

Determination

Bledisloe New Zealand Limited and Cremation Society of Canterbury Limited and Harewood Memorial Gardens and Crematorium Limited [2014] NZCC 17

The Commission: Dr Mark Berry
Sue Begg
Elisabeth Welson

Summary of application: An application from Bledisloe New Zealand Limited to acquire the business and assets of Cremation Society of Canterbury Limited and Harewood Memorial Gardens and Crematorium Limited.

Determination: Under section 66(3)(a) of the Commerce Act 1986, the Commission gives clearance for Bledisloe New Zealand Limited to acquire the business and assets of Cremation Society of Canterbury Limited and Harewood Memorial Gardens and Crematorium Limited.

Date of determination: 24 July 2014

Confidential material in this report has been removed. Its location in the document is denoted by [].

The proposal

1. On 30 April 2014, the Commerce Commission (the Commission) received an application from Bledisloe New Zealand Limited (Bledisloe) seeking clearance to acquire the business and assets of Cremation Society of Canterbury Limited and Harewood Memorial Gardens and Crematorium (CSC/Harewood).

The decision

2. The Commission gives clearance to the proposed acquisition. The Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market.

Our framework

3. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.¹

The substantial lessening of competition test

4. As required by the Commerce Act 1986, we assess mergers using the substantial lessening of competition test.
5. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).²
6. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),³ or reduce non-price factors such as quality or service below competitive levels.
7. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
8. 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. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.⁴

When a lessening of competition is substantial

9. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁵

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.

² *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

³ Or below competitive levels in a merger between buyers.

⁴ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

⁵ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.⁶

10. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

11. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.⁷

The clearance test

12. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.⁸ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

Key parties

Bledisloe – the applicant

13. Bledisloe is a wholly owned subsidiary of InvoCare New Zealand Limited, which in turn is owned by InvoCare Limited. InvoCare Limited is a large Australian based operator of funeral homes, crematoria and cemeteries in Australia, Singapore and New Zealand.
14. In New Zealand, Bledisloe operates 22 funeral homes, five crematoria, and three memorial and monumental masonry businesses.⁹ Bledisloe’s operations are spread throughout the North Island and the top half of the South Island.
15. In Christchurch, Bledisloe own and operate John Rhind Funeral Directors, Academy Funeral Services and Simplicity Funerals as well as the monumental masonry business of Fraser Lawrence Memorials. Bledisloe do not currently provide cremation services in Christchurch.

CSC/Harewood – the target

16. CSC/Harewood are privately owned crematoria and memorial gardens ultimately owned by Mr Glen Stapley, a Queensland based accountant. CSC/Harewood provides cremation services and the interment of ashes and memorial services.

⁶ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [129].

⁷ *Ibid* at [111].

⁸ Commerce Act 1986, s 66(1) of the Commerce Act 1986.

⁹ A complete list of Bledisloe's businesses and its areas of operation can be found at paragraphs 4.2 and 4.3 of the application.

CSC/Harewood does not provide funeral directing services, although the chapels at both its sites are available for use for funerals.

Lamb & Hayward

17. Lamb & Hayward is a New Zealand owned company that provides funeral directing and embalming services, and cremation services through its Christchurch Crematorium Funeral Service Limited business, in the Christchurch area. Lamb & Hayward also provide cremation services in Ashburton through their associated funeral directors Patterson's Funeral Services.

McKinnon Group

18. The McKinnon Group consists of a number of funeral directing and embalming businesses in the greater Canterbury area, owned and operated by the McKinnon family. The McKinnon Group also provide cremation services through their Gulliver and Tyler business located in Rangiora.

Mainland Crematorium

19. Mainland Crematorium is a private company wholly owned and directed by John Guthrey. Mainland Crematorium is located in Sydenham (Christchurch) and provides cremation services. Cremations can be viewed at Mainland Crematorium at their committal room. Mainland Crematorium does not currently have chapel facilities.

Bell, Lamb and Trotter

20. Bell, Lamb and Trotter is a Christchurch based company that provides funeral directing and embalming services in the greater Christchurch area. It does not currently provide cremation services.

Hall and Co Funeral Directors

21. Hall and Co Funeral Directors is a Christchurch based company that provides funeral directing and embalming services from locations in Rangiora, Christchurch and Ashburton. It does not currently provide cremation services.

Dignity with Sincerity Funeral Services

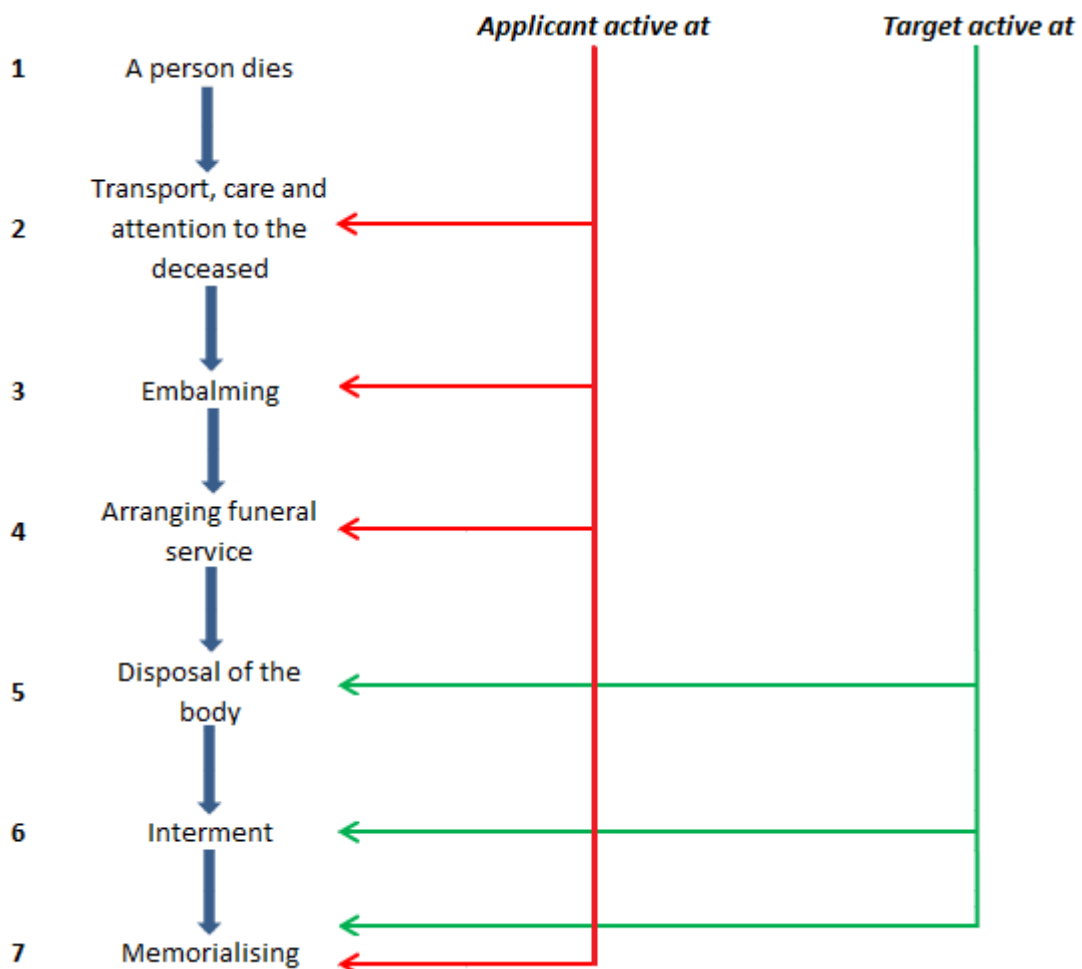
22. Dignity with Sincerity Funeral Services is a Christchurch company that provides funeral directing and embalming services in the Christchurch area. It does not currently provide cremation services.

Industry background

Funeral directing services

23. A funeral director can provide a range of services when a person dies. These services include the immediate care and transport of the deceased, embalming services, the arrangement of a funeral service, the disposal of the body, assisting with legal formalities, the interment of human remains and arranging memorial markers.

24. Family members can choose the services and the level of service they acquire. For example, funeral services can be simple affairs held in a person's home, or elaborate ceremonies with entertainment and catering.
25. Funeral directors such as Simplicity Funerals (a business unit of Bledisloe) and Christchurch Crematorium Funeral Services Limited offer 'packages' or 'plans' that offer a range of set services. These packages and plans are advertised as providing a more cost effective and simpler funeral directing services and may be purchased well in advance of a family member's death.
26. The diagram below outlines the various services provided when a person dies, and the extent to which the applicant and target provide these services.



Cremation services

27. Cremations are the most prevalent form of body disposal in New Zealand.¹⁰ An estimated 75 percent of all funerals conducted in the Christchurch region involve

¹⁰ Law Commission *The Legal Framework for Burial and Cremation in New Zealand: A First Principles Review* (NZLC IP34, 2013) at 119 [Law Commission Report].

cremations.¹¹ Cremation can either be attended or non-attended. Attended cremations typically involve close family members and friends travelling with the deceased's body to the location of the crematorium after a funeral service. We have been informed that there is a lower tendency for attended cremations in the Christchurch area in comparison to other centres such as Auckland.¹²

28. There is considerable variation in the number, size and mix of public and private providers of cremation services throughout the country.¹³ Currently, cremation services in the Canterbury region are provided solely by the private sector. There are two independent providers of cremation services, in the sense that they do not also provide funeral directing and embalming services, in the Christchurch area; CSC/Harewood and Mainland Crematorium.
29. There is significant excess capacity for cremation services in the Christchurch area. An assessment made by the Christchurch City Council found that the total capacity of the operating crematoria in the district was well in excess of forecast demand.¹⁴ This has been confirmed by industry participants who have confirmed that their crematoriums are not currently running near capacity.

Interment of ashes and memorial services

30. At the conclusion of a cremation, ashes can either be interred (placed) in the ground or upon a niche in an ashes wall, generally with a plaque or memorial of some sort. Ashes can be interred at memorial gardens, which specialise in providing areas where ashes can be interred and arranging for memorial markers. Ashes can also be disposed on consecrated grounds, at sea, cemeteries, at the deceased's favourite location or held by a next of kin. The choice of location for ash interment depends heavily on religious and cultural beliefs and family history.
31. Presently, CSC/Harewood provides the only privately owned memorial garden in the Christchurch area with two locations in Harewood and Linwood. Ashes can also be buried at the Christchurch City Council cemeteries which have specific areas set aside for ash interment.¹⁵
32. The interment of ashes can either be arranged through funeral directors or by family members themselves. Information provided by market participants suggests that a large proportion of families choose to arrange interment of ashes themselves once they have received the remains of a deceased family member. Figures provided to us

¹¹ Commerce Commission interview with [](27 May 2014) []].

¹² Commerce Commission interview with [](21 May 2014) []].

¹³ *Law Commission Report*, above n 10, at 121

¹⁴ Christchurch City Council *Christchurch City Three Year Plan 2013-16: Volume 2* (2013) at 10.

¹⁵ These are the Avonhead, Memorial Park, Yaldhurst, Belfast, Waimairi, Sydenham and Ruru Lawn cemeteries.

suggest that less than five percent of customers ask funeral directors to arrange for the interment of ashes.¹⁶

Previous Commission decisions

33. The Commission has considered mergers of crematoria on two previous occasions, both under the previous dominance test. In Decision 312,¹⁷ the Commission cleared CSC/Harewood to acquire up to 100 percent of the shares in Harewood Crematorium. CSC/Harewood subsequently purchased 44.86 percent of the shares in Harewood Crematorium, and was granted clearance to purchase the remaining 55.14 percent of shares in Decision 403.¹⁸
34. In both Decisions the Commission considered the markets for the provision of cremation services, and the market for interment of ashes and the provision of memorials in Christchurch as the two relevant markets for determination.

With and without scenarios

With the acquisition

35. With the acquisition, Bledisloe would acquire CSC/Harewood cremation and interment of ashes and memorials businesses and related land, plant, equipment, inventory and consumables.
36. Bledisloe []¹⁹

Without the acquisition

37. []²⁰ As a result, we consider it likely that Bledisloe would establish its own crematorium without the merger.
38. We consider this scenario to be the most competitive without the acquisition. As a result, our analysis proceeds on this basis since if the proposed acquisition is unlikely to substantially lessen competition compared to this scenario, it is unlikely to substantially lessen competition in comparison to other likely scenarios.

¹⁶ Commerce Commission information request response, [](24 June 2014).

¹⁷ The Cremation Society of Canterbury Limited and Harewood Crematorium Limited (Commerce Commission Decision 312, 3 December 1997).

¹⁸ Cremation Society of Canterbury Limited and Harewood Memorial Garden & Crematorium Limited (Commerce Commission Decision 403, 7 September 2000).

¹⁹ Commerce Commission information request response, Bledisloe (30 May 2014).

²⁰ []

Ways in which the merger could substantially lessen competition

39. We have considered three ways in which the merger could substantially reduce competition, namely:
- 39.1 unilateral effects that could arise if the merged entity could profitably raise price²¹ above the level that would prevail without the acquisition for:
- 39.1.1 the supply of memorial markers; and
- 39.1.2 the supply of cremation services.
- 39.2 vertical effects that could arise if the acquisition gives the merged entity the ability and/or incentive to foreclose cremation services to rival funeral directors by raising the price of cremation services to rival funeral directors or refusing to supply them cremation services altogether, with the result that there is a lessening of competition in the market for funeral directing services.²²

Market definition

Our approach to market definition

40. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely face.²³ It encompasses actual and potential transactions between sellers and buyers, and seeks to capture the factors that directly shape and constrain rivalry between sellers.²⁴
41. A market is defined in the Commerce Act as a market in New Zealand for goods and services as well as other goods and services that are substitutable for them as a matter of “fact and commercial common sense”. In general, the more closely substitutable two products are, the closer the competition and the greater the competitive constraint between the products.
42. We define markets in a way that 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.
43. To help us establish whether customers would switch sufficient purchases to alternative products, we use the hypothetical monopolist test as a conceptual tool. This test asks whether a hypothetical sole supplier of a set of products (or locations)

²¹ Price in this document refers to all dimensions of competition, including quality, range, the level of innovation, service or any other element of competition valued by buyers.

²² We also considered the theory of harm where the acquisition would give Bledisloe the ability and/or incentive to foreclose interment of ashes services through the proposed acquisition. In light of the various options customers have when interring ashes and the low number of customers who instruct funeral directors to arrange for such services, we did not consider the proposed acquisition would give Bledisloe the ability or the incentive to foreclose these services.

²³ *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].

²⁴ *Commerce Commission v Air New Zealand Ltd et al* (2011) 9 NZBLC 103,318 (HC) at [124].

would profitably increase prices for at least one of the merging firms' products (or locations) by at least a small, but significant, amount.²⁵ This small, but significant, amount is often referred to as a SSNIP – a small, but significant, non-transitory increase in price.

44. In general, the smallest set of products (or locations) in which the SSNIP can be profitably sustained is defined as the relevant product (geographic) market.

The applicant's view of the relevant markets

45. Bledisloe submitted that the relevant markets in which to consider the competition effects of the proposed transaction are the greater Canterbury markets for:

- 45.1 the provision of cremation services;
- 45.2 the provision of interment of ashes and memorial services; and
- 45.3 the provision of funeral directing, embalming and monumental masonry.

The Commission's view of the relevant markets

Product dimension

Funeral directing services

46. As stated earlier, funeral directors provide a range or bundle of services related to the funeral of a deceased person. Families or customers typically choose to purchase funeral directing services due to the ease, assistance and expertise funeral directors can provide with the arrangement of services related to the funeral of a deceased person.
47. While we consider that there is a separate market for funeral directing services, we do not come to a definitive view on the boundaries of this market for the purposes of this determination. However, even applying a narrow market definition, we consider the proposed acquisition would not give rise to a substantial lessening of competition in the market for funeral directing services. As a consequence, except when considering the ability or the incentive of Bledisloe to foreclose cremation services to rival funeral directors, we do not consider this market further.

Cremation services

48. Cremations are one form of body disposal. The other form of body disposal is burial. We have considered whether the price of burials act to constrain the price of cremation services.
49. We consider burials do not act to constrain the price of cremation services and that there is a separate market for cremations. From a demand side perspective, it is unlikely that burial services are a close substitute to cremation services. A burial must be carried out at a cemetery, denominational burial ground or Maori burial

²⁵ The test assumes that all other prices are held at current levels.

ground.²⁶ The cost of a burial in comparison to a cremation is generally greater.²⁷ A SSNIP in cremation services is unlikely to lead to a sufficient number of customers switching to burial services so as to make the price increase unprofitable.

50. In addition to the cost difference, the chosen form of body disposal depends heavily on the preferences of the bereaved family. Factors such as family history and religious and cultural history heavily influence which form of disposal is chosen. For example, some religious groups endorse burials whereas others endorse only cremations.
51. From a supply side perspective, it is not possible for a cemetery to supply cremation services without first acquiring specialist equipment and/or land. For example, a cemetery seeking to offer cremations would need to establish a crematorium that meets environmental regulatory and council approval. The time and cost associated with such development means that burial services are unlikely to be close supply side substitutes for cremation services.
52. In light of the above factors, it is unlikely that burials constitute a substitute for cremation services. Overall, we consider there to be a separate market for the provision of cremation services.

Memorial markers

53. Bledisloe supply monumental masonry, as well as some wooden crosses and urns, through its Fraser Lawrence Memorials Limited business. CSC/Harewood supply plaques, wooden crosses, plants, boxes and urns.
54. We consider there to be a broader market for markers indicating the resting place of human remains as opposed to separate markets for particular types of markers. Monumental masons typically supply a range of markers indicating human remains such as headstones, plaques, wooden crosses and artwork.²⁸ This indicates that suppliers can easily switch production to particular forms of markers. We also consider that a sufficient number of customers would view different forms of markers as substitutes in light of a SSNIP for a particular marker so as to render the price increase unprofitable.

Geographic dimension

Cremation services

55. CSC/Harewood crematoriums operate in the Christchurch region. Bledisloe submit that the relevant geographic market is the greater Canterbury area. Specifically, it

²⁶ Burials and Cremations Act 1964, s 46(1).

²⁷ For example, the cost of a burial at a Christchurch City Council Cemetery would be in excess of \$1,352, which is the cost of a Council administered burial plot. On the other hand, we have been informed that cremations typically cost around \$700. We note that there may be an additional cost to cremations where ashes are interred at Council owned plots or memorial gardens.

²⁸ See for example Decra Art Limited who specialise in manufacturing a range of different types of headstones, plaques, crosses and artworks.

considers the relevant geographic market to incorporate the region encompassing Kaikoura, the West Coast and Ashburton, in addition to Christchurch.²⁹

56. We consider the relevant geographic market to be that of a broader Christchurch region, including Christchurch, Ashburton and Rangiora. We do not consider the relevant geographic is as broad as that submitted by Bledisloe.
57. We have been informed that options for cremations for funerals directed in Christchurch include transferring the body to Ashburton or Rangiora.³⁰ [].³¹ In light of the current use of cremation services outside of the Christchurch area by funeral directors, we do not consider a SSNIP for cremation services within Christchurch alone could be profitably sustained.
58. However, the Commission considers it unlikely that there is a broader geographic market for cremation services encompassing Kaikoura and the West Coast. It is unlikely that funeral directors in Ashburton, Rangiora or Christchurch would consider shifting cremation service purchases to locations within the West Coast region³² as a feasible option.³³ Specifically, we consider that in the event of a SSNIP in cremation services in the broader Christchurch region encompassing Christchurch, Ashburton and Rangiora, there would not be a sufficient number of customers who would switch purchases to outside this region to make the SSNIP unprofitable.
59. Overall, we consider that the relevant geographic market for cremation services is a broader Christchurch region that encompasses Ashburton, Christchurch and Rangiora.

Memorial markers

60. Both Bledisloe and CSC/Harewood supply memorial markers in the Christchurch area. We consider it likely that there is a national market for the supply of memorial markers.
61. We have been informed that suppliers of memorial markers face competition for their products from firms across the country. Most, if not all, suppliers of memorial markers supply or have the ability to supply memorial markers across New Zealand.

²⁹ Commerce Commission interview [], Bledisloe (18 June 2014) [BNZL Interview]

³⁰ []Interview, above n 12.

³¹ Bledisloe Interview, above n 29.

³² Currently, the only provider of cremation services in the West Coast region is Westland Funeral Services Limited which is located in Greymouth.

³³ We are unaware of any instances where a funeral director located in Christchurch used a crematorium located in Kaikoura or the West Coast. We do note some instances of funerals directed in location such as Kaikoura where cremations have been undertaken in Christchurch. We consider such instances to be infrequent in nature and dictated by particular customer choices and not an indication of a wider geographic market.

Bledisloe has also informed us that it is not unusual to receive orders from elsewhere around the country and indeed from overseas, such as from the Pacific Islands.³⁴

62. While customers have the ability to order memorial markers from firms throughout the country and firms are also able to supply memorial markers throughout the country, the extent of the geographic market for memorial markers may vary by a particular type of marker. For instance, the supply of memorial headstones may more likely be regional whereas the supply of memorial plaques is more likely to be national.
63. The following competition analysis for the market for memorial markers does not rely on the geographic market. Consequently, we do not delineate the geographic market for the purposes of this decision.

Conclusion on market definition

64. We consider that the appropriate markets in which to consider the competition effects of the proposed transaction are:
 - 64.1 the provision of cremation services in the broader Christchurch region encompassing Ashburton, Christchurch and Rangiora; and
 - 64.2 the supply of markers to indicate the resting place of human remains.

Competition analysis – unilateral effects

65. As the following competition analysis demonstrates, the Commission considers it unlikely that the proposed acquisition would lead to a substantial lessening of competition through Bledisloe unilaterally:
 - 65.1 increasing prices profitably in the market for memorial markers; and
 - 65.2 increasing prices profitably in the market for cremation services.

The supply of memorial markers

66. The market for memorial markers in New Zealand is characterised by a large number of suppliers. For example, the New Zealand Master Monumental Masons Association lists 47 businesses across the country as part of their network. We consider that the proposed acquisition would result in only a small aggregation in the supply for memorial markers in New Zealand.
67. Bledisloe would also continue to face competition in Christchurch from firms such as Decra Art Limited and L Robertson Memorials Limited. This would also be the case in a greater Canterbury region where Bledisloe would continue to face competition from firms such as Aorangi and Harding Memorials Limited and EB Carter Limited in addition to firms operating in Christchurch. As such, we consider that Bledisloe would continue to face a significant competitive constraint from other suppliers of memorial markers, irrespective of the relevant geographic market.

³⁴ Application at [14.5].

The supply of cremation services

68. [],
absent the proposed acquisition.

69. In order to carry out this analysis, we consider it likely that:

69.1 []; and

69.2 []This takes into account that, due to familial or other links, a certain proportion of customers will insist on the vendor’s cremation business, irrespective of whether the responsible funeral director has its own cremator.³⁵

Existing competition

70. Table 1 below outlines the market shares for the firms providing cremation services in the greater Canterbury region.

Table 1: Market share estimates for cremation services markets

Party	Volume	%	Capacity (approx.)	%
Vendor	[]	[]	[]	[]
Applicant (assuming entry)	[]	[]	[]	[]
Merged entity	[]	[]	[]	[]
Mainland	[]	[]	[]	[]
Lamb & Hayward	[]	[]	[]	[]
McKinnon Group	[]	[]	[]	[]
Totals	[]	100	[]	100

Source: Estimates from information provided by industry participants for 2013

71. Table 1 shows that with the acquisition, Bledisloe would increase its market share by []% to []%, []. The remaining competitors would be Lamb & Hayward with []% and the McKinnon Group with

³⁵ This volume is calculated by using the average proportion of cremations carried out ‘in-house’ by the other vertically integrated funeral directors compared to the proportion carried out at the vendor’s cremator.

[]%, and the remaining independent competitor Mainland with []%.

72. [] informed us that it currently has excess cremation capacity available.³⁶

73. [] capacity available and would make this available to any funeral director who wished to use it.³⁷

74. []³⁸

75. With the acquisition, funeral directors in Christchurch would face the loss of one of the two independent cremation providers, leaving a single independent provider (Mainland Crematorium) and three vertically integrated providers (Lamb & Hayward, the McKinnon Group and Bledisloe).

76. However, the Commission considers that the remaining cremation competitors would continue to provide strong competitive constraint on the merged entity. In particular, [].

77. []
].

78. []
].

79. []
].

³⁶ [] *Interview*, above n 11.

³⁷ [] *Interview*, above n 12.

³⁸ Commerce Commission interview with [] (13 June 2014).

80. In addition, as stated earlier, existing competitors currently possess significant excess cremation capacity.
81. [], we do not consider that the removal of that entry will remove a substantial additional source of competitive constraint in the market given current competitive conditions.

Competition analysis – vertical effects

Partial/total foreclosure to the supply of cremation services

82. A funeral director typically arranges any cremation undertaken. As outlined, cremation services can be provided by non-vertically integrated cremators, such as the vendors or cremators owned by vertically integrated funeral directors.
83. Following the acquisition, Bledisloe would be a vertically integrated firm providing embalming and funeral directing, cremation services, and the interment of ashes and memorial markers.
84. A vertical merger between an upstream provider of cremation services (CSC/Harewood in this case) and a downstream funeral services provider (Bledisloe in this case) could potentially lead to the merged firm increasing the price it charges for cremations to rival non-vertically integrated funeral directors, making it harder for the rival to compete effectively in the downstream funeral services market. This is often described as partial input foreclosure.
85. Alternatively, the merged firm could stop supplying cremation services to its rival non-vertically integrated funeral directors altogether. This could lead to higher cremation service prices for rival funeral service providers, as they would have to go elsewhere, or foreclose their access to cremation services altogether. Either could have the effect of reducing competition in the downstream funeral services market. This is often described as total input foreclosure.
86. In order for Bledisloe to have the ability to successfully foreclose non-vertically integrated funeral directors from cremation services, it would need to have market power in the provision of cremation services post acquisition. Absent market power, non-vertically integrated funeral directors would simply switch to alternative cremators if Bledisloe attempts to raise the prices of cremation services or refuse supply of cremation services.
87. Even if Bledisloe does have market power in cremation services, in order to have an incentive to foreclose, it would need to gain sufficient increased profits (through a combination of increased market share in funeral services and increased funeral service prices) to offset profits lost from decreased cremation services sales.

Ability of Bledisloe to foreclose rival funeral directors

88. The Commission considers that with the acquisition, Bledisloe would be unlikely to have the ability to foreclose rival independent funeral directors through refusing to

allow access to the CSC/Harewood’s crematoriums, or by only providing access on disadvantageous terms. This is because access to cremation services would still be available through Mainland Crematorium, Lamb & Hayward, and McKinnon. Further, Bledisloe submits that were it to attempt to foreclose rival funeral directors from access to the Harewood and Linwood facilities, customers would switch away.³⁹

89. [].⁴⁰ [].⁴¹

90. As outlined above, all three remaining crematorium suppliers are operating with excess capacity and have informed the Commission that they could easily expand their throughput to accommodate additional volumes. Lamb & Hayward and McKinnon offer broadly comparable services to CSC/Harewood (albeit without the memorial gardens) and Mainland [].

91. We have considered whether historical links to CSC/Harewood’s facilities would give Bledisloe market power in that, even though other crematorium suppliers would have the capacity to provide such services and would be willing to provide them, families of the deceased would, nonetheless, be unwilling to switch. We have been informed that CSC/Harewood’s facilities had been historically used by all funeral directors in the Christchurch area.⁴² As such, many families have historical ties to the CSC/Harewood facilities as previous family members may have been cremated there. Consequently, there may be a proportion of ‘captured’ customers who insist on the use of CSC/Harewood facilities when arranging for funerals.

92. []informed us that around ten percent of all funerals directly request the use of CSC/Harewood’s cremators.⁴³ Figures provided by [] indicate that they have used CSC/Harewood’s cremator for []% of all cremation it has undertaken for the past four years. This latter figure is likely to overstate the proportion of ‘captured’ customers as there may be other reasons for the use of CSC/Harewood’s facilities such as proximity to the funeral service and the lack of availability of other cremators. Overall, we consider the proportion of ‘captured’ customers to be low and would not be sufficient to give Bledisloe market power post acquisition.

93. Specifically, we consider that any attempt by the merged firm to foreclose cremation services to rival funeral directors, by increasing the price of cremation services or

³⁹ Application at [18.2].

⁴⁰ Commerce Commission information request response, Bledisloe (25 June 2014).

⁴¹ [].

⁴² [] *Interview*, above n 11.

⁴³ *Ibid.*

refusing access, would not be profitable. This is because enough funeral directors would switch to alternative providers of cremation services.⁴⁴

Incentive of Bledisloe to foreclose rival funeral directors

94. Moreover, Bledisloe would only have the incentive to foreclose rival funeral directors if it is profitable to implement such a strategy. To do so it would have to either increase the cost to rival non-vertically integrated funeral directors to utilise the Harewood or Linwood crematoriums, or alternatively, restrict access to the facilities such that consumers switch away from rival funeral directors and utilise Bledisloe's funeral directors, to such an extent that the lost cremation profits are offset.
95. The Commission considers that the presence of Lamb & Hayward and McKinnon in both the downstream (funeral directing services) and upstream (cremation services) markets would further lessen the incentive of Bledisloe to foreclose. As stated earlier, Lamb & Hayward and McKinnon are vertically integrated firms and operate their own cremators. They could not be foreclosed for cremation services and would continue to provide competition in the downstream funeral services market even if there was foreclosure of non-vertically integrated funeral directors. If Bledisloe were to attempt to foreclose, these firms would still act as a competitive constraint and could absorb customers that switch away from non-vertically integrated firms as a result of any foreclosure. Bledisloe would therefore not be guaranteed to offset the revenue lost in cremation services.

⁴⁴ Even if Lamb & Hayward and the McKinnon Group were also to adopt a strategy of foreclosing non-vertically integrated firms, non-vertically integrated firms would have access to Mainland Crematorium which has sufficient capacity to undertake all their cremation requirements.

Determination on notice of clearance

96. We are satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
97. Under section 66(3)(a) of the Act, the Commerce Commission determines to give clearance for Bledisloe New Zealand Limited to acquire the business and assets of Cremation Society of Canterbury Limited and Harewood Memorials Gardens and Crematorium Limited.

Dated this 24th day of July 2014

Dr Mark Berry
Chairman