

# COMMERCE ACT 1986: BUSINESS ACQUISITION

## SECTION 66: NOTICE SEEKING CLEARANCE

16 October 2007

**PUBLIC VERSION**

The Registrar  
Market Structure Group  
Commerce Commission  
P O Box 2351  
**Wellington**

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

### **OUTLINE AND SUMMARY OF PROPOSAL**

#### **The Proposal**

Pacific Radiology Limited ("PRL"), or any of its interconnected bodies corporate, seeks clearance to acquire all of the assets of Wellington Radiology Limited ("WRL"). WRL's assets comprise radiology practices located in Porirua, Kelvin Chambers and Bowen Hospital.

Given the particular circumstances of this proposed acquisition, and the fact that these circumstances are not easily accommodated under the format of the Commission's standard form of application, we take this preliminary opportunity to outline the substance of our application.

#### **WRL's Exit is Inevitable**

The reason for this proposed acquisition is that WRL has made a unilateral decision to exit the market for the provision of private low tech radiology services.

PRL has not taken affirmative steps to acquire WRL. Rather, PRL has merely responded to WRL's Request for Expressions of Interest, which was issued in June this year.

**[Confidential]**

**The Position at Bowen Hospital**

Wakefield Health is currently planning to redevelop Bowen Hospital on the existing site.

WRL's lease at Bowen Hospital expires on 1 December 2007.

It is understood that Wakefield Health is likely to initiate an RFP process for the award of the lease to provide radiology services at the new Bowen Hospital. It is further understood that Wakefield Health will require contenders for this lease to provide expanded radiology services at the new Bowen Hospital, including high tech services.

As noted above, WRL has already advised the Commission that it will not be in a position to respond to this anticipated RFP. In contrast, PRL will respond to any approach Wakefield Health may make to it for the opportunity to provide radiology services at the new Bowen Hospital, whether or not PRL acquires WRL.

The timing for the anticipated RFP process is unknown. It is possible that Wakefield Health may roll over current lease arrangements for radiology services for the transition period of (say) two to three years pending the rebuild of Bowen Hospital. The anticipated RFP process will presumably be initiated and determined during this transition period. It is likely that Wakefield Health will want a provider to cover this transition period, but it seems clear that this will not be WRL with or without the sale to PRL and, in any event, whoever the provider is for this transition period is unlikely to affect the competitive position in the event that an RFP is issued to provide services at the new Bowen Hospital. This matter is discussed in further detail below.

**Section 47 Framework Issues**

Section 47 of the Commerce Act requires a comparative assessment of:

1. the factual (i.e. the merger proposal); and
2. the counterfactual (i.e. the most likely outcome should the merger not proceed).

Factual

The factual here is the acquisition of WRL by PRL. Under the factual the remaining providers of private radiology services in the Wellington area will be:

1. PRL; and
2. Wellington Interventional Radiology (WIR”), in the case of low tech services in Wellington city and suburbs.

### Counterfactual

If PRL does not acquire WRL, then WRL will exit the market in any event. This forms the basis for the counterfactual assessment. Under the counterfactual, the remaining providers of radiology services in the Wellington area will again be:

1. PRL; and
2. WIR, in the case of low tech services in Wellington city and suburbs.

### Counterfactual Comparison

The competitive outcome under the factual and counterfactual will therefore be the same. In both cases the remaining providers of private radiology services will be PRL and WIR.

As the competitive outcomes will be the same under both the factual and counterfactual, there will be no lessening of competition in terms of the test imposed under section 47.

### **Preliminary Questions**

In the circumstances of this case, it is open to the Commission to assess this application for clearance on the basis of either of the following preliminary questions.

#### First Question

If the Commission is satisfied that:

1. WRL’s exit is inevitable; and
2. there is no alternate purchaser to PRL,

then the Commission should grant clearance on the basis of the counterfactual analysis just described.

Some further guidelines are offered relating to the inquiries which form the basis for this preliminary question.

### **[Confidential]**

#### Second Question

Particular circumstances attach to the time dimension of this merger. There appear to be two discrete time periods here. The first pertains to the continuation of low tech services at Bowen Hospital in the transition period

pending the rebuild; the second pertains to the period commencing after the award of the anticipated RFP at Bowen Hospital, which period will presumably commence upon the opening of the new Bowen Hospital site.

Clearance of this proposal, coupled with an agreement on the part of Wakefield Health to roll over the existing lease, would enable PRL to provide low tech services at Bowen Hospital for (say) two to three years, assuming that this is the time period for the rebuild. The position relating to ongoing services beyond this time will be decided by Wakefield Health pursuant to the anticipated RFP, or such other process that Wakefield Health may elect to follow.

Accordingly, this merger must be assessed in the context of this limited period of transition.

### **Further Competition Analysis Beyond these Two Preliminary Questions is Premature -- The Commerce Act Position is Preserved in Respect of Future Developments**

Analysis beyond the preliminary questions just described is unduly speculative and premature. The provision of radiology services at the new Bowen Hospital will be determined by Wakefield Health under contractual arrangements which will be determined following implementation of the current proposal.<sup>1</sup> These contractual arrangements at the new Bowen Hospital will be subject to separate assessment under sections 27 and 28 of the Commerce Act at a future time. As the owner of Bowen Hospital, Wakefield Health is free to determine its process for selecting the service provider. The current indications are that it intends to run a competitive process.

This merger proposal is a prior and separate matter to these proposed contractual arrangements.

As already noted, PRL is unaware of Wakefield Health's precise plans for the redevelopment of Bowen Hospital. However, it is reasonable to speculate that the following approach may be taken:

1. Upon the expiry of the WRL lease on 1 December 2007, Wakefield Health will seek to renew this lease for the transition period up to the opening of the new Bowen Hospital. As already predicted, this term could be for two to three years. Throughout this time there would be presumably the expectation that private low tech radiology services would continue to be provided at Bowen Hospital.

---

<sup>1</sup> There will be no aggregation in the Porirua low tech radiology services market, and for this reason no further reference is made to this aspect of the proposal in this introductory section. In addition, no further reference is made in this preliminary section to Kelvin Radiology, given that it is not of sufficient scale to operate as a stand alone business. Its future will most likely be linked to the outcome of developments at Bowen Hospital.

2. In the lead up time to the opening of the new Bowen Hospital, Wakefield Health will issue an RFP, or make such other arrangements as may be necessary, for the lease of space for the provision of high and low tech radiology services at the new site.
3. Further, it is likely that the lease of space at the new Bowen Hospital will not confer exclusive rights for the performance of radiology services at that hospital. Therefore, new entry of the kind which has occurred with WIR at Wakefield Health will remain an option. There will also be scope for new entry by sub-specialist radiologists, as described in paragraph 21(d) below.

The following further observations are relevant to the assessment of competition at Bowen Hospital in the period leading up to the opening of the new Bowen Hospital:

1. PRL understands that WRL will assist Wakefield Health with the transition to an interim service provider [**Confidential**] Wakefield Health would, presumably, explore other potential service providers. It is unlikely that Wakefield Health would wish to see the disappearance of radiology services at Bowen Hospital, even during the rebuild period. Indeed, there is the prospect that hospital accreditation status would be lost at Bowen Hospital if post-operative radiology services are no longer available on site. This search for another service provider would presumably include an approach to PRL to provide services for the period leading up to the opening of the new Bowen Hospital.
2. Accordingly, even if the Commission declines this application, there is the prospect that PRL will assume the Bowen Hospital radiology practice during this transition period. In this setting, PRL would need to locate its own assets at Bowen Hospital because it would not be able to acquire WRL's assets. This outcome would, therefore, be likely to result in the stranding of WRL's assets.

### **In Summary**

Accordingly, it is appropriate that this application should be determined on the basis of the counterfactual assessment and preliminary questions which are framed above.

The key matter, in the present case, is that there will be no difference between the factual and the counterfactual. The Commission can, on this basis alone, reach a finding that this proposal involves no lessening of competition.

Future decisions about the lease of space for radiology services at the new Bowen Hospital have yet to be made by an independent third party, namely Wakefield Health. However, the potential for future competition for the lease of space at the new Bowen site still exists and current indications are that Wakefield Health intends to run a competitive process to choose its service

provider. The competition assessment of the contracts entered into at that time is unaffected by, and a separate matter to, this merger proposal.

The Commerce Act position is preserved in respect of future contracts entered into by Wakefield Health for the lease of space to provide radiology services at the new Bowen Hospital. If clearance is given to this merger proposal, sections 27 and 28 will apply to any contract that Wakefield Health may enter into for the provision of such services at the new Bowen Hospital.

The remaining parts of this application respond to the matters raised in the Commission's standard form of application.

## PART I: TRANSACTION DETAILS

### 1. The proposal

- a. PRL, or any of its interconnected bodies corporate, seeks clearance to acquire all of the assets of WRL.
- b. There is no agreement for sale and purchase of these assets. WRL requested expressions of interest for the purchase of its assets in June 2007. A copy of the WRL "Sale of Radiology Practices: Request for Expressions of Interest" is attached: see Confidential Attachment 1.<sup>2</sup> The assets described in this request are more particularly:
  - i. Porirua and Kelvin Radiology (as going concerns); and
  - ii. The assets of Bowen Radiology.
- c. Discussions between PRL and WRL are still progressing regarding the terms of the sale agreement. There is, as yet, no draft of the agreement. A copy of the agreement will be forwarded to the Commission once it is entered into. The agreement will be conditional upon clearance under the Commerce Act.

---

<sup>2</sup> [Confidential]

## 2. The person giving this notice

a. This notice is given by:

Dr Lance Lawler  
Managing Partner  
Pacific Radiology Limited  
P O Box 7168  
Wellington South

Tel: 978 5561  
Fax: 976 5501

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

Mark Berry  
Barrister  
P O Box 8045  
Wellington

Tel: 914 1052  
Fax: 473 3179

c. Inquiries that may relate only to WRL should be directed to:

Oliver Meech  
Minter Ellison Rudd Watts  
P O Box 2793  
Wellington

Tel: 498 5095  
Fax: 498 5001



### **3. Confidentiality**

- a. Confidentiality is not claimed for the fact of this proposed acquisition.
- b. Confidentiality is claimed in respect of confidential information contained in this application. This information is identified in the "Public Version" of this application.

#### 4. Details of the participants

- a. The acquirer is PRL and the assets proposed to be acquired are owned by WRL.
- b. The contact details for these participants are set in paragraph 2 above.

#### Interconnected/associated bodies

5. Details of interconnected and associated bodies of the acquirer and target companies are as follows:

#### *Acquirer group/associates*

- a. PRL is a wholly owned subsidiary of Pacific Radiology Group Limited ("PRGL").
- b. The shares in PRGL are held by radiologists employed in the PRGL group, either individually or via family trusts or holding companies. The shareholders of PRGL, and their respective shareholdings, are set out in Confidential Attachment 2.
- c. PRGL has six subsidiaries being Christchurch Radiology Group Limited ("CRGL"), PRL, Nelson Radiology Limited ("NRL"), Hutt Radiology Clinic Limited ("HRCL"), Capital Radiology Limited ("CRL") and Pacific Medical Imaging Limited ("PMIL"). HRCL, CRL and PMIL are non-trading companies. CRGL also owns 100% of the shares in Hagley Radiology Limited and 68% of the shares in Canterbury Breast Care Limited, which in turn owns 50% of the shares in Breastscreen South Limited. For ease of reference, the corporate structure of PRGL is set out in diagrammatic form in Attachment 3.
- d. PRGL and none of its interconnected bodies corporate is beneficially entitled to 10% or more of the shares in any other company, other than shares held on trust in companies established for name protection purposes.

#### *Target company group/associates*

- e. The majority of the shares in WRL are held by the company's two directors and employed radiologists, Dr John Mathews and Dr Rodney Allen. Related family members hold minority interests.

#### Beneficial entitlements/interests in the target

6. Neither PRGL (including its subsidiaries) nor any of the beneficial shareholders in PRGL have a beneficial interest in, or a beneficial

entitlement to, any shares or other pecuniary interest in WRL. Similarly, none of WRL's shareholders have a beneficial interest in, or entitlement to, any shares or other pecuniary interest in PRGL (including its subsidiaries).

#### Links between market participants

7. There are no links, formal or informal, between any participants (including interconnected bodies corporate and other persons identified in paragraph 5) and their existing competitors in each market, except for the following:
  - a. All of the shareholders of PRGL and its subsidiaries are members of the Royal Australia and New Zealand College of Radiologists, as are Drs Mathews and Allen. Some are also members of the New Zealand Medical Association.
  - b. Each of the shareholders of PRGL and its subsidiaries is subject to a restraint of trade which prevents her or him from competing within specified areas for a period of three years following cessation of employment or sale of shares. There is an exception to this restraint which pertains to the provision of radiology services to the public sector. A number of the shareholders of PRGL and its subsidiaries provide radiology services on a consulting basis to District Health Boards ("DHBs")<sup>3</sup>. Details of shareholder radiologists engaged in the provision of such public sector services in the Wellington area are;
    - i. Dr James Wellwood -- CCDHB and HVDHB;
    - ii. Dr Rodney Wu -- CCDHB;
    - iii. Dr Mark Leadbitter -- CCDHB; and
    - iv. Dr Trevor Fitzjohn -- CCDHB.
  - c. Drs Allen and Mathews are also engaged in the provision of public sector services in the Wellington area.
  - d. PRL does provide, under contract, some ad hoc reporting services to both the CCDHB and HVDHB, as required by them. PRL also has an ongoing relationship with the CCDHB to report their Emergency Department films, and to provide neurointerventional procedures, including on-call. In addition, PRL also provides CCDHB with about a full-time equivalent radiologist (including general call) to act as an "employee". This position is made up by four PRL radiologists who are part-time employees of CCDHB. PRL also provides radiology services to the Masterton and Wanganui DHBs under contract.

---

<sup>3</sup> The DHBs in the Wellington area are Capital and Coast DHB ("CCDHB") and Hutt Valley DHB ("HVDHB").

### Cross-directorships

8. None of the directors of PRGL and its subsidiaries hold directorships in any other companies which are involved in the provision of radiology services in the greater Wellington region.

### **Business activities of the merger participants**

9. In outline, the activities of PRL and WRL are as follows:

- a. PRL provides both high and low tech radiology services variously from the following practice locations:

- i. Wakefield Health;
- ii. AMC;
- iii. Southern Cross Hospital;
- iv. Lambton Quay;
- v. Johnsonville;
- vi. Boulcott Hospital;
- vii. Upper Hutt;
- viii. Paraparaumu; and
- ix. Waikanae.

- b. WRL provides low tech radiology services at the following locations:

- i. Porirua;
- ii. Kelvin Chambers; and
- iii. Bowen Hospital.

- c. The services provided at each of the above locations are as follows:

- i. Wakefield Health

1. X-ray
2. Ultrasound
3. Fluoroscopy/Procedures
4. Mammography
5. Bone densitometry
6. Biopsy/Interventional
7. Nuclear medicine
8. PET scanning
9. Angiography
10. MRI

- ii. AMC

1. X-ray

iii. Southern Cross Hospital

1. X-ray

iv. Lambton Quay

1. X-ray
2. Ultrasound

v. Johnsonville

1. X-ray
2. Ultrasound
3. Mammography
4. Bone densitometry

vi. Boulcott Hospital

1. X-ray
2. Ultrasound
3. Fluoroscopy/Procedures
4. Mammography
5. Bone densitometry
6. Biopsy/Interventional
7. MRI

vii. Upper Hutt

1. X-ray
2. Ultrasound
3. Mammography

viii. Paraparaumu

1. X-ray
2. Ultrasound
3. Mammography
4. Bone densitometry

ix. Waikanae

1. X-ray

x. Porirua

1. X-ray
2. Ultrasound

xi. Kelvin Chambers

1. X-ray

- xii. Bowen Hospital

1. X-ray
2. Mammography and interventional breast procedures
3. Ultrasound

### **Reasons for this proposal**

10. The reasons for this proposal will already be apparent from the earlier sections of this application. To recap:

- a. This proposal was instigated by WRL. PRL has simply responded to WRL's request for expressions of interest.
- b. The catalyst for this proposal is WRL's inevitable exit from the market.
- c. **[Confidential]**

## PART II: IDENTIFICATION OF MARKETS AFFECTED

### Horizontal aggregation

11. This section of the application addresses market definition issues, as follows:
- a. We take the position that, for reasons of pragmatism, the market definitions adopted by the Commission in *Pacific Radiology/Wakefield Radiology Limited* (Decision 518) can be used for analytical purposes in the present case. Given the particular circumstances of this application, the outcome is likely to be same whether or not markets are defined more broadly than was the case under Decision 518.
  - b. Having said this, we note that in this case, as in almost all cases, there are imprecise market boundaries.<sup>4</sup> Public sector constraints apply in relation to the services in question. There will be instances where the imposition of a 5-10% increase in price for private radiology services may cause consumer migration to the public sector. Further, the separate market treatment of high and low tech services is potentially artificial. Supply-side switching from low to high tech services is feasible and likely where economies of scope are involved. Further, the leverage theory advanced under Decision 518 (i.e. that new entry to high tech involves some dependency on prior access to a low tech practice base<sup>5</sup>) is questionable in light of the potential for simultaneous new low/high tech entry to occur. Such simultaneous new entry has occurred, and is likely to be a requirement under the terms which will apply to Wakefield Health's anticipated RFP for the lease of space at the new Bowen Hospital.
  - c. Recent examples of simultaneous new high/low tech entry include:
    - i. Dr Lance Lawler, who in 1999 set up PRL as a stand-alone high tech practice in Lower Hutt;
    - ii. Dr Quentin Reeves is opening a stand-alone high tech practice (MRI) adjacent to Ascot Private Hospital in Auckland. This is happening notwithstanding that MRI scans are already available from another provider at that hospital; and
    - iii. A number of recent examples of radiologists setting up as stand alone high practices have also emerged in

---

<sup>4</sup> This point was made by the Commission itself in relation to radiology service markets in the *Fullford/Taranaki Healthcare* decision (Decision 347, para 58). The reference in the *Fullford* decision to routine and non-routine markets was viewed by the Commission to equate to the low and high tech markets adopted by the Commission in the later *Pacific/Wakefield* decision (Decision 518, fn 8).

<sup>5</sup> Decision 518, paras 143-47.

Australia, such as Savage X-ray<sup>6</sup> which opened a new practice in July 2005 and Caloundra Medical Imaging Queensland<sup>7</sup> which commenced practice in 2006.

- d. We simply raise these points in paragraphs (b) and (c) above to demonstrate that precise market boundaries are not clear in this case. As it happens, we do not think that undue detailed consideration of market definition needs to be undertaken in the present case because of the unique counterfactual circumstances which apply to this application. Accordingly for the purposes of this application, we adopt the following markets as the markets relevant to this proposal:
  - i. The provision of private low tech radiology services in:
    - 1. Wellington city and suburbs;
    - 2. Wellington North (Johnsonville, Newlands, Tawa, Crofton Downs); and
    - 3. Porirua.
  - ii. The provision of private high tech radiology services in the greater Wellington area.
- e. No horizontal aggregation will occur under this proposal in the following markets:
  - i. The Porirua low tech market; and
  - ii. The high tech market for the greater Wellington area.
- f. Horizontal aggregation will occur in the following low tech markets:
  - i. Wellington city and suburbs; and
  - ii. Wellington North.

#### Differentiated product markets

12. Radiology services, for each category of service, are largely homogenous. Some service providers may strive to achieve higher levels of performance so as to differentiate themselves from other service providers. But this does not in reality provide a basis for the identification of separate markets in this case.

13. Accordingly, further analysis of product differentiation is unnecessary.

#### **Vertical integration**

14. This proposal does not involve vertical integration within any market.

---

<sup>6</sup> See [www.savagexray.com.au](http://www.savagexray.com.au)

<sup>7</sup> See [www.xrayimaging.com.au](http://www.xrayimaging.com.au)



## Previous acquisitions

15. PRL has, in the last three years, made the following acquisitions:

- a. Acquisition of Wakefield Radiology, pursuant to Decision 518, on 1 April 2004; and
- b. Acquisition of Kapiti Radiology Limited on 1 April 2005. Clearance was not sought for this acquisition because it involved no horizontal aggregation in the Kapiti Coast private low tech radiology services market.<sup>8</sup>

---

<sup>8</sup> The Commission has previously found that no substantial lessening of competition issues arise in such low tech markets where there is no horizontal aggregation: see Decision 518, para 131.

### PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

#### Existing Competitors

16. The following position relating to existing competitors applies to the markets identified in paragraph 11(d) above:
- a. Wellington city and suburbs private low tech market: the participants in this market, and their estimated market shares,<sup>9</sup> are as follows:
    - i. PRL [ ] %;
    - ii. WRL [ ] %; and
    - iii. WIR [ ] %.
  - b. Wellington North private low tech market: the participants in this market, and their estimated market shares, are as follows:
    - i. PRL [ ] %; and
    - ii. WRL [ ] %.
  - c. WRL is the only participant in the Porirua private low tech market.
  - d. PRL is the only participant in the private high tech market for the greater Wellington area.
  - e. The question of “near entrants” to the market is best addressed by reference to the circumstances attaching to Bowen Hospital, which have already been described. There will be the potential for significant new entry under the forthcoming arrangements relating to the new Bowen Hospital.
  - f. This proposal does not involve the removal of a vigorous and effective competitor. WRL cannot be portrayed as such a competitive force, again for reasons which have already been described above. Indeed, WRL’s exit from the market is inevitable.

#### Conditions of Expansion

17. The question of the potential expansion of existing competitors within the market needs to be assessed in the context of the present facts which assumes WRL’s exit from the market.
18. WIR has the potential to expand within the defined low tech markets. It already has an established position in the Wellington city and suburbs low tech market. We are unaware of what expansionary plans WIR

---

<sup>9</sup> Market shares are estimated on the basis of sales rather than productive capacity.

may have. However, its presence as an existing competitor assumes some significance in the forthcoming environment which will see the exit of WRL.

19. The question of expansion by competitors of PRL will be significantly impacted upon by the outcome of the award of the lease of premises at the new Bowen Hospital. If this is awarded to a competitor of PRL, then it is reasonable to assume that such competitor will have the ability readily to expand. The successful bidder for this lease will, presumably, be required to make a commitment to develop a leading radiology practice for the provision of both high and low tech services. Such successful bidder is likely to have an incentive for expansion of the services based at Bowen Hospital, and there would be no apparent barriers to expansion in this setting.
20. If the new Bowen Hospital lease is awarded to a competitor of PRL, there is no reason to believe that there would be any time constraints to the implementation of expansionary strategies. The market for radiology services is growing. The demand for community-based medical imaging services increases by about 5% each year. This assessment is based on the increased medical needs of an aging population and consumer demand for high quality medical care. In addition, not only are people living longer, but also they are living with chronic illnesses that are managed rather than cured (such as heart and vascular disease, arthritis and some forms of cancer), and these conditions often require ongoing imaging.
21. If the new Bowen Hospital lease is awarded to a rival of PRL, then there will be two heads in the private radiology services markets for high tech services and for low tech services (in Wellington North, and potentially in all other areas within the Wellington area). In the case of low tech services in Wellington city and suburbs there would be three heads in the market. Significant competitive constraints would continue to come from sources such as the following :
  - a. Establishment and maintenance of referral sources.
  - b. Public sector constraints: Public sector constraints do apply in the case of patients who are sensitive to price increases in the order of 5-10%. They can elect to have x-rays and scans at public hospitals free of charge. Patients who elect to go public will experience longer waiting times. If waiting times become too long, then DHBs may contract out the waiting list patients to the private sector at the community radiology price.
  - c. Funding constraints: this matter is addressed in Part V below.
  - d. Sub-specialist expertise: Much of the high end difficult imaging in any particular specialty (such as orthopaedics and neurology) is provided by sub-specialist radiologists with additional Fellowship

training. The referrers will seek out these radiologists for the extra value they can get from in their fields. All of the PRL partners (and indeed most radiologists in New Zealand) have a sub-speciality interest. New entrants to the region will bring their own sub-specialty expertise which will attract a following from referrers.

22. Given the uncertainty surrounding the outcome of the lease for the new Bowen Hospital, it is not possible to provide further comment on this question of potential expansion.

Co-ordinated market power

23. This application does not involve issues of co-ordinated market power except theoretically in relation to the provision of private low tech services in Wellington city and suburbs, where WIR has an existing presence. Co-ordination between PRL and WIR is unlikely to occur if clearance is given to this application.

24. Not applicable.

25. Not applicable.

26. Not applicable.

## PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

### Conditions of Entry

27. The ability of new firms to enter the market will be dictated largely by access to radiologists. A secondary issue is access to capital to support the investment costs in radiology practices. In the case of the fit-out of a new high and low tech practice within the likely contemplation of Wakefield Health for the new Bowen Hospital, the establishment cost may be in the order of \$[ ] million.
28. The potential new entrants to the markets at issue here include:
- a. The Radiology Group ("TRG");
  - b. Abano Healthcare;
  - c. Wakefield Health;
  - d. WIR;
  - e. Sonic; and
  - f. Auckland Radiology Group ("ARG").
29. Each of the businesses identified above has the potential to be a contender for the new Bowen Hospital lease. The ability of each of the above entities to compete for the market demonstrates that there exists a very real and immediate point of new entry to all of the markets under review. A successful new entrant to the new Bowen Hospital would ensure new entry to the private low tech markets in Wellington city and suburbs and Wellington North, as well as the high tech market for the greater Wellington area. In addition, such new entrant would be poised to enter other adjacent low tech markets in the greater Wellington area.
30. There is also the potential for further de novo entry to occur. Such entry could take one of a number of forms, such as:
- a. New stand alone high tech entry of the kind described above in paragraph 11(c);
  - b. New entry of the kind which has been undertaken by WIR at Wakefield Health. Access to lease space at hospitals does not typically involve the conferral of exclusive rights to provide radiology services, and accordingly, such venues are entry points for other competing providers; and
  - c. The expansion of sub-specialist expertise as described in paragraph 21(d), again via access to hospital space.

Likelihood, Sufficiency and Timeliness of Entry

31. In answer to questions 30-35 of the Commission's standard form of application, the potential for new entry via the lease for the new Bowen Hospital meets all of the elements of the *LET* test.

## **PART V: OTHER POTENTIAL CONSTRAINTS**

### **Constraints on Market Power by the Conduct of Suppliers**

32. Not applicable.

### **Constraints on Market Power by the Conduct of Acquirers**

33. Approximately one half of our invoices are subject to funding levels set by government in one way or another. The main governmental groups in this context are ACC, Community Radiology Funding and Health Benefits Limited for obstetric scanning. In addition, a further 30% of our charges are met through medical insurance.

34. The government funds are set entirely by the various bodies that administer them. Private service providers, such as PRL, have very little influence over the level of fee that is set. Such public funding comes on a "take it or leave it" basis.

35. Recently, Southern Cross have indicated that they wish to negotiate fixed prices for their members, and PRL has just signed a Preferred Provider contract with them for cardiac CT for an agreed set fee. We anticipate that this trend will continue into the future over a wider range of radiology services.

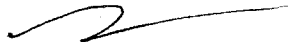
**THIS NOTICE** is given by PRL.

The company hereby confirms that:

- all information specified by the Commission has been supplied;
- all information known to the applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of this application; and
- the company undertakes to advise the Commission immediately of any change in circumstances relating to the application.

Dated this 16<sup>th</sup> day of October 2007

Signed by:



---

Dr Lance Lawler  
Director



**Attachment 1**

**[Confidential]**

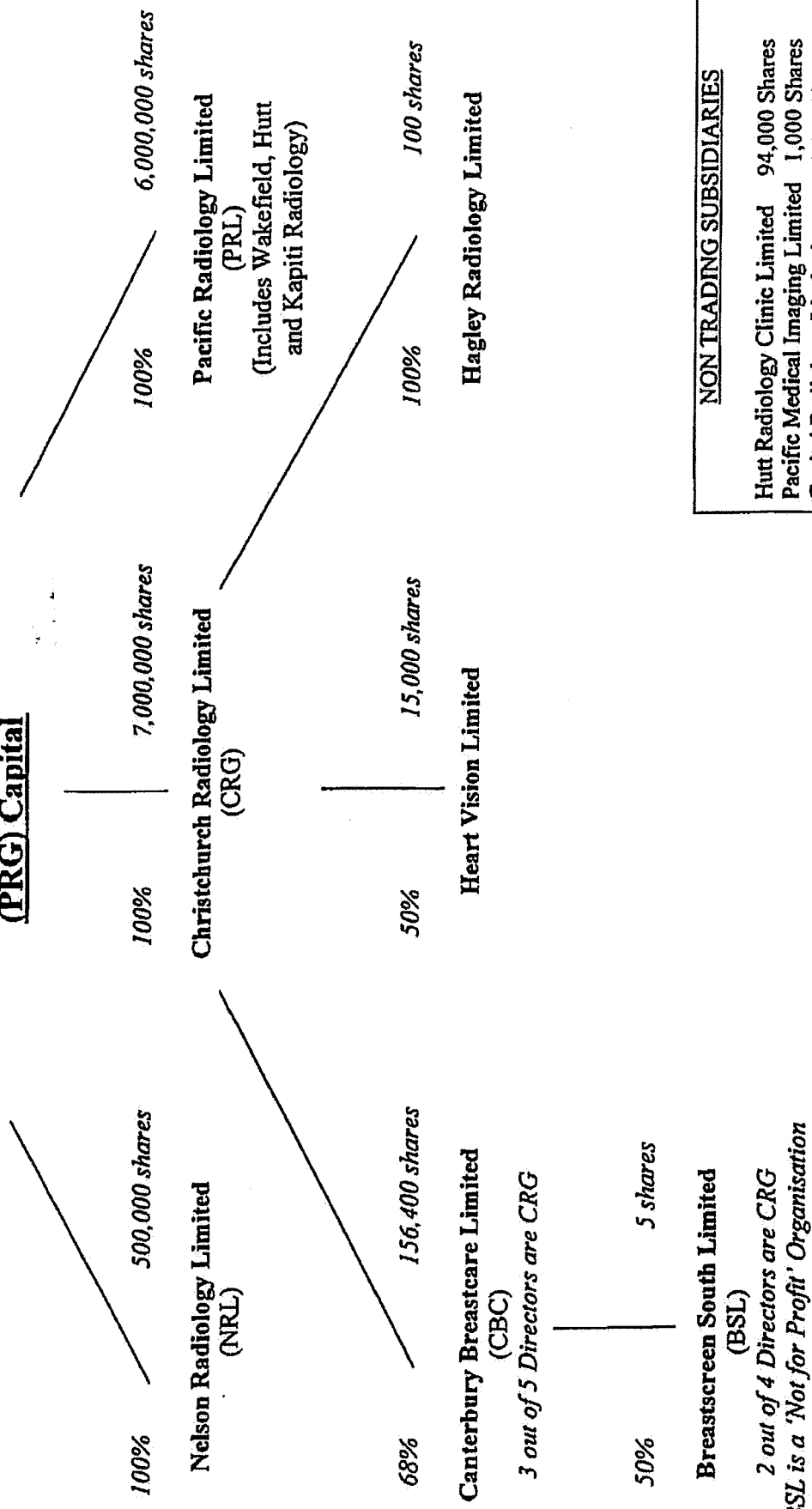


**[Confidential]**

**Structure as at 1<sup>st</sup> October 2007**  
**(After Issue of New Shares)**

**PACIFIC RADIOLOGY GROUP LIMITED**

**(PRG) Capital**



**NON TRADING SUBSIDIARIES**

Hutt Radiology Clinic Limited	94,000 Shares
Pacific Medical Imaging Limited	1,000 Shares
Capital Radiology Limited	1,000 Shares