

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 4 November 2016

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington

registrar@comcom.govt.nz

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

EXECUTIVE SUMMARY

1. This is an application under section 66(1) of the Commerce Act 1986 for clearance for Aon New Zealand (**Aon**) to acquire the book of business and assets of Fire Protection Inspection Services Limited (**FPIS**). Aon will also have the right to offer employment to employees of FPIS, as Aon considers appropriate. As consideration, Aon will pay a sum of up to [**REDACTED**].

Rationale and counterfactual

2. Aon and FPIS both operate in the broader fire protection services market, discussed below. Through the proposed transaction, Aon will gain access to FPIS's qualified staff as well as the opportunity to better cross-market complementary services to Aon's and FPIS's customers (who are primarily FPIS's own shareholders).
3. At least in the short term, the counterfactual will involve the existing shareholders of FPIS continuing to own FPIS. [**REDACTED**].

REDACTED

].

Markets and competition effects

4. Aon and FPIS both participate in the fire protection services market. There are a number of segments within the broader fire protection services market. The fire protection services market includes consultation services (eg, fire protection consultants, evacuation planning advisors, and risk assessors), passive fire protection services (eg, building design, and manufacture and supply of building materials), active fire protection services (eg, equipment manufacture and imports, as well as fire alarm, hydrant, and sprinkler system design and installation), sprinkler system certification; system inspection and re-inspection, and system maintenance.
5. For the purposes of this application, the relevant market is the national market for the inspection of sprinkler and fire alarm systems (the **inspection market**). The proposed transaction will result in horizontal aggregation in this market. The inspection market is worth approximately [**REDACTED**] annually. To put that in context, the broader fire protection services market is worth several hundred million dollars.
6. The proposed transaction is unlikely to substantially lessen competition in the inspection market. This is because there are very low barriers to entry into the inspection market, meaning that Aon will be constrained by the threat of new entry. In addition, Aon will face constraints from existing competitors in the inspection market, the availability of alternative solutions, and the countervailing power of its customers.
7. The applicant has also considered whether the proposed transaction may give rise to any vertical or conglomerate competition effects, given that Aon has a role in certifying inspection companies.
8. The proposed transaction will be unlikely to give rise to any vertical or conglomerate competition issues. There are very low barriers to becoming a certifier of inspection companies, and Aon will be constrained by the threat of new entry into that market and the applicable industry standards.

Conclusion

9. The proposed transaction is not likely to substantially lessen competition. Accordingly, the applicant submits that clearance should be granted.

PART 1: TRANSACTION DETAILS

1. Person seeking clearance – Aon New Zealand (Aon)

1.1 This notice is given by Aon:

Aon's registered office and physical address is:

16th Floor, AMP Centre
29 Customs Street West
Auckland
New Zealand

Telephone: 09 362 9000

Website: www.aon.co.nz

1.2 Aon is an unlimited liability company registered in New Zealand, and is ultimately owned by Aon plc, a public limited entity registered in the United Kingdom that is also listed on the New York Stock Exchange (NYSE:AON).

1.3 Aon is a leading provider of insurance broking services, risk management services, and associated services (for example, HR solutions and financial services consulting). In New Zealand, while Aon is a leading provider of these services, Aon faces competition from a range of well-resourced competitors, such as other brokers, insurance companies, and major accounting firms (in particular, in relation to risk management and financial services). The division of Aon relevant to the transaction to which this application relates is known as Aon Group Risk Consulting (**AGRC**), the specialist risk consulting division of Aon.

1.4 Aon's fire system inspection and sprinkler system certification services are part of the services delivered by the AGRC division, and are also an integral part of client risk advisory services. However, the revenue generated by fire system inspection and certification services [**REDACTED**]. Aon commenced providing inspection services after it acquired Central Inspections Services Limited in 2010. Since acquiring Central Inspection Services Limited, Aon's inspection business has doubled in size (measured by revenue and staff numbers).

1.5 The contact person at Aon is:

Andrew Bergman
GM – Finance
09 362 9044
andrew.bergman@aon.com

1.6 Correspondence and inquiries for Aon in respect of this notice should in the first instance be addressed to:

Buddle Findlay
PO Box 2694
Wellington 6140

Attention: Susie Kilty / Dipti Manchanda / Jen Sangaroonthong
Telephone: 04 498 7356 / 04 498 7340 / 04 498 7330
Facsimile: 04 499 4141
Email: susie.kilty@buddlefindlay.com / dipti.manchanda@buddlefindlay.com /
jen.sangaroonthong@buddlefindlay.com

2. Vendor – Fire Protection Inspection Services Ltd (FPIS)

2.1 The vendor is FPIS. FPIS's registered office and physical address is:

9c William Pickering Drive
Rosedale
Auckland 0632
New Zealand

Telephone: 09 415 4213
Facsimile: 09 415 4214
Website: www.fpis.co.nz

2.2 FPIS is a limited liability company registered in New Zealand. FPIS has operated for over 25 years, providing fire inspection services nationwide.

2.3 FPIS is an accredited inspection body and employs 15 accredited Technical Officers nationwide. Its customers include fire engineers, fire protection contractors, building owners, and insurers. FPIS has experience in inspections, which includes:

- (a) inspection of new fire sprinkler systems;
- (b) annual and biennial re-inspections of fire sprinkler systems;
- (c) inspection of fire alarm systems;
- (d) testing of isolating valves and flow switches;
- (e) street hydrant flow testing;
- (f) inspection and testing of dry and wet risers;
- (g) testing of backflow prevention units; and
- (h) inspection and testing of special hazard systems including gas flood, deluge, water mist and tail-end systems.

2.4 FPIS's shareholders are:

- (a) Guardian Alarms Wellington Limited;
- (b) Tyco New Zealand Limited (trading as Wormald);
- (c) Chubb New Zealand (unlimited company);
- (d) Fire Security Services Limited;
- (e) Pyro-Tech Services Limited;
- (f) AFS Total Fire Protection Limited;

- (g) Argus Fire Protection Limited;
- (h) Clements Consultants Limited;
- (i) Gary Arthur Choat;
- (j) B J Houston; and
- (k) G D MR Hodge.

2.5 The majority of the 11 shareholders provide a wide range of total fire protection system products and services to their customers, as well as other services such as security systems, and building warrant of fitness inspections. With regard to fire protection system testing, inspections, and re-inspections, these companies will often engage FPIS as a subcontractor. The shareholders of FPIS are the main customers of FPIS.

2.6 The contact person at FPIS is:

Dave Hipkins
National Technical Manager, Wormald (Tyco New Zealand Limited)
09 635 0749
dhipkins@tycoint.com

2.7 Correspondence and inquiries for FPIS in respect of this notice should in the first instance be addressed to:

Bell-Booth Sherry Solicitors
PO Box 33002
Takapuna 0740

Attention: Karen Sherry QSM
Telephone: 09 489 9177
Facsimile: 09 486 0569
Email: karen@bellboothsherry.co.nz

3. Proposed Transaction

3.1 Aon is proposing to acquire the book of business, assets and certain liabilities of FPIS. [**REDACTED**

]

3.2 Specifically, Aon proposes to:

- (a) [**REDACTED**]; and
- (b) purchase the benefit of all FPIS's material contracts, including FPIS's motor vehicle lease obligations as Aon sees fit, and, subject to negotiation with the landlord, acquire a leasehold interest in FPIS's premises at 9c William Pickering Drive, Auckland; and
- (c) purchase FPIS's computer system, office assets, systems, and associated intellectual property, including FPIS's Client Relationship Management system, and archive records held by FPIS of New Zealand buildings' sprinkler designs.

3.3 For clarity, Aon and FPIS have agreed that Aon will not:

(a) [REDACTED]; or

(b) [REDACTED]; or

(c) assume responsibility for any other liabilities of FPIS.

3.4 Aon will not purchase FPIS's subsidiary, Firetech Training Limited.¹

3.5 [REDACTED], FPIS's major shareholders² have agreed [

REDACTED

].

3.6 [

REDACTED

].

Genesis of, and Aon's rationale for, the proposed transaction

3.7 In 2015, a representative of FPIS approached Aon in relation to the potential acquisition by Aon of FPIS's business. [REDACTED

].

FPIS was not put up for tender or otherwise offered to the market.

3.8 FPIS is an attractive target for Aon because it is a well-regarded participant in the industry with a long-term and loyal network of customers, as well as qualified and well-regarded staff.

3.9 FPIS's business objectives of providing high quality services and promoting the fire safety industry to help make people and buildings safer are aligned with Aon's objectives. Aon and FPIS have both demonstrated a commitment to the fire protection industry by playing a part in the development of quality standards for the industry. The experience of FPIS's qualified staff will be a valuable addition to Aon.

3.10 Aon provides a broad range of risk management services, which may appeal to FPIS's clients. Acquiring FPIS's book of business will mean that Aon may be able to cross-market its other services to FPIS's customers.

¹ Firetech Training Limited is accredited by NZQA as a private training establishment, under the Education Act 1989. Firetech Training Limited is the only private training establishment that offers NZQA unit standards in fire safety and protection.

² Guardian Alarms Wellington Limited, Tyco New Zealand Limited, Chubb New Zealand, and Fire Security Services Limited.

Ancillary agreements associated with the transaction

- 3.11 On some occasions, Aon has supplied fire certification services to FPIS at arm's length rates. Aon also provides inspection services to some of FPIS's shareholders. However, there are no existing long-term supply arrangements between Aon and FPIS.

Competition agencies in other jurisdictions

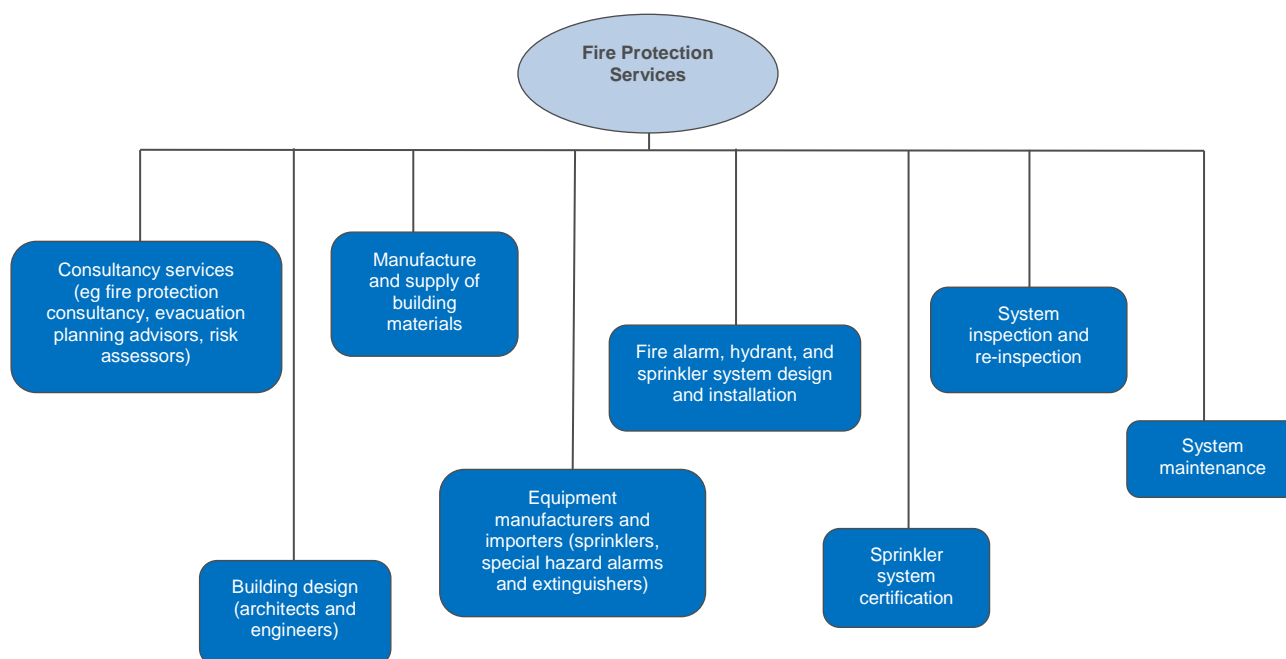
- 3.12 No other competition agencies have been or will be notified of the proposed acquisition. The acquisition is New Zealand specific.

PART 2: INDUSTRY CONTEXT AND RELEVANT MARKETS

4. Industry context

- 4.1 The fire protection services market includes the provision of a range of products and services, designed to minimise the loss or damage that results from fires. **Figure 1** provides an overview of the fire protection industry.

Figure 1: Diagram of Fire Protection Industry



- 4.2 Fire protection systems have traditionally been referred to as either passive fire protection systems or active fire protection systems.
- 4.3 In broad terms, passive fire protection systems are components of a building that separate "fire cells" or fire compartments" to slow down or prevent the spread of a fire. They include fire-resistant walls, glass, and doors, and fire-proof cladding.
- 4.4 Active fire protection systems include fire detection systems (such as alarms), manual or automatic fire suppression systems, and sprinkler systems. Fire suppression systems are systems designed to control or extinguish a fire, and can include fire extinguishers.
- 4.5 Inspection services are generally regarded as being part of active fire protection. The two main types of inspection services provided in relation to fire protection systems are:
- inspections of newly installed fire protection systems; and
 - re-inspections of fire protection systems as part of ongoing maintenance.
- 4.6 Those two services are discussed further below, being the areas of horizontal overlap between Aon and FPIS.

Inspections of newly installed fire protection systems

- 4.7 The designer of a construction project will specify the type of fire protection system that will be installed in the new building, as well as the type of standards with which the fire protection system must comply.
- 4.8 For new installations of fire protection systems, compliance with the Building Code (issued under the Building Act 2004) is usually achieved by adhering to national fire protection standards for sprinkler, hydrant and alarm systems. These standards (**NZ Standards**) include NZS4541 (sprinkler systems for commercial buildings), NZS4515 (sprinkler systems for smaller, residential buildings), and NZS4512 (for fire alarm systems). Adherence to the NZ Standards is an acceptable method of establishing compliance with the Building Code. Under the NZ Standards, fire protection systems must be independently inspected and certified. Building consent authorities (such as local councils) will also usually require independent certification of fire protection systems before they issue a Code Compliance Certificate at the end of the construction of the building.
- 4.9 Normally, the designer of a construction project will specify compliance with NZ Standards, but is also able to specify compliance with other fire protection system standards if the alternative standard is appropriate. Other fire protection system standards include U.S. standards (such as those published by the National Fire Protection Association), insurance company requirements (such as those published by FM Global), or European standards.
- 4.10 Typically, the owner/developer of a construction project will appoint a construction company to build a building. The construction company will then subcontract a specialist fire protection company to install the alarm and sprinkler systems into the building. There are approximately 50 fire protection companies in New Zealand. They include FPIS's shareholders, as well as entities such as FFP Canterbury Limited, South Pacific Protection Limited, and Triangle Fire Protection Limited.

The fire protection company subcontracted by the construction company will then usually subcontract an accredited inspection company (such as Aon, FPIS or other companies) to inspect the fire protection systems, in order to demonstrate that the installation complies with installation standards (NZ Standards or any other standards as specified by the designer). The contractual relationships are depicted in **Figure 2** and **Figure 3** below. **Figure 2** indicates how the contractual arrangements have traditionally worked, and continue to mainly work, with a fire protection systems company engaged by the main building contractor. In recent times, Aon has observed more flexibility in terms of who may engage the sprinkler system certifier (the design team/architect and engineers, project manager, or main building contractor). On occasion, the sprinkler system certifier has directly subcontracted the inspection company.

Figure 2: Traditional Contractual Arrangements for New Inspections

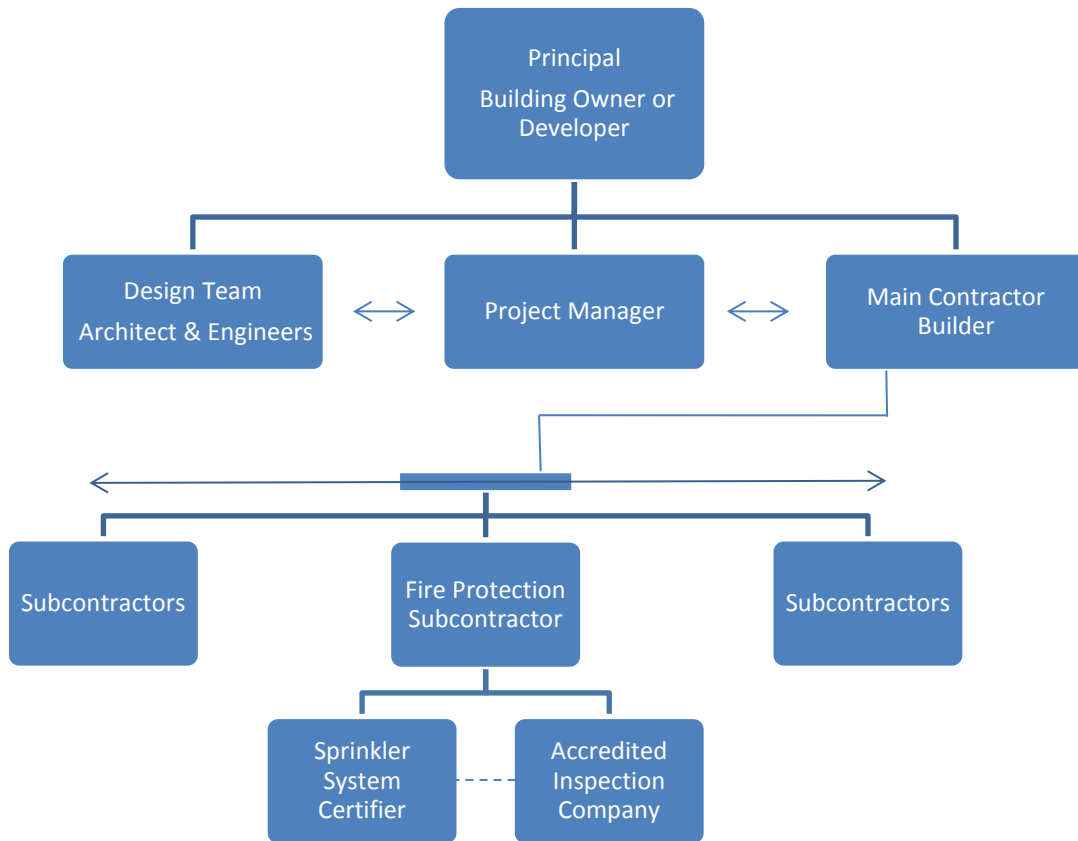
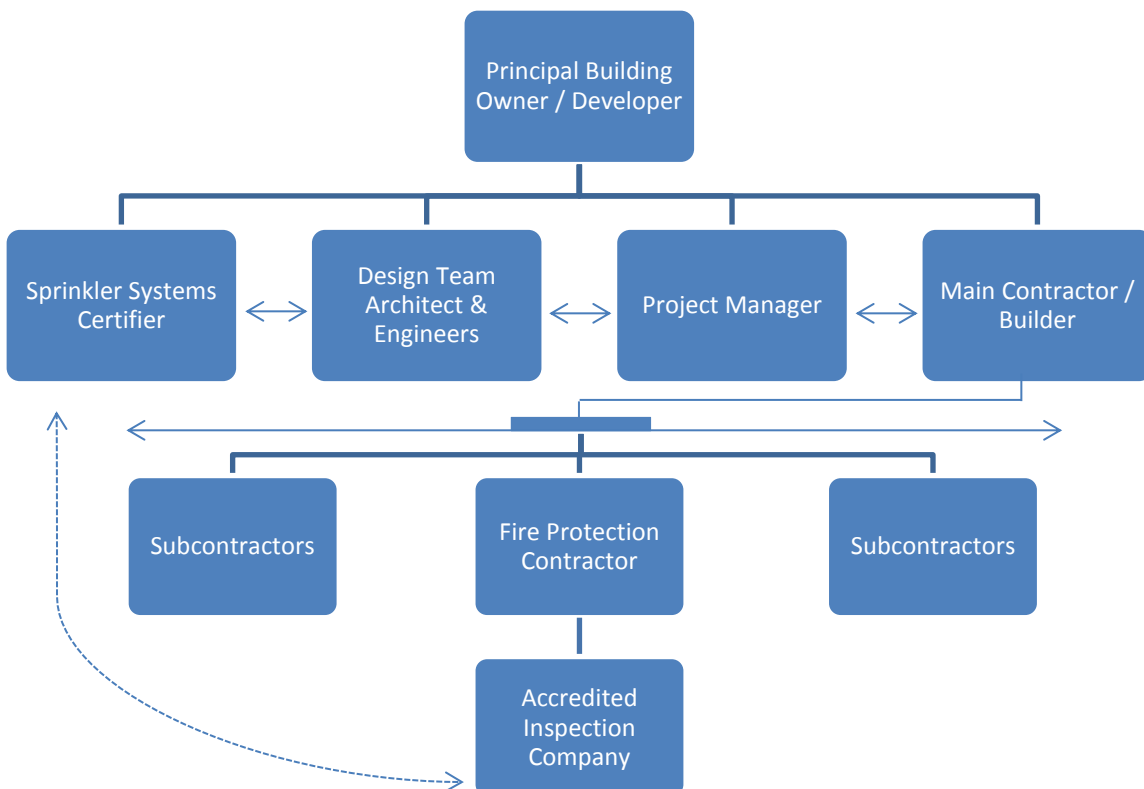


Figure 3: Non-traditional Contractual Arrangements for New Inspections



4.11 There is no publicly available information on this point, but Aon estimates that the value of contracts for installation of fire protection systems is in the order of several hundreds of million dollars per year, and that the value of inspection services for newly installed fire protection systems is about [REDACTED].

Re-inspections of fire protection systems

4.12 Active fire protection systems are referred to as "Specified Systems" for the purposes of regulations passed under the Building Act. This means that fire protection systems are listed on a building's Compliance Schedule. The Compliance Schedule will usually require that ongoing inspection, testing and maintenance of the fire protection system be carried out in accordance with NZ Standards. However, as with new inspections, it is possible for the building's designer to specify other fire protection system solutions as described in paragraph 4.9 above.

4.13 The purpose of ongoing inspection, testing, and maintenance requirements is to ensure that installed fire protection systems will perform reliably in the event of a fire. NZ Standards require sprinkler systems to be inspected either annually (for residential fire protection systems installed in, for example, rest homes) or biennially (for most other commercial and industrial buildings).

4.14 As shown in **Figure 4** and **Figure 5**, purchasers of re-inspection services include specialist fire protection service companies, building management companies, and building owners.

Figure 4: Traditional Contractual Arrangements for Re-inspections

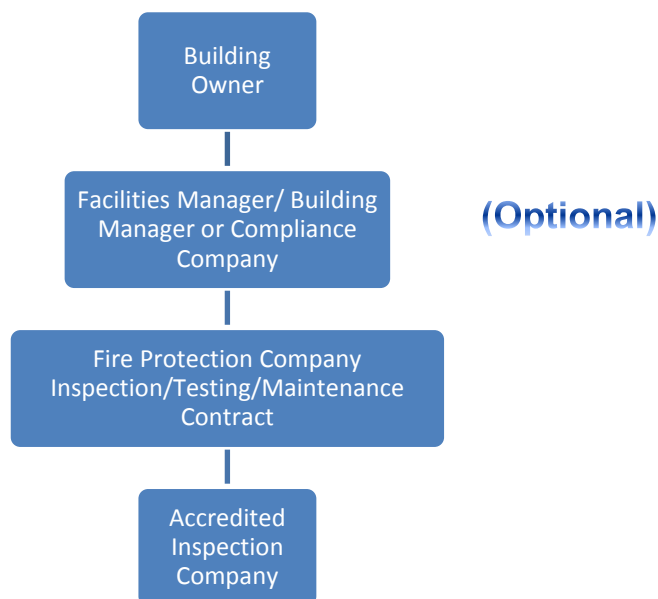
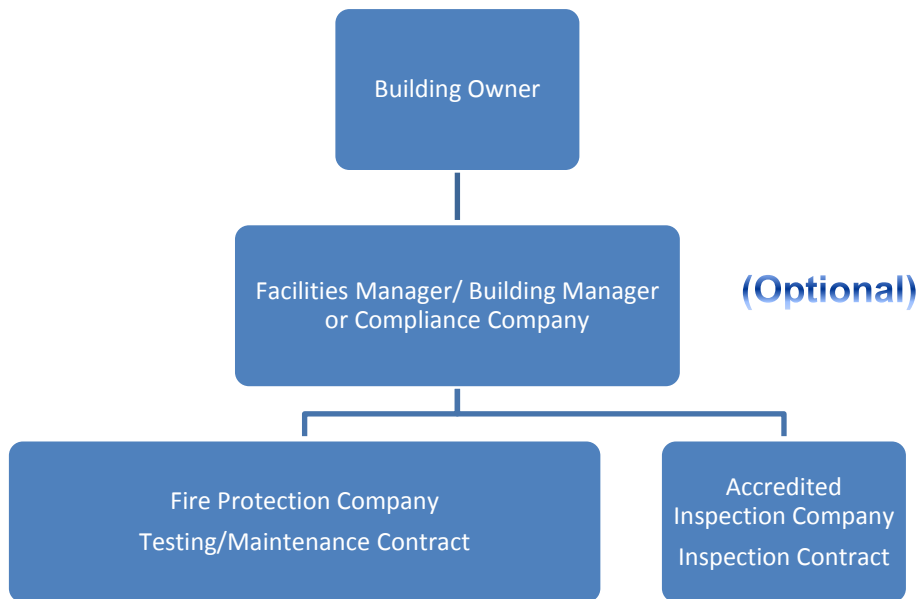


Figure 5: Non-traditional (Direct Client Relationship) Contractual Arrangements for Re-inspections



4.15 Aon estimates the value of services provided by inspection companies at around [REDACTED]. This figure is a small fraction of the value of contracts relating to the on-going servicing of fire protection systems. Aon estimates this is in the order of several hundreds of million dollars per year.

5. Relevant markets

5.1 In the Commission's Mergers and Acquisitions Guidelines, the Commission states that it defines markets in the way that best isolates the key competition issues that arise from the merger, and that in many cases this may not require a precise definition of the boundaries of a market. As set out below, we consider the relevant market to be the national market for the inspection of new and existing sprinkler and fire alarm systems (the **inspection market**). However, to assist the Commission, we have also considered other aspects of the fire protection services market.

The inspection market

5.2 The applicant submits that the key potentially affected market for the purposes of assessing the proposed acquisition is the inspection market which, as outlined above, involves a range of services, specifically inspection services for new build installations (which are services provided to ensure a Code Compliance certificate can be issued) and services for the re-inspection of sprinklers (as required by warrant of fitness regimes imposed by local councils under a building's Compliance Schedule).

5.3 There are a range of companies that specialise in inspection, including FPIS and Aon, as listed in paragraph 6.2 below. Based on the information available on the Fire Protection Association of New Zealand's website (<http://www.fireprotection.org.nz>), all of those companies offer services nationally/have national coverage.

- 5.4 As outlined further below, it is not necessary to have staff/an office in the region in which work is carried out. That is, the market is characterised by the inspection company staff member travelling to the location of the customer – no company has an officer in every location where inspection services are required (indeed, to do so would require an office in virtually every town in New Zealand). For the purposes of this application, Aon submits that it is appropriate to adopt a market that is national in its geographic extent.
- 5.5 To Aon's knowledge, Aon, FPIS, and Argest Technical Services Limited each have offices in main centres in both the North and South Islands:
- (a) For Aon, as an insurance broker, Aon has offices around the country. While the operation of Aon's inspection business is based in Auckland, it has been able to locate staff in broking offices, reducing the costs of Aon's overheads.
 - (b) FPIS has established multiple offices, which Aon assumes would be in order to reduce the accommodation and travel costs associated with providing inspection services around the country, and for convenience.
 - (c) Aon is aware that Argest has established offices in Wellington and Christchurch, and Aon assumes that it has done so for similar reasons. Aon understands that Argest also has an Auckland office, but does not have an inspector based in that office.
- 5.6 Fire System Inspections Limited and Building and Fire Safety Limited are both based in the Auckland region, and Aon understands that much of their work is in the area north of Taupo and in the Gisborne area.
- 5.7 Hudson Fire Limited is based in Dunedin, with a staff member in Christchurch, and appears to generally provide services in the South Island. Aon understands that Hudson Fire's Dunedin-based principal uses a campervan as a mobile office, and for transport and accommodation when carrying out inspections outside the Dunedin area, and that Hudson Fire's Christchurch-based employee works from a home office.
- 5.8 The equipment needed for most inspection jobs can be transported around the country relatively easily. For example, all equipment needed for "average-sized" inspection jobs, such as for supermarkets and small multi-storey buildings, can be transported on commercial passenger flights, and inspection companies can use SUVs/utes to transport the necessary equipment to its customers' sites. The largest piece of equipment required measures 200mm in diameter by 1m in length, and is needed for inspections mainly in Auckland and Christchurch. For larger jobs, equipment can be transported by freight.
- 5.9 The main constraints on the ability to provide inspection services in different areas of the country are the logistics and costs of travel (ie, flying or driving to customers' sites) and accommodation, and any safety considerations that may restrict the number of hours an employee spends conducting inspections and driving between centres. However, there are ways to minimise those costs. For example, as outlined above, Hudson Fire conducts its business out of a campervan (used for transport, for accommodation, and as a mobile office) and out of a home office.

- 5.10 In order to make travel to different geographic areas economic, inspection companies tend to schedule their inspection jobs such that an individual employee can do multiple jobs in one trip, depending on the nature of the job. For example:
- (a) it would be economic for an inspection company to send an employee to a large industrial complex, for example, a milling operation, and, of course, the Aluminium Smelter at Tiwai Point, even if the inspection company had no other jobs to complete in the area; and
 - (b) it would be economic for an inspection company to send an employee to a location where the inspection company did not have staff based, if the inspection company could undertake, for example, three inspections over a period of two days.
- 5.11 Although providing services nationally may require greater scale than providing services exclusively in, say, the North Island or the South Island, it is possible for an inspection company to partner with others, until it is in a position to offer services nationwide (for example, by having another employee to work out of a home office in a different part of the country). For instance, until Aon's inspection business grew large enough for Aon to have an employee in the South Island, Aon provided inspection services only in the North Island, and engaged Hudson Fire to conduct inspections in the South Island. In light of the above, Aon submits that the appropriate geographic extent of the market is national. However, even if smaller geographic markets were adopted (eg, a North Island market and a South Island market), Aon does not consider that this would affect the competition analysis, given the low barriers to entry.
- 5.12 Aon estimates that a newly established inspection company would aim to generate [REDACTED] of revenue in its first year. This is on the basis that an inspector typically earns about [REDACTED] a year, the equipment required to conduct inspections costs approximately \$10,000 per staff member, it is sufficient to enter with just one qualified staff member, the listing fee for inspection companies is about \$1,630, and \$10,000 in fees is required for accreditation as a Type A inspection body by International Accreditation New Zealand.
- 5.13 Finally, for completeness, as outlined below in paragraph 5.17, it is possible for the Compliance Schedule to specify a non-installation alternative, though this is an unattractive alternative for many building owners.

Other segments of the broader fire protection services market

- 5.14 In other segments of the broader fire protection services market, services are provided by a range of other participants. Those services include installation of sprinkler and other fire protection systems, street/hydrant flow testing, backflow testing, and flow testing, as well as special hazard systems including gas flood, deluge, water mist and tail-end systems.
- 5.15 A range of other businesses in different sectors also provide one or more of those services. For example, backflow device testing services are also provided by the plumbing industry, hydrant flow testing services are also provided by water supply companies, and flow switch testing services are provided by all fire protection service companies.
- 5.16 Because the provision of services in those segments of the market is highly competitive, the applicant does not believe that it is necessary to consider the effect of the acquisition on these markets further.

5.17 Under the Building Act, a designer is able to specify other fire protection system service solutions in order to meet the performance-based requirements of the Building Act. That is, it is possible for a designer to specify, in the Compliance Schedule, a fire protection system solution that will not require inspections. A non-inspection solution is specified infrequently – Aon estimates that those solutions would be specified for less than 5% of the market. The non-inspection solution is specified infrequently because inspection services are readily accessible, relatively cheap, and well accepted.

Sprinkler certification services

5.18 For completeness, Aon also provides sprinkler system certification services. Aon is currently the sole Sprinkler System Certifier as defined in NZS4541. NZS4541 is the installation standard for sprinklers in commercial buildings, and provides for certification of sprinkler systems. Sprinkler system certification is accepted and preferred by Councils in order to demonstrate compliance with the Building Act requirements for new buildings, as well as to demonstrate ongoing compliance through biennial inspection and certification processes.

5.19 As a Sprinkler System Certifier, Aon is involved in:

- (a) certifying a sprinkler system as meeting the requirements of the relevant building consent on the basis of a desk-based audit of the sprinkler system and a report provided by an accredited inspection company;
- (b) listing equipment for sprinkler systems; and
- (c) approving and listing contractors to work on sprinkler systems, including approving and listing accredited inspection companies.

5.20 In its capacity as Sprinkler System Certifier, Aon provides customers a list of accredited inspection companies on request, although most customers are already aware of who is available in the market (as set out later, customers tend to be relatively experienced organisations).

5.21 Over the past 60 years or so, sprinkler system certification services have typically been procured by fire protection subcontractors as outlined in **Figure 2**. More recently, Aon has begun contracting directly with the principal owners and developers of new buildings, as depicted in **Figure 3**. [

REDACTED

]. From time to time, when Aon, in its capacity as the Sprinkler System Certifier, contracts directly with a building owner or developer, Aon will also be asked to engage a company to conduct inspections of new sprinkler systems. However, certification and inspection services still tend to be provided separately.

6. Existing competitors, market shares, and competition in the inspection market

6.1 There is no established or publicly available market share information, and Aon has no information on other participants' revenue or their profitability. However, Aon sets out below a range of information about Aon (and to a limited extent about other participants), which may be used by the Commission to estimate market shares in the inspection market.

Existing Competitors

6.2 Table 1 lists Aon's and FPIS's main competitors for the provision of inspection services:

Table 1: Providers of various services

Company	Sprinkler Inspections – New Installations	Sprinkler Re-inspections as part of Building Warrant of Fitness	Fire Alarm Inspections
Aon	X	X	X
Fire Protection Inspection Services Limited (FPIS)	X	X	X
Fire System Inspections Limited (FSI)	X	X	
Argest Technical Services (ATS)	X	X	X
Building and Fire Safety Limited (BFS)			X
Hudson Fire Limited (HF)		X	

6.3 Businesses that provide some services, but not others, sometimes partner with one another in order to provide a full suite of services. For example, Aon understands that [REDACTED] and [REDACTED] often provide inspection services for the same projects. Aon has also observed that [REDACTED] may inspect fire alarms on projects where Aon is engaged to inspect sprinkler systems.

Turnover and staff numbers

6.4 Aon's approximate annual turnover for its financial year to December 2015, and Aon's estimates of FPIS's annual turnover for its financial year ended March 2016, are set out in Table 2.

Table 2: Aon's and FPIS's annual turnover

Company	New Sprinkler Inspections	Sprinkler Re-inspections	Alarm Inspections	Other Income
Aon	[REDACTED]	REDACTED]
FPIS	[REDACTED]	REDACTED]

6.5 Aon estimates that, over the past six years, [REDACTED]].

6.6 Staff figures for Aon and estimates of its competitors' staff figures as at 1 June 2016, are set out in Table 3.

Table 3: Staff numbers

Company	Number Productive Staff	Number Trainees
Aon ³	[REDACTED]]
FPIS	[REDACTED]]
FSI	[REDACTED]]
ATS	[REDACTED]]
BFS	[REDACTED]]
HF	[REDACTED]]
Total	[REDACTED]]

6.7 Over the last four years, Aon has increased its staff numbers from [**REDACTED**]].

How inspection companies compete

6.8 As indicated in Table 2, Aon's and FPIS's businesses are weighted towards sprinkler re-inspections. New sprinkler inspections do not provide repeat income and they are comparatively infrequent.

6.9 When choosing a provider of sprinkler inspections services:

- customers have the choice of using a single provider or multiple providers for new sprinkler inspections;
- customers also have the choice of using a single provider or multiple providers for sprinkler re-inspections;
- customers will not necessarily use the same provider for new sprinkler inspections and re inspections. For example, Aon carries out most new sprinkler inspections for construction contracts in the Waikato/Bay of Plenty region, including for [**REDACTED**] stores. However, FPIS carries out re-inspections for [**REDACTED**]; and
- in some cases, the building owner will choose the provider of sprinkler re-inspections and different inspection service suppliers may be selected for different sites. For example, Aon carries out all sprinkler re-inspections for [**REDACTED**], and FPIS carries out all sprinkler re-inspections for [**REDACTED**]. However, new fire protection system inspections for that same entity are provided by the companies selected by the fire protection system contractor for those particular construction projects.

6.10 Inspection companies compete for business on price, by building relationships with customers, and on quality of service.

6.11 [**REDACTED**]].

6.12 Inspection companies typically win business by approaching fire protection companies, and vying for their business. However, inspection companies will sometimes approach others. For example, Aon understands that one of [REDACTED] employees tends to approach building owners rather

³ [REDACTED]

than fire protection companies, and Aon recently approached a facilities manager in order to retain the inspection work for [REDACTED].

6.13 By way of further illustration of how competition may occur, [

REDACTED]

(a) [REDACTED]

(b) [REDACTED]

6.14 [

REDACTED

].

6.15 [

REDACTED

].

6.16 Relationships between an inspection company's employees and the main client contact are also important factors that determine whether inspection work is won or lost. For example:

(a) [REDACTED

].

(b) [REDACTED

].

6.17 In terms of quality, Aon submits that customer service and responsiveness is also a factor. For example, [REDACTED

1.

PART 3: COMPETITION ANALYSIS

7. Introduction

- 7.1 The proposed transaction is unlikely to substantially lessen competition in a market. In the only market where the proposed transaction will result in horizontal aggregation (ie, the inspection market), Aon will be constrained by existing competitors, the threat of new entry, as well as, to an extent, alternative solutions.
- 7.2 The requirements of the NZS4541 mean the threat of new entry into the national market for sprinkler system certification services will constrain Aon from engaging in any foreclosure strategy that could give rise to vertical or conglomerate competition issues.

8. Counterfactual

- 8.1 As mentioned earlier, the main customers of FPIS are also the shareholders of FPIS. The shareholders operate large businesses in the fire protection and security systems industry, and Aon understands that the shareholders wish to exit the market to concentrate on their core businesses.
- 8.2 Accordingly, Aon submits that, if Aon does not acquire FPIS, the shareholders of FPIS will seek an alternative purchaser (whether for FPIS's assets or for the FPIS shares).
- 8.3 Assuming an alternative purchaser is able to be found, Aon submits that, in the counterfactual, an alternative purchaser will likely wish to acquire FPIS's book of business or FPIS on similar terms as Aon's acquisition. [**REDACTED**].
- 8.4 [**REDACTED**].
- 8.5 [**REDACTED**].
- 8.6 [**REDACTED**].

8.7 [REDACTED]

8.8 The next section discusses the competition analysis in the factual compared with the counterfactual.

9. No horizontal competition issues

9.1 Although the proposed transaction will result in horizontal aggregation, the proposed transaction will not give rise to any horizontal competition issues. This is because:

- (a) there are already a number of providers of services for the inspection of sprinkler and fire alarm services, as outlined in the previous section;
- (b) FPIS's participation in the market for fire protection system services is largely limited to providing services to its shareholders, [REDACTED];
- (c) the barriers to entry into the inspection market are very low;
- (d) Aon's customers will have significant countervailing power over Aon; and
- (e) in relation to the proposed incentive arrangements for FPIS's current shareholders, there is no substantial lessening of competition when compared with the counterfactual.

9.2 Paragraphs 9.1(c) to 9.1(e) are discussed further below.

Provision of services to shareholder-customers

9.3 FPIS largely provides inspection services to its shareholders. For the year ending March 2016, close to [REDACTED] of its business came from its shareholders, as a subcontracted supplier to the building owners and as part of the wider fire protection services provided by FPIS's shareholders. Despite [REDACTED], the majority of FPIS's revenue is from the supply of services directly to its shareholder-customers, as opposed to the non-shareholder customers.

9.4 [REDACTED].

9.5 In the counterfactual, FPIS's shareholders are likely to continue to procure inspection services from FPIS to some degree until FPIS sells its business to an alternative purchaser who would purchase FPIS's business on terms that are similar to those proposed by Aon.

9.6 In particular, an alternative purchaser would be likely to [REDACTED] as a condition of entering into a sale and purchase agreement for FPIS. Such a mechanism would protect the value of FPIS's business [REDACTED]. Therefore, there is no difference between the factual and the counterfactual, and no substantial lessening of competition in relation to Aon's acquisition when compared with the counterfactual.

9.7 [REDACTED]
As outlined in paragraph 3.6, FPIS's representative approached Aon about the possible purchase by Aon of FPIS's business,[REDACTED].

9.8 [REDACTED]

1.

Requirements for new entry and expansion

- 9.9 The barriers to entry into the inspection market are very low.
- 9.10 The key entry requirement to provide services for the inspection of sprinkler and fire alarm services is that the inspection company must be accredited under ISO/IEC17020 as a type A inspection body. This is not an onerous requirement.
- 9.11 Accreditation under ISO/IEC17020 is managed by International Accreditation New Zealand (**IANZ**)⁴. ISO/IEC17020 specifies requirements for the operation of various types of bodies performing inspection. When Aon first began providing fire protection system services, Aon prepared a manual as part of its accreditation application that sets out the technical and quality system Aon would undertake when inspecting fire protection systems. In order to be accredited under ISO/IEC17020, Aon had to set up a system that complied with the requirements of ISO/IEC17020. The overall application process took about a month, and about \$10,000 in fees were paid to IANZ.
- 9.12 As mentioned earlier, Aon is involved in approving and listing accredited inspection companies as part of its Sprinkler System Certifier role. Aon will list an accredited inspection body (accreditation is managed by IANZ, as mentioned above) if:
- (a) Aon is satisfied that the inspection body has adequate levels of professional indemnity (minimum \$2 million) and public liability (minimum \$10 million) insurance; and
 - (b) the inspection body pays the biennial accreditation service fee of \$1,630 to Aon.
- 9.13 Other requirements for entry and expansion are access to transport and accommodation, and employees that are able to develop relationships to establish a loyal client base.
- 9.14 As previously outlined, it is sufficient to rely on SUVs and commercial flights for transport and inspection companies have developed creative ways of minimising overheads and transport and accommodation costs. They include:
- (a) using a campervan as a mobile office, for transport, and for accommodation;
 - (b) using a home office to reduce overheads; and
 - (c) partnering with inspection companies present in other locations.
- 9.15 The fact that barriers to entry are low is evidenced by the fact that there has been new entry over the past few years, such as by Fire System Consultants Limited (which has since been purchased by Argest Technical Services). Evidencing the ease of entry is that new entrants have been able to partner with other inspection companies until they attract employees from established inspection companies, to enable them to expand. For example:
- (a) When Aon entered the inspection market in 2010, having purchased Central Inspection Services Limited, Aon provided inspection services only in the North Island. Aon partnered

⁴ There is an alternative to IANZ operating in New Zealand, *Joint Accreditation System of Australia and New Zealand (JAS-ANZ)*. However, all accredited inspection companies currently use IANZ as their accreditation organisation.

with Hudson Fire in the South Island, until Aon was in a position to hire an employee in the South Island.

- (b) Other inspection companies entered with one employee, and have since hired an additional one or two employees.
- (c) Aon understands that, in addition to its two employees, Fire System Inspections is looking to hire a third employee.

- 9.16 Aon therefore submits that, even though some employment contracts in the inspections market include restraints of trade,⁵ those restraints are of sufficiently short duration, and a sufficient number of employment contracts do not appear to include restraints of trade, for new entrants to be able to enter and expand in a timely fashion, and to a sufficient extent.
- 9.17 Further, new entrants can choose to provide either new fire protection system inspections or re-inspection services, or both.
- 9.18 New entrants could include entities that already provide some inspection or re-inspection services, but not the entire range of inspection or re-inspection services. Examples include Hudson Fire, which does not currently provide new fire protection system inspection services, and Building Fire and Safety, which specialises in alarm system inspections, but only provides new system inspection services (alarm system inspections are not required to be re-inspected).
- 9.19 Other new entrants could include facilities management companies. For example, Aon understands that Argest established a new division in order to self-supply inspection services.
- 9.20 Overall, this demonstrates that new entry is likely, would be of sufficient extent, and would be sufficiently timely to constrain Aon after the proposed transaction.

Countervailing power of customers

- 9.21 Aon's customers will have countervailing power over Aon. Aon's direct and indirect customers (including FPIS's shareholder-customers and customers of the shareholder-customers) will include companies with significant purchasing power, many of which are listed on the NZX or are New Zealand subsidiaries of international companies.
- 9.22 Aon is further constrained in the inspection market because of its broader relationships with many of its customers. Inspection services make up only a small component of the revenue Aon derives from its customer relationships. Therefore, an attempt to require its customers to use Aon's inspection services would be likely to prejudice Aon's broader relationships with its customers.
- 9.23 The fire protection services industry is competitive. This means that customers (including FPIS's shareholder-customers) will seek alternative suppliers if Aon's prices for inspection and re-inspection services become uncompetitive. If Aon's customers also choose to find alternative suppliers for other services, any increases in Aon's revenue from the lower margin fire protection

⁵ [REDACTED

]

services are likely to be offset by reductions in revenue for the provision of its other, potentially higher margin, services.

9.24 This means that Aon will be constrained by the countervailing power of its customers.

10. **No vertical or conglomerate issues**

10.1 Given that Aon is the sole provider of sprinkler system certification services and inspection companies are required to carry out those services, Aon has considered whether there are any vertical or conglomerate issues. Aon has also considered whether any vertical or conglomerate issues could arise from the bundling of inspection services with other services. Aon submits that there are no vertical or conglomerate issues, based on the reasons outlined below.

10.2 In *BlueScope Steel / Pacific Steel*, the Commission described the potential for vertical or conglomerate competition issues in the following terms (at paragraphs 89-91):

We have considered whether or not the proposed acquisition would create or increase the ability and incentive of the merged entity to foreclose competitors at different levels in the supply chain by offering bundled discounts or by tying purchases of flat and long steel products together.

In order for such a strategy to be possible and profitable, two factors would have to hold:

90.1 that the merged entity has a "must-have" product for which there are few good, cost-effective alternatives;

90.2 that tying or bundling the sale of this "must-have" product to a second product, which has substitutes, forecloses a competitor(s) for that second product.

Any losses made by discounting the bundled product would be recouped once producers of the second product are foreclosed (or are rendered less competitively effective). The market power of the merged entity in the second product may thus be enhanced and competition may be lessened.

10.3 In *Vodafone/TelstraClear*, the position was summarised in the following terms:

[Bundling] could raise competition concerns if bundling prevented rivals obtaining sufficient scale to be viable. Alternatively, bundling might take the form of predatory pricing. It would also have to be likely that following any foreclosure, Vodafone would be well positioned to exercise enhanced market power, such as increasing prices, resulting in a substantial lessening of competition.

Bundling may be a concern in this case if the merged entity acquired the ability and incentive to foreclose its rivals. We note that pro-competitive bundling can also have an exclusionary effect as a result of superior competitive performance. An additional requirement before bundling becomes a concern, therefore, is that foreclosure would need to have the effect of substantially lessening competition.⁶

...

⁶ At paragraphs 408, 409.

The Commission notes that for there to be a substantially lessening of competition as a result of anti-competitive foreclosure via bundling, the conditions of entry would need to be such that an exercise of market power by Vodafone post foreclosure would not attract price disciplining entry or expansion.⁷

Sprinkler certification services

- 10.4 Aon does not generally provide inspection and certification services as a bundle or offer a discount for purchasing Aon's inspection services if certification services are also purchased (and vice versa).
- 10.5 Aon will occasionally tender for work requiring both inspection and certification services. When Aon tenders for this work, Aon lists both services as separate line items. Building developers/owners may appoint Aon to provide the certification services, and Aon may or may not be appointed to provide inspection services by the fire protection system subcontractor. [REDACTED]
- 1.
- 10.6 Although Aon is the sole provider of sprinkler system certification and may choose to offer its services in bundles (ie, offer its sprinkler system certification services together with its Aon-owned inspection services), Aon will not have an increased ability or incentive to engage in a foreclosure strategy that requires purchasers of its sprinkler system certification services to also purchase other services from Aon. This is because:
- (a) inspection services provided are typically provided as stand-alone services;
 - (b) there are low barriers to entry into the provision of sprinkler system certification services, as discussed below;
 - (c) NZS4541 prevents Aon, as the Sprinkler System Certifier, from refusing to provide other inspection companies with access to necessary information (subject to limited exceptions); and
 - (d) Aon will be constrained by the countervailing power of its customers.
- 10.7 The barriers to entry into the provision of sprinkler system certification services are very low. The key requirements for providing sprinkler system certification services as a Sprinkler System Certifier are that the company must be accredited under ISO/IEC17020:2012 as a type A inspection body (details on accreditation have been mentioned at paragraph 9.11), and must employ an appropriately qualified chartered professional engineer (CPEng). The standard states that, ideally, the CPEng should also be a professional member of IPENZ in the fire practice college, but this is not a mandatory requirement. Once the company satisfies the requirements, the company may self-declare itself as a Sprinkler System Certifier, as there is no external regulator of sprinkler system certifiers.

⁷ At paragraph 423.

10.8 Having said that, although there is no external regulator of sprinkler system certifiers, if an engineer purports to provide sprinkler system certification services as or on behalf of a "sprinkler system certifier" that does not meet the requirements of the standard, that engineer is likely to be subject to disciplinary action by the Chartered Professional Engineers Council and/or IPENZ. It is also possible that such conduct would breach the Fair Trading Act 1986.

10.9 If Aon attempted to engage in any foreclosure strategy, it would likely result in new entry of providers of sprinkler system certification services. Likely new entrants could include other providers of inspection services, other entities in the broader fire protection industry, and facilities management companies. The threat of new entry means that Aon will not have the incentive to engage in a foreclosure strategy, and will not have the ability to foreclose the market.

10.10 [REDACTED]⁸ [REDACTED]

].

10.11 The sprinkler system standard now includes a provision⁹ that requires a Sprinkler System Certifier to make information that it holds in that capacity available to listed inspection companies (subject to, in some circumstances, the written consent of owners of buildings such as prisons, courts, and military facilities). Any changes to that standard would be subject to a public consultation process. This means that:

- (a) if Aon attempted to restrict other inspection companies' access to information, Aon would be in breach of the standard; and
- (b) if Aon attempted to remove the requirement to share information from the standard, the Committee responsible for the standard would likely receive objections from other inspection companies (and possibly interested government departments, like MBIE and the Commerce Commission), and Aon would be unsuccessful in attempting to change the standard.

10.12 Finally, as discussed in paragraphs 9.21 to 9.24, Aon will be constrained by the countervailing power of its customers. In particular, if Aon attempted to exercise market power, many of Aon's direct and indirect customers will be in a position to support new entry into the provision of sprinkler system certification services and the inspection market. This is particularly the case in the context of the nature of Aon's customers, the low barriers to entry into the provision of sprinkler system certification services and the inspection market, and the increasing tendency for building owners and developers (which include large organisations, such as [REDACTED]) to contract directly with providers of sprinkler system certification services (as outlined in **Figure 3**).

10.13 [REDACTED]

⁸ FPIS was the sole Sprinkler System Certifier, until Aon also became a Sprinkler Systems Certifier. Aon's Risk Management Team was concerned that [REDACTED] of FPIS's sprinkler system certification services was encouraging certain building owners to design buildings without certified sprinkler systems. Once Aon became a Sprinkler System Certifier, Aon was able to win much of FPIS's sprinkler system certification business [REDACTED], and FPIS left the market.

⁹ Clause 112.6 of NZS4541.

] Aon has, since becoming a sprinkler system certifier, listed three new inspection companies, even though new inspection companies impact on Aon's ability to grow its own inspection business. [**REDACTED**]].

Other services

10.14 Aon is also unlikely be motivated to bundle its inspection services with its other services. This is because:

- (a) Aon participates in competitive markets across all of its services (even though Aon is a leading company in some of those markets). Therefore, Aon is always constrained because its customers will always have a variety of options in relation to service providers.
- (b) [**REDACTED**]].

PART 4: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

11. Contact details of relevant competitors, buyers, and suppliers

11.1 A table setting out the contact details of relevant competitors is attached as Appendix 2.

12. Annual reports and financial statements

12.1 Copies of the most recent annual reports for Aon NZ and FPIS are attached as Appendix 3.

PART 5: CONFIDENTIALITY

13. Request for confidentiality

- 13.1 Confidentiality is sought for the information in this application included in square brackets and highlighted. A public version of this notice with the confidential information deleted will be provided to the Commission.
- 13.2 We request that we be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.
- 13.3 These requests for confidentiality are made because the information is commercially sensitive and disclosure would be likely to unreasonably prejudice the applicant.

PART 6: DECLARATION

I, Andrew Bergman, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

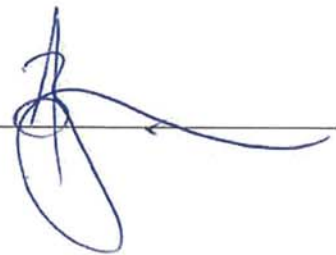
I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Andrew Bergman
General Manager – Finance

Sign: _____

A handwritten signature in blue ink, appearing to be 'A. Bergman', written over a horizontal line.

Date: _____

4 Nov 2016 .

Appendix 1: [CONFIDENTIAL]

[Provided separately]

Appendix 2: Details of Customers and Industry Participants

Part A: Details of Aon's Key Customers (including Revenue) [CONFIDENTIAL]

	Customer	Contact name	Contact details	Total Revenue (September 2016 YTD)
[REDACTED]				

Part B: Details of FPIS's Key Customers (including Revenue) [CONFIDENTIAL]

	Customer	Contact Name	Contact Details	Total Revenue (YE 31 March 2016)
[REDACTED]				

Part C: Contact Details for Other Industry Participants

Provider	Contact name	Contact details
Fire System Inspections Limited	Lindsay Morris (Director)	09 833 9126
Argest Technical Services Limited	Bruce Hay-Chapman (General Manager)	09 309 9419
Building and Fire Safety Limited	Warner Gebhardt (Director)	09 476 8019
Hudson Fire Inspections Limited	Geoffrey Hudson (Director)	03 487 6333

Appendix 3: Aon's and FPIS's Annual Reports

[Provided separately]