

Wilson Parking New Zealand Limited: investigation closure report

Date: 20 March 2015

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

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Purpose of this report

1. This report summarises the outcome of the Commission's investigation into Wilson Parking Limited's (Wilson Parking's) acquisition of parking leases and management agreements from Tournament Parking Limited (Tournament) on 1 July 2013 (the Acquisition).
2. In our view, the evidence does not support a conclusion that the Acquisition has resulted in a substantial lessening of competition in the areas where we had concerns.
3. This summary report has been prepared to provide a public record of our views, the reasons for these views and the decision we took not to pursue enforcement action against Wilson Parking. The report is intended to assist participants in the industry and the general public (including businesses) to understand the investigation and its outcomes.
4. We note that the analysis contained in this report is specific to the particular parking areas affected by the acquisition and would not necessarily be the same for other areas if other consolidation took place in the parking industry.
5. The Commission makes this report publicly available in accordance with its statutory functions and powers, including under section 25 of the Act, which allow the Commission to make information available with respect to the carrying out of its functions and the exercise of its powers.
6. The Commission emphasises that the views we have formed, as contained in this report, have not been tested in court. Where we have made assessments, we have proceeded by asking whether a substantial lessening of competition could ultimately be proven in court. However, only a court can make findings of fact or law, and this report does not purport to do either. Rather, it records the Commission's view on this investigation and the reasons for its decision not to pursue enforcement action against Wilson Parking.

Executive summary

Our investigation

7. On 1 July 2013 Wilson Parking acquired 63 car park leases and management agreements in Auckland, Hamilton, Wellington and Christchurch from Tournament.
8. Given that Wilson Parking and Tournament were New Zealand's first and second largest car parking providers, we had concerns that the Acquisition may have substantially lessened competition in breach of section 47 of the Commerce Act.

Our concerns

9. We were concerned that the Acquisition may have removed Wilson Parking's closest competitor in localised areas, potentially enabling Wilson Parking to raise car parking prices above competitive levels in those areas.

Areas we focussed on in our investigation

10. After an initial prioritisation exercise, we focused our investigation on car parking areas where the loss of Tournament removed a significant competitive constraint. These areas were Symonds Street and Parnell Rise in Auckland and Boulcott Street in Wellington.

Outcome of our investigation

11. In our view, the evidence does not support a conclusion that the Acquisition has resulted in a substantial lessening of competition in the areas where we had concerns.
12. The evidence before us indicated that existing competition and potential new entry would be unlikely to constrain Wilson Parking in the Symonds Street and Parnell Rise areas. However, the customer survey we commissioned indicated that public transport may be a sufficient constraint on Wilson Parking's ability to raise prices in these areas. Although this outcome is inconsistent with international literature and views expressed by other market participants, it may be explicable on the basis that both areas have good public transport and are close to tertiary education institutions.
13. Based on the survey results and our analysis of existing competition in Boulcott Street, we concluded that other competitors will continue to constrain Wilson Parking in the Boulcott Street area.

The Acquisition and the Commission's jurisdiction

14. On 1 July 2013 Wilson Parking paid \$[] to acquire approximately 63 car park leases and management agreements in Auckland, Hamilton, Wellington and Christchurch from Tournament.
15. The acquisition of the leases and management agreements falls for review under section 47 of the Act.

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The parties

The acquirer: Wilson Parking

19. Wilson Parking is a privately owned company and is New Zealand's largest public parking provider. It is part of a wider Wilson Group that has similar parking operations in Australia and in Asia.
20. In New Zealand, Wilson Parking has a nationwide presence and operates approximately 250 car parks, including car parks in all the main centres.
21. At present, Wilson Parking owns [] of the car parks that it manages with the remainder managed on behalf of third party landlords.

The target: Tournament

22. Tournament is a private company which began managing a car parking site in 1999 in Auckland. At the time of this Acquisition, Tournament operated approximately 80 sites in Auckland, Wellington, Hamilton and Christchurch.⁵
23. [] Tournament owns a number of the buildings from which it operates car parks. However, it operates the vast majority of its car parks on behalf of third party landlords.

Industry background – how public parking works

Parking products

24. There are two broad types of public parking: those located off the street (off-street parking) and those on the street (on-street parking).
25. Off-street parking includes dedicated parking buildings, underground car parks and open-air sites. Generally, off-street car parks offer the following parking options or products:
 - 25.1 **Casual parking** – typically this product offers parking for up to four hours and is charged by the hour (or part thereof). Consumers using casual parking are typically visiting the area for a limited amount of time, eg, for shopping or a meeting.

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⁵ At the time of this Report, it lists nine car parks on its website – five in Auckland and four in Wellington.

- 25.2 **Daily parking** – consumers pay a flat rate to park from early in the morning until the end of the day. Many car parks offer a discounted daily (Early Bird) rate if consumers enter before a certain time in the morning (for example many car parks use a cut off time of 8.30am). Consumers using this type of product are predominantly commuters who work in the area.
- 25.3 **Monthly parking** – this product allows consumers unlimited parking (often including weekends) for a month. It tends to be pre-paid and involve a contract between the consumer and the car park operator. Users of monthly parking are typically commuters and it is particularly useful for commuters who need to use their vehicle during the day, as it allows them to enter and exit the car park multiple times without paying for additional parking. It is not uncommon for employers to pay for monthly parking products on behalf of their staff. There are two types of monthly parking products: reserved and unreserved.
- 25.3.1 Reserved monthly parking guarantees entry to the car park and the same parking space each day.
- 25.3.2 Unreserved monthly parking does not guarantee the same parking space and may not guarantee entry if the car park is full, due to an oversell element in this category.
26. On-street parking can be free (with or without a time limit) or paid. Only local councils provide on-street parking. On-street parking is predominantly used by casual parking customers because, in general, on-street parks have time restrictions.⁶

How public car parks are managed

27. In most cases, commercial car park operators do not own the land and buildings from which they operate. Rather, they enter into an arrangement with the owner and the specific terms and the conditions of the arrangement are subject to negotiation between the two parties. In general, there are two types of arrangements:
- 27.1 **Lease** – this is where the car park operator pays a fee to the landlord for the right to operate the car park. Typically, the retail prices for parking are set by the car park operator. Of the 63 licenses Wilson Parking acquired from Tournament, [] are leases.
- 27.2 **Management agreement** – this is where the car park operator receives an agreed fee for operating the car park on behalf of the landlord. Typically, the retail price for parking is set by the landlord. Such agreements can include profit share provisions.
28. Leases and management agreements vary in length from month to month arrangements to terms of over 10 years. Most leases and management agreements

⁶ On-street parking in Auckland Central Business District (CBD) is not time restricted, but the cost per hour increases the longer you stay.

are for two years or longer and often include automatic renewal provisions. Car park operators compete for leases and management agreements when landlords put them out to tender.

Operators of public car parks

29. Other major commercial operators are described below.

29.1 **Care Park New Zealand Limited (Care Park)** is owned by part of Care Park Australia, an international car parking company. In New Zealand, it has approximately 42 car parks, two of which are in Auckland. The majority of its car parks are in Wellington.

29.2 **Secure Parking NZ Limited (Secure)** is 100% owned by its Australian parent company, which has extensive car park operations in Australia and Asia. Secure entered the New Zealand market in 2010 and has since won two large airport car park tenders, Auckland and Wellington. As at July 2013 Secure had grown to having 10 sites in total (seven in Auckland, two in Wellington and one in Dunedin).

29.3 **Cooper and Company NZ (Coopers)** operates four large car parks in Auckland, two of which it owns. Coopers developed the Britomart shopping complex and manages the complex's car park and recently expanded its presence by winning two tenders for sites close by.

[]⁷

29.4 **Tournament** continues to operate nine car parks in Auckland and Wellington.
[]

29.5 **Primeproperty Group Limited (Primeproperty)** is a property management group that owns and operates commercial office buildings, car parks, hotels and other properties, mainly in Wellington. It has nine car parks in Wellington, most of which are small monthly-only car parks. As at June 2014 it had two car parks open for casual and daily parking. It leases car parks to commercial operators, including to Wilson Parking currently and Tournament in the past, [].

Councils

30. Local councils operate on-street and off-street parking. Unlike commercial operators, councils have goals other than generating revenue from car parking.

30.1 **Auckland Transport** (manager of Auckland Council's on-street and off-street parking) operates five large parking buildings in central Auckland as well as various smaller open air car parks. The Council provides parking as a benefit

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to the public, []
 it is focused on reducing congestion and increasing the use of public transport.⁸

30.2 **Wellington City Council** operates one large off-street car park in the CBD and three smaller casual-only car parks, as well as providing on-street parking.

30.3 **Hamilton City Council** runs on-street parking and owns eight off-street car parks. Two of the facilities are managed by Wilson Parking but the council retains pricing control.

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30.4 **Christchurch City Council** provides parking in the Christchurch CBD, although it lost some parking buildings through the 2010 earthquakes. It currently has seven sites, all of which are open air sites.

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Public parking ancillary to hotels, shopping centres etc

31. Some entities offer parking to the general public as part of a larger offering (eg, SkyCity, Wellington Waterfront, hotels, shopping centres etc). Access is at times restricted to just their patrons. For example, SkyCity restricts public access to its car parks when demand is high at its casino.

Phases of the investigation

Phase 1: Prioritisation process

32. We undertook a prioritisation exercise to focus our investigation on the car parking areas where the Acquisition was most likely to lead to a substantial lessening of competition.

33. As a first step we identified key areas by examining competition with a 350 metre radius around each Wilson Parking and Tournament car park. Secondly, we narrowed the markets of focus to weekdays, as this is where the Acquisition would lead to the most potential harm. Finally, we undertook an analysis (examining lease/management agreement terms and interviewing landlords) to narrow areas down to those where entry is less likely.

34. This prioritisation process resulted in our investigation being focused on car parking in two areas in Auckland (Symonds Street and Parnell Rise) and one area in

⁸ Auckland Transport abolished early bird parking rates on 1 December 2014, raising all daily parking rates at its parking buildings to \$17 per day ("Early birds lose in parking change", The New Zealand Herald online, 18 November 2014).

Wellington (Boulcott Street). These were areas where we considered the Acquisition was most likely to substantially lessen competition and cause harm.

Phase 2: Consumer survey and in-depth investigation

35. In the three areas identified as of most concern we commissioned a survey of car park customers. The survey was designed to elicit evidence from consumers on how they regarded the closeness of competition between the merging parties and existing competitive constraint from other car parks and other modes of transportation in each of these areas. Colmar Brunton Limited conducted the survey on our behalf at 29 Wilson Parking operated car parks (including car parks that were acquired as part of the Acquisition), in and around these areas.
36. We also carried out further interviews with other car park operators, local councils and landlords, in each of these areas. We obtained and reviewed internal documents from Wilson Parking and analysed historic bidding on tenders in relation to any potential incumbency advantage.
37. Following the survey analysis and further investigation, we again narrowed the areas of potential concern to the Symonds Street and Parnell Rise areas.

Phase 3: Analysis of pricing and quantity data

38. We engaged NERA Economic Consulting Limited (NERA) to conduct pricing and quantity analysis of data provided by car park operators. The core purpose of the analysis was to test the robustness of the survey results and better inform us on the level of constraint imposed by public transport in Symonds Street and Parnell Rise areas, as well as to better inform our assessment of the geographic scope of the areas.

What would have happened absent the Acquisition

39. The 'with' scenario is Wilson Parking's Acquisition from Tournament of 63 leases and management agreements for the operation of car parks.
40. Our view is that what would have happened absent the Acquisition is that Tournament would have continued as an independent competitor with the same portfolio of sites as at 30 June 2013.
41. When asked what Tournament would have done if Wilson Parking had not been interested in the Acquisition, Tournament responded:

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42. []¹¹

⁹ Interview with Tournament Parking (25 June 2013).

Competition for leases and management agreements

How the Acquisition could lessen competition for leases and management agreements

43. Wilson Parking and Tournament compete to win contracts (leases and management agreements) with landlords.
44. The merger could have substantially lessened competition in relation to the Acquisition of leases and management agreements in two ways.
 - 44.1 First, if the Acquisition gave Wilson Parking market power in car parking markets, it may have an incentive to bid above competitive rates for leases and management agreements to keep competitor car park operators out and preserve this market power. Issues could arise if such increases could be passed on to end consumers post-merger.
 - 44.2 Second, if the Acquisition gave Wilson Parking the ability to reduce the price it pays to landlords for leases and management agreements, it could result in a reduction in the quantity of car parking supplied by these landlords in car parking markets, and therefore a reduction in the supply of car parking to consumers and a corresponding price increase.
45. Since the first of these theories relies on the merger resulting in a substantial lessening of competition in car parking markets, we have not considered it in detail here. This is because concerns are only likely to arise to the extent that they arise downstream and therefore any competition issues would be resolved by addressing the concerns in the downstream market.

Market definition: market for acquiring public car parking leases and management agreements

46. In this section we define a national market for the management of car park contracts.
47. The relevant 'product' is the management of car parks under contract, whether by lease, management agreement or other arrangement.
48. The different management structures tend to reflect different commercial considerations: leases give car park operators a higher degree of control over operations (eg, pricing), while management agreements allow a higher degree of landlord involvement. Nevertheless, we do not consider that this provides a basis for defining separate markets for each type of agreement. This is because:
 - 48.1 while a landlord seeking a management agreement may not switch to a lease, either way, the competitive alternatives available to the landlord are the same since the car park operators providing those services are identical; and

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¹¹ []
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- 48.2 there are no material differences between the product offerings of car parks operated under leases and management agreements.
49. As the competition issues are the same across both lease and management agreements, we have aggregated the two.
50. The evidence before us suggests that the geographic scope of the market is likely to be national. Care Park and Secure have each recently tendered and won tenders for leases and management agreements in Auckland despite a limited presence, and Secure is a relatively recent entrant based out of Australia.

Competition assessment: market for acquiring public car parking leases and management agreements

51. Pre-merger, the parties competed for the right to manage car parks under lease and management agreements. Our assessment is that post-merger the constraint Tournament provided was lost.
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52. We received a number of concerns (mainly from rival car park operators) relating to price decreases to landlords (referred to above at paragraph 44.2). These entities argued that incumbents have an advantage over non-incumbents in tenders (incumbency advantage) and that Wilson Parking currently engaged in behaviour that exacerbated this. Following the merger, Wilson Parking would have a greater number of leases in any one area and as such any incumbency advantage would increase the difficulty of another car parking operator entering or expanding in an area.
53. We were told that it is difficult for competitors to win leases and management agreements from incumbents because:
- 53.1 there is limited access to information to enable competitive bidding; and
- 53.2 incumbents engage in ‘transferring’ monthly customers to other car parks at the end of leases.
54. Operators complained that when Wilson Parking is the incumbent and loses a tender, the new operators’ costs are higher than if the incumbent is not Wilson Parking. For example, a division of Wilson Parking manufactures ticketing machines and Wilson Parking tends to own the machines at sites that it operates. New entrants therefore need to replace these machines, incurring additional costs. We note that this is true both with and without the merger, but with the merger Wilson Parking has control over more car parks.
55. Operators advised that they take these factors into account when bidding against Wilson Parking and that this can make them uncompetitive, ie, too low, when tendering against Wilson Parking for leases.

56. On balance, the evidence before us does not support Wilson Parking having a material incumbency advantage and there is nothing to suggest that it would gain such an advantage with the merger.

57. The evidence shows that other operators do win car park leases/management agreements from Wilson Parking. For example, we were able to examine bid documentation from one lease¹²

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58. Second, operators such as Care Park and Secure have had success winning tenders against Wilson Parking in recent times, as has property development company Coopers. These operators have been able to overcome any incumbency advantage that may exist and as such even with Wilson Parking being the incumbent in a greater number of car parks post-merger other operators would remain strong potential bidders for any car park tenders.

59. For example, the bidding evidence we collated shows that between 2010 and 2013 for tenders in Auckland

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60. The bidding evidence only allows the identification of the incumbent on a limited number of occasions; however, the evidence did not support there being a strong incumbency advantage with only [].

61. Finally, other car park operators have become more active in recent years and [

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62. Our view is therefore that Wilson Parking continues to face significant competition in this market when tenders come up. We therefore do not consider it likely that the merger has given Wilson Parking the ability to reduce the price it pays to landlords.

Public car parking: how the Acquisition could lessen competition

63. Wilson Parking and Tournament compete for customers in their public off-street car parks with localised areas.

¹² []

64. The Acquisition could substantially lessen competition if the removal of Tournament as a competitor in public car parking would allow Wilson Parking to profitably increase prices to customers within localised areas above the level that would prevail without the Acquisition.
65. To assess whether the Acquisition enables Wilson Parking to achieve this for each different parking product in each localised area, we examined:
- 65.1 the degree of competition between Wilson Parking and Tournament;
 - 65.2 the degree of competition offered by other public car park operators (including Tournament's retained sites);
 - 65.3 the degree of competition (if any) from ancillary car parks and on-street parking;
 - 65.4 the level of constraint (if any) imposed by alternatives such as public and other modes of transport;
 - 65.5 the likelihood of new operators (and new car parks) entering the relevant market either by establishing a new car park or winning a lease/management agreement; and
 - 65.6 Wilson Parking's incentive and ability to bid above competitive rates for leases/management agreements and as such have the effect of foreclosing entry.

Public car parking: market definition

66. In this section we define a separate product market for casual parking (including on-street). Whether daily and monthly parking are separate markets depends on the characteristics of the car parks in the relevant area. We set out that geographic markets are localised and the physical size and shape of each market depends on the characteristics of each area. We also set out why public transport and private parking are not part of these markets.
67. The market definition and competition assessment for each localised area is addressed separately. This is because every area has different characteristics that need to be considered individually.

Wilson Parking's submission

68. Wilson Parking submitted that public parking forms part of a broader transport market, which includes all types of parking (public and private) as well as public transport. It submitted that the geographic scope of these markets is CBD-wide, in line with previous Commission decisions.

Market definition in past decisions

69. The Commission has previously received three clearance applications from Wilson Parking.¹³ Each of these applications was considered under the previous ‘dominance’ test.
70. A summary of the key findings from these cases relevant to the current investigation are:
- 70.1 ‘Long stay’ (monthly) parking products are in a different market from ‘short stay’ (daily and casual) parking products.
- 70.2 It is difficult to precisely define geographic markets, although the scope of the market is generally dictated by the distance that car park users are prepared to walk to and from their ultimate destination.¹⁴
- 70.3 Public car parks are in a different market to private car parks.¹⁵
- 70.4 Public transport is not in the same market as car parking.¹⁶
71. On public transport, in Decision 290, Wilson Parking and Wellington City Council, the Commission said that:

While taxis and public transport might provide an alternative for some people, they would not be seriously considered to be an alternative by those who place a high value on using their own vehicle. Consequently, we do not consider that these other transport modes fall within the same market.

Product market definition

72. Wilson Parking submitted that car parking is part of a wider transport market which includes public transport. If we were to consider a market just for car parking, then Wilson Parking argues that there is a single market for commuters including both daily commuter spaces and reserved/monthly spaces. For casual car park users, Wilson Parking considers on-street car parking to be a substitute.

Is public transport in the market?

73. There are two pieces of evidence which support Wilson Parking’s arguments that public transport is in the same market as car parking products.
- 73.1 An internal Wilson Parking presentation, which states that

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¹³ Decision W12/1: Wilson Parking New Zealand / Mainzeal Property and Construction Ltd, 19 December 1996; Decision 285, Wilson Parking NZ and Wellington City Council, 18 March 1997; Decision 290, Wilson Parking NZ and Wellington City Council, 16 April 1997.

¹⁴ The Commission, agreeing with Wilson’s submission, in *Wilson/Mainzeal* at [18].

¹⁵ Decision 285, Wilson Parking NZ and Wellington City Council, 18 March 1997 at [12].

¹⁶ Decision 290, Wilson Parking NZ and Wellington City Council, 16 April 1997 at [20].

^{17]}

- 73.2 Third party economic analysis commissioned by Wilson Parking. NZIER argued that long-term parkers are relatively price elastic and part of a wider market for all methods of commuting, drawing on a 1999 study prepared for Wellington City Council (WCC), which surveyed the international literature and carried out analysis on WCC parking data.¹⁸ Specifically, NZIER found an elasticity for long-stay parking (greater than seven hours stay) of -0.9. NZIER asserts that this is a short-term elasticity, and a long-term elasticity would be higher (in an absolute sense). NZIER argues that if the elasticity is greater than 1.0 then the SSNIP¹⁹ test would imply that a price increase is not profitable. Accordingly, NZIER concludes that long-term parkers are relatively price elastic, and part of a wider market for all methods of commuting.
74. Nevertheless, the balance of evidence is that public transport is not part of the relevant market, as set out in the reasoning below.
75. First, car parking is not substitutable with modes of passenger transport (catching a bus or a train). Rather, it is a complement to travelling by car (along with petrol, car maintenance costs etc). Public transport is likely to influence the extent to which consumers will switch away from using a car and car parking in response to a SSNIP by car parking operators.
76. Second, we have significant reservations about the methodology underlying the elasticity calculations in the NZIER report. The process of defining markets starts with the narrowest possible market and applying the 'hypothetical monopolist test' to determine the smallest product and geographic area over which a 5-10% price increase would be profitable. For car parks, the process would start with a single car park and additional car parks would be added.
- 76.1 The surveys cited in the NZIER study do not follow this methodology. Rather, they measure the elasticity of demand based on an examination of behaviour in the event that the price of *all* car parks is increased by a SSNIP. That is, rather than determining the borders of the market(s), they actually start from the assumption that there is a single, CBD-wide market.
- 76.2 Further, our analysis of the NZIER report shows that the elasticity of demand could be interpreted as showing long-term parkers to be relatively price inelastic. As such, we consider that the evidence in the NZIER report could in fact indicate that public transport should be considered outside of the market.^[20]

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¹⁸ NZIER memo to Wilson Parking, Potential merger – Market definition, 16 April 2013.

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76.3 In addition, none of the studies reviewed by NZIER actually estimated demand elasticities in any New Zealand markets – the studies were of car parking in Sydney. This casts further doubt on the probity of the NZIER’s survey review, particularly given that the underlying survey literature cautions that demand elasticities vary greatly between locations.

77. [73.1]

78. Finally, car park operators (other than Wilson Parking and Tournament) and government agencies stated that public transport is not in direct competition with car parks. While some industry participants noted that car park price increases will result in a drop in occupancy (with the presumption of a shift to public transport), this effect is short term: one party stated that occupancy tends to return to pre-price increase levels within two months.^{21 22}

79. We recognise that the Colmar Brunton survey results indicated that public transport may be a constraint in the specific areas surveyed. To the extent that public transport constrains public car park pricing, our view is that it is better dealt with as part of a competition assessment in those areas, and this is what we have done.

Are casual, daily and monthly parking separate product markets?

80. For **casual parking products**, our market enquiries indicated that casual parkers are likely to be visiting an area for a short amount of time (eg, for a meeting). As such, they tend to purchase casual products which are short-term and cheaper than daily products. Daily and monthly products are significantly more expensive and therefore highly unlikely to be suitable for these consumers.^{23 [24]}

81. Within casual parking, we were advised that parkers prefer on-street parking to off-street parking and will typically search for a casual park on-street before parking in an off-street car park.²⁵ We therefore consider on-street parking to be in the same market as casual off-street parking.

82. On the demand-side we consider there are separate markets for **daily and monthly parking products**.

83. Daily and monthly parking products have been defined in the same ‘long stay’ market in previous Commission decisions. We re-visited whether ‘long stay’ could be sub-divided into daily and monthly parking products.

²¹ Commerce Commission interview with [].

²² Commerce Commission interview with [].

²³ See, for example, Commerce Commission interview [].

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²⁵ See, for example, Commerce Commission interview [].

84. We consider that there are similarities between the pricing of monthly and daily parking products.^{26 27} However, we identified differences between the two products which mean that, for a significant proportion of customers, the two products are not substitutes:²⁸
- 84.1 Some customers require the ability to enter and exit multiple times during the day, a feature not offered by daily parking.
 - 84.2 Some customers do not always use a car park during regular business hours. For example, they may start later in the day and miss the cut-off time for cheaper daily parking (early bird parking).
 - 84.3 Some customers do not require a car park for all five days of the working week. Monthly parking would therefore entail paying for more parking than is required.
 - 84.4 Some customers have a preference for a particular car parking space,²⁹ a feature not offered by daily parking.
85. Pricing is also different for each type of parking. Daily rates are advertised and each consumer pays the same price, ie, there is no price discrimination between customers in the same car park. However, there can be significant differences between the prices paid by monthly parkers. Although monthly rates are sometimes advertised, we received evidence of car park operators offering discounts to the advertised price in order to attract or retain customers.

Potential for supply side substitution between types of parking products

86. The ability of a car park operator to switch between car park products depends on the individual characteristics of the car park. An on-grade car park (essentially an empty lot with car park markings) can be easily switched between monthly, daily and casual parking (or a mix of all three types). However, car parks within a commercial building can have restrictions, such as security systems and obligations to other commercial tenants that prevent the car park being used by daily or casual customers.
87. We therefore consider that whether daily and monthly parking are in the same market needs to be considered on the facts of the particular car parks in any given geographic market.
88. Overall, we considered casual parking to be in a separate market to the daily and monthly parking. We consider whether daily and monthly parking are in the same market by looking at the particular characteristics of the relevant areas below at paragraphs 115 and 148.

²⁶ Commerce Commission interview with [].

²⁷ Commerce Commission interview with [].

²⁸ Commerce Commission interview with [].

²⁹ This applies to reserved monthly customers only.

Are private and ancillary parking products part of the relevant markets?

89. The evidence suggests that **private car parks** (those not available to the public on a daily basis, such as a tenant only car park attached to an office block) do not provide significant competitive constraint on public car parks.
90. First, commercial operators do not view private parking operators as competitors and do not take private car parks into account when setting prices at public car parks.^{30 31} We were told that this is because:³²
- 90.1 private car park rates are considerably more expensive; and
- 90.2 the car parks are connected with leases of commercial office space and as such are not available to the public as a possible alternative following a price increase in public parking.
91. Second, we did not find evidence of these sites competing with commercial operators. [] told us, in relation to private car parks:
- I don't really see them as a competitor in any way shape or form ...³³
92. Finally, no private operators that we spoke with expressed an interest in offering public parking in the event of a 5% price increase in public parking.
93. We received mixed evidence on whether ancillary parking products (ie, those offered in connection with a business such as SkyCity or a hotel), formed part of the relevant market. For example, [] referred to competition from SkyCity, but on the other hand this type of parking is at times restricted to patrons.
94. We consider that ancillary car parking products may compete with public car parking, but that this assessment needs to be made on a market-by-market basis.

Geographic market definition

95. On geographic market definition, Wilson Parking argues that markets are CBD-wide because a 'chain of substitution' or 'ripple effect' means that car park pricing in one localised area will affect car park pricing in other areas, despite the fact that they do not compete directly. However, evidence indicated that car parking markets are likely to be narrow, and smaller than a CBD, and the size and shape will vary.
96. Past Commission decisions generally found that geographic markets are intrinsically linked to how far parkers are prepared to walk from a car park to their final destination,³⁴ but also defined CBD wide markets. However, these decisions noted

³⁰ Commerce Commission interview with [].

³¹ Commerce Commission interview with [].

³² Commerce Commission interview with [].

³³ Commerce Commission interview with [].

³⁴ Decision W12/1: Wilson Parking New Zealand / Mainzeal Property and Construction Ltd, 19 December 1996, para 18.

that drawing ‘bright line’ geographic boundaries is difficult,³⁵ and it is not easy to identify clear breaks between the boundaries of different markets.³⁶

- 97. Wilson Parking cited the Commission’s previous decisions and said that any geographic market definition would, at its narrowest, be CBD wide. Wilson Parking stated that if one car park changes its pricing there is a ripple effect (chain of substitution) across the whole CBD.
- 98. The evidence before us supports car parking markets being local geographic markets. We did not find strong evidence of there being a chain of substitution between these local markets that would justify defining broader markets.
- 99. This section sets out the evidence for local markets in general. We define the scope of specific local markets in later sections.

CBD-wide or local markets?

100. The evidence suggests that markets are more likely to be local for the following reasons.

100.1 [

37

38]

100.2 Second, the NZIER report commissioned by Wilson Parking places doubt on its assertion of a CBD-wide market. For example, the NZIER report refers to a Sydney CBD parking survey in which parking alternatives were selected according to “relatively tight geographic destinations.” Overall NZIER concluded that:

... the implication of this view is that there are “micro markets” for parking within the Wellington CBD. So, unless another more general analysis is put forward, a detailed examination of the various submarkets would be required.³⁹

100.3 Third, [⁴⁰ ⁴¹ ⁴²] all advised that geographic markets are local. For example, [] told us that when it considers submitting a tender it surveys the competing parking options in the “community of interest” around

³⁵ Decision 285, Wilson Parking NZ and Wellington City Council, 18 March 1997

³⁶ Decision 290, Wilson Parking NZ and Wellington City Council, 16 April 1997

³⁷ []

³⁸ []

³⁹ NZIER memo to Wilson Parking (16 April 2013).

⁴⁰ []

⁴¹ []

⁴² []

a car park, which it estimated would be a 300 metre radius.⁴³

100.4 Finally, NERA’s analysis (including quantity correlation and regression analysis) of car park data and of the customer survey data suggested that markets are likely to be local. It found a localised effect of the university holidays on the demand for car parking, which supported the argument that, in this instance, the geographic markets were small and localised.

101. Wilson Parking and [] stated that pricing in one local area affects pricing in adjoining areas and that this “chain of substitution” meant that this justified broadening the scope of the market. However, their arguments were not supported by any concrete evidence. Further, as set out above at paragraph 100.1, Wilson Parking’s comments on this topic were inconsistent. [] also advised that competition is restricted to limited geographic areas, in contrast to its comments regarding a chain of substitution.⁴⁴
102. Moreover, such a chain of substitution is inconsistent with observed price variation across a CBD for comparable car parks and parking types. NERA’s analysis of car park data also found material differences in early bird pricing across Auckland CBD, which undermines a chain of substitution argument.⁴⁵

Public car parking: assessing localised markets

103. Our prioritisation process focused our investigation on car parking in the Boulcott Street, Symonds Street and Parnell Rise areas (also referred to as precincts), as set out above at paragraph 34.
104. Upon further investigation, Boulcott Street was removed as an area of concern, for the reasons set out below at paragraph 106. The Symonds Street and Parnell Rise markets are then discussed in more detail.
105. Each of these three precincts is discussed in turn below. The markets we focused on are:
- 105.1 the market for weekday casual parking in the Symonds Street precinct;
- 105.2 the market for daily (Monday-Friday) and monthly parking in the Symonds Street precinct;
- 105.3 the market for weekday casual parking in the Parnell Rise precinct; and
- 105.4 the market for daily (Monday-Friday) and monthly parking in the Parnell Rise precinct.

⁴³ Commerce Commission interview with [].

⁴⁴ Commerce Commission interview with [].

⁴⁵ NERA Car Parking Data Analysis: Summary of Analysis and Results (13 October 2014).

Boulcott Street

106. The market concentration analysis identified Boulcott Street, in Wellington, and the surrounding side streets as an area of concern. Wilson Parking's share in the precinct, by number of off-street bays, increased from []% to []% ([] bays to [] bays).
107. However, the Capital car park ([] bays, operated by Care Park) and the Plimmer Towers car park (Tournament retained site with [] bays) continue to compete with Wilson Parking and are therefore likely to provide a significant competitive constraint on Wilson Parking.
108. In addition, no customers surveyed in this area indicated that they would switch from Wilson Parking car parks to Tournament car parks in response to a price increase. While 15% of customers surveyed said they would switch from Tournament to Wilson Parking, more customers (17%) said they would switch to other competitors. This suggests that, while the Wilson Parking and Tournament car parks in this area are important competitors, there remain sufficient other important or even more important competitors.
109. We therefore consider that the evidence does not support a conclusion that the Acquisition has led to a substantial lessening of competition in the Boulcott Street area.

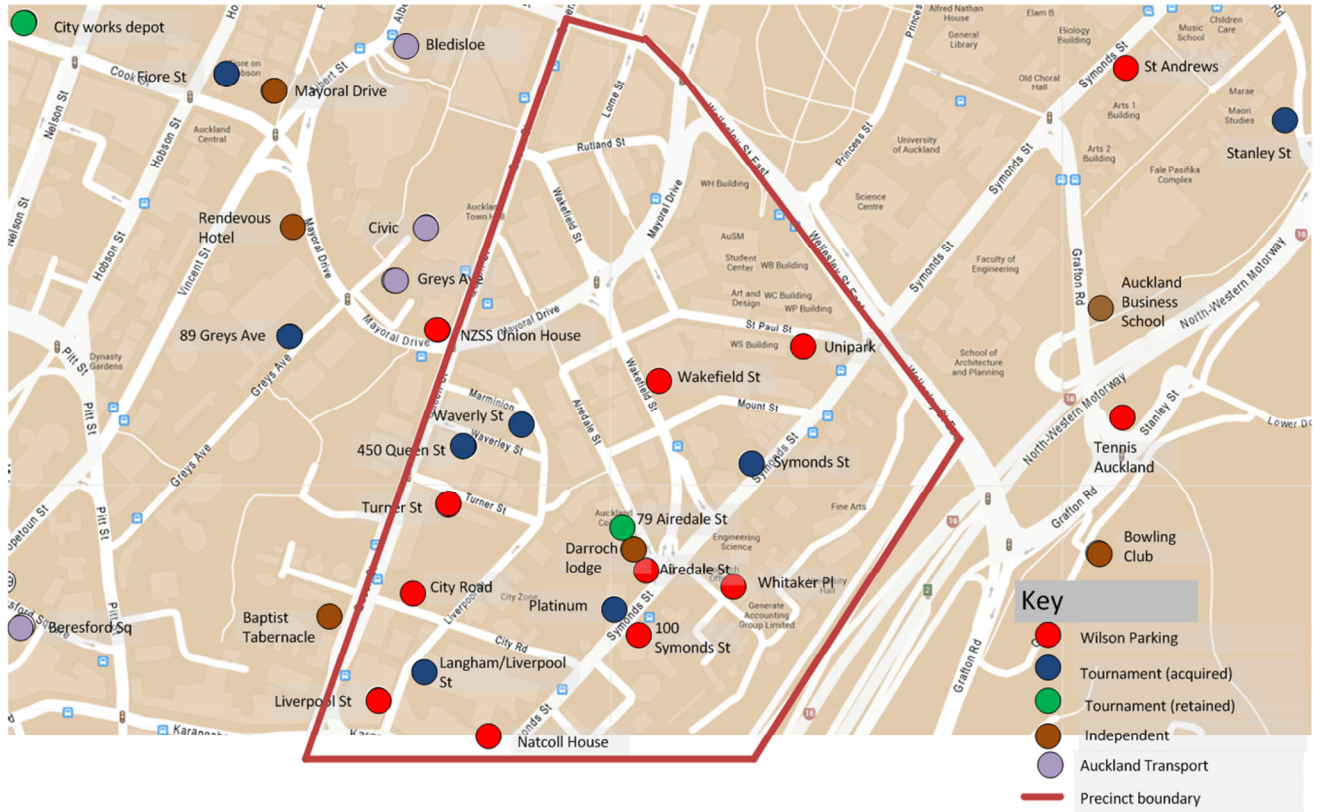
Symonds Street precinct

Defining the geographic scope of the market

110. The market that we defined in the Symonds Street precinct has the following geographic boundaries.
- 110.1 Southern limit, Symonds Street Bridge and motorway – the bridge over the motorway is a physical break in the neighbourhoods.
- 110.2 Eastern limit, North-western motorway – the motorway is a physical barrier that limits pedestrian access.
- 110.3 Northern limit, Wellesley Street – the northern section of Symonds Street is dominated by the University of Auckland and Albert Park. This area has a much lower concentration of public parking making it distinct from the area of focus.
- 110.4 Western limit, Queen Street – industry participants identified Queen Street as the delineation between precincts.
111. There is a major road and bus route and there are many tertiary education buildings in the area.

112. Figure 1, below, shows the distribution of Wilson Parking car parks (red dots), the acquired Tournament car parks (blue dots) and other off-street parking competitors within the precinct and the surrounding area.

Figure 1: Map of car parking in mid Symonds Street (March 2014)



Source: Commission Commerce

113. Wilson Parking and Tournament are the only commercial parking operators within this geographic area. Both Wilson Parking and Tournament offer casual, daily and monthly parking. Pre-merger, Wilson Parking held leases at eight car parks with a share of []% of total off-street bays. Post-merger, it had 13 car parks with a total of []% of off-street bays. Wilson Parking has acquired one additional car park lease since the Acquisition (Natcoll House, [] bays, previously independent). Following that acquisition, its share of off-street bays rose to []%.
114. Tournament continues to have a presence as an operator through one retained site (79 Airedale Street, [] bays).

Are there separate markets in the Symonds Street precinct for daily and monthly parking?

115. There are two car parks in the area that are currently monthly only car parks. These are Darroch Lodge, operated by a property management company on behalf of the Masonic Lodge, and Turner Street, acquired by Wilson Parking as part of the Acquisition. Neither of these car parks have restrictions that would prevent them from being used for daily parking.

116. We have therefore considered daily and monthly parking together as one product market in the Symonds Street precinct.

Competition in the markets

117. Pre-merger, Wilson Parking and Tournament were each other's closest competitors for off-street public parking and there was very limited constraint from other off-street car parks within the Symonds Street precinct. Of the 16 car parks in the precinct, Wilson Parking operated 8 and Tournament operated 6 (1 of which it continued to operate post Acquisition). There were two small monthly-only car parks operated by independents (one of which Wilson Parking has since acquired) and Auckland Transport operates on-street parking.

Casual parking

118. Casual on-street parking in the precinct is operated by Auckland Transport, and we consider that it is likely to provide a significant constraint on Wilson Parking. The reason for this assessment is that there is spare capacity in on-street parking in at least part of the precinct,⁴⁶ and []⁴⁷ Given our understanding that casual parkers prefer on-street to off-street parking, this should indicate that there is also spare capacity in off-street parking.
119. We consider that the existence of on-street parking means that concerns are less likely to arise than in daily and monthly parking. And to the extent issues arose in other product markets within the precinct, the resolution of such issues would also resolve any in casual parking.⁴⁸

Daily and monthly parking

120. The evidence before us is that existing competition in the daily and monthly parking market is unlikely to constrain Wilson Parking.
121. Immediately post-merger, there were only three off-street car parks within the precinct which were not operated by Wilson Parking. We consider that those car parks would provide only a limited constraint on Wilson Parking.
- 121.1 The first is 79 Airedale Street ([] bays), which is operated by Tournament.
- 121.2 The second is Darroch Lodge ([] bays), which currently offers monthly parking only.
- 121.3 The third is Natcoll House ([] bays), which was subsequently acquired by Wilson Parking.

⁴⁶ The area from Airedale Street to Wellesley Street, up to Mayoral Drive, and the side streets to the east of Symonds Street. This represents approximately a third of the precinct's area.

⁴⁷ []

⁴⁸ Any remedy in the daily and monthly market would almost certainly involve the divestment of car parks, each of which would be likely to supply casual, daily and monthly parking.

122. In total, this is [] bays in comparison to [] bays⁴⁹ operated by Wilson Parking in the precinct post-merger.
123. Our analysis of the survey data is that Wilson Parking and Tournament were each other's closest competitors pre-merger. The customer survey identified that, when results are aggregated at the precinct level, if an individual car park raised its price by 5% a total of 16% of Wilson Parking customers surveyed in the Symonds Street precinct say they would switch to Tournament car parks and 19% of Tournament customers surveyed say they would switch to Wilson Parking. To set this in context, the percentage of customers surveyed saying they would switch from Wilson Parking to Tournament is the largest out of the three precincts surveyed, while the percentage of surveyed customers saying they would switch from Tournament to Wilson Parking is the second largest. These aggregated results at the precinct level were corroborated by analysis of customer responses at the individual car park level.^[50]
124. On a conservative basis, we also examined whether the University of Auckland, which operates a large car park⁵¹ for its staff and students just outside the precinct, provides any constraint on the merged entity. However, we considered that this is unlikely.
- 124.1 Only 1.5 customers (weighted) surveyed, out of a total sample of 940 customers surveyed in the Symonds Street precinct, would switch to the University of Auckland's car park if faced with a 5% price increase at their car park.^[52]
- 124.2 Although it is available for public parking, it has no external signage or advertising.
- 124.3 It is not run as a commercial business. The University of Auckland has a rates exception from Auckland Council.
[]

Constraint from new entry

125. There are two main types of potential entry into the Symonds Street precinct:
- 125.1 building a new car park; and
- 125.2 winning tenders to manage or lease existing car parks.

Entry through building a new car park

126. We do not consider that new entry via building a new car park is likely.

⁴⁹ Excludes Natcoll House, acquired post-merger.

⁵⁰ []

⁵¹ [] of which are pre-allocated

⁵² []

127. Our enquiries revealed that obtaining planning consents for new, permanent car parks is difficult. Most consents are granted on a temporary basis only and it therefore appears unlikely that a new car park will be built within the Symonds Street precinct within two years of the Acquisition. We are not aware of any current resource consents for new buildings, including car parking in the precinct, and Auckland Council's district plan currently discourages daily and monthly parking.⁵³

Entry through winning a tender

128. Notwithstanding our comments above about other car park operators winning tenders when they have been available, we do not consider that new entry by winning tenders for car parking leases/management agreements is likely. This is because we do not expect any car parks to come up for tender within a timely manner.

129. []

130. []⁵⁴

131. []

Constraint from public transport

132. While previous studies do not suggest that public transport is likely to be a sufficient constraint on car parking prices, the survey evidence before us suggests that public transport may be a sufficient constraint on Wilson Parking's ability to increase prices by 5% in the Symonds Street precinct.
133. Analysis of the consumer survey indicates that in response to a 5% price rise at all car parks, 17% of customers surveyed in the Symonds Street precinct say they would switch to using public transport.
134. This result is significant because if 17% of customers of a car park were to switch to public transport if the price was increased by 5%, then the price rise would likely be

⁵³ Auckland Council's District Plan limits the number of car parks in new developments. The focus of the Transportation Plan is encouraging the use of alternative means of transport to address congestion. Part 9.3.4 of the City of Auckland District Plan.

⁵⁴ []

unprofitable. The car park operator would likely lose more money from the customers it lost than it would gain from the price increase.

135. Further, the survey results indicate 16% of Wilson Parking customers surveyed in the Symonds Street precinct say they would switch to public transport and 16% of Tournament customers surveyed say they would switch to public transport, if the car park they parked in raised its prices by 5%.⁵⁵ This suggests that public transport would be an equivalent constraint on Wilson Parking car parks as Tournament car parks.

Why does the survey evidence differ from other evidence and our conclusions in other decisions?

136. There are a number of explanations for why the survey evidence differs from other studies.
- 136.1 The Symonds Street precinct is well-served by public transport and is proximate to tertiary education institutions. Together these factors are likely to mean that public transport is a viable option for more people in this precinct than in others.
- 136.2 The survey was ‘stated preference’ meaning that interviewees responded on what they would do, rather than revealing what they have actually done in response to price changes. For example, if interviewees thought that their responses would be passed on to Wilson Parking, this may have affected their responses.
- 136.3 It may be that any such switching is short-lived, which is consistent with evidence from the investigation detailed at paragraph 78.

What did economic analysis of pricing and quantity data reveal about constraint from public transport?

137. NERA’s analysis (including quantity correlation and regression analysis) of the price and volume data suggested that the nature of the data did not allow for the level of competitive constraint from public transport to be easily tested. Preliminary analysis led NERA to advise that further regression analysis based on public transport price shocks is also unlikely to be conclusive either way on the question of whether public transport and car parking are in the same market.

Conclusion on the markets within the Symonds Street precinct

138. Wilson Parking and Tournament were each other’s closest competitors for the provision of public car parking within the Symonds Street precinct. The competitive constraint from Tournament was lost following the Acquisition. We consider it unlikely a new provider of public car parking will constrain Wilson Parking, although there appears to be spare capacity for on-street car parking.

⁵⁵ Based on the question relating to if an individual car park raised its price by 5% and aggregated at the precinct level.

139. However, we consider that in this local area the survey results suggest that public transport may be a sufficient constraint on daily and monthly car parking based on the number of customers surveyed who say they would switch to public transport following a price increase in car parking.

Parnell Rise precinct

Defining the geographic scope of the market

140. The Parnell Rise precinct refers to the area around the intersection of Parnell Rise, Beach Road, The Strand and Stanley Street, and includes the recent Carlaw Park development.
141. This area was defined following Commission staff visiting the area and observing the nature of the precinct. One industry participant⁵⁶
] which supports our precinct boundary.

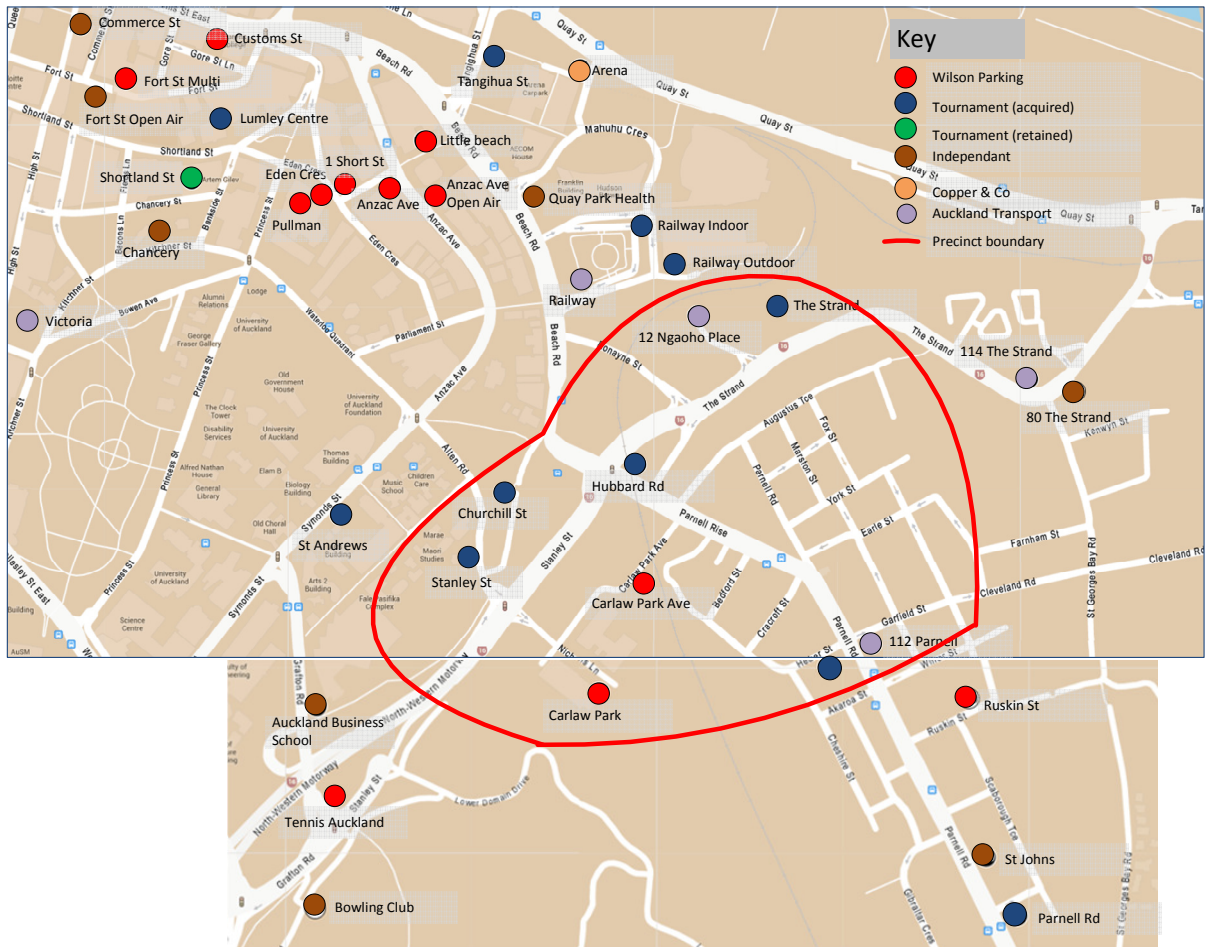
I suspect that the area that you guys are more interested in is lower Parnell, where it's accommodating students and CBD traffic. Whereas commercial Parnell – well, that retail strip of Parnell is not so affected by those people. They haven't really swarmed. It's a little bit too distant for them to walk from that car park to town or to university... that hill [up to Parnell central] is an obstacle.⁵⁷

142. The car parks outside of the defined precinct along The Strand appear to serve the light industry area directly adjacent to those car parks, so were not included.
143. The area to the South-West of the precinct is up a steep hill up to the University of Auckland and appears unconnected with the precinct.
144. Figure 2 below shows the distribution of Wilson Parking car parks (red dots), the acquired Tournament car parks (blue dots) and other off-street parking competitors within the precinct and the surrounding area.

⁵⁶ []
⁵⁷ Transcript of interview with []

].

Figure 2: Map of car parking in Parnell Rise (March 2014)



Source: Commerce Commission

145. We acknowledge that the geographic boundary of this precinct is harder to distinguish than the Symonds Street precinct because of the lack of defining geographical features such as motorways and bridges.
146. Wilson Parking and Tournament are the only commercial parking operators within the precinct. Both Wilson Parking and Tournament offer casual, daily and monthly parking. Pre-merger, Wilson Parking held leases/management arrangements at two car parks with []% of off-street bays. Post-merger, it had seven car parks with a total of []% of off-street bays.
147. Auckland Council is the other operator within the precinct and has []% of the off-street bays.

Are there separate markets in the Parnell Rise precinct for daily and monthly parking?

148. There are two car parks in the area that do not currently offer monthly car parks (Carlaw Park and 12 Ngaoho PI). Neither of these car parks have restrictions that would prevent them from being used for monthly parking.
149. We have therefore considered daily and monthly parking together as one product market in the Parnell Rise precinct.

Competition in the markets

150. Like the Symonds Street precinct, Wilson Parking and Tournament were each other's closest competitors in the Parnell Rise precinct for off-street public parking. There is very limited constraint from other off-street car parks within the precinct.

Casual parking

151. We did not find any evidence that the merger has resulted in competition concerns arising in casual parking in this precinct.
152. Most of the precinct⁵⁸ is outside of Auckland Transport's on-street CBD pay and display zone. We do not have detailed information about the casual spaces in the precinct that are outside the pay and display zone (because such data is not available).
[]
153. The evidence on spare capacity for on-street parking was corroborated by the survey analysis which showed that for casual parkers Tournament and Wilson Parking car parks were not close substitutes. Rather, both Tournament and Wilson Parking casual customers surveyed said they would switch to either parking on the street, other competitors, or public transport, in response to a 5% price increase.
154. We consider that the existence of on-street parking means that concerns are less likely to arise than in daily and monthly parking. And, to the extent issues arose in daily and monthly parking market in the Parnell Rise precinct, the resolution of such issues would also resolve any issues in casual parking.⁵⁹

Daily and monthly parking

155. We do not consider that existing competition in the market provides a significant constraint on Wilson Parking post-merger.
156. Auckland Transport operates the only two car parks within the precinct that compete with Wilson Parking. Combined these two car parks have [] bays, compared with Wilson Parking's [] bays.
157. Wilson Parking and Tournament appear to have been relatively close competitors. The customer survey identified that, when results are aggregated at the Parnell Rise precinct level, if an individual car park raised its price by 5%, 13% of Wilson Parking customers surveyed said they would switch to Tournament car parks. However, only 4% of Tournament customers said they would switch to Wilson Parking. The issues are most acute at Wilson Parking's Carlaw Park Ave car park. The majority of customers surveyed at that car park said they would substitute either to another Wilson Parking car park at Carlaw Park, or to the Tournament car parks at Churchill Street and Stanley Street. There is only a small amount of substitution to other (non-Wilson Parking or Tournament) alternatives to this car park.

⁵⁸ Stanley Street, The Strand and everything to the east of these streets.

⁵⁹ Any remedy in the daily and monthly market would almost certainly involve the divestment of car parks, each of which would be likely to supply casual, daily and monthly parking.

158. We examined whether any of the public car parks just outside the precinct may also constrain Wilson Parking. Nearby public car parks include the Auckland Bowling Club (daily and monthly only) and the University of Auckland car park (discussed above at paragraph 124). However, even if these car parks had the potential to have a competitive impact in the Parnell Rise area, they do not currently and it is very unlikely that they will in future even if prices rose.

158.1 The Bowling Club's operation

[
].

158.2 Similarly, as set out above at paragraph 124.3, the University of Auckland

[
].

158.3 The survey results support the conclusion that the University of Auckland does not provide a competitive constraint on the Parnell Rise precinct. The results show that just two customers surveyed (weighted results) from the Parnell Rise precinct, out of the 303 customers surveyed in the precinct, would switch to the University of Auckland car park if faced with a 5% price rise at their car park.⁶⁰]

Constraint from new entry

159. Entry conditions in the Parnell Rise precinct are very similar to the Symonds Street precinct and we have seen no evidence to suggest that new entry through building a car park is likely.

160. We also consider that the limited availability of leases in the Parnell Rise precinct, with one exception (the [], discussed below), means that entry of sufficient extent to constrain Wilson Parking in the Parnell Rise precinct is unlikely.

161. There is only one car park in the precinct potentially coming up for tender within two years of the Acquisition:

[
] and
[
].

162. We therefore do not consider that new entry by winning tenders for car parking leases/management agreements is likely.

Constraint from public transport

163. The evidence before us suggests that public transport may constrain Wilson Parking's ability to increase prices by 5% in the Parnell Rise precinct.

⁶⁰ []

164. Analysis of the consumer survey suggested that in response to a 5% price rise at all car parks, 17% of parkers surveyed in the Parnell Rise precinct said they would switch to using public transport. These results align with the Symonds Street precinct results. Further, when looking at the survey results, aggregating the question relating to if an individual car park raised its price by 5%, 22% of Tournament customers surveyed in the Parnell Rise precinct said they would switch to public transport and 12% of Wilson Parking customers surveyed said they would also switch to public transport.
165. The reasons for why public transport may be a sufficient constraint on Wilson Parking's ability to increase prices by 5% in the Parnell Rise precinct are the same as the reasons set out above (at paragraph 136.1) in relation to the Symonds Street precinct. That is, the car park operator would likely lose more money from the customers it lost than it would gain from the price increase.
166. As for Symonds Street precinct, NERA's analysis of the price and volume data for the Parnell Rise precinct suggested that the nature of the data did not allow for the level of competitive constraint from public transport to be easily tested.

Conclusion on the markets within the Parnell Rise precinct

167. Wilson Parking and Tournament were each other's closest competitors for the provision of public car parking within the Parnell Rise precinct. The competitive constraint from Tournament was lost following the Acquisition. We consider it unlikely a new provider of public car parking will constrain Wilson Parking, although there appears to be spare capacity for on-street car parking.
168. However, we consider that in this local area the survey results suggest that public transport may be a sufficient constraint on daily and monthly car parking based on the number of customers surveyed who say they would switch to public transport following a price increase in car parking.

Overall conclusion

169. In summary, we are closing our investigation because the evidence does not support a conclusion that the Acquisition has resulted in a substantial lessening of competition in the areas where we had concerns.
170. We focused our investigation on car parking markets where the loss of Tournament removed a significant competitive constraint. These areas were Symonds Street and Parnell Rise in Auckland and Boulcott Street in Wellington.
171. Based on the survey results and our analysis of existing competition in the area, we concluded that other competitors will continue to constrain Wilson Parking in the Boulcott Street area.
172. In the Symonds Street and Parnell Rise areas, we concluded that a new entrant would be unable to constrain Wilson Parking. However, survey evidence indicated that public transport may be a sufficient constraint on Wilson Parking's ability to raise prices in these areas. Although this outcome is not consistent with international

literature and general views of other market participants, it may be explicable on the basis that both these areas have good public transport and are close to tertiary education institutions.