

# Feedback to proposed Infocare/APT acquisition

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Confidential Response V1.3

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## Introduction

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## Executive Summary

The proposed merger between APT and Infocare would result in a substantial reduction in competition in the ECE SMS market. The merger will result in an overwhelming reduction of the market competition which will inevitably reduce meaningful consumer choice. The merger exceeds any conventional parameters of an acceptable increase in market concentration.

True market share of the available number of childcare services that could be considered the target market requires further analysis.

There are only three active SMS vendors servicing the ECE market in the largest sector of education and care centres and they are Infocare, APT and Discover. All other SMS vendors either have little to no market share or purely service their own organisation. If Infocare and APT merge it could become challenging for existing SMS vendors to grow any further market share along with any new entrants who may view the market as anti-competitive.

The Ministry of Education (MoE) have restraint and control over the SMS market with the process of acceptance, testing and certification of any new SMS entrants.

The contention that each or both businesses may fail seems unrealistic as each still have a significant client base, revenue and time to upgrade systems individually without the merger proceeding.

## Summary

### 1. Market Share and Competition

- a. The Early Childhood Census and ECE Directory listing totals the services as 4,653 and 4,677 services respectively from December 2019 data<sup>1</sup>. In the merger application, Paragraph 60 claims the market totals 5,500 services.
- b. Of those 4,677 services (taking the higher number), several large childcare service providers are listed as below who have associations with SMS vendors and should not be considered as open market or target clients for competing SMS vendors:
  - i. [ ]
  - ii. [ ]
  - iii. [ ]

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<sup>1</sup> See attachments 'Early Childhood Census Data 2019.pdf' and 'Directory ECE Current Dec 2019.xlsx'

iv. [ ]

v. Total of 505 services to be excluded

- c. The total number of available remaining services for SMS vendors to market to is reduced from the higher number of 4,677 down to 4,172 services as the above listed childcare services either own or have direct associations with the SMS they are operating.
- d. In June 2019, Infocare advertised they supported 1,900 services (40.4%) and in the merger proposal, APT was documented (Paragraph 23) as supporting 1,100 services (23.5%). The website of APT states that “Our software is used to administer over 1,400 MOE licensed services”. The combined market share of both providers would be approximately 3,000 services of the available 4,677 indicating a combined market share of 64%. If APT’s website is correct, the combined market share would be 3,300 services of 4,677 equating to 70.6%. Paragraph 72 of the application states that four new entrants have gained a total combined market share of 41.2% which doesn’t align with the proposal’s analysis of total market share. Paragraph 75 claims that Discover have secured a similar market share as Infocare and APT which tends to indicate that the other three new entrants have had little to no impact on that 41.2% market share further reinforcing that only three SMS vendors are active in the market.
- e. Paragraph 79 indicates that the market is open to entry from International organisation’s. While that is true for any market, that International organisation would still need to be certified and signed off by the Ministry. That process could take a significant amount of time while that timeline allows existing SMS vendors to ensure their product is competitive. Paragraph 80 claims that International SMS providers could easily modify their software within a short timeframe and the Ministry would simply sign that off. An internal view is that timeframe is more protracted than just several months and the Ministry of Education have a preference to engage with domestic SMS vendors.

## 2. Ownership model of SMS

- a. An important factor that is not discussed in any detail in the application is the ownership model of the SMS vendors. Each SMS vendor who has interests or other investments in the childcare services sector is listed as below:
- b. [
  - i.
  - ii. ]
- c. [
  - i. ]
- d. [
  - i. ]

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- e. In summary, each of the listed entities above should be excluded when calculating available market share as those organisation's would not easily move to a new SMS vendor regardless of price or functionality. The total of services listed above is 505 leaving the remaining 4,172 services available for SMS vendors to promote their platform and feature set. Infocare states in Paragraph 60 that the total early childcare industry consists of approximately 5,500 individual services when public record states there are 4,677 individual services that connect to ELI. The combined services supported by Infocare and APT if merged would be approximately 3,000 services. Calculating the potential combined market share off the higher of 5,500 services is 54.5% while the public record of ECE services of 4,677 creates a market share of 64%. If childcare services only use the free ELI portal due to their size and have no requirement for an SMS, they should also be excluded from available market share calculations further increasing that combined market share of 64%. Healthy competition for SMS vendors has only become apparent in the last two years through the ECE community requiring better technology and solutions than were being provided by the pioneer SMS vendors. An unhealthy marketplace will exist if Infocare and APT can merge as prices could easily be adjusted down to either restrain consumers moving to the existing competition or inhibit any new competitors entering the market. Industry knowledge supports that the childcare centres associated with the Applicants specified above in 2 (a) - (d) commonly use low or free pricing as a means of attracting new customers. There should be minimal restraint on new entrants to the SMS market as the last 24 months confirm they offer modern technology and functionality to assist an otherwise poorly serviced marketplace. The key driver of a good SMS is to save time and money by reducing administrative tasks and therefore costs to ensure ECE services have healthy balance sheets for financial sustainability and to pay teachers a fair wage.

### **3. Ministry of Education**

- a. The Ministry of Education (MoE) already have strict controls over new entrants to the NZ ECE SMS market. There are limited resources available within the MoE to continually test and allow new entrants to the SMS market. The MoE will only accept two new SMS vendors annually with preference given to domestic organisations. This ensures there is a constrained amount of competition as the MoE validates the integrity and quality of SMS vendors and the capability of their software. It is an internal view that it is not an open market where anyone can simply meet the MoE requirements and start to promote software to ECE service providers. SMS vendors primarily need to be accepted and then allowed to progress through the process and testing phase of becoming a certified NZ SMS vendor. The time it takes to become certified also ensures existing SMS vendors have enough time to innovate and compete with new entrants creating a fair market for existing and new entrants.
- b. The application states in Paragraph 5 quoting the Ministry of Education as having no objections and expressed comfort with the acquisition proceeding. This confirmation

was unable to be confirmed by the Ministry and the Commerce Commission would need to verify this directly with senior national representatives within the MoE.

#### **4. Each or both businesses may fail**

An internal view is that each or both businesses will continue and can remain profitable if they do not merge. There are investors and enough client revenue to support the investment in their platforms individually, a merger does not need to proceed to ensure this investment upgrade occurs. APT's website states "Our list of features continues to grow as we incorporate your ideas and requests in our frequent upgrades. We continually innovate." Both organisation's may continue to lose market share but could continue to provide services to their significant large clients and to other clients who are either loyal or resistant to change.

#### **Public Interest**

The applicants case significantly overstates the benefits and understates the likelihood of outcomes detrimental to the customer and thus the public interest. In particular the applicants make claims that the merger will facilitate opportunities for greater investment and thus a superior product. Such products already exist in the marketplace and therefore the merger will not provide any greater benefit to the public than that already being experienced by those services that have already changed SMS vendor and are likely to change in the future.

Although the Applicants may believe that ... this cannot be deemed to be sufficient reason to exempt two companies with large market shares for the competition regulations intended to prevent undue levels of market concentration and power being acquired by a single company.

#### **5. One system or two**

The application states that should the acquisition proceed, two new front-end systems would be built while using a single back end engine or database. This appears anti-competitive as the two systems could become relatively similar offering less options and features to ECE services.

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] The technology that new entrants are currently offering the ECE sector will be diminished and will again reside with Infocare and APT [ ]. With such a large single SMS vendor in the market, new entrants may also decide not to enter this market space, in turn lessening the competition and leaving consumers once again with little to no choice of providers.

## **Conclusion**

It is our submission that on the basis of the above considerations, the merger scenario fails the public benefit test, would substantially lessen competition and would constitute an unacceptable concentration of power and market control in one large entity. Consequently,

we do not believe that the Commence Commission should authorise the proposed business acquisition or any other merger arrangement between APT and Infocare.

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