

COMMERCE COMMISSION

DECISION NO. 305

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of s105 of the Act, in the matter of an application for clearance of a business acquisition involving:

THORN RENTALS TRADING INCORPORATED

and

GROUP RENTALS NEW ZEALAND LIMITED

- The Commission:** Peter Allport
Kate Brown
- Summary of Proposal:** That Thorn Rentals Trading Incorporated acquire the rental contracts and appliances subject to those contracts of Group Rentals New Zealand Limited.
- Determination:** Pursuant to s66(3)(a) of the Act, and in accordance with a delegation granted under s105 of the Act, the Commission determines to give a clearance for the proposed acquisition.
- Date of Determination:** 25 August 1997

AUT/BA - T
M2348

MEMORANDUM

To: Peter Allport
Kate Brown

From: Jane Chilcott
John Preston

Date: 25 August 1997

Subject: **Business Acquisition: Thorn Rentals Trading
Incorporated/Group Rentals New Zealand Limited**

Working Day 9: 25 August 1997

Working Day 10: 26 August 1997

Confidential information in this report is contained in square brackets.

THE PROPOSAL

- 1 On 12 August 1997, the Commission registered a notice from Thorn Rentals Trading Inc (“Thorn Rentals”) seeking clearance to acquire all of the rental contracts and appliances subject to those contracts of Group Rentals New Zealand Limited (“Group Rentals”).

THE PROCEDURES

- 2 Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. As no extension has been agreed, a determination is required by 26 August 1997.
- 3 In the notice, the applicant sought confidentiality for the fact of the proposed

acquisition. However, after discussions with the solicitors acting for both Thorn Rentals and Group Rentals, the Commission considered it inappropriate to grant a fact confidentiality order and declined to do so. A confidentiality order was granted over specific information contained in the notice which in no way impeded the Commission's investigation into the proposal.

- 4 This report concludes that staff are satisfied that implementation of the proposal would not result, and would not be likely to result, in Thorn Rentals acquiring or strengthening a dominant position in a market, and recommends that in terms of s 66(3)(a) of the Act, the Commission give clearance to the proposed acquisition.

THE PARTIES

Thorn Rentals

- 5 Thorn Rentals, a branch of the US company Thorn Rentals Trading Incorporated, is wholly owned by Thorn Americas Incorporated. Thorn Americas Incorporated is owned by Thorn Plc in the United Kingdom.
- 6 Thorn Rentals, trading as Dominion Television Rentals ("DTR") in New Zealand, is involved in the rental and rent-to-own/hire purchase of:
- household electrical appliances to domestic customers; and
 - electrical appliances and office equipment to commercial customers and small businesses (mainly in the hospitality industry - hotels, motels etc.)
- 7 DTR's business includes internal warehousing facilities, distribution and technical servicing of all products supplied on rental. DTR has shop outlets throughout the country. It also operates a telesales centre and has a team of sales representatives.

Group Rentals

- 8 Group Rentals is a subsidiary of Television Holdings Ltd, which is wholly owned by The Television Trust. The Television Trust is associated with David Gold and family.
- 9 Group Rentals owns a number of subsidiary companies:
- Granada TV Rentals Ltd;
 - Television Rentals Ltd;

- Dollar Rentals Ltd;
- NEXT Electronic Servicing Ltd; and
- Group Finance Ltd.

- 10 Group Rentals is involved in the rental, rent-to-own/hire purchase, and retail sale of a wide range of household appliances and office equipment to domestic and commercial customers. Unlike DTR, Group Rentals does not have shop outlets or a team of sales representatives, but operates through telemarketing and a direct mail service.
- 11 It is noted that Group Rentals is retaining its rent-to-own/hire purchase business, so there will be no aggregation of those business activities as a result of the proposed acquisition.

THE MARKET

- 12 DTR and Group Rentals both provide appliance rental services throughout New Zealand to domestic and commercial customers.
- 13 The applicant submits that the two markets in which there would be an aggregation of business activities as a result of the proposed acquisition are as follows:
- the market for the rental of household electrical appliances to domestic customers (the “domestic rental market”); and
 - the market for the rental of household and other electrical appliances and office equipment to commercial or business customers (the “commercial rental market”).
- 14 The types of goods involved in the above domestic and commercial rental markets comprise televisions, video cassette recorders, stereos, laundry appliances such as washing machines and dryers, kitchen appliances such as refrigerators and microwaves, other home appliances including vacuum cleaners, heaters and dehumidifiers, furniture including dining room tables, chairs and beds, and communications equipment such as fax machines and computers. However, colour televisions make up the greatest proportion of the appliances for rent by DTR and Group Rentals. For example, in the domestic rental market, approximately [] of DTR’s appliances and more than [] of Group Rentals’ appliances are colour televisions. In the commercial rental market, televisions comprise over [] of both

parties appliances for rent.

- 15 There was agreement from market participants contacted that the market definitions provided by the applicant were realistic descriptions of the markets in which they compete, although it was noted that DTR and Group Rentals are the only two players providing nationwide rental services. Other competitors in the domestic and commercial rental markets, with diverse ranges of rental appliances, operate only in the region in which they are physically located.
- 16 In terms of geographic market definition, it is considered that the domestic and commercial rental markets are national markets. Therefore, the competitive effects of the proposed business acquisition will be analysed at a national level. Although most market participants are operating locally, within limited geographic areas, Group Rentals operates a nationwide telemarketing service, and there do not appear to be any geographical constraints preventing other competitors or potential competitors from operating on a similar basis.

Conclusion on Market Definition

- 17 For the purposes of this report, the relevant markets are defined to be:
- the market for the rental of household electrical appliances to domestic customers in New Zealand (the “domestic rental market”); and
 - the market for the rental of household and other electrical appliances and office equipment to commercial customers in New Zealand (the “commercial rental market”).

ASSESSMENT OF DOMINANCE IN THE NEW ZEALAND DOMESTIC AND COMMERCIAL RENTAL MARKETS

- 18 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to give clearance to a proposed acquisition if it is satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market. If the Commission is not so satisfied, clearance must be declined.
- 19 Section 3(8) of the Act states that a person is in a “dominant position” if:

... a person as a supplier or an acquirer of goods or services either alone or together with an interconnected body corporate is in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is in a position to exercise a dominant influence ... regard shall be had to -

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

Current Competition in the Domestic and Commercial Rental Markets

- 20 The applicant has submitted that DTR and Group Rentals compete with a large number of market participants renting any of the appliances referred to in paragraph 14 of this report. A directory of existing competitors offering rental services throughout New Zealand was provided by the applicant in a schedule attached to the application. The directory listing was compiled from a Telecom “Business Search”.
- 21 All market participants contacted confirmed that the domestic and commercial rental markets are characterised by a large number of market participants, although, as stated earlier, DTR and Group Rentals are the only two market participants providing nationwide rental services of a wide range of appliances. Existing competition in the domestic rental market is provided by a large number of small operators of varying size, with diverse appliance ranges (ie: between 100 and 1,000 or more appliances for rent). It is also noted that most of the smaller market participants are only involved in the provision of rental services, and do not offer rent-to-own or hire purchase arrangements like DTR and Group Rentals.
- 22 The applicant submitted that in relation to the domestic rental market, there has been “a steady decline in rental volumes which is attributed to the attractiveness of interest-free purchasing arrangements”¹ from retail chains. A number of market participants agreed that there had been a fall in demand in the domestic rental market over the last few years. For example, Fisher & Paykel Finance Ltd stated that [

].

- 23 The Manager for Total Rentals, Mr Peter Sharp, considered that the decline in domestic rental volumes in recent years was as a result of the greater availability of lower-priced, more reliable household electrical appliances, and the availability of hire purchase arrangements allowing consumers to purchase appliances over extended periods.
- 24 A number of other market participants in the domestic rental market did not consider that their business activities had been affected by a decline in rental volumes. These competitors considered that DTR and Group Rentals had probably been detrimentally affected by a reduction in the number of customers wanting appliances on a rent-to-own basis. As the smaller market participants do not offer rent-to-own services, the increased availability and flexibility of hire purchase arrangements had not impacted on their rental operations.
- 25 The applicant submitted that one of its main competitors in the commercial rental market is Fisher & Paykel Finance Ltd. It was estimated that the company would have a market share of approximately [] in that market.² The General Manager of Fisher & Paykel Finance Ltd, Mr Alastair Macfarlane, stated that []].

Market Shares in the Domestic Rental Market

- 26 In the Commission's view,³ a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
 - the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.
- 27 Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market(s) and measurement of market shares, fall within these "safe harbours".

28 The applicant, while noting the difficulty in collating market share information in the rental markets, has estimated that existing competitors in the domestic rental market would have the following market shares:

Market Participant	<u>Units</u>	Estimated Market Share (based on number of units)	Annual Revenue	Estimated Market Share (based on annual revenue)
DTR	[]	[]	[]	[]
Group Rentals	[]	[]	[]	[]
Combined Entity	[]	[]	[]	[]
Other Operators		[]		[]
Total		100%		100%

29 The above estimates were calculated from the applicant’s own internal market research and management records, and from management information provided by Group Rentals. All market participants contacted considered that it would be very difficult to get an accurate estimate of the size of the domestic rental market or accurate estimates of market shares for existing competitors, and were unable to provide market share estimates for themselves or their main competitors. Consequently, Commission staff have been unable to verify the market share estimates provided by the applicant.

30 Assuming that the above market share estimates are realistic, the market share for the merged entity could be approximately []. This concentration of market share would appear to raise some concerns as there are no market participants in competition with the merged entity having a market share of no less than in the order of 15%. That is, the estimate does not fall within one of the Commission’s “safe harbours”.

31 However, market shares are insufficient in themselves to establish whether a dominant position would exist in a market. The Commission considers a range of additional factors before reaching a conclusion as to the acquisition or strengthening of a dominant position in any market, such as the constraint from the threat of market entry, and barriers to entry. These additional factors are discussed below.

Market Shares in the Commercial Rental Market

32 The applicant estimates market share figures in the commercial rental market would be as follows:

Market Participant	Units	Estimated Market Share (based on number of units)	Annual Revenue	Estimated Market Share (based on annual revenue)
DTR	[]	[]	[]	[]
Group Rentals	[]	[]	[]	[]
Combined Entity	[]	[]	[]	[]
Fisher & Paykel Finance Ltd				[]
Other Operators				[]
Total				100%

33 As with the domestic rental market, Commission staff were unable to verify the market share estimates provided in the application, although it is accepted that there are a large number of small operators competing in the market.

34 Fisher & Paykel Finance Ltd []
].

35 Again, assuming that the market share figures represent the actual position in the commercial rental market at the present time, the estimated market share for the combined entity would appear to fall within one of the Commission's "safe harbours" with the combined entity having less than in the order of a 60% share of the market and facing competition from at least one other market participant, Fisher & Paykel Finance Ltd, having no less than in the order of a 15% market share. Consequently, it is considered unlikely that the proposed business acquisition would result in the creation or strengthening of dominance in the commercial rental market.

Constraints from Market Entry or Expansion

- 36 The applicant contends that the merged entity will continue to be significantly constrained by existing competitors in the domestic and commercial rental markets following the proposed acquisition. It was argued that, in many cases, the cost effectiveness of the smaller operations providing rental services means that there is aggressive competition from these operators in the form of cheaper monthly rental rates. And, despite accepting that DTR and Group Rentals are major players in the rental markets, the market participants contacted by Commission staff considered that the proposed merger would not constrain them from continuing to compete in those markets.
- 37 The applicant also argued that any retailer or provider of hire purchase arrangements for any of the appliances available for rental by DTR or Group Rentals could enter the rental markets given the appropriate economic incentives to do so. Similarly, the applicant considers that it is feasible for finance companies to enter the rental markets as they would already operate the appropriate systems, and would only need to purchase the necessary appliances.
- 38 The applicant submitted that a further potential competitor in the rental markets was Philips New Zealand Ltd, which “is intending to enter the New Zealand rental markets”.⁴ Commission staff contacted the Managing Director for Philips New Zealand Ltd, Mr Roger Finn, for confirmation of the company’s intention to enter the domestic and commercial rental markets. Mr Finn stated that [
-].
- 39 As stated earlier, the applicant argues that the availability and flexibility of interest-free purchasing arrangements and hire purchase agreements have seen a marked decline in rental volumes in the domestic rental market. It is contended that, following the proposed business acquisition, DTR will continue to face constraints from hire purchase providers such as Farmers, Bond & Bond, Noel Leeming and Group Rentals, with hire purchase arrangements continuing to be an attractive alternative to appliance rental.

Barriers to Entry

- 40 The applicant submits, and it is accepted by Commission staff, that there are few barriers to entry to the domestic and commercial rental markets. A new entrant would incur costs associated with obtaining the necessary supply of appliances and suitable premises from which to set up in competition. Therefore, it is considered that the possibility of de novo entry into the relevant markets serves as a real constraint on existing market participants and would continue to constrain the combined entity.

CONCLUSION

- 41 Staff consider that the domestic and commercial rental markets are highly competitive, with a large number of existing competitors and relatively low barriers to entry and expansion.
- 42 While the proposal would involve horizontal aggregation of market share in the two markets, and despite an inability to verify market shares for existing market participants, it is considered that the proposed business acquisition would not lead to the acquisition or strengthening of a dominant position in the markets. DTR will continue to be subject to constraints from existing competitors and from the threat of market entry.
- 43 It is therefore concluded that the proposed acquisition would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in the markets for:
- the rental of household electrical appliances to domestic customers in New Zealand (the “domestic rental market”); and
 - the rental of household and other electrical appliances and office equipment to commercial customers in New Zealand (the “commercial rental market”).

RECOMMENDATION

- 44 It is recommended that you give clearance to the proposal under s 66(3)(a) of the Act.

This document is sourced from an unsigned electronic version and does not include appendices which were supplied to the Commission in hardcopy; pagination may also differ from the original. For a full public copy of the signed original (copy charges may apply) please contact the Records Officer, Commerce Commission, PO Box 2351 Wellington, New Zealand, or direct dial +64 4 498 0929 fax +64 4 471 0771.

Jane Chilcott
Investigator

John Preston
Chief Investigator

Jo Bransgrove
Manager

DETERMINATION ON NOTICE SEEKING CLEARANCE: THORN RENTALS TRADING INCORPORATED/GROUP RENTALS NEW ZEALAND LIMITED

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s66(3)(a) of the Commerce Act 1986 (the Act), and in accordance with a delegation given under s105(1) of the Act, we hereby give clearance for Thorn Rentals Trading Incorporated, or any interconnected body corporate thereof, to acquire all of the rental contracts and appliances subject to those contracts of Group Rentals New Zealand Limited.

In terms of s66(5) of the Act, this clearance shall expire twelve months after the date of this determination. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 8 August 1997.

Dated this day of 1997

P C Allport
Deputy Chairman

K M Brown
Member