 54 If the acquisition does not go ahead, APT and Infocare will continue to lose market share to the new software providers, significantly impacting APT and Infocare's ability to provide for remaining customers. APT and Infocare both service large customers (that run over 100 – 200 services). Loss of just one of these customers to a new entrant SMS provider would see significant revenue loss for Infocare and APT. Ultimately one or both firms could fail.
- 55 [REDACTED]
- 56 In the counterfactual one of the new SMS platforms would likely acquire APT and switch APT's customers onto that new platform. It would be difficult for Infocare to compete effectively in this scenario as it would need to finance the upgrade of its own system without being able to scale that upgrade across a larger customer base. In this scenario, Infocare may need to raise its fees to support the new build which would put its existing market share and ongoing competitive position at risk.

PART 6: COMPETITION ANALYSIS

57 [REDACTED]

58 Despite an increase in market share, the proposed acquisition will not substantially lessen competition as:

58.1 the merged entity will face significant constraint from existing competitors;

58.2 the merged entity will face significant constraint from potential competitors;

58.3 the market is characterised by countervailing customer power; and

58.4 the acquisition is pro-competitive and will lead to increased efficiencies.

59 For the reasons above, the merged entity will not have the ability to foreclose competitors.

Background to the Market

Market participants

60 The early child care industry consists of approximately 5,500 individual services across the different segments discussed in the market definition section above.

61 There are currently eight known SMS providers in the market. Other than Infocare and APT, these providers are:

61.1 *Discover*: Discover entered the market in 2017. Discover has so far focused attention on the Education and Care Centres segment of the market. However, they are now rolling out new features to accommodate home-based networks and kindergartens.

61.2 *Aimy Plus*: Aimy Plus entered the Education and Care Centres segment of the market in 2019. Before 2019, Aimy Plus had operated in the OSCAR segment of the market. Prior to Aimy Plus' entry, OSCAR services used either manual systems, Kidtracker, or excel spreadsheets.

61.3 *Junior Logs*: Junior Logs entered the market in 2018, focusing largely on Playcentres.

61.4 *Ministry of Education*: as discussed in the sections above, the Ministry of Education offers free ELI software, but has a relatively low market share as the zero cost means the software is of a lesser quality.

61.5 *Porse*: Porse entered the market in 2018 and has focused on the Home-Based Care segment of the market. PORSE is a Home-Based Care provider which has developed its own software that was used by its internal services before 2018. In 2018 PORSE was sold and the new owners have made the software commercially available.

61.6 *First base*: First Base have been operating for 20 years, but did not become web-based until 2017. First Base focuses on the Education and Care Centres and OSCAR segments.

62 Since 2017, there have been numerous new entrants in the Market. Discover has rapidly secured a similar market presence to each of Infocare and APT (previously the only providers). It is unusual for Infocare and APT to lose customers to each

other, so the key competitive challenge to both firms comes from Discover and other new entrants.

- 63 We provide at **Appendix 13** a table setting out the specific functionality of each competitor’s software.

Market shares

- 64 In the table below we provide estimated market shares for each of the current providers for 2017, before the proposed acquisition and after the proposed acquisition. These estimates have been calculated by reference to an internal view of the customer relationships held by each SMS provider across all segments.

Table 1: Aggregated market shares across all segments

Provider	Market shares in 2017	Current market shares (2019)	Market shares post-acquisition
<i>Infocare</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>APT</i>	[REDACTED]	[REDACTED]	
<i>Discover</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Junior Logs</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>First Base</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Porse</i>	[REDACTED]	[REDACTED]	[REDACTED]
Total	100%	100%	100%

- 65 We have taken a conservative approach to calculating market share, in particular, by excluding Playcentres from our analysis. Infocare and APT do not provide SMS to Playcentres, limiting our ability to provide accurate information about that segment. However, we estimate the total value of the Playcentre segment of the market to be about \$400,000. We consider that any firm that provides SMS to other market segments could easily provide services to Playcentres, and accordingly that services to Playcentres should be included within the scope of the relevant market for the purpose of assessing the competition effects of this acquisition.

- 66 Additionally, we have estimated each SMS provider’s annual revenue in the table below. These estimates have been calculated by reference to an internal view of the customer relationships held by each SMS provider, multiplied by an internal view of the fees likely to have been charged. The estimated total of all providers’ revenue (\$6,405,220) represents the total size of the New Zealand SMS industry (not including the estimated \$400,000 attributable to Playcentres).

Table 2: revenue estimates (annual) based on current market shares

Provider	Estimated revenue (2019 calendar year)
<i>Infocare</i>	[REDACTED]
<i>APT</i>	[REDACTED]
<i>Discover</i>	[REDACTED]
<i>Junior Logs</i>	[REDACTED]
<i>First Base</i>	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]

<i>MoE ELI Web</i>	[REDACTED]
<i>Porse</i>	[REDACTED]
Total	[REDACTED]

67 For completeness, we also provide shares broken down by customer type. Regardless of how the shares are cut no competition concerns would arise for the reasons set out in the section below. The tables below set out each provider's share of:

67.1 Education and Care Centres;

67.2 Kindergartens

67.3 Home-based care; and

67.4 OSCAR.

Table 3: Shares of supply for Education and Care Centres

Provider	Shares of supply in 2017	Current shares of supply (2019)	Shares of supply post-acquisition
<i>Infocare</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>APT</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Discover</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Junior Logs</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>First Base</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Porse</i>	[REDACTED]	[REDACTED]	[REDACTED]
Total	100%	100%	100%

Table 4: revenue estimates (annual) for Education and Care Centres

Provider	Estimated revenue (2019 calendar year)
<i>Infocare</i>	[REDACTED]
<i>APT</i>	[REDACTED]
<i>Discover</i>	[REDACTED]
<i>Junior Logs</i>	[REDACTED]
<i>First Base</i>	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]
<i>Porse</i>	[REDACTED]
Total	[REDACTED]

Table 5: Shares of supply for Kindergartens

Provider	Shares of supply in 2017	Current shares of supply (2019)	Shares of supply post-acquisition
<i>Infocare</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>APT</i>	[REDACTED]	[REDACTED]	
<i>Discover</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Junior Logs</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>First Base</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Porse</i>	[REDACTED]	[REDACTED]	[REDACTED]
Total	100%	100%	100%

Table 6: revenue estimates (annual) for Kindergartens

Provider	Estimated revenue (2019 calendar year)
<i>Infocare</i>	[REDACTED]
<i>APT</i>	[REDACTED]
<i>Discover</i>	[REDACTED]
<i>Junior Logs</i>	[REDACTED]
<i>First Base</i>	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]
<i>Porse</i>	[REDACTED]
Total	[REDACTED]

Table 7: Shares of supply for Home-based Care

Provider	Shares of supply in 2017	Current shares of supply (2019)	Shares of supply post-acquisition
<i>Infocare</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>APT</i>	[REDACTED]	[REDACTED]	
<i>Discover</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Junior Logs</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>First Base</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Porse</i>	[REDACTED]	[REDACTED]	[REDACTED]
Total	100%	100%	100%

Table 8: revenue estimates (annual) for Home-based Care

Provider	Estimated revenue (2019 calendar year)
<i>Infocare</i>	[REDACTED]
<i>APT</i>	[REDACTED]
<i>Discover</i>	[REDACTED]
<i>Junior Logs</i>	[REDACTED]
<i>First Base</i>	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]
<i>Porse</i>	[REDACTED]
Total	[REDACTED]

Table 9: Shares of supply for OSCAR

Provider	Shares of supply in 2017	Current shares of supply (2019)	Shares of supply post-acquisition
<i>Infocare</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>APT</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Discover</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Junior Logs</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>First Base</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Porse</i>	[REDACTED]	[REDACTED]	[REDACTED]
Total	100%	100%	100%

Table 10: revenue estimates (annual) for OSCAR

Provider	Estimated revenue (2019 calendar year)
<i>Infocare</i>	[REDACTED]
<i>APT</i>	[REDACTED]
<i>Discover</i>	[REDACTED]
<i>Junior Logs</i>	[REDACTED]
<i>First Base</i>	[REDACTED]
<i>Aimy Plus</i>	[REDACTED]
<i>MoE ELI Web</i>	[REDACTED]
<i>Porse</i>	[REDACTED]
Total	[REDACTED]

69 [REDACTED]

The acquisition will not substantially lessen competition

70 For the reasons set out below, the proposed acquisition will not substantially lessen competition in the relevant market.

There is significant constraint on the merged entity from existing competitors

71 There are a number of alternative SMS providers to which customers can switch in the event that the merged entity increases prices post-acquisition.

72 As discussed above, four new competitors have entered the market since 2017. Prior to 2017, the only market participants were Infocare, APT, First Base and the Ministry of Education's free ELI Web Portal. Since entering the market, these four new participants have gained a total combined market share of 41.2%.

73 New entrants are at an advantage to the merged entity as they operate modern technology platforms, allowing them greater flexibility, agility and scale. These new entrants provide better experiences and features for customers, offering stable software while maximising today's technology.

74 New entrants have, and will continue to, secure significant market share at the expense of the merged entity, despite the proposed acquisition. [REDACTED]

75 Discover, which only entered the market in 2017, has already secured a similar market presence to both Infocare and APT. The superior offerings of the new entrant will constrain the merged entity, which will continue to operate with its outdated technology post-acquisition, until it is able to grow enough capital to develop new technology.

76 While new entrant providers may begin by targeting a particular type of customer, they subsequently readily expand to target different customer types. As set out above, an SMS product must be able to support all customer types in order to become Ministry of Education approved; no changes need to be made in order for a provider to expand to a different customer type.

77 As noted at paragraph 37 above, Infocare expects that some participants are only active in one segment simply because that has been their strategic focus. Infocare expects that focus will inevitably shift to different segments as and when resources allow. For example, Discover has only recently begun to market to Kindergartens in addition to Education and Care Centres, but has already gained 3% of that customer base.

There is significant constraint on the merged entity from potential competitors

78 In addition to the constraints provided by existing competitors, there is significant constraint from potential competitors.

79 Software providers are not bound by geographic constraints, meaning the market is also open to entry from existing providers in Australia and the United States. Entry into the market is straightforward. A new entrant only needs to meet the Ministry of Education's requirements.⁵ Many overseas providers, particularly in Australia,

⁵ Set out above in section 3.

already meet the Ministry of Education’s requirements and could enter the New Zealand market. We have included names and contact details of these providers at **Appendix 9**.

- 80 For providers who do not currently meet the Ministry’s requirements, Infocare estimates it would take an existing software operator a few months to modify their existing software to meet New Zealand standards. Infocare estimates that a participant would only need to win 200 services in order to become a significant competitor in the market.
- 81 Additionally, as evidenced by the market’s transformation over the past 2 years, the market is susceptible to rapid technological development. New products will continue to increase competition, and there is great potential for disruption.
- 82 Similar SMS is provided in other sectors of the Education industry, including to high schools and tertiary education providers. SMS providers in these sectors would be able to modify their existing back-end technology to create a new platform that can cater to the early childhood education market and constrain the merged entity. Examples of potential new entrants currently operating in other markets are set out in the table below.

Provider	Software name	School type	Contact details
<i>Com-Assist Solutions Pty Ltd</i>	PC School	All (excluding child care)	0508 502 200 support@pcschool.net
<i>eTAP Ltd</i>	eTAP	Primary, intermediate and composite	09 263 4827 info@etap.co.nz
<i>KAMAR Ltd</i>	KAMAR	All (excluding child care)	07 575 2627 helpdesk@kamar.co.nz
<i>Linc Technologies</i>	LINC-ED	Primary	03 929 0813 support@linc-ed.com
<i>MUSAC Limited</i>	MUSAC Edge and MUSAC Classic	All (excluding child care)	0800 600 159 support@musac.co.nz
<i>Assembly</i>	Assembly	Primary, intermediate and composite	0800 555 98 service@assembly-sms.co.nz
<i>Computing directions Australia Pty Ltd</i>	Synergetic	Primary, intermediate and composite	+61 3 9803 8000 support@synergetic.net.au

The market is characterised by countervailing customer power

- 83 Customers can constrain any attempts to increase price above competitive levels through their ability to switch suppliers and this would continue to be the case following the proposed acquisition. Additionally, there are a number of large customers responsible for a significant portion of Infocare and APT’s revenues. Incentives to keep these revenue streams will deter the merged entity from increasing prices post-acquisition.

- 84 There are no barriers to switching SMS provider. Customers are able to easily transfer data from one provider to another. Most providers offer a “conversion” tool which essentially automates the export and import processes for the data. For providers that do not offer a conversion tool, the service would need to print all current data and manually recapture that information into the new SMS. The complexity of the conversion tool varies for each SMS provider. This process can be completed in a timeframe of between one hour to one day, depending on the software providers.
- 85 Customers that do switch providers may sometimes require training on how to use the new product. The length and complexity of this training will vary depending on the customer’s expertise, but can be completed in as little as 3 – 4 hours.
- 86 Additionally, all providers have easily accessible help desks and hotlines able to assist any customer having difficulties. Price is not a deterrent to switching providers; most providers currently offer public rates priced between \$140 and \$150 per month.
- 87 The majority of SMS providers do not charge for data migration or for initial training. Those providers that do charge for these services will charge between \$200 - \$450 for data migration and training.
- 88 The early childhood education industry contains a number of large operators who each run over 50 - 150 early childhood education services. Loss of even one customer of this size would lead to a significant decrease in market share of the merged entity and a substantially reduced revenue stream.
- 89 For example, APT could have a customer that operates 200 services. At \$150 per service (the average public rate), that is a loss of \$30,000 and 4% market share from a single customer switching providers.
- 90 Additionally, customers do not typically enter into long-term contracts or have locked in prices; they are able to renegotiate prices or switch providers without contractual restriction.

The acquisition will result in increased efficiencies and is pro-competitive

- 91 The acquisition will allow the merged entity to invest in new technology that provides customers with a better product. In this regard, the acquisition is pro-competitive to the extent that it facilitates further investments being made so that the competitive propositions of the two parties can be enhanced in response to the imminent threat of recent and new entrants.
- 92 Without the proposed acquisition, it is likely that Infocare and APT will fail to develop updated software and will continue to rapidly lose market share. A depleting customer base may see one or both parties fold and exit the market. The market could lose both major providers which would change the competitive landscape entirely, reducing the number of operators and leading to less competitive outcomes.
- The Market post-acquisition will not be conducive to coordinated effects**
- 93 The acquisition will not enhance the ability for Infocare/APT and other competitors to coordinate their behaviour. The relevant market is not vulnerable to coordination as:

- 93.1 There are a large number of competitors in the market. The rapid entry of four new competitors over the last two years indicates that new competitors will continue to enter.
 - 93.2 Firms do not regularly interact. There are no industry organisations or meetings, and no other reason for competitors to interact.
 - 93.3 Products are not homogenous. Each firm offers a different SMS that contains slightly different features. See screenshots attached as **Confidential Appendix 2**.
 - 93.4 There is limited transparency of the commercial terms being offered by competitors.
 - 93.5 The market has been characterised in recent years by innovation and technological developments. It is likely firms will continue to innovate to develop more efficient SMS products as new technology becomes available.
 - 93.6 Competitors vary in size. APT, Infocare and Discover are all reasonably large firms with similar market shares. The remainder of competing firms are smaller in size than the three above.
- 94 As discussed above, the market has seen many highly competitive new entrants over the last few years, and it is likely that this will continue post-acquisition.

PART 7: CONFIDENTIALITY

- 95 Confidentiality is requested for all the information contained in this version of the notice.
- 96 A "public version" of this notice will be provided subsequently that will specifically identify all information that is commercially sensitive to the Applicants.
- 97 The parties request that they be notified if a request is made to the Commission for release of the information under the Official Information Act 1982.

DECLARATION BY INFOCARE

I, Sean Collins, have prepared, or supervised the preparation of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- All information specified by the Commission has been supplied;
- If information has not been supplied, reasons have been included as to why the information has not been supplied;
- All information known to me that is relevant to the consideration of this notice has been supplied; and
- All information supplied is correct as at the date of this notice.

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

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Sean Collins

On behalf of Infocare

Sign: 

Date: 12/12/19

CONFIDENTIAL APPENDIX 1: SALE AND PURCHASE AGREEMENT

[CONFIDENTIAL]

APPENDIX 2: SOFTWARE SCREENSHOTS

Attached separately.

**CONFIDENTIAL APPENDIX 3: DUE DILIGENCE REVIEWS OF INFOCARE AND
APT**

[CONFIDENTIAL]

CONFIDENTIAL APPENDIX 4: INFOCARE'S FINANCIAL STATEMENTS

[CONFIDENTIAL]

CONFIDENTIAL APPENDIX 5: OVERVIEW OF TECHNOLOGY POST-ACQUISITION

[CONFIDENTIAL]

APPENDIX 6: INFOCARE'S FIVE LARGEST CUSTOMERS AND REVENUES FOR THE LAST THREE YEARS

Client	2017 revenue	2018 revenue	2019 revenue	Contact
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

APPENDIX 7: APT'S FIVE LARGEST CUSTOMERS AND REVENUES FOR THE LAST THREE YEARS

Client	2017 Net Sales	2018 Net Sales	2019 Net Sales	Contact
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

APPENDIX 8: NAMES AND CONTACT DETAILS FOR INFOCARE AND APT'S MAIN COMPETITORS

Party	Contact details
Discover	Athens Rd, Onehunga, Auckland 1061 www.discoverchildcare.co.nz support@superiodadmin.co.nz 08 0020 22000
Junior Logs	Level 1, 3053 Great North Rd, New Lynn, Auckland 0600 www.juniorlogs.co.nz support@juniorlogs.co.nz 09 282 4433
Aimy Plus	B3, 34 Triton Drive, Rosedale, Auckland www.aimyplus.com support@aimyplus.com 09 972 9484
Ministry of Education	http://services.education.govt.nz/eli/overview/about-eli/ http://services.education.govt.nz/eli/contact-eli/feedback 0800 323 323

APPENDIX 9: OVERSEAS PROVIDERS THAT MEET THE MINISTRY OF EDUCATION'S REQUIREMENTS

Party	Contact details
Qik Kids	PO Box 485, Morningside, QLD 4170 www.qikkids.com.au support@qktech.com.au 1300 367 770
Hub Works	www.hubworks.com.au hello@hubworks.com.au 1300 769 110
Xplor	520 Bourke Street, Melbourne 3004 ourxplor.com info@myxplor.com 03 8652 1963
Kidsoft	6 Charles Avenue, Broadbeach QLD 4218 www.kidsoft.com.au info@kidsoft.com.au 1800 827 234
Smartfees	22 Manor Hill Close, Holgate NSW 2250 www.smartfees.net enquiries@smartfees.com.au 1300 859 470

CONFIDENTIAL APPENDIX 10: CUSTOMERS WHO HAVE SWITCHED FROM INFOCARE TO A NEW PROVIDER

Customer	Contact details
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

CONFIDENTIAL APPENDIX 11: CUSTOMERS WHO HAVE SWITCHED FROM APT TO A NEW PROVIDER

Customer	Contact details
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

APPENDIX 12: COMPETITORS OPERATING IN EACH SEGMENT

Provider	Education & Care	Kindergarten	Homebased	Play Centres	OSCAR
<i>Infocare</i>	✓	✓	✓	✗	✓
<i>APT</i>	✓	✓	✓	✗	✓
<i>Discover</i>	✓	✓	✓	✓	✓
<i>Junior Logs</i>	✓	✓	✓	✓	✓
<i>Aimy Plus</i>	✓	✗	✓	✗	✓
<i>Firstbase</i>	✓	✓	✓	✗	✓
<i>ELI Web (MoE)</i>	✓	✓	✓	✓	✗
<i>Porse</i>	✗	✗	✓	✗	✗

APPENDIX 13: COMPARATIVE FUNCTIONALITIES OF SMS PRODUCTS

Functionality	APT	Infocare	Discover	Junior Logs	First Base	Aimy Plus	MoE ELI	Porse
<i>Parent Mobile App⁶</i>	✗	✗	✓	✓	✗	✓	✗	✗
<i>Centre App⁷</i>	✗	✓	✓	✓	✗	✓	✗	✗
<i>Automated submissions⁸</i>	✗	✓	✓	✓	✗	✓	✗	✓
<i>CRM</i>	✗	✓	✓	✓	✗	✓	✗	✓
<i>Tech Stack under 5 years old</i>	✗	✗	✓	✓	✗	✓	✗	✗
<i>Tech Stack under 10 years old</i>	✗	✗	✗	✗	✗	✗	✓	✓
<i>Tech Stack over 10 years old</i>	✓	✓	✗	✗	✓	✗	✗	✗
<i>Desktop based</i>	✓	✗	✗	✗	✓	✗	✗	✗
<i>Cloud based</i>	✗	✓	✓	✓	✗	✓	✓	✓
<i>Digital sign in / out⁹</i>	✗	✓	✓	✓	✗	✓	✗	✓
<i>Integrations</i>	✓	✓	✓	✓	✗	✓	✗	✓

⁶ An app which parents can download to their phone that allows them to interact with the centre in various ways e.g. request changes to the time their child is at the centre.

⁷ An app that is used within the centre and integrates with the SMS to facilitate easier administration (e.g. staff sign in/out and child sign in/out).

⁸ Of information to Ministry of Education.

⁹ The alternative to digital sign in/out is paper sign in/out.