



COMMERCE COMMISSION

Decision No. 631

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

PACIFIC RADIOLOGY LIMITED

and

WELLINGTON RADIOLOGY LIMITED

The Commission: Paula Rebstock
Peter JM Taylor
Denese Bates QC

Summary of Application: The acquisition by Pacific Radiology Limited, or any of its interconnected bodies, of all of the assets of Wellington Radiology Limited.

Determination: Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 20 December 2007

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SQUARE BRACKETS**

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EXECUTIVE SUMMARY

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 17 October 2007. The Notice sought clearance by Pacific Radiology Limited (PRL), or any of its interconnected bodies, to acquire all of the assets of Wellington Radiology Limited (WRL).
2. PRL provides private radiology services from nine locations in the greater Wellington region. It provides low technology (commonly referred to as low tech) radiology services at all of its locations and at some of these locations it also provides high technology (high tech) radiology services. PRL is also part of a wider group that provides radiology services in Christchurch and Nelson.
3. WRL provides low tech radiology services from three locations in the greater Wellington region. It is owned by two radiologists although one of these radiologists is retiring.
4. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the markets for:
 - the provision of private low tech radiology services in Wellington City and suburbs (the Wellington City market);
 - the provision of private low tech radiology services in Wellington North, which includes Johnsonville, Newlands, Tawa and Crofton Downs (the Wellington North market); and
 - separate markets for the provision of a number of discrete private high tech procedures, including MRI scans, CT scans, nuclear medicine, and interventional radiology (including angiography) in the greater Wellington region.
5. The proposed acquisition would result in there being only one private radiology provider in all the relevant markets. However, the Commission considers that absent the proposed acquisition, it is likely that WRL would exit the relevant markets. This is because:
 - WRL will not have sufficient radiologists to continue its existing operations as it has been unsuccessful in its search for additional radiologists;
 - without radiologists, WRL is unable to make the capital investment required to update and expand its equipment;
 - as such, WRL is unable to commit to providing both low and high tech services at Bowen Hospital; and
 - in the absence of such a commitment, WRL is unable to secure a long term lease at Bowen Hospital.
6. In addition, WRL's efforts to find an alternative buyer to PRL have proved unsuccessful. PRL is the only party that has shown a serious interest in acquiring WRL.
7. Further, the Commission considers that, unlike previous circumstances, WRL's inability to find additional radiologists, the need for WRL to upgrade all of its existing equipment as well as to further invest in high tech equipment, and its inability to secure a long-term lease mean that 'leveraged entry' into any high tech market through acquisition of WRL is unlikely to occur.

8. Therefore, the Commission considers that there is likely to be little difference between the state of competition if the acquisition proceeds compared to that if the proposed acquisition does not proceed.
9. Accordingly, 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.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 17 October 2007. The Notice sought clearance by Pacific Radiology Limited (PRL or the Applicant), or any of its interconnected bodies, to acquire all of the assets of Wellington Radiology Limited (WRL).

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 15 February 2008.
3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

STATUTORY FRAMEWORK

4. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal would not be likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline the application. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²
5. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.³
6. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is more than nominal and not minimal.⁴ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

³ *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, (2004) 11 TCLR 347 Para 42.

⁴ *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

7. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate in any given case.

ANALYTICAL FRAMEWORK

9. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
10. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
 - existing competition;
 - potential competition; and
 - other competition factors, such as the countervailing market power of buyers or suppliers.

THE PARTIES

Pacific Radiology Limited

11. PRL is a wholly owned subsidiary of Pacific Radiology Group Limited (The Pacific Group). All of the shareholders of The Pacific Group are practicing radiologists (or their associated trusts). The Pacific Group has a number of subsidiaries that provide privately funded radiology services in Christchurch and Nelson, in addition to the services it offers through PRL in Wellington.
12. PRL operates from nine locations in the greater Wellington region, offering low tech radiology services such as x-rays and ultrasounds at all of its locations, as well as high tech radiology services such as Magnetic Resonance Imaging (MRI) scans at a few locations.
13. PRL operates with the equivalent of ten full time equivalent (FTE) radiologists. This consists of nine shareholding partner radiologists and four associate

radiologists. Many of PRL's practicing radiologists combine their schedules (known as "lists") at PRL with lists in the public hospital system.

14. Each of PRL's shareholding radiologists has a restraint of trade clause in their employment contract. This states that if they resign from the practice they cannot work for another private practice [] for [] months, although they can (and do) work in the public hospital system.

Wellington Radiology Limited

15. WRL is a private radiology practice owned by two radiologists: Dr Rodney Allen and Dr John Matthews. WRL provides low tech radiology services from three sites in the greater Wellington region: Bowen Hospital (a private hospital in Crofton Downs); Porirua; and Wellington City (Kelvin Radiology). The radiologists are located at the Bowen Hospital practice and all the required scans or X-rays are couriered to this site to be physically read by the radiologists.
16. WRL operates with the equivalent of one full time radiologist. Currently, the two partner radiologists each work approximately two days per week and WRL employs a part-time additional radiologist to work one day per week.

OTHER RELEVANT PARTIES

Wakefield Health Limited

17. Wakefield Health Limited (Wakefield Health) is a publicly listed healthcare provider. It operates three hospitals in the North Island: Wakefield Hospital in central Wellington; Bowen Hospital in Crofton Downs, North Wellington; and Royston Hospital in Hastings.
18. Each of Wakefield Health's hospitals has an independent radiology provider located onsite. These providers lease space at the hospitals and are tenants of Wakefield Health. PRL is the current provider at Wakefield Hospital and WRL is the current provider at Bowen Hospital.
19. Wakefield Health is planning a major rebuild of the Bowen Hospital site. Its preliminary plans include expanding the existing low tech radiology services to include high tech services. [

] At

this stage, Wakefield Health does not have a radiology provider for this anticipated service.

Wellington Interventional Ultrasound Limited

20. Wellington Interventional Ultrasound Limited is a private radiology provider with one radiologist, Dr Billy Cheung. Dr Cheung is the only private radiologist working in the greater Wellington region who is not directly associated with either PRL or WRL. Dr Cheung is an interventional radiologist who performs a specialised service in conjunction with a particular surgical procedure. Dr Cheung performs his private work at Wakefield Hospital.

INDUSTRY BACKGROUND

21. In New Zealand, radiology services are provided by both public hospitals and by private providers. Typically, public hospitals provide a full range of radiology

services to cater for both elective and acute patients. However, demand for radiology services in the public system generally outstrips supply so provision is rationed. Private radiology providers cater to those patients who would not otherwise receive treatment in the public system, or who would prefer private treatment for reasons such as timeliness or convenience.

22. Private radiology services are funded, in part, by a number of different organisations including the Accident Compensation Commission (ACC), primary health care providers (such as the Wellington Independent Practice Association), local District Health Boards (DHBs) and insurance companies. In addition, some patients pay the full cost of the service themselves.
23. Each radiology procedure can be categorised into two broad industry classifications: either a low technology radiology service, commonly referred to as ‘low tech’ or a high technology (high tech) radiology service⁵. Low tech radiology services are considered to be routine procedures that can be performed by all qualified radiologists with standardised equipment and no specialised training. Low tech radiology services include:
 - Plain film x-rays, where an x-ray is used to penetrate the body and produce ‘shadows’ of bones on photographic film;
 - General screening, which can be used to demonstrate structures in the body using contrast agents with x-ray techniques;
 - Mammography, which is a x-ray examination of the breast;
 - Venography, which is the use of contrast agents that are injected into a vein, in conjunction with x-ray techniques; and
 - Ultrasound imaging, which is the use of high frequency soundwaves to produce real-time images of the body.
24. High tech radiology services include more complicated, or non-routine, radiology procedures. Each high tech service is performed by a specialist radiologist who has undergone extensive training in each particular procedure. Further, high tech radiology equipment is significantly more expensive than that required for low tech services. High tech services include:
 - MRI scanning, which combines a powerful magnet, radio waves and a sophisticated computer to create highly detailed anatomical images of the body;
 - Computer assisted tomography (CT) scans, which produces x-ray pictures as transverse (crosswise) slices of the body. This allows radiologists to see details of the brain, spine, liver or other internal organs not visible on regular x-ray films;
 - Nuclear medicine (or scintigraphy) enables a reliable, painless and efficient examination of the physiological functions in various parts of the body by using medical radioisotopes for imaging; and
 - Interventional radiology, which includes procedures such as abscess drainage and angiography. Radiologists are able to perform a range of

⁵ All parties interviewed by the Commission advised the terms ‘low tech’ and ‘high tech’ are the common nomenclature used by industry participants to describe these types of services.

procedures under local anaesthesia, without the need for surgical incisions or general anaesthesia. X-ray, ultrasound or CT scanning may be utilised to guide interventional procedures such as needle biopsy and catheter placement.

25. All industry participants interviewed by the Commission advised that, presently, there is a nationwide, and indeed international, shortage of radiologists. This situation has been compounded by technological innovations that have increased diagnostic imaging capabilities, which in turn has increased the demand for radiology services and the necessary radiological support. Industry participants advised that the shortage of radiologists is likely to continue for some time.

PREVIOUS COMMISSION DECISIONS

26. The Commission has previously considered two clearance applications in respect of radiology services, namely:
- *Decision 347: Fulford Radiology Services Limited and Taranaki Healthcare Limited and Fuflord Radiology Limited*, 19 March 1999 (the Fulford Decision); and
 - *Decision 518: Pacific Radiology Limited and Wakefield Radiology Limited* 26 February 2004 (the Wakefield Decision).
27. The Fulford Decision involved the formation of a 50/50 joint venture company between Fulford Radiology Services Limited, a private Radiology company and Taranaki Healthcare Limited (at that time, the Government-owned radiology service provider at the Taranaki Base Hospital). The Commission gave clearance to the proposal on the basis there were low barriers to entry in the market for low tech radiology services and that the purchasers of radiology services had a degree of countervailing power. There was no aggregation in respect of high tech radiology services.
28. However, the most relevant decision in respect of the present clearance application is the Wakefield Decision. The Wakefield Decision involved the proposed acquisition by PRL of the radiology services business and assets of Wakefield Radiology Limited. Unlike WRL in the present case, Wakefield Radiology Limited provided a comprehensive range of both low and high tech radiology services in the greater Wellington region and, at the time, was the largest provider of radiology services in that region. There was no aggregation in respect of low tech radiology services.
29. The Commission granted clearance in the Wakefield Decision on the basis that new entry would likely constrain the combined entity, should it attempt to exercise market power, post acquisition. The Commission considered that new entry into high tech services would most likely occur via the acquisition and expansion of an existing low tech provider. At the time, WRL was identified as the most likely acquisition target for this kind of 'leveraged' entry into a high tech radiology market.
30. The Commission also noted in the Wakefield Decision that the relevant funding agencies (namely the local DHBs, ACC, and insurance companies) would, taken together, have a degree of countervailing power. However, this countervailing

power was contingent on the ability of existing competitors, such as WRL, to expand in the relevant markets.

31. PRL acquired Wakefield Radiology Limited in April 2004. Subsequent to this acquisition, in April 2005, PRL also acquired Kapiti Radiology Limited (KRL). KRL was a provider of low tech radiology services on the Kapiti Coast.

MARKET DEFINITION

32. The Act defines a market as:

“... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.”⁶

33. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.
34. As noted above, the Commission has previously considered markets for radiology services in the greater Wellington region. In the Wakefield Decision, the Commission defined the following markets:
- The provision of private low tech radiology services, consisting of X-rays, general screening, mammography, venography, and ultrasound, in each of the following separate geographic regions within the greater Wellington area:
 - Wellington City and suburbs;
 - Wellington North (Johnsonville, Newlands, Tawa, Crofton Downs);
 - Hutt Valley;
 - Porirua;
 - Kapiti Coast; and
 - Masterton (the low tech markets).
 - The provision of the following private high tech radiology services for the greater Wellington area:
 - MRI scans (the MRI market);
 - CT scans (the CT market);
 - Nuclear medicine (the nuclear market); and
 - Interventional radiology, including angiography (the interventional market).

⁶ s 3(1A) of the Commerce Act 1986.

35. The Applicant submitted that, for reasons of pragmatism, the market definitions adopted by the Commission in the Wakefield Decision can be used for the analytical purposes of the present case. The Commission has tested with industry participants whether or not these markets are still appropriate. The views expressed by most suggest that they are. The Commission, therefore, considers that there are no grounds to deviate from the markets it identified in the Wakefield Decision.
36. However, not all of the low tech radiology markets identified in the Wakefield Decision are relevant to the present Application. The Applicant does not operate in Porirua, while WRL does not operate in the Hutt Valley, Masterton, or the Kapiti Coast. Hence no aggregation will occur in these areas as a result of the proposed acquisition.
37. WRL does not currently offer any high tech services. As such, no aggregation would occur as a result of the proposed transaction in any high tech radiology market. However, high tech radiology markets are still relevant to this decision. This is because, as noted by the Commission in the Wakefield Decision, entry into these high tech radiology markets might be easier for an existing low tech radiology service provider than a de novo entrant. The removal of WRL, the only other private radiology service provider in the greater Wellington region besides PRL, therefore may increase the already considerable entry barriers into high tech radiology markets.
38. Therefore, consistent with the Wakefield Decision, the Commission considers that the relevant markets in respect of the proposed acquisition are those for:
- the provision of private low tech radiology services in Wellington City and suburbs (the Wellington City market);
 - the provision of private low tech radiology services in Wellington North, which includes Johnsonville, Newlands, Tawa and Crofton Downs (the Wellington North market); and
 - separate markets for the provision of a number of discrete private high tech procedures including MRI scans, CT scans, nuclear medicine, and interventional radiology (including angiography) in the greater Wellington region.

FACTUAL / COUNTERFACTUAL

39. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgement considering the likely outcomes between two hypothetical situations, one with the acquisition, (the factual) and one without (counterfactual).⁷ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

40. In the factual situation, PRL would acquire all the assets of WRL and the combined entity would become the only private provider of low and high tech radiology services in all of the relevant markets.

⁷ *Air New Zealand & Qantas Airways Ltd v Commerce Commission* (2004) 11 TCLR 347, Para 42.

Counterfactual

- 41. WRL submitted that its landlord, Wakefield Health, requires the radiology provider at Bowen Hospital also to provide high tech radiology services in the future. To this extent, Wakefield Health is not prepared to grant WRL a long-term lease until WRL commits to the provision of such services.
- 42. WRL advised the Commission that it is unable to commit to the provision of high tech services at Bowen Hospital because:
 - it has insufficient radiologists to provide such services and it has been unsuccessful in finding more over a considerable period of time;
 - its low tech equipment requires replacement at a capital cost of around [] ; and
 - the high tech equipment required would cost in the order of \$[] million.
- 43. Without sufficient radiologists, WRL is not prepared to commit to the significant capital investment required. As such, it cannot commit to providing high tech services at Bowen Hospital and accordingly cannot secure a long term lease.
- 44. Further, WRL submitted that PRL is the only party to have expressed a serious interest in acquiring its business. WRL advised the Commission that absent the proposed acquisition, WRL would have to exit the relevant markets.

Rationale for the Sale of WRL

- 45. WRL’s long term lease for the premises at Bowen Hospital expired on 1 December 2007 []].
- 46. []].
- 47. []].
- 48. []].

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49. WRL advised the Commission that it has investigated all the options for responding to Wakefield Health's proposal including attempting to find additional radiologist support and a strategic partner(s) with which to submit a bid to meet Wakefield Health's requirements. Both these have proved to be unsuccessful.

Equipment and Support Staff

50. WRL advised that the equipment it uses at its practices requires an immediate upgrade. In particular, WRL advised that its existing ultrasound machines (although operational) need to be replaced []. WRL's information system also needs to be replaced at an estimated cost of \$[]. [] confirmed these price estimates.
51. WRL advised that it has been unable to justify the necessary capital investment, with an estimated pay back period of [] years, without the certainty of a long term lease. This investment relates to its existing low tech equipment.
52. Further, WRL stated that the capital investment it would need (for the required high tech equipment) to fit out the radiology practice in response to the anticipated RFP from Bowen Hospital, was in the vicinity of \$[]. This estimate was also confirmed by a number of parties interviewed by the Commission.
53. WRL submitted that, although it has performed well financially in the past, this is not a true indicator of its current (and future) performance. This is due to the need for immediate capital investment, the retirement of Dr Allen, and the uncertainty of the lease at Bowen Hospital. []

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Attempts to Secure a Partner

54. Dr Allen, Partner, WRL, advised the Commission that he has been deferring retirement for the past five years in the hope that WRL would be able to find a replacement radiologist for him. Dr Allen further advised that despite WRL's inability to find a radiologist, he is now retiring.
55. All industry parties interviewed by the Commission noted the shortage of radiologists in New Zealand, particularly a (historic) shortage in Wellington, and this situation is unlikely to change any time soon.
56. WRL advised that, in December 2006, it increased its efforts to find a partner when it became clear to WRL that Wakefield Health would not extend WRL's existing lease at Bowen Hospital past the expiry date of 1 December 2007.
57. WRL stated that it has been seeking, both formally and informally, a replacement partner radiologist since the retirement of Dr Alistair Wilson in 1996.

58. WRL advised that its initial efforts involved approaching a number of local radiologists. Dr Matthews advised of the importance of focusing on local radiologists as WRL needed a radiologist(s) with a long term commitment to Wellington. However, the number of available radiologists in Wellington is relatively small, especially given that a number are already committed to PRL and bound by restraint of trade clauses.

59. WRL advised the Commission that
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60. As noted above, Dr Billy Cheung is the only private radiologist working in the greater Wellington region that is not directly associated with either PRL or WRL.

61. [

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62. WRL noted that, periodically, new radiologists arrive in the Wellington region. For instance,
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63. The remaining partner of WRL, Dr Matthews, advised the Commission that he has a close working relationship with most local radiologists through his work in the public hospital. However, he has not formally approached other radiologists as he considers that it is clear that, for a number of reasons, including some having young families, they would not be interested in investing in WRL.

Other Potential Acquirers

64. WRL advised the Commission that it has approached a number of different parties, including:

- [];
- []; and
- [].

[_____]

65. [

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66. WRL advised that it considered that [] would be the most likely purchaser for WRL and approached it in December 2006. In February 2007, senior [] staff visited WRL's operations in Wellington and undertook due diligence.

67. [], advised the Commission that it reviewed the WRL operations and the proposed expansion of the Bowen Hospital

practice. [] considered that the existing operations were run down and in need of significant capital investment to upgrade the existing equipment.

- 68. In addition, in order to meet the proposed requirements of Bowen Hospital, further capital investment in high tech equipment would be required. [] estimated the cost of investment to be in the order of \$[]. This was of concern to [] as was the impending retirement of Dr Allen and no replacement radiologist.
- 69. [] was also concerned that WRL did not have any private sector experience in the delivery of high tech services and, therefore, no established reputation with referring specialists in these areas.
- 70. [] stated that, with the retirement of Dr Allen, the practice would be entirely reliant on Dr Matthews, and that sole radiology practices (as WRL would be) are almost impossible to run successfully. He added that [] are not in a position to provide a radiologist to boost partner numbers. Further, [] considered that, with one partner radiologist working only part-time at the practice, WRL would be unable to manage its existing workload, let alone bid for the anticipated Bowen Hospital contract.
- 71. []

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[]

- 72. []

- 73. []

- 74. []

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- 75. [] advised the Commission that whilst [] had capital to invest in WRL, it was looking to Drs Allen and Matthews to make a commitment towards responding to the proposed Bowen Hospital RFP and to drive the business forward []. However, given Dr Allen's stated intention to retire, WRL was unable make this commitment to [].
- 76. In addition, [] advised that he would be very reluctant to invest in a sole radiologist practice and in his view sole radiology practices, with the radiologist essentially working in isolation, to be potentially unsafe.
- 77. []

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78. [

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[_____]

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83. [

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84. [

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Overseas Providers

85. In addition, the Commission has explored the possibility of Australian-based radiology providers acquiring WRL.

86. [

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87. []
], and it has never considered WRL itself or any other practice in the greater Wellington region before.
88. [] []
] advised the Commission that it was unaware of the proposed acquisition but it would have no interest in WRL as
 []].

The Commission's Assessment of the Counterfactual

89. Both the Applicant and WRL submitted that WRL's exit in the counterfactual is inevitable. WRL submitted that the practice, as it stands now, is not an attractive investment option for practicing radiologists or investors other than PRL.
90. WRL has not been able to sign a long term lease with Wakefield Health for its Bowen Practice. This is because Wakefield Health requires an expanded radiology service that, presently, WRL can not provide. WRL also needs to update its existing equipment. This is unlikely to occur without the security of a long term lease.
91. WRL has approached a number of different parties in an attempt to attract additional radiologists to its practice. All these approaches have been unsuccessful. Further, one of the two partner radiologists intends to retire. Without additional radiological support, WRL is unlikely to be able to sustain its existing operations.
92. Absent the proposed acquisition, the Commission considers it likely that WRL would continue to have difficulties attracting additional radiologists to its practice.
93. Therefore, WRL is unlikely to be in a position to respond to the stated desire of its landlord (and main patient referrer), Wakefield Health, to expand its range of services to a level that Wakefield Hospital considers to be "industry standard". This would include the provision of high tech radiology services.
94. Further, all potential purchasers formally approached by WRL (and other industry parties approached by the Commission) did not consider the existing operations of WRL to be worth investing in. This is because none of these parties could provide any radiological support to the existing operations of WRL. Therefore, with only one remaining radiologist, WRL would have a limited ability to maintain its existing operations. In addition, the existing equipment needs to be upgraded.
95. However, unlike any other industry participant, PRL has a pool of available radiologists, and the existing equipment in place, to continue the existing operations of WRL in the greater Wellington region. PRL also has an established reputation and an existing referral pattern in the delivery of both low tech and high tech services in this region.
96. Accordingly, PRL, the only other private radiology provider in the greater Wellington region, has been the only party that has showed a serious interest in acquiring WRL. PRL has the available resources to be able to absorb WRL's

existing customers, support staff and, to a limited extent, equipment into its existing operations.

97. Accordingly, the Commission considers that, in the absence of PRL acquiring WRL, it is unlikely that WRL will continue to provide radiological services from its practice at Bowen Hospital and in the greater Wellington region.
98. In the Wakefield Decision, the Commission considered that acquisition was the most likely mode of entry into the relevant high tech markets. However, since that decision, the shortage of radiologists appears to have worsened, WRL's equipment has not been replaced and is now becoming dated, and Wakefield Health has insisted that the radiology provider situated at Bowen Hospital provide both low and high tech services. Given these developments, the Commission now considers it unlikely that another party would acquire WRL in order to effect 'leveraged entry' into any high tech market.
99. Accordingly, the Commission considers that in the counterfactual scenario, PRL is likely to be the only private provider of radiology services in the relevant markets.

Conclusion of the Difference Between the Factual and Counterfactual Scenarios

100. Absent the proposed acquisition, the Commission considers that WRL would be unlikely to continue to operate its business and that it would likely exit the markets in which it competes. To that extent, there would likely be only one private radiology provider in both the factual and the counterfactual scenarios.
101. Accordingly, the Commission considers that there is likely to be little difference between the state of competition if the acquisition proceeds compared to that if it does not proceed.

OVERALL CONCLUSION

102. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the markets for:
 - the provision of private low tech radiology services in Wellington City and suburbs (the Wellington City market);
 - the provision of private low tech radiology services in Wellington North, which includes Johnsonville, Newlands, Tawa and Crofton Downs (the Wellington North market); and
 - separate markets for the provision of a number of discrete private high tech procedures including MRI scans, CT scans, nuclear medicine, and interventional radiology (including angiography) in the greater Wellington region.
103. The proposed acquisition would result in there being only one private radiology provider in all the relevant markets. However, the Commission considers that absent the proposed acquisition, it is likely that WRL would exit the relevant markets. This is because:
 - WRL will not have sufficient radiologists to continue its existing operations as it has been unsuccessful in its search for additional radiologists;

- without radiologists, WRL is unable to make the capital investment required to update and expand its equipment;
 - as such, WRL is unable to commit to providing both low and high tech services at Bowen Hospital; and
 - in the absence of such a commitment, WRL is unable to secure a long term lease at Bowen Hospital.
104. In addition, WRL's efforts to find an alternative buyer to PRL have proved unsuccessful. PRL is the only party that has shown a serious interest in acquiring WRL.
105. Further, the Commission considers that, unlike previous circumstances, WRL's inability to find additional radiologists, the need for WRL to upgrade all of its existing equipment as well as to further invest in high tech equipment, and its inability to secure a long-term lease mean that 'leveraged entry' into any high tech market through acquisition of WRL is unlikely to occur.
106. Therefore, the Commission considers that there is likely to be little difference between the state of competition if the acquisition proceeds compared to that if the proposed acquisition does not proceed.
107. Accordingly, 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 of the affected markets.

DETERMINATION ON NOTICE OF CLEARANCE

108. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Pacific Radiology Limited, or any of its interconnected bodies, to acquire all of the assets of Wellington Radiology Limited.

Dated this 20th day of December 2007

Paula Rebstock
Chair
Commerce Commission