

**COMMERCE ACT 1986: BUSINESS ACQUISITION  
SECTION 66: NOTICE SEEKING CLEARANCE**

7 August 2015

The Registrar  
Mergers and Acquisitions Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

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

**PART A: EXECUTIVE SUMMARY**

1. Wilson Parking New Zealand Limited (Wilson) seeks clearance to acquire the leases of 10 car parking sites currently operated by Tournament Parking Limited (Tournament). Nine of the sites are owned by companies related to Tournament. The tenth is independently owned. Wilson is not seeking to purchase Tournament's parking sites or buildings. If clearance is granted Wilson will acquire leases over these properties. Therefore, Wilson would only acquire a temporary right to continue to offer parking services on leased sites, and not ownership of those sites.
2. The commercial terms of the acquisition are yet to be finalised, but it is expected that these will be similar to the transaction which occurred in July 2013, of which the Commission has details.
3. Wilson is a local subsidiary of a Hong Kong family owned group operating throughout South East Asia, Australia and New Zealand. Operating in New Zealand since 1989, it was the first strong brand to emerge in New Zealand as a carpark operator. Wilson operates approximately 270 parking facilities containing over 30,000 parking spaces (bays) throughout New Zealand. Its portfolio includes leased parking facilities, parking facilities that it "manages" on behalf of the owner (more accurately described as providing certain operational services to the owner), and it owns three car parking sites in Auckland, which it self operates. Wilson's ability to generate revenue depends on the number and terms of the leases it is able to secure. For a competition analysis the bays that are operated under the 'managed model' must be excluded from Wilson's portfolio because control over products offered and pricing rests with the site owner, not Wilson, for those bays.
4. The acquisition would enable Wilson to increase business volumes, leverage its fixed operating costs and improve operational efficiency. These outcomes are typical of many acquisitions.
5. Tournament has previously been prominent in the retail parking business throughout New Zealand. It divested most of its portfolio of car park operations in July 2013. That divestment (**T1**) was to Wilson and has been the subject of an investigation by the

Commission that is now closed.<sup>1</sup> The sites that are the subject of this application are ten of the thirteen remaining sites operated by Tournament, 9 of which Tournament has been owner-operating. Tournament wishes to complete its exit from the provision of car parking services by leasing those 9 sites to Wilson and by assigning its lease of the one other site it operates. However Tournament will continue to own the sites<sup>2</sup>.

6. Wilson operates primarily as a retailer by leasing blocks of parking bays from wholesalers (typically carpark owners). The rights acquired by Wilson in the wholesale market are to 24 hour / 7 days a week access to parking bays. The retail supply involves Wilson re-packaging their 24 hour/7 day right to park into a menu of parking services for end-users. The retail car parking market is highly differentiated and contains a range of attributes that consumers value in different ways.
7. Wilson's market experience, and surveys recently conducted by the Commerce Commission, show that consumers are highly price sensitive. The alternative to parking for a sizeable number of consumers is to use public transport or change their travel plans, rather than parking somewhere else. A material number of consumers will simply exit the parking market if their price sensitivity levels are breached. In particular the surveys by the Commission suggest that an attempt by operators to increase prices by 5 percent would substantially lower operator revenue and eliminate most of the retailers' gross margin.
8. The demand for parking is a derived demand arising from consumer choice to make a journey using a car that needs to be left somewhere. Accordingly, it is an intermediate good.
9. Both the wholesale and retail markets are highly competitive and are characterised by high levels of substitution:
  - choices on the supply side by the building owner about who retails the park bays how the risks and rewards of park bay retailing are shared between the building owner and the retailer
  - customer choices of parking location and travel mode choices for consumers at the retail end (demand).
10. Wilson is an intermediary service provider that operates in a tight confine between parking space wholesalers and retail consumers. A very high proportion (approximately ) of the revenue Wilson gathers from retail parking services is paid to the parking space wholesaler as rental for the lease of the space. Their business success is almost entirely dependent on their ability to read and meet consumer demand better than the building owner.
11. Wilson understands that Wilson's reasons for the acquisition are  
strictly commercial. The acquisition offers it the ability to increase business volumes, leverage its operating margins and to maximise profit through operational efficiency.

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<sup>1</sup> Refer to the Commission's closure report dated 20 March 2015.

<sup>2</sup> In addition Wilson understands that Tournament also operates another three parking sites that are not included in this transaction. Two of these sites are owned in a joint venture arrangement between Tournament and another company. Wilson expects that the leases of these parking sites will be put up for tender and Wilson will consider bidding for these leases. The third parking site at City Works Depot is part of a building owned by Tournament and this parking site is used primarily to provide parking for tenants of the building.

12. Four of the sites to be acquired are in the Wellington CBD. Four are in the Auckland CBD. Two are in Newmarket. In each of these areas strong competition comes from:
- Care Park
  - Secure Parking
  - Cooper Properties
  - The relevant territorial authorities (AT and WCC)
  - Car park owner operators
  - Various small parking site operators, including the emerging Prime Parking in Wellington.
13. Within the 'areas' around these ten T2 parking sites it is possible to identify, in relation to any individual site, the other sites which obviously compete with it for retail customers. One could think of that area as a "zone of substitution" for that site. But when that identification exercise is done for each site, it becomes obvious that the zones of substitution for each site overlap with other zones<sup>3</sup>. The extent of the overlaps is such that the substitution effects from pricing changes ripple across the areas in question until they eventually hit natural boundaries defining these areas or they peter out. This is how the market is structured and how it operates.
14. Whether this means there is one geographical market for each of these three T2 'areas' is moot because an analysis at a less aggregated level demonstrates that the acquisition will not enable Wilson to exercise market power in any market. The overlapping zones of substitution play a part in this inability to gain or exercise market power, but a wider market definition is not necessary for the conclusion that the acquisition is not likely to substantially lessen competition in any market.
15. There are three principal factors that constrain Wilson, or any other operator, exercising market power:
- The market structure, in particular the natural disincentive that the typical lease structure provides to an operator implementing aggressive pricing policies because the operator, not the building owner carries the revenue risk associated with this approach.
  - The optimal pricing model is to minimise vacancy. Wilson's success depends on achieving this. Its competitors have higher vacancy rates which provides a stock of latent supply that would be engaged by any unreasonable attempt by Wilson to raise prices;
  - The demand curve derived from Commission surveys demonstrates that consumer price sensitivity means that raising prices is not a profitable strategy. Consistent with Wilson's experience, the effect of this sensitivity in a competitive scenario is

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<sup>3</sup> We note that the Commission adopted a narrower geographically based definition of markets in its "Wilson Parking New Zealand Limited: investigation closure report" released on 20 March 2015. We have provided evidence supporting our suggested 'overlapping zones of substitution' approach in the NZIER 1 and NZIER 2 reports attached to this application.

very strong. But even in a notional monopolistic market, enough customers will exit the parking market altogether to other transport modes or public transport and make such a strategy unprofitable<sup>4</sup>.

16. There are current working examples of very strong market presence of an operator in localised sections of the wider geographic parking areas. These examples provide evidence of no ability for the operator to gain or exercise market power by increasing prices or restricting supply or by reducing the quality of the offering. The nature of the constraints varies from zone to zone but because of this the various constraints cannot be generalised across the wider market. This is important evidence for demonstrating the existence of material constraints.

## NOTICE DETAILS

### The person giving notice (acquirer)

17. This notice is given by Wilson Parking New Zealand Limited.

*Registered Office:* Level 12, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

*Postal address:* PO Box 8290, Symonds Street, Auckland 1150, New Zealand

*Website:* [www.wilsonparking.co.nz](http://www.wilsonparking.co.nz)

*Telephone:* 09 3755 080

*Fax:* 09 3755 085

*Contact person:* Steve Evans

*Position:* Chief Executive Officer – New Zealand

*Email address:* SEvans@wilsongroupnz.com

18. All correspondence and notices in respect of this application should be directed in the first instance to:

Brent O'Callahan, Director, Kirkland Morrison O'Callahan

*Email:* [brent@kmoh.co.nz](mailto:brent@kmoh.co.nz)

*Telephone:* (09) 366 1366

### Other party

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<sup>4</sup> The survey completed by Commerce Commission indicated that increasing prices by 5 percent across all carparks in the area is likely to reduce revenue by encouraging people to switch to public transport (an average of 16 percent of respondents in Wellington and 18 percent of respondents in Auckland) or park elsewhere (an average of 11 percent of respondents in both Wellington and Auckland).

19. The other party to the proposed transaction is Tournament Parking Limited.

*Registered Office:* Shed 10, 77 Cook Street, Auckland, New Zealand

*Postal address:* PO Box 909 30, Auckland 1142

*Website:* www.tournament.co.nz

*Telephone:* 09 37 4040

*Contact person:* James Brown

*Position:* Director

*Email address:* james@tournament.co.nz

*Wilson Parking New Zealand Limited*

20. Wilson is owned by Wilson Parking Holdings Pte Ltd, a company incorporated in Singapore.

21. Wilson operates parking sites in a number of New Zealand cities, including Auckland and Wellington.

*Tournament Parking Limited*

22. Tournament Parking Limited (Tournament) is owned by Joanne Rowntree and Rowntree Trustee Limited as to one half and by Katherine Buchanan and Harvey Pierce St Clair Brown as to the other.

### **Supporting documentation**

23. In support of this application, please find NZIER's first report, dated 2 April 2015 (**NZIER 1**) that was provided to the Commission at the pre-application meeting is annexed as **Appendix A**. NZIER's second report, dated April 2015 (**NZIER 2**) that considers amongst other things the competition effects of the T2 transaction is annexed as **Appendix B**. In addition, NZIER's report and the submissions made in this application rely on information and documentation that has been provided to the Commission over time in relation to the Commission's investigation of Tranche 1. The L.E.T assessment on entry and expansion carried out by NZIER dated 12 June 2015 (**LET test**) is annexed as **Appendix C**.

## PART B: TRANSACTION DETAILS

24. The proposed transaction concerns Wilson acquiring leases of 10 car parking sites located in Auckland Central, Newmarket and Wellington Central. The ten sites together comprise a total of 2437 parking bays. The carpark sites which are the subject of the proposed transaction are set out in schedule 1 below.

### Schedule 1: sites the subject of the proposed transaction

	Car Park	Bays	Address	Expected tenure
1.	The Airedale Street Car Park	85	81 Airedale Street, Auckland Central <sup>5</sup>	longer than 5 years
2.	The Nelson Street Car Park	207	17-19 Nelson Street, Auckland Central	longer than 5 years
3.	The Khyber Pass Car Park	379	459B Khyber Pass Road, Newmarket	longer than 5 years
4.	The Rialto Car Park	311	9 – 13 Kent Street, Newmarket	longer than 5 years
5.	The St. Benedict's Street Car Park	82	16 St. Benedict's Street, Auckland Central	longer than 5 years
6.	The Upper Queen Street Car Park	49	6 West Street, Auckland Central	longer than 5 years
7.	The Leftbank Car Park	203	179 – 181 Victoria Street, Wellington Central	longer than 5 years
8.	The Lombard Car Park	314	28 Bond Street, Wellington Central	longer than 5 years
9.	The Marion Street Car Park	205	26 Marion Street, Wellington Central	longer than 5 years
10.	The Plimmer Tower Car Park	602	2 Gilmer Terrace, Wellington Central	4 years
	Total	2,437		

25. Sites numbered 1 – 9 in schedule 1 are owned by Tournament who currently self-operates them. The tenth site, the Plimmer Tower Car Park in Wellington CDB has recently changed ownership and is now owned by Paul Benjamin, and currently leased to Tournament.

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<sup>5</sup> Wilson understands that this the same site as the site referred to as 79 Airedale St in the Commission's investigation closure report of 20 March 2015.

26. The commercial terms of the leases of the first nine sites are yet to be finalised. It is anticipated that they will have tenure of longer than 5 years<sup>6</sup> The lease on the Plimmer Tower Car Park, Tournament would be assigned to Wilson.

#### **Control and structure of the parties**

27. The proposed transaction will not alter the control or ownership of either Wilson or Tournament.

#### **Transaction documents**

28. The proposed transaction is not the subject of a formal agreement. Wilson previously had an option to acquire these leases on the terms proposed, but that option has expired. The parties have decided to seek clearance on the terms proposed before entering into further contractual documentation.

#### **Commercial rationale**

29. Wilson understands that irrespective of whether clearance is given for the acquisition to proceed,
30. Tournament has offered to sell the lease rights to the Applicant because Tournament believes that a sale to Wilson would secure it the best price for the leases and would meet its objective for a quick and clean exit from the business of retailing car parks, at the lowest possible transaction cost.<sup>7</sup>
31. Car parking operators like Wilson face competitive pressure from both the supply side (from the wholesalers from whom the car parking bays are obtained), and from the demand side (from the consumers who purchase car parking services).
32. Because the supply of car parks is limited there is rivalry between sellers (car park service operators) for access to that supply. As a result, lease contracts have high fixed costs. In order for a car park service operator to increase its revenue and profitability the operator has to increase parking space utilisation.
33. The supply side structure does not give retailers of parking services incentives to withhold supply as this approach exposes the retailer to loss of revenue through lower occupancy levels without lowering the retailer's commitment to meet the fixed lease costs charged by the wholesaler.<sup>8</sup>
34. In addition, because of the possibilities of substitution on the demand side (demand elasticity's are greater than one)<sup>9</sup>, if the Applicant were to obtain market share it could not use its share of the market to maximise profit by withholding supply to increase the retail price – consumers would change to one of the many substitutes available to them.

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<sup>6</sup> This is the basis of NZIER's assessment: NZIER 2 at [4].

<sup>7</sup> NZIER 1 [280].

<sup>8</sup> NZIER 1 [123].

<sup>9</sup> NZIER 1 [179]

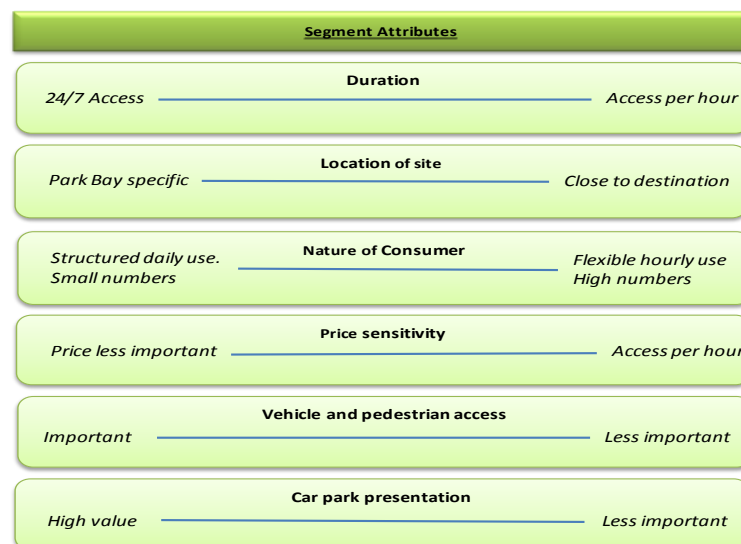
35. The Applicant's business model is therefore dependent on improving operational efficiency and increasing parking space utilisation.
36. There are three commercial reasons for Wilson's interest in this transaction:
  - a. Wilson expects to improve the profitability of the sites acquired from Tournament by reducing revenue leakage and by re-allocating the service offering to better match unmet high value customer demand. That is, they expect to improve allocative efficiency;
  - b. From this acquisition Wilson can achieve both a step change in the amount of product it has to sell immediately and to de-risk its supply side portfolio of leased parking properties;
  - c. There will be an overall gain in productive efficiency from economies of scale obtained by Wilson expanding their business volume.
37. Wilson's assessment is that the way Tournament is currently managing the T2 sites is very basic compared to the approach that Wilson would use, and that the difference in sophistication gives Wilson an opportunity to increase revenue from the sites operated by Tournament by differentiating these sites to better suit consumer preferences.
38. Wilson's objective is to improve the operation of the T2 sites through their expertise.
39. In summary, Wilson's business model is based on operating leased parking bays more efficiently than either the site owner or competing retailers can. They do so by leveraging the following competitive advantages:
  - A better understanding of and a tighter focus on preventing revenue leaking – i.e. by controlling access to, and collection of payment for use of parking bays so that all end-users pay for the parking services they are using; and
  - A closer matching of their parking services offered to those demanded by the market.



## PART C: Competitive Overlaps

40. The T2 sites currently compete with Wilson sites.
41. Before discussing each of the T2 sites, it is important to note that competition in parking markets is not between homogenous products. As explained in NZIER 2[21], end-users of parking are generally not seeking 24 hour/7 day use of a carpark but want access to a parking space as part of their decision to travel by car. The time at which consumers need access to the carpark, length of stay, and the strength of their preference for a particular site will vary across end users and be influenced by the purpose of the travel and the sustainability of alternative modes of travel. These choices also vary by geographic location – that is by site or by groups of sites.
42. NZIER go on to explain:
  - '23. In Figure 4 below we illustrate the attributes, beyond location and duration, that consumers attach to car parks when deciding where and how to park their car.

Figure 1 Consumer parking attributes



Source: NZIER

24. The attributes combine at an individual consumer level, making accurate estimates of the elasticity of demand problematic because, at the individual consumer level, these attributes carry different weights in consumer parking preferences. It is these extremes of differentiation that preclude the use of standard competition tools, such as ssnip tests, when assessing parking markets.
25. We are of the view that direct competition between parking sites that are more proximate is often observable but quickly become diffuse and difficult as site proximity decreases. For us the Commission's 2014 car park survey highlighted this situation with customers choosing alternative carparks some of which were quite some distance away when asked what they would do if their first choice carpark closed.'

43. For this reason, Wilson does not approach the question of competing car parks by looking at simple zones with bright lines at the physical boundaries. The degree of competition and substitution varies depending on, amongst other things, the attributes of both the preferred and substitute sites, as well as by the size of the price difference **and** the type of parking service offered.
44. In order to make some sense of these complex interactions from an analytical perspective, NZIER have attempted to identify a 'zone of substitution' for each T2 car park. They describe this as a 'first round' examination of which carparks appear to have a material level of substitution for the particular site in question. The analysis has been divided into closely competing sites and less closely competing sites, but each on the basis of a 'first round' response.
45. There are two important limits on this analysis as a full and accurate statement of the substitutability of carparks:
- Some customers who would still choose to park in the event of price change will choose carparks that are geographically distant. The Commission's 2014 car park survey highlighted this situation where some customers choose alternative car parks some distance away<sup>10</sup> when asked what they would do if their first choice of carpark closed.<sup>11</sup> There could be at least two reasons for this element of complexity in parking markets:
    - i. Once a particular price threshold is met, some customers cease to value certain attributes, such as proximity to destination, above other attributes and will, on price, choose a car park without that attribute;
    - ii. The geographic attributes of distant car parks might be close to neutral for certain customers, such as those who could choose to park at any point on the perimeter of a city and walk to the centre. Here, a customer in a park at one end of town might choose to switch to a park at the other end of town in response to a small price change.
  - A 'first round' analysis is static in the sense that it does not take into account the dynamic adjustments that will occur in the market following a price change. Because of the mix of car park attributes consumer decision making is complex. For example, a price change in a car park may involve its customers choosing one of several others. But then if those sites experience increased demand and raise their prices then some customers in those car parks will look to park in car parks within the 'zone of substitution' for those parks, which may include car parks that were not within the zone of substitution for the original site where the original price change occurred. This will keep happening until vacancy is found somewhere or customers leave the market. Accordingly, although a distant car park may not be a direct and proximate substitute for the current users of a particular carpark, it and others may

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<sup>10</sup> We note that the Commission used a 350 metre radius around each site as the starting point for the definition of the zone of competition around each site in their investigation closure report. We have provided evidence supporting a broader definition of 'overlapping zones of substitution' in the NZIER reports attached to this application.

<sup>11</sup> NZIER 2 at [24].

be important constraints. Accordingly the 'zone of substitution' approach ignores the dynamic nature of parking markets.

46. For these reasons, NZIER regard zones of substitution as something of an artificial construct but a necessary tool to make sense of these dynamics. Nonetheless, in order to undertake a practical analysis at site level, they have begun with such zones and then considered the likely constraints that the simple zone of substitution approach ignores. In this application, the zones of substitution for each site will be defined and described. The analysis of what drives competition within zones of substitution, and the effect of overlaps between the zones of substitution on the price/vacancy trade-off for parking sites, are both discussed in the later section on competition analysis.

#### **Different products depending on duration?**

47. Wilson's view is that provided there are no restrictions on the use to which particular bays can be put, the concept of different product markets collapses because an operator can immediately, or in the short term, apply their product to meet the demand for four types of products:
- casual short stay;
  - casual daily;
  - monthly unreserved;
  - monthly reserved.
48. Wilson is not aware of any such restrictions on relevant off-street parking sites in its current portfolio, in the T2 sites being acquired, or amongst its competitors.
49. Where the question could become important is with respect the role played by on-street parking. On-street parking has traditionally been regarded as relevant only to casual short stay because traditionally on-street parking, provided by local councils, has involved time restrictions on parking that is enforced by fines. Even then, the fine regime itself might be relevant if the fine could be regarded as part of the fee. However, both Wellington City Council and Auckland Council now operate on street parking to facilitate long stays during a day. For Auckland Council, this policy is applied generally to all on-street paid parking. In Wellington it varies. Accordingly, in most of the T2 sites, on street parking plays an important role.
50. Whilst on-street parking cannot ever provide the same product as monthly parking, the interaction between monthly parking and casual daily parking is important because of the role it plays in enabling revenue to be earned on vacant parks for retailers and the signal it sends to consumers about the trade-offs between different parking services. Aggregation of casual daily rates sets a starting point for monthly unreserved parking and monthly unreserved parking sets a starting point for monthly reserved parking. For this reason Wilson regards all offerings as comprising a single market.
51. Wilson is aware that the Commission took a different view in its closure report of 20 March 2015 concerning the definition of different product markets. However, the mix of offerings within the T2 sites and the immediate zones of substitution is sufficiently similar that Wilson considers the distinction is not material to this application.

52. We now turn to our analysis of the individual T2 sites using this competitive overlap framework. By way of explanation, each table includes those sites that we consider compete 'closely' with the T2 site (highlighted in dark pink), and those sites that compete less closely with the T2 site (highlighted in light pink). The proximity of the car parks to each other are one of the factors we include in this assessment, but not the only factor. The mix of product offering and pricing are other attributes that are included in the mix.
53. The share of park bays in the competitive zone that is shown in each table is the pre T2 situation with the T2 site acquisition impact on the share of bays shown at the top of the table. Where we have physically surveyed on-street park bays (for example Boulcott zone) we have included that data. It is important to note that the following tables of the T2 site data do not include on-street park bay numbers and as such the relative shares of park bays will be overstated and the implied competitive overlaps are understated.

#### **The Plimmer Tower (2 Gilmer Terrace, Wellington), 602 bays**

54. The first round substitutes for Plimmer Tower are contained in NZIER 2, Table 6:
55. Wilson already operates \_\_\_\_\_ of the bays in this zone. The acquisition of Plimmer will give Wilson \_\_\_\_\_ of the bays in this zone.
56. The closest competition to Plimmer comes from the \_\_\_\_\_ car park operated by \_\_\_\_\_ and Wilson's own site at \_\_\_\_\_. Amongst those closely competing large sites, the current dynamic is Tournament \_\_\_\_\_, Care \_\_\_\_\_ and Wilson \_\_\_\_\_. Wilson's acquisition of Plimmer will result in Care having \_\_\_\_\_ of these closely competing bays and Wilson \_\_\_\_\_



### **The Leftbank Car Park, 203 bays**

60. The first round substitutes for Leftbank are set out in NZIER 2, Table 9:

61. Wilson currently has no presence among the sites that closely compete with Leftbank. The close competition comes from Care's site , Prime's and , and the Wellington City Council's on-street bays in the immediate vicinity.

62. When one looks to the less close competition this brings in sites operated by Wilson and . Therefore among all of the immediate competition Wilson currently has . The acquisition of Leftbank will bring Wilson to

**The Lombard Street Car Park, 314 bays**

63. The immediate substitutes for Lombard are set out in NZIER 2, Table 10:

64. Close competition with Lombard comes only from the James Smith carpark, which is under the control of its owner.

65. When one looks at the less close substitutes for Lombard, Wilson currently has only the tiny , representing only a fraction of . Therefore Wilson currently has no material presence that is an immediate substitute for Lombard.

### **The Upper Queen Street Car Park, 49 bays and St Benedict's, 82 bays**

66. There are no close substitutes for either of these sites. However, when considering the less close substitutes for these two sites the same list appears for each. Therefore, it is useful to adopt NZIER 2, Table 11 to see the first round substitutes for both:
67. Both these sites are quite small, being 49 and 82 bays. They are each south of the Symonds Street Bridge, which the Commission in its closure report considered was a natural boundary.<sup>12</sup> The only Wilson sites in this zone of substitution south of the Symonds Street Bridge is the site in St Benedicts Street owned by the Diocese of Auckland with 101 bays (Wilson also calls this "St Benedicts"). If the zone of substitution excluded the sites north of the Symonds Street Bridge (Langham, Whitaker Place and City Road) then it would comprise bays with Wilson currently holding and the acquisition taking it to
68. Wilson believes that the Symonds Street Bridge is not a clear barrier and that this brings into play some larger sites currently controlled by Wilson north of the Symonds Street Bridge. On that basis, which is the basis on which Table 11 was prepared, Wilson currently holds The acquisition will take them to
69. It should be noted that in neither scenario have the Auckland Council's on-street bays been quantified and included. They are clear substitutes.

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<sup>12</sup> [110]



### **The Nelson Street Car Park, 207 bays**

70. NZIER have set out the first round substitutes for Nelson Street in NZIER 2, Table 13:

71. The total number of bays in this table is just on The Nelson Street site, at 207 bays is therefore only

72. The close competition to Nelson Street comes from the Auckland City Council's , an open air site at operated by its owner and Wilson's own site

73. The less close competition brings in some very large sites. Of the total, Wilson's current presence is , which will go to with the acquisition of Nelson Street.

## **The Airedale Street Car Park, 85 bays**

74. NZIER have set out the first round substitutes for Airedale Street in NZIER 2, Table 14:
75. This presentation of the substitutes for Airedale is quite different to the view taken by the Commission in its closure report where it defined a local geographical market in the upper Symonds Street area that included Airedale Street and which was bounded on the west by Queen Street.<sup>13</sup> If the Commission's geographical market is adopted, the only substitutes for Airedale Street comprise sites currently operated by Wilson.
76. If Table 14 is used as a measure of first round substitutes for Airedale, Wilson currently has and the acquisition of Airedale Street would take Wilson to

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<sup>13</sup> [112 Figure 1]

### **The Rialto Carpark, 311 bays**

77. The first round substitutes for Rialto are set out in NZIER 2, Table 15:

78. There are no sites that closely compete with Rialto.

79. When considering less closely competing sites, all the sites in Newmarket come into play. Wilson currently has a presence which will move to with the acquisition of Rialto. If the Tournament site at Khyber Pass is also acquired, Wilson will have share.

### **The Khyber Pass Carpark, 379 bays**

80. The first round substitute sites for T2 Khyber Pass are set out in NZIER 2, Table 16:

81. These are the same sites as for Rialto.

82. There are two sites that compete closely with T2 Khyber Pass, namely the \_\_\_\_\_ and the \_\_\_\_\_. Wilson does not have a closely competing carpark with T2 Khyber Pass.

83. When considering the less closely competing sites, the whole of Newmarket comes into play. Wilson presently has a \_\_\_\_\_ presence. The acquisition of T2 Khyber Pass will take that to \_\_\_\_\_. If Rialto is also acquired Wilson will have a \_\_\_\_\_ presence.

**PART D: The acquisition of any or all of the sites would not result in a substantial lessening of competition in any market**

84. The geographic dimension of parking markets is an elusive concept. Wilson remains of the view that geographic markets are city-wide in the Auckland CBD and the Wellington CBD and in Newmarket include the whole of the commercial and retail area.
85. They say this because they believe that the dynamic nature of parking markets referred to above combined with demand and supply side substitutability between the product segments, means that price adjustments occur in the wider set of overlapping first round substitute sites.
86. However, as mentioned above, an alternative way of looking at markets is to focus more narrowly on the first round substitutes for sites that are to be acquired and then to look at the constraints on market power. These constraints can include pressure from outside the narrowly defined market, to the availability of other substitutes, such as public transport or other travel mode choices, and from new entrants.
87. We conduct this exercise below because Wilson believes that such an analysis demonstrates that the acquisitions will not enable it to gain or exercise market power, even using the more narrow view of markets.
88. That conclusion is best understood in the context of how the markets work – that is the structure, conduct and performance of parking markets, which is where we will begin before moving to an analysis of the specific sites to be acquired.

**Entry Assessment - Likelihood, Extent and Timeliness (LET test)**

89. The LET test considers the parking market to be dynamic and highly differentiated. This is as a result of consumer preferences for parking services being comprised of different attributes and their complementarities. The merged Wilson/Tournament entity is unable to cover off all such attributes and complementarities. The test considers that Wilson's opportunities to restrict the likelihood of entry or expansion in the managed and owner operator wholesale sites to be so minimal as to render it non-existent.
90. The extent to which entry or expansion will constrain Wilson post-acquisition is affected by the highly differentiated consumer preferences on the one side, the supply side sectors (owner operator, managed and leased) on the other. The extent to which the entrant competitor might constrain Wilson will also depend on the object function of the entrant. Owner operators for instance are likely to have a profit maximisation objective for their premises and parking may be a trade-off component. As such, the entrant competitor may not be engaged in direct head to head competition with Wilson. The LET test shows that the competition for contracts in the leased and managed sector, particularly in Auckland, is strong. This is supported by instances of when Wilson lost its bid to continue as lessee in some of its Auckland and Wellington sites by entrants.
91. The LET test further suggests that competitive entry or expansion would occur in a very timely manner. Use of market power to lessen competition in parking markets will be highly visible and a competitive response is likely to be swiftly implemented. Leases for parking premises are short term by nature. For providers such as Wilson Parking, this factors acts as a restraint on its ability to assert market power in the industry.

## Structure – Conduct – Performance

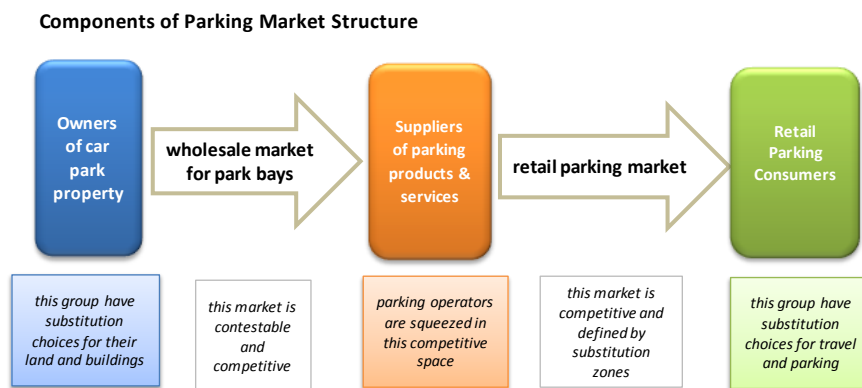
### *Structure*

92. As mentioned earlier, NZIER has identified that car parks and the parking services offered include a range of attributes that are valued more or less by different customers.<sup>14</sup>
93. This leads to a degree of differentiation being in the hands of the customer not the retailer. The parking retailer can respond to this differentiation by adjusting some of the attributes, in particular the duration attribute, which includes not just length of stay but all configurable terms relating to the basis on which the customer values the car park. Other attributes such as vehicle and pedestrian access and car park presentation can be configured by the retailer, but the most dynamic adjustment is with duration.
94. This type of differentiation has 3 important consequences:
- The attributes that are valued could potentially be informed by any of the dimensions (e.g. product dimensions, geographical dimension, time dimension) that make up the package of attributes for each customer;
  - There is a high degree of supply substitutability in the duration dimensions of parking bays from suppliers ability to swap park bay usage;
  - Whilst every car park is unique, there is a considerable sharing and overlap of those attributes among car parks both geographically proximate and geographically separated. This sharing leads to considerable demand side substitutability because customers find it easy to 'swap-out' to car parks with similar attributes.
95. This T2 transaction is taking place within the wider car parking market. The basic structure of the parking business is shown in Figure 2 below – it is made up of three essential components;
- a site on which to provide parking bays
  - the ability to convert the parking bays to parking products that capture the attributes that consumers are seeking when purchasing a car park
  - a service delivery capability that, when combined with appropriate parking products, enable market demand to be met and revenue collected.

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<sup>14</sup> NZIER 1 figure 12, p25, and accompanying discussion.

Figure 2 The parking business



Source: NZIER.

96. Owners of parking property face the problem of how to earn the best net return on the use of their assets. They can either manage the sale of parking services using these assets themselves or engage a specialist to retail parking services using their bays under a number of possible commercial structures.
97. End-users of parking want access to a parking space as part of their decision to travel by car. The length of stay (and requirement for certainty of availability) varies considerably – from permanent 24 hour access (at a pre-set location) down to a short 10 minute stay ('near' the travel destination), and everything in between. Accordingly when contemplating a journey, end-users of car parking services make two substitution decisions - firstly the mode of transport to use for the journey and secondly which car-park service to use based on the attributes of each service.
98. A clear understanding of the elements of market structure is important in assessing the competitive effects of the T2 transaction. This is not an acquisition in a retail market for homogenous parking bays but rather it takes place in a wholesale market for parking bays that are the raw material for parking operators who provide parking services to retail customers. Both ends of this market are competitive and both are characterised by substitution, for site owners at the input end by choices of how to use their building and location and for consumers at the retail end by travel mode choices.
99. Market share is best stated in numbers of park bays. Parking bays are the 'raw material' input to the car parking product 'production' process because they can be easily configured into various parking products to meet the range of consumer demand preferences. Because of this, as shown in Table 2, the main markets are dimensioned in simple high-level terms - numbers of parking bays, rather than (say) revenue or the complex but more appropriate 'real world' products sold at sites that have varying degrees of substitutability with both other sites and also other modes of transport.
100. The reference to competitive share of bays includes 'owner-operator' sites which may or may not be contestable – this depends on the site owner's commercial strategy. Wilson does not have the opportunity to compete for all these sites – however customers in the downstream retail markets do have the opportunity to choose their preferred offering from all of these sites.

Table 1 Reconciled share of bays at December 2014

<b>Competitive</b>	AKL CBD	AKL NEW	AKL PAR	AKL TAK	AKL AIRPORT	WLG CBD	Total Bays
Auckland Transport							
Care Park							
Cooper and Company							
Prime							
Private							
Secure							
Self managed							
SKYCITY							
Tournament 2							
Tournament 3							
Wilson							
WLG CC							
Total Bays							
% of Total							
<b>Managed</b>							
Wilson managed							
Care managed							
Secure managed							
Total All Bays							

Source: NZIER & Wilson

101. By way of explanation:

'Competitive' refers to leased parking sites where the operator has full decision rights over how they use the parking bays and what prices they charge.

'Managed' refers to parking sites where all decision rights regarding how the parking bays are used and the prices charged lie with the site owner.

'Private' refers to parking sites that are owned and operated by private entities for their own use.

'Self-Managed' refers to parking sites that are owned and operated by private entities that compete in the retail parking market for customers.

'WLG CC' refers to the Wellington City Council.

102. Barriers to entry in the retail market are low. Real world observation supports this. All current operators have entered the market in circumstances where Wilson had been the principal operator, independent of building owners. There have over time been other entrants who have established successful businesses, such as Parking New Zealand, Citipark and Centre Park. Most recently there is Prime Parking who has gone from being an owner to being an owner/retailer.



103. The supply side dynamics are important: Wilson's margins above the cost of leases are low. Many of the leases include \_\_\_\_\_, a rent review process will usually determine rent at approximately \_\_\_\_\_ of revenue. So the structure is such that any temporary drive for revenue by the operator will increase their input cost over the long term and make this market model very sensitive to erosion of volume in that longer term.
104. The input lease costs, once set, are fixed for the site and account for a large proportion of the expected revenue. It therefore follows that it is the revenue performance of the overall site that is important to the operator and that \_\_\_\_\_ contributes to the retailers fixed costs. So the cost of withholding supply within a site is high because the bays have to be paid for, regardless of the operator's utilisation of them. This cost is very high compared to average revenues.

#### *Conduct*

105. A key characteristic of the use of market power to lessen competition is for the firm to establish a market position that corresponds with a profit maximisation objective. Such a position would include setting prices and output volumes to achieve that objective.
106. If increased market share conferred market power on a parking retailer (that would be exercised to the detriment of consumers) the following indicators would be present:
- higher prices charged by that retailer relative to either other providers in the same market segment or the market average price, and/or
  - withholding of parking spaces to create scarcity or the acceptance of higher vacancy rates.
107. Also any evidence of the exercise of market power in the market now could be used as a low-side estimate of how concentration of market share after the proposed merger would be expected to affect prices.
108. The supply side structure does not give retailers of parking services incentives to withhold supply as this approach exposes the retailer to loss of revenue through lower occupancy levels without lowering the retailer's commitment to meet the fixed lease costs charged by the wholesaler. The results of the survey of parking intentions in Auckland completed by the Commerce Commission suggests a severe fall in carpark use and gross revenue for a small increase in price – see Appendix A to NZIER 1 report.<sup>15</sup>
109. The parking operators' response to the reduced parking capacity caused by the 2013 Wellington earthquake highlights their general reluctance to attempt to increase price by withholding capacity, and emphasises their 'down to earth' business view that the price of alternative travel modes puts a ceiling on consumer willingness to pay on the availability of spaces.
110. Essentially, because the substitutability between nearby parking services sites varies, it is not possible to define simple submarket zones of parking sites based only on location. The 'in-

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<sup>15</sup> The loss of revenues to the operator from a price increase at both a single parking site and across all car parks is reported in NZIER 2 [156 – 162]. The number of customers that would exit the parking market to public transport rises from 7% for a single site price increase to 17% for an increase across all car park sites. This outcome is particularly harmful for a multiple site operator like Wilson.

principle' reason for this is that for sites near any such boundary there is an opportunity for consumers to substitute services from sites outside the boundary for services from sites inside the boundary.

111. These matters define the structure that NZIER have adopted in their SCP analysis.<sup>16</sup> As already noted, this market structure gives rise to the observation that parking products are highly differentiated. A 'chain of substitutes' metaphor is often used to make sense of market structure where there are differentiated products. However, NZIER have not found such a metaphor to be particularly helpful in capturing the structure of parking markets. They prefer the metaphor of a multi-layered web.<sup>17</sup>

'Rather than the chain of substitutes metaphor ... it seems clear to us that the demand side of the parking market is a multi-layered web. The parking sites with their varying attributes are a network of offerings which allow multiple sites to be compared at once by the consumer, rather than sequentially/linearly as implied by the chain metaphor. The different segments of consumers seeking different attributes create different layers of the web of demand for the network. Finally, suppliers (retailers or building owners) create links between the layers of the web to match the supply of parking services to demand to meet their business objectives. For retailers the objective is maximising revenue through maximising utilisation. For building owners the objectives are more likely to be focussed on the contribution of parking services to maximising overall building rental, or core business income.'

112. Accordingly, NZIER have used the 'zones of substitution' for identifying first round substitutes as a real world structure against which to examine market conduct and performance.<sup>18</sup> These zones are derived by NZIER from a combination of Wilson's internal views and their own analysis as well as the Colmar Brunton surveys carried out at the Commission's direction. Each carpark is considered in light of the first round substitutes.
113. The first round substitutes that are described in the NZIER 2 report are regarded as being robust and representative of how car parking works in the real world. It is difficult to hypothesise what second round and higher effects would be but the Commission survey points to a wider spread of substitutes.

#### *Conduct*

114. The principal observations made by NZIER in sections 2.5 and 2.6 of their report of September 2014 are:
- a. Market participants have little incentive to and do not in fact increase price by withholding supply;
  - b. Consumers react to price changes in a way that crosses various interconnected zones of substitution. This is enhanced by the presence of "iconic" sites that act as close substitutes across many zones of substitution;

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<sup>16</sup> See generally section 2.4 of NZIER 1 - report of September 2014.

<sup>17</sup> NZIER 1, [117] to [118].

<sup>18</sup> NZIER 1, [119].

- c. The retail market is open to new participants, who do appear from time to time in significant ways, especially from other tiers in the supply chain;
- d. Participants in the retail market can and do quickly and easily switch their supply between the various product segments in order to maximise revenue through higher utilisation. Some participants are better at achieving this than others. Those who are not as good at it (ie, who are less efficient) provide a further constraint for the others by creating latent supply (vacancy).

### *Performance*

115. As a result of the market features that have been outlined above, Wilson has, in an effort to be as efficient as possible, been operating within the objective of maximising revenue by pursuing a strategy of high utilisation. As demonstrated above, that outcome is productively efficient and does not result in the ability to exercise market power.
116. The performance rationale for the acquisition is consistent with that approach and that outcome:
- a. Wilson expects to use its expertise to make the former Tournament sites run more efficiently by reducing leakage and lowering the vacancy rates;
  - b. The acquisition will allow Wilson to further leverage its capital investment in infrastructure through further economies of scale;
  - c. Wilson aims to be best placed to offer the most competitive bid on the expiry of the leases. Its principal advantage in the bidding process is the knowledge it will have concerning the efficient operation of the carpark. That means that it can confidently out bid other parties who are risk averse, but equally it can stop bidding at a level where the returns will not justify the rental commitment. A successful bid ought, therefore, to be an efficient outcome. It still leaves ample scope for new entrants to the retail market, especially from existing property owners, to appropriate margins for themselves.
117. On the supply side NZIER have observed (as encapsulated in Figure 39) that [redacted] and the majority of the other Wilson leases are [redacted]. Moreover, the leases have [redacted]. The acquisition does not enable Wilson to [redacted]. The supply side structure does not enable Wilson to increase downstream retail prices for the leases they have without a high risk of an overall fall in revenue and profitability, or the probability that [redacted]. This second point is a significant feature of NZIER's observation around the demand side competition analysis.
118. On the demand side, NZIER have referred to a data set, presented graphically in Figure 40, demonstrating how Wilson have been gaining and losing customers as a result of winning or losing their bids on various sites<sup>20</sup>. That dynamic, combined with the substitution effects detailed in section 2 of their report, leads them to the view that any attempt by Wilson to increase prices carries a high risk of reducing revenue and profitability. Wilson is particularly sensitive to a reduction in volume given that carpark rentals are [redacted] and that [redacted].

<sup>19</sup> NZIER 1, [246]

<sup>20</sup> NZIER 1, [250]

once they have entered into a lease they have the rental obligation for all bays in that carpark for the duration of the lease.

*Other constraints on exercise of market power*

119. There are a number of specific further constraints that arise out of the structure and conduct of parking markets. These are summarised at [254] of NZIER's report of September 2014, and explained further at [255] to [265].
120. Those constraints are:
  - a. Potential loss of sites to competing retailers;
  - b. Owners wanting a larger share of parking revenue;
  - c. Consumers using alternative travel modes or mode combinations;
  - d. Local bodies achieving other objectives through their pricing policies for parking services;
  - e. Building owner preferences shifting from leases to "managed" or owner/retailer.
121. With this analysis in mind we now turn to specific considerations regarding the sites that are the subject of this application.

## Plimmer Tower, Wellington

122. In the Commission's closure report the Commission considered that Capital car park, operated by Care, and the Plimmer Tower car park operated as effective competitive constraints on Wilson's presence in the Boulcott Street area as modified by the T1 acquisition.
123. Wilson and NZIER have analysed that the two closest competing carparks with Plimmer Tower (602 Bays) is the [redacted] and the [redacted] site operated by Wilson.
124. The T2 acquisition of Plimmer Tower will provide effectively head to head competition between Care [redacted] and Wilson [redacted]. That, of itself, ought to maintain the specific competitor constraint amongst these closely competing carparks.
125. When considering a wider view of competing carparks, Wilson's share moves from [redacted] to [redacted] in this area.
126. NZIER is of the view that constraint exists from the following:
  - The immediate constraint of competitors on the first round substitutes;
  - The direct substitutability outside the defined first round substitutes, evident from the survey responses from the parkers at 80 Boulcott Street and Gilmer Terrace. These parkers stated next best preferences both to the north and south of the immediate Boulcott Street area and across towards the waterfront (refer Figure 10 of NZIER March 2015 report) plus Westpac Stadium further to the North, that is not shown in that Figure;
  - The general constraints emerging from the S-C-P analysis;
  - The demand curve.
127. Accordingly, the acquisition of Plimmer Tower will not substantially lessen competition in any market.

## The Te Aro sites: Marion Street, Left Bank and Lombard

128. All these sites are on the Te Aro flat.

129. They each have their own position in terms of first round substitutes:

- Marion Street has no close competition other than the immediate on-street parking because of its particular attributes of location and access point. It does compete less closely on a first round response basis with some of the other Te Aro sites, which include Wilson sites. Wilson will move from a presence to on what has currently been quantified. However, NZIER are of the view that there is a large stock of on-street bays (some available for all day parking) that have not yet been counted, so these figures likely to over-represent Wilson's presence.
- Wilson currently has no presence among the closely competing sites to Leftbank. Looked at on that basis alone, there is no immediate competitive constraint either on the operation of Leftbank or of Wilson's existing sites being removed by Wilson acquiring Leftbank. Wilson has several sites that less closely compete so the question arises as to whether Wilson acquiring Leftbank removes a 'less close' constraint from Wilson's operation of those sites. The could be seen to provide existing close competition for those sites so the removal of Tournament from the range of less close competition from those sites is not material. As for Marion Street, NZIER are of the view that on-street parking provides a material level of competition but it has not been properly quantified.
- Lombard competes closely only with which is independently operated. It competes more widely on a first round response basis with some other large car parks, including and , none of which are operated by Wilson. The only overlap on a first response basis is with Wilson's site, which is tiny at and not material to the analysis. Wilson is just taking over Tournament's participation amongst these sites in a first round substitution basis.

130. Enough overlaps emerged from the analysis of the T2 sites in Te Aro that NZIER has, in addition to analysing each of the Te Aro flat sites on their own, considered them together. This combined analysis confirms the individual analyses that Wilson will continue to experience competitive constraint in these areas from their competitors. Their share of bays moves from a presence in the wider Te Aro flat area to presence.

131. In addition, it appears that the sites in between the Te Aro flat and the Boulcott Street area, loosely called the Willis Street area, provide a significant linkage, in terms of competitive overlap, between the Te Aro flat and the Boulcott Street area. Accordingly, NZIER have specifically considered the role of those parks in the analysis of the Te Aro sites. The Willis Street area is shared by Wilson, ] and The supply of park bays in that area and the competition that exists there provides a competitive constraint on the Te Aro flat area.

132. The overlaps within the Te Aro flat, and through the Willis Street area, that also overlap into the Boulcott Street area, demonstrate the availability of clear paths for dynamic in-market responses (to find latent vacancy in response to say a price increases by a participant, such as Wilson) before the customers exit the market.

133. Therefore, in addition to the constraint from competitors, the following further constraints exist:
- The clear paths that exist for dynamic in-market responses;
  - Those that generally emerge from the S-C-P analysis;
  - The likely impact of public transport, (not the subject of specific survey in Te Aro) is likely to be similar to that experienced in other locations.

### **Nelson Street, Auckland**

134. The Nelson Street car park (207 bays) competes closely with Wilson's \_\_\_\_\_, a small owner operated site at \_\_\_\_\_ and the \_\_\_\_\_ site. Wilson will move from \_\_\_\_\_ of bays in these closely competing sites to \_\_\_\_\_ of bays. The principal competitor thereby is Auckland Council, with Tournament being removed from the market. Even on this very narrow 'close competition' basis the Council can be regarded as a real competitive constraint because they have vacancy and they do not have dynamic pricing practices. Therefore there is no possibility of the Auckland Council following any attempt by Wilson to increase price.
135. In addition, when the less closely competing sites are considered, it is apparent that the Nelson Street site sits amongst a competitive zone of \_\_\_\_\_ bays. Wilson currently has \_\_\_\_\_ of the wider zone. Acquiring Nelson Street moves that to \_\_\_\_\_. There is no basis for suggesting that a competitive constraint will not still exist, even on the first round response analysis.
136. In addition to that constraint, Wilson will also be impacted by those constraints that emerge from the S-C-P analysis and by other substitutes such as public transport.

### **Upper Queen Street and T2 St Benedicts, Auckland**

137. The first round substitutes for these sites overlap. Therefore there will be some discussion of the sites together.
138. NZIER have the following to say about Upper Queen Street:
- 90. On the face of it there appears to us to be little concern. Although Wilson currently have a \_\_\_\_\_ share of bays, and despite an absence of close-by competition, they face a range of less close competition from a wider group of car parks that, in combination, currently constrain their behaviour. We do not anticipate that a \_\_\_\_\_ change in share will materially alter this situation.
  - 91. The T2 Upper Queen Street is small at only 49 bays with a minor impact on market shares. Wilson already has the option to raise prices or withhold capacity, but as before they would harm themselves more than the market.
  - 92. In the same way as for the Marion Street and Leftbank zones in Wellington the T2 Upper Queen Street and St Benedict's sites also have considerable

overlap and compete across both T2 zones to a greater or lesser degree, hence our merging them in Figure [14] below. We believe that the presence of Auckland Transport with on-street parking and their and car parks act as a material competitive pressure throughout this wider zone.

94. While the Upper Queen Street and St Benedicts zones are bounded by both the motorways and New North Road Wilson do not see these seemingly natural barriers as a physical limitation on the competitive scope of the zones (that is - they do not act as a bright line boundary for these zones). We tend to agree with this view. To illustrate our views we have identified four sites on the CBD side of the motorways that we believe could easily provide competition with both these T2 sites because of their proximity to these zones. The AT Upper Queen Street site is clearly a competitor while the other three (yellow markers – ) also provide competition though to a lesser degree than the others listed in Table 10.

95. In summary we see this zone as diverse and with considerable choice of substitute sites for parkers. The zone is heavily used by commuter and short stay parkers and interestingly it includes a couple of the sites that were included in the Commission survey (City Road and Liverpool Street). Both these sites are dominated by short stay/commuter and in the survey recorded a price response here that was materially higher than the Auckland CBD average (that is - parkers here are much more sensitive to price increases and responded that they would either move to another car park site or use public transport should prices be increased by a permanent 5%).

139. In its closure report, the Commission was of the view that the Symonds Street Bridge was a natural barrier that meant that the upper Symonds Street area that was defined in that report was separate to the sites south of Karangahape Road. If that view remains then the range of sites that compete with Upper Queen Street and T2 St Benedicts is smaller than what is depicted in the table set out in NZIER's Table 11. The table of first round substitutes would then be the following:

Upper Queen Street	T2
T2 St Benedicts	T2
Madison Retail	Wilson
Exmouth Street	Wilson
Ariel	Ariel
AT Burleigh	AT
Citta	Wilson
AT Upper Queen Street	AT
St Benedicts	Wilson

Total

Wilson Current  
Wilson with T2



140. This is a useful cross-check because it demonstrates that competitive constraints will continue, regardless of how the market is viewed.
141. In addition Wilson will be constrained in the way that generally emerges from the S-C-P analysis and by the likely effect of public transport. There being no real basis to distinguish the role of public transport in the Upper Symonds Street area from this area. The major bus service routes are not materially different.

### **Airedale Street, Auckland**

142. The Commission's closure report identifies that the T2 Airedale Street car park does not provide a competitive constraint on Wilson in the Upper Symonds Street area. If that view holds, then Wilson acquiring this site will not substantially lessen competition: the constraints come from other sources.
143. We note the view of Wilson and NZIER, however, that an analysis of the first round substitutes for Airedale Street does not produce the same result as the geographic area defined in the Commission's closure report. In particular, Wilson and NZIER rank the Auckland Council's large and iconic [redacted] as a close competitor. The Civic was excluded by the Commission from the Upper Symonds Street zone.
144. We regard the competitive effect of the [redacted] as a material constraint on Wilson's ability to gain or exercise market power in the upper Symonds Street area not recognised in the Commission's closure report, along with the constraints that generally emerge from the S-C-P analysis. This, combined with the constraint from public transport, helps to explain why, despite a very concentrated market presence in an area that appears to have particular geographic features an operator does not gain market power or cannot exercise it. It is a very good example of dynamic parking markets at play.
145. Whichever way this markets are viewed, it cannot sensibly be said that Tournament's current operation of Airedale Street is itself a competitive constraint on Wilson, so acquiring it can have no effect on the competition dynamics.

### **Rialto and T2 Khyber Pass, Newmarket**

146. These two sites each compete in the Newmarket area as a whole. Significant competitive constraint will remain with [redacted] and the [redacted] iconic sites.
147. In addition, the constraints arising from the S-C-P analysis will also remain.
148. We also note that Wilson's market presence in the tables are over-stated because they include Wilson's management of [redacted], over which it has no rating control, and that the on-street bays controlled by Auckland Council have not been quantified.

### *Conclusion*

149. For all the reasons state above, the T2 acquisition, either on a site by site analysis, or looked at on a more aggregated level, is not likely to substantially lessen competition in a parking market regardless of how the market is defined.

## **PART E: Counterfactual**

150. Without the acquisition, NZIER is of the view that Tournament has three market exit options:
- a. Offer to terminate the parking bay lease on Plimmer Tower early so that the decision on how to retail the car parks is returned to its existing wholesaler, and put leases of its own sites out for tender in the usual way that a building owner does ;
  - b. Attempt to sell the leases to either existing retailers or a new entrant;
  - c. Attempt to sell the leases to existing retailers that operate a managed model – which would require these operators to adopt a new retail model.
151. We note that assessing these options is speculative but we believe that option b is the most likely counterfactual. In relation to that counterfactual, the most likely acquirers would be current competitors.
152. That view is held because:
- Tournament wants to exit car parking operations;
  - Despite that, it has a business package that is saleable, so it is unlikely that it would just surrender a lease or offer its own properties for lease in the usual way;
  - There is an incentive for existing operators to pay Tournament for leases. If such willingness to pay exists, Tournament will choose that option rather than behaving as a normal property owner would.
  - The willingness of existing operators to pay arises for exactly the same reasons Wilson is interested in this transaction: the ability to gain a step change in business volume, de-risk the existing lease portfolio and leverage fixed costs;
  - It is unlikely that such willingness would exist for a new entrant unless it was first able to establish a portfolio through the usual tender processes with other sites. Therefore it is likely only market incumbents will be interested.
153. Therefore, the counterfactual will involve the Tournament sites being operated by other existing competitors. In that scenario, market concentrations will increase because Tournament will be exiting.
154. Regardless of whether or not the acquisition proceeds Wilson will continue to act in the same manner as it always has, because its commercial strategy and the constraints of the market, dictate the way in which it has to act.

**PART F: Further information**

**The Commission should have the information it needs through the NZIER reports that are annexed to this application and through the investigation process conducted by the Commission relating to T1.**

## **PART G: Confidentiality**

### **Specific information contained in or attached to the notice**

155. The information contained in this version of the notice is public information. A confidential version of this notice has been provided that specifically identifies all information that is commercially sensitive to Wilson and/or Tournament.
156. The parties request that they be notified if a request is made to the Commission for release of the information under the Official Information Act 1982.

## **PART H: Update on Market Activity**

157. Since preparing this application in draft, there have been the following significant transactions in Wellington:

- a) Care Park has purchased the Tory Street (approximately 600<sup>21</sup>bays) car park.
- b) Prime Parking has entered into a commercial lease as lessee of the James Smith carpark. This substantially increases Prime Parking's portfolio and is Prime Parking's first significant foray into operating car parks under the lease model.
- c) Wilson Parking has a conditional right to acquire control of 388 bays in the Victoria Street Parking Centre at cnr Victoria Street and Willeston Street. This is currently managed by Care Park on behalf of the owner.

**This Notice** is given by Wilson Parking New Zealand Limited.

The company hereby confirms that:

- All information known to Wilson Parking New Zealand Limited which is relevant to the consideration and determination of this application has been supplied; and
- All information supplied is correct as at the date of this application.

The company undertakes to immediately advise the Commission of any material change in circumstances relating to the application.

Dated 7 August 2015

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Steve Evans  
Chief Executive Officer – New Zealand

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<sup>21</sup> There are a total of 600 bays but Wilson Parking believes them to be in 2 titles. Care Park has definitely acquired the title that accesses 474 bays. Wilson Parking is not sure about the remainder.