

Commerce Commission

Decision No. 400

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

REINDEER INVESTMENTS PTY LTD

and

HARDING LICENSING SYSTEMS

The Commission: M J Belgrave
M N Berry
P R Rebstock

Summary of Application: The acquisition by Reindeer Investments Pty Limited, or any of its interconnected bodies corporate, of a 51% equity interest in the business of Harding Licensing Systems.

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

Date of Determination: 17 August 2000

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THE PROPOSAL

1. In a notice to the Commission received on 3 August 2000, pursuant to section 66(1) of the Commerce Act 1986 (the Commerce Act), Reindeer Investments Pty Limited, or any of its interconnected bodies corporate (“Reindeer”) sought clearance for the acquisition of a 51% equity interest in the business of Harding Licensing Systems (“Harding”).

THE PROCEDURE

2. The notice was received and registered on 3 August 2000. Section 66(3) of the Commerce Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. A decision is therefore required by Thursday 17 August 2000.
3. The applicant has not sought confidentiality for the application, or any information in the application.
4. The Commission’s determination is based on an investigation conducted by its staff. In the course of the investigation Commission staff obtained further information from the applicant, as well as from the Land Transport Safety Authority (“LTSA”), Roadsigns and Traffic Control Equipment Limited (“RTL”), Altona Industries Pty Limited (“Altona”), PDL Industries Limited, and the Corrections Department.

PARTIES

Reindeer Investments

5. Reindeer is a private holding company, which is incorporated and conducts business in Australia. It operates four wholly owned subsidiaries:
 - George Industries Traffic Pty Limited;
 - Bundaberg Quarries Pty Limited;
 - George Industries Limited; and
 - George Industries Holdings Pty Ltd which is a 50% owner of Reflexite Australasia;
6. George is a large manufacturer and distributor of vehicle registration plates in Australia. It does not currently conduct any business in New Zealand; it was an unsuccessful tenderer for the Land Transport Safety Authority’s business in 1994 and 1998. Currently, George Industries Traffic Pty Ltd (road cones etc) and Reflexite (reflective tapes and products) distribute their products in New Zealand.

Harding

7. Under the proposal, Harding will be a newly created company to accommodate this proposal. Assets from Harding Electronic Systems will be transferred to Harding, of which Reindeer will acquire a 51% equity interest. The remaining 49% equity interest will be retained by Viking Pacific Holdings. Harding Electronic Systems is a wholly owned subsidiary of Viking Pacific Holdings, which owns and operates a number of manufacturing and distribution businesses in Australia and New Zealand. Viking

Pacific Holdings are the 62nd largest company in New Zealand in terms of sales revenue. In the 1999 financial year, they had revenue of \$345m.

8. Viking Pacific Holdings has a number of wholly owned subsidiaries operating in Australia, one of these being Harding Licensing Systems Australia (“Harding Australia”). In a related transaction, Harding Australia will be sold to George Industries Pty Ltd.

RELATED PARTIES

Land Transport Safety Authority

9. The Land Transport Safety Authority (“LTSA”) is a crown entity,¹ whose principal objective is to undertake activities that promote safety in land transport at a reasonable cost.² One of the functions of the LTSA is to maintain and preserve records and documents concerning activities within the land transport system, in particular the land transport register.³ The authority has the power to contract out or delegate its functions to appropriate persons selected from an appropriate competitive process.⁴
10. The Motor Registration Centre (“MRC”) is a business unit of the LTSA, and has the contract to manage the registration of motor vehicles and the issuance of registration plates. This function is delegated to the LTSA by the Registrar of Transport, who under the Act, is the chief executive of the Ministry of Transport.⁵

RELATED LEGISLATION

11. The legislation that relates to the registration of motor vehicles is the Transport (Vehicle and Driver Registration and Licensing) Act 1986 (“the Act”). Section 5 of the Act states:
 5. Motor vehicles to be registered and licensed:
 - (1) Except as otherwise provided in this Act, no person shall use any motor vehicle on any road unless-
 - (a) The motor vehicle is registered in accordance with this part of this Act; and
 - (b) The registration plates and a current licence issued for that vehicle are affixed and displayed on the vehicle in the manner prescribed in any notice made under section 14 of this Act.

¹ Section 185 of the Land Transport Act 1998

² Section 189 of the Land Transport Act 1998

³ Section 190 (e) of the Land Transport Act 1998 and section 18 of the Act.

⁴ Section 201 of the Land Transport Act 1998.

⁵ See section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

12. Section 8 of the Act relates to the issue of registration plates. It states:

8. Issue of registration plates and certificates of registration-

(1) On receipt of an application for the registration of any motor vehicle under this part of this Act, the Registrar(, or a person authorised in that behalf under sub section (6),), if satisfied that the application is in order, shall assign a number or distinguishing mark to be shown on the registration plate or plates to be affixed to the motor vehicle, and shall issue to the applicant a registration plate or plates for the motor vehicle and a certificate of registration of the motor vehicle.

13. Personalised registration plates can be allocated for disposition if the Registrar of Motor Vehicles considers it appropriate.⁶ Currently Personalised Plates Limited markets and promotes personalised plates, whilst Harding produces and distributes the plates as part of its contract with the LTSA.

BACKGROUND

14. Motor vehicles are an important part of the New Zealand way of life and in particular they are an important part of commerce. At the end of 1999 there were 2.763m licensed vehicles in New Zealand,⁷ which has a population of 3.812m.⁸ Approximately 70 percent of licensed vehicles are cars, whilst trucks account for about 13 percent.⁹ Approximately 30 percent of these vehicles are from the Auckland region, whilst 12 percent are situated in Christchurch and 9 percent are situated in Wellington.¹⁰

15. The annual level of registration of new vehicles is variable and may be related to the prevailing economic conditions. Table One outlined below, shows the annual variation in the registration of new cars and commercial vehicles during the past 10 years.

Table One
Annual Registration of New Cars and Commercial Vehicles from 1989-1999

Year	New Cars		Commercials	
1990	159,746		29,445	
1991	102,966	-35%	24,985	-15%
1992	92,110	-10%	23,772	-4%
1993	97,663	6%	27,402	15%
1994	123,853	27%	30,534	11%
1995	146,656	18%	29,598	-3%
1996	176,178	20%	29,844	1%
1997	155,599	-12%	24,520	-18%
1998	154,094	-1%	20,540	-16%
1999	189,313	23%	22,328	9%

Source: Land Transport Safety Authority

⁶ Section 9 of the T Act.

⁷ Land Transport Safety Authority, *New Zealand Motor Vehicle Registration Statistics 1999* (Transport Registry Centre, Land Transport Safety Authority, Palmerston North, 2000) 69.

⁸ www.stats.govt.nz.domino/external/web/prod-serv.nsf/htmldocs/key+Population+Statistics.

⁹ Op cit note 7.

¹⁰ Op cit note 7, at 69.

16. During 1999 there were 264,578 vehicles registered of which 74% were cars and 9% were trucks. There were 226,507 vehicles registered in 1998 with 72% of them being cars and 10% being trucks.¹¹
17. The market for vehicle registration plates is variable and is experiencing slow growth, probably at the rate of population growth.

MARKET DEFINITION

Introduction

18. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in any market in terms of section 47(1) of the Act.
19. Section 3(1A) of the Act provides that:

“. . . the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”
20. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,¹² *Commerce Commission v Carter Holt Harvey Building Products Limited*,¹³ and in the Commission’s *Business Acquisition Guidelines* (“the Guidelines”).¹⁴ A brief outline of the principles follow.
21. Markets are defined in relation to three dimensions, namely product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
22. A properly defined market includes products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (the “*ssnip*” test), assuming that other terms of sale remain unchanged.

¹¹ Op cit note 7, at 54.

¹² (1991) 4 TCLR 473.

¹³ Williams J, 18 April 2000, HC, yet to be reported.

¹⁴ Commerce Commission, *Business Acquisition Guidelines*, 1999, pp. 11-16.

23. Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products takes place through a series of stages, which may be visualised as being arranged vertically, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence, the functional market level affected by the application has to be determined as part of the market definition. For example, that between manufacturers and wholesalers might be called the “manufacturing market”, while that between wholesalers and retailers is usually known as the “wholesaling market”.

The Relevant Market

24. The Commission seeks to define relevant markets in a way which best assists the analysis of the competitive impact of the acquisition under consideration. In this case the subject of the application is Harding, which specialises in the design, production and distribution of vehicle licence plates and registration stickers, graphic sheeting and signage and security and identity cards. It is also involved in agency distribution.
25. Currently, Reindeer are not involved in these business activities in New Zealand, and any acquisition will result in a merger between a potential entrant and the existing competitor. However Reindeer are involved in these business activities in Australia.
26. The LTSA has the statutory responsibility for the registration of motor vehicles and the issue of licence plates. The LTSA contracts out the manufacture and distribution of licence plates and also the provision of associated services. In this context the LTSA effectively defines the extent of the market, by specifying in detail what is required from the supplier in terms of product and function.

Product Market

27. The area of business activity where both the applicant and the subject are involved in is the activity of the manufacture and supply of registration plates and associated services to government authorities responsible for vehicle registration within their respective jurisdiction. The applicant has submitted that this area of business activity, is the market for vehicle registration services.
28. The applicant has stated that:
- The relevant product market, from a demand side, is for vehicle registration services, for which there is no substitute. While there may be other methods of operating a vehicle registering system, the current form is defined by the legal requirements. The Transport (Vehicle and Driver Registration and Licensing) Act 1986 establishes a system of registration with which all vehicles within New Zealand generally must comply. The requirements for the manufacture, stock management and distribution of registration plates, and the provision of LTSA agency business are determined by MRC, in accordance with Government and LTSA policy.
29. Clearly, from a demand perspective, there are no close substitutes for registration plates and for the provision of associated services. The type of products and services are influenced by statutory requirements and the policy of the LTSA. If a hypothetical monopolist supplier of vehicle registration plates increased its prices by a small but

significant non-transitory amount, the LTSA could not substitute another product for vehicle registration plates and associated services.

30. It is considered that the relevant product market is the market for the manufacture and distribution of vehicle registration plates and the provision of associated services.

Functional Market

31. The business activity involved is the manufacture and distribution of vehicle registration plates. The associated activity is the processing of information into the LTSA's vehicle register in respect to the manufactured plates, and the handling of public queries in respect to personalised plates.
32. It is considered that the functional market relevant to the application is the manufacture and distribution of vehicle registration plates.

Geographic Market

33. Vehicle registration plates are manufactured in Auckland and are distributed to about 300 LTSA agents situated around the country, who are responsible for selling the plates to the public. These actual distribution flows provide strong evidence that the geographic scope of the market is national.

Conclusion on Market Definition

34. It is concluded that the relevant market for the consideration of the application is that for the manufacture and distribution of vehicle registration plate, and the provision of associated services.

COMPETITION ANALYSIS

Introduction

35. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of **dominance**.

The Dominance Test

36. Section 47(1) of the Commerce Act prohibits certain business acquisitions:
- “No person shall acquire assets of a business or shares if, as a result of the acquisition, -
- (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
 - (b) That person's or another person's dominant position in a market would be, or would be likely to be, strengthened.”

37. Section 3(9) of the Commerce Act states:

“For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-

- (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
- (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
- (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

38. The test for dominance has been considered by the High Court. McGechan J stated:¹⁵

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”

...

“Dominance includes a qualitative assessment of market power. It involves more than ‘high’ market power; more than mere ability to behave ‘largely’ independently of competitors; and more than power to effect ‘appreciable’ changes in terms of trading. It involves a *high degree of market control*.”

39. Both McGechan J and the Court of Appeal, which approved this test,¹⁶ stated that a lower standard than “a high degree of market control” was unacceptable.¹⁷ The Commission has acknowledged this test:¹⁸

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.

“A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.” (p21)

40. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined. The dominance test is applied in the following section.

¹⁵ *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC).

¹⁶ *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA).

¹⁷ *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC).

and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA).

¹⁸ *Business Acquisition Guidelines*, Section 7.

The Market for the Manufacture and Distribution of Vehicle Registration Plates and the provision of associated services

Market Concentration

41. An examination of concentration in a market often provides a useful first indication of whether a merged firm may or may not be constrained by others participating in the market, and thus the extent to which it may be able to exercise market power.
42. The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of s 47 of the Act -

“In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
 the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
 the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.” (p 17)
43. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged firm and its rivals is relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Commission went on to state that:

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”
44. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by s 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided through market entry, also typically need to be considered and assessed.
45. Within the market under analysis, the nature and size of the market is such that there is only one manufacturer and distributor of vehicle registration plates, and only one purchaser, the LTSA. This particular business is put out to tender every three to five years by the LTSA.

Constraint from Existing Competition

46. The proposed acquisition will result in the merger of a potential entrant and the existing competitor in the market. Neither the applicant nor any of its subsidiaries currently manufacture and distribute vehicle license plates in New Zealand. Because of the nature of the market, there is only one supplier and one purchaser. There will be no existing competitors of the merged entity to consider in this analysis.
47. The market is mature and has been the subject of increased competition during the tendering process. Prices and margins have decreased as a result. In 1990 [

].

48. In New Zealand, the average cost of manufacturing a pair of general issue registration plates is approximately []. This cost is broken down as follows:

Component	Cost in NZ\$
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
Total Cost	[]

49. In Australia, the average cost of manufacturing a pair of general issue registration plates is approximately []. The Trans-Tasman freight and handling costs are estimated to be between [] per pair of plates.
50. General purpose vehicle registration plates retail for \$21.50 per pair. This figure is set by statute. For each transaction, the agent selling the plates receives a commission of between [] and the remaining amount goes to the LTSA.

Constraint from Potential Competition

51. A business acquisition is unlikely to result in the acquisition or strengthening of dominance if there is a credible threat of market entry. Potential competition can act as a constraint on market power, and so an examination of the nature and extent of this constraint is part of the Commission’s assessment of competition.
52. Entry conditions, including the nature and height of any entry barriers, must be considered before the threat of new entry, which might constrain the conduct of a merged entity, can be evaluated.
53. The current competencies required to compete effectively in this market include the sourcing of aluminium sheeting, metal embossment, and hot foil stamping.

Capital Costs

54. The manufacture and distribution of vehicle registration plates would require a capital investment of between []. This level of investment would finance the purchase of the necessary equipment, which has the capabilities of metal embossment, and ‘hot foil stamping’. These competencies would be required to comply with the LTSA’s current specifications for vehicle registration plates.
55. An investment would also be required in information technology to enable the manufacturer to access the computer network of the LTSA. This level of investment has been estimated to be approximately [].

56. The sunk cost component of this investment would be low if the plant could be sold overseas. Generally the required plant has little or no other manufacturing application in New Zealand. The capital costs of entry do not impose significant barriers to entering this market.

Contract with LTSA

57. Before entry could be made into this market, the potential entrant would have to successfully tender for the business of the LTSA, the monopsony purchaser in this market. Any potential entrant would require the security of a contract for three to five years, before they would make the necessary capital investment.
58. The LTSA sets the specifications for vehicle registration plates, after consultation with the Police. Important issues for consideration include safety, longevity and maintaining the integrity of the plates, which can be subject to fraudulent practises. The LTSA have stated that [
-]. However these factors do not create significant barriers for potential entry into this market.
59. The Commission's investigation has identified a number of potential entrants. The most likely entrant is RTL, who presently manufacture street signs using similar materials. RTL stated [
-].
60. [
-].
61. [
-].
62. The Corrections Department was also identified as a potential entrant into this market. [
-].
63. Altona was also identified as a potential entrant. Altona are an established Western Australian company that specialises in embossed motor vehicle license plates. They currently have the contract to supply the Western Australian and Tasmanian state authorities with vehicle registration plates. [

].

Conclusion on Constraint from Potential Entry

64. There are no significant barriers to entering this market and a number of potential entrants have been identified. The fact of ease of potential entry into this market would provide a constraint on the behaviour of the merged entity.

The Countervailing Power of Acquirers

65. The LTSA, being the monopsonist purchaser of vehicle registration plates and associated services, has considerable countervailing power. If the merged entity attempted to exercise market power by raising prices or by offering less in terms of product or service quality, the LTSA could perform the function of manufacture and distribution themselves. This could involve the sub contracting of the manufacturing process to another organisation, or they could involve themselves in the entire process.
66. The LTSA, pursuant to its tender document, has the right to reject any tender, and has the right to contract with any party as it thinks fit.¹⁹ Such conditions provide the authority with considerable flexibility if the exercise of market power was attempted by the merged entity.

Conclusion on the Market for the Manufacture and Distribution of Vehicle Registration Plates, and the provision of associated services

67. The monopsonist purchaser, the LTSA, has statutory responsibility for administering the registration of motor vehicles and the issue of registration plates. The LTSA has considerable countervailing power which could constrain the merged entity if it attempted to exercise market power by increasing its tender prices or by offering less in terms of product or service quality.
68. There are no significant barriers to entering this market, and the Commission in its investigation has identified several potential entrants who could also constrain the behaviour of the merged entity.
69. On the basis of the matters discussed above, the Commission concludes that Reindeer is not currently dominant in the market for the manufacture and distribution of vehicle registration plates and the provision of associated services in New Zealand, and would not be likely to acquire a dominant position in this market as a result of the proposed acquisition.

OVERALL CONCLUSION

70. The Commission has considered the likely impact of the proposal in the market for the manufacture and distribution of vehicle registration plates, and the provision of associated services in New Zealand.

¹⁹ Refer Appendix E of the application, part titled "Notice of Tender Part 1", 2.

71. Having regard to the various elements of section 3(9) of the Act, and all the other relevant factors, the Commission is satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the manufacture and distribution of vehicle license plates, and the provision of associated services in New Zealand.

DETERMINATION ON NOTICE OF CLEARANCE

72. Accordingly, pursuant to section 66(3)(a) of the Act, the division of the Commission determines to give clearance for the proposed acquisition by Reindeer Investments Pty Limited, or any of its interconnected bodies corporate, of a 51% equity interest in the business of Harding Licensing Systems.

Dated this 17th day of August 2000

M J Belgrave
Chair