

BLACKTOP

24 June 2019

Susan Brown
Senior Investigator
Competition
Commerce Commission

By email: susan.brown@comcom.govt.nz

Public version

Dear Susan

Mainland Print / Inkwise – reply to late submission

1. I write on behalf of Mainland Print and its shareholders in reply to the late (and anonymous) submission received on 21 June 2019. As with the first anonymous submission, the parties reserve their position on the confidentiality claims made. For the reasons explained in this letter, the parties believe that:
 - 1.1 the Commission should not consider and should place no weight on the late submission; and
 - 1.2 even if the Commission did consider the late submission, nothing in that submission undermines any of the arguments the parties made in response to the Letter of Issues.
2. As a general point, the subtext of the submission is **[CONFIDENTIAL]**. It would be a strange result if the Commission were to decline clearance because **[CONFIDENTIAL]** (absent vertical effects).

Commission should not consider and should place no weight on the late submission

3. The parties submit that the Commission should not consider and should place no weight on the late submission. The Commission's most recent statement of position on receiving late submissions is contained in its draft update to the Mergers and Acquisitions Guidelines, where it states:

Submissions and cross-submissions will generally only be accepted within the notified submission timeframe.¹
4. The anonymous submitter is represented by experienced counsel and there can be no suggestion that the submitter was unaware of the dates for making a cross submission or the consequences of not making a cross submission in time. The Commission clearly outlined the deadlines for parties to make submissions and cross submissions in the Letter of Issues and on the clearances register on the Commission's website.

¹ Draft Revised Mergers and Acquisitions Guidelines (January 2019) at [328].

5. Nor can there be any suggestion the submitter had insufficient time to make a submission on time. The parties filed their 8-page submission on the Letter of Issues on 4 June 2019. Cross-submissions were due on 11 June. One week is ample time to respond to an 8-page submission. However, the submitter did not file a cross submission on 11 June and did not seek an extension of time (as far as the parties are aware). Rather, the submitter took a further 10 days to file its just over 2-page submission. There is nothing in the submission that indicates why such a delay has been necessary, and the parties are not aware of any other circumstances that would mean an extension is warranted. Indeed, the parties consider it is open to the Commission to conclude that if the anonymous submitter had a genuine concern, it would have been vigilant to make sure that it made its submission on time.

Specific replies to assertions made in the late submission

6. The parties have already explained why they consider the Commission should be satisfied that the acquisition will not be likely to substantially lessen competition in any market and do not repeat them here. Nevertheless, the parties make the following points in reply to the following assertions contained in the late submission.

Whether [CONFIDENTIAL] publications will be affected

7. In paragraphs [3] to [5] the submitter implicitly suggests that the Commission should decline clearance because, at some indeterminate point in the future, there is a possibility that [CONFIDENTIAL]. There is no evidence that this is anything other than a remote possibility; there is certainly not enough evidence to conclude that this is a real chance. Indeed, the evidence [CONFIDENTIAL].²
8. Moreover, the submitter has not identified any real causal link between the acquisition and such a purported substantial lessening of competition or why that possibility is likely with the acquisition but not likely without it.

Impact on the Ashburton Guardian

9. At paragraph [8], the submitter repeats its assertion that the Ashburton Guardian will have an incentive to switch its printing to Inkwise post-transaction because of Inkwise's connections with Allied Press. This is incorrect. Rather than increasing the links between the Ashburton Guardian and the Inkwise assets, the acquisition removes them. This means the only way Mainland Print could win the Ashburton Guardian's business is by winning it off the Ashburton Guardian's current printer.
10. And while the submitter is correct that Allied Press distributes the ODT in Timaru and Canterbury, it does not follow that the Ashburton Guardian could be viably printed and distributed from Allied Press' Dunedin press. The risk of transporting a Dunedin daily to satellite distribution areas is completely different to the risk of transporting an Ashburton daily from Dunedin. If the road from Dunedin is closed (as it has been 9 times in the last 12 months), the ODT can still be distributed in its primary distribution area, Dunedin; however, the Ashburton Guardian could not distribute in its primary catchment area, Ashburton.

No inconsistency in suggestion that prices are not transparent

11. The submitter erroneously suggests at paragraph [10] that there is an inconsistency in the parties' submission that because printers' knowledge of prices is derived from customers,

²

prices are not transparent, and [CONFIDENTIAL]. There is no such inconsistency. [CONFIDENTIAL] because this is what it was told by its customers. That does not mean prices are transparent – it simply means that printers are reliant on the information provided to them by their customers, the point the parties made in response to the Letter of Issues.

[CONFIDENTIAL]

12. The submitter also incorrectly suggests in paragraph [10] and the proceeding heading that the parties have overstated [CONFIDENTIAL]. The suggestion is premised on the notion that because [CONFIDENTIAL], it is not competitive. This is a fallacy.
13. Competitive conduct involves winners and losers. The fact that someone does not win a new customer after pitching for it does not mean its offer was uncompetitive or did not exert a competitive constraint. It depends on the offer. This is illustrated by what happened in the specific example relied on where [CONFIDENTIAL] to retain its customers. Rather than highlighting a lack of competitive constraint, this conduct is the very essence of competitive constraint.

[CONFIDENTIAL] *characterisation of the third-party interviews*

14. The parties refer the Commission to their comments on the third-party interviews in their response to the Letter of Issues and reject the submissions made by [CONFIDENTIAL].
15. Specifically, [CONFIDENTIAL] wrongly asserts at paragraph [14] that the response to the Letter of Issues [CONFIDENTIAL]. [CONFIDENTIAL] position seems to be based on what it says is the [CONFIDENTIAL].
16. Putting aside the fact that there is no evidence of Allied Press [CONFIDENTIAL]. It follows that a necessary (but not sufficient) condition for [CONFIDENTIAL]. In other words, it is premised on [CONFIDENTIAL], the point made in the parties' response to the Letter of Issues. As explained earlier there is no evidence to support this being a likely outcome.
17. If you need any further information, please let me know.

Yours sincerely



David Blacktop

Director

T (09) 377 0592 / M 021 366 284