

ISSN NO. 0114 - 2720

COMMERCE COMMISSION

DECISION NO. 288

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of s 105 of the Act, in the matter of an application for clearance of a business acquisition involving:

TRANZRICH TRAVEL LIMITED

and

GUTHREYS INTERCITY COACH SERVICES LIMITED

The Commission:	Peter Allport Roger Taylor
Summary of Proposal:	Tranzrich Travel Ltd proposes to acquire the assets of Guthreys Intercity Coach Services Ltd related to its Intercity coach operation.
Determination:	Pursuant to s 66(3)(a) of the Act, the Commission determines to give clearance to the acquisition.
Date of Determination:	11 April 1997

AUT/BA - T- 16/2
M2333

MEMORANDUM

To: Peter Allport / Roger Taylor

From: John Preston
Jo Bransgrove
Victoria Healy
Richard Hoy

Date: 9 April 1997

Subject: **Commerce Act 1986: Business Acquisition
Tranzrich Travel Ltd/Guthreys Intercity Coach
Services Ltd**

Working Day 8: 9 April 1997

Working Day 10: 11 April 1997

Confidential information in this report is contained within square brackets.

THE PROPOSAL

- 1 On 27 March 1997 the Commission registered a notice from Tranzrich Travel Ltd (Tranzrich) for clearance to acquire the assets of the Intercity business of Guthreys Intercity Coach Services Ltd (Guthreys). The assets comprise the Intercity franchise held by Guthreys, the coaches and related assets used to operate the franchise and, Guthreys 18.03% shareholding in Intercity Management Ltd (IML). The proposal does not include the other assets of Guthreys, in particular its chartered coach and tour operation. The current shareholdings and proposed acquisition are summarised in appendix one.
- 2 Section 66(3) of the Commerce Act 1986 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 of time has been agreed, a decision is due on Friday 11 April 1997.

BACKGROUND

The Parties

Tranzrich Travel Ltd

- 3 Tranzrich is a coach operator and holds an Intercity franchise under which it provides services on a number of North Island routes. The company also operates travel centres. There are two shareholders in Tranzrich - Tranzit Group Ltd (Tranzit Group) which is owned by the members of the Snelgrove family and Ritchies Transport Holdings Ltd (Ritchies Transport) which is owned by members of the Ritchie family. Tranzit Group and Ritchies Transport each hold 50% of the shares in Tranzrich.

Guthreys

- 4 Guthreys provides bus and coach services and holds an Intercity franchise which serves Auckland, Hamilton, Rotorua, Waitomo and Tauranga. It also operates a charter and tour service and a travel agency in Hamilton. It is owned by Richard Guthrey and Warren Dalzell.

Intercity Management Ltd

- 5 IML is based in Auckland and was established to provide services to the six companies who own IML and which hold Intercity franchises. These companies are Guthreys, Tranzrich, Ritchies Transport, Tranzit Intercity Limited, Nelson SBL Travel Limited and Pacific Tourways Limited. IML does not itself operate any coach services but provides facilities for the franchisees in respect of management, marketing, computing, reservations systems and ticketing services. The Intercity services, which are long distance coach services, were formerly provided by the Intercity Division of the then New Zealand Railways Corporation.

Intercity Franchises

- 6 IML franchises out the scheduled long distance route services throughout New Zealand to the six franchise holder companies.
- 7 The operation of the Intercity franchise system means that generally, the franchisees do not compete in the provision of long distance coach services. Franchise holders may not offer services under another brand which compete with the Intercity franchise of another operator. However, for geographical reasons, the franchise areas overlap on four of the six routes under which Guthreys currently operates. Despite this, all franchise holders carry the same livery, and cannot be readily distinguished by travellers on these sectors.

MARKETS

Introduction

- 8 The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition will breach the threshold of anti-competitiveness set out in s. 47(1) of the Act by leading to the acquisition or strengthening of a dominant position.
- 9 Section 3(1A) of the Act (as amended by the Commerce Amendment Act 1990) provides that:
- “the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common-sense, are substitutable for them.”
- 10 Markets are not always easy to define in practice, for a number of possible reasons. The present case raises difficulties with regard to determining the exact product market boundaries as a number of other transport modes are substitutable by some passengers but not others.

The Relevant Market

Long Distance Coach Services

- 11 In Decision 262 of March 1991¹, the Commission noted that scheduled long distance coach services face competition from other modes of transport: private motor vehicles, hire vehicles, shuttle buses, trains and airlines. However, the Commission concluded that coach services have some characteristics which justify them being regarded as a separate market.² These include:
- their ability to serve small towns which do not have air or rail services;
 - the price factor (i.e. that some passengers use coaches because they cannot afford airfares and because the travelling time involved may be less significant to them);and
 - the ability to pick up and drop-off passengers at any point along a route.
- 12 Decision 262 also noted that there are several geographic markets based on “point to point” routes. That is, a service between Auckland and Hamilton is not substitutable for a Gisborne to Napier service.

¹ This involved Mount Cook and Newmans, in which each agreed to restrict their operations to the South and North islands respectively. They also purchased each others operations in the respective islands.

² This definition was also followed in Decision M2303 in June 1996 which involved the purchase of Bayline Ltd, an Intercity franchise by Tranzrich.

Routes Affected by the Acquisition

- 13 The routes upon which there will be aggregation are scheduled long distance coach services on the following routes:
- Hamilton - Auckland
 - Auckland - Rotorua
 - Hamilton - Tauranga
 - Hamilton - Rotorua
- 14 The other routes operated by Guthreys where Intercity does not compete and which are therefore unaffected by the acquisition are: Rotorua - Waitomo and Auckland - Waitomo.
- 15 Due to the high numbers of tourists who travel in the Auckland, Waitomo, Rotorua areas, these routes are known in the industry as the “golden triangle” and this is reflected in the make-up of coach passengers. Parties spoken to by Commission staff indicated that tourists are generally the principal users of coach services on these routes. The proportions vary according to season and public holidays.

Conclusion on Market Definition

- 16 It appears appropriate to continue to regard scheduled long distance coach services as a separate product and function market, although one faced by constraint from other transport modes. The geographic markets are the point to point routes listed above.
- 17 Although this may be regarded as a narrow definition of the relevant market, for the purposes of analysis, an approach has been adopted that if there are no dominance concerns in this market as result of the acquisition, then possible wider market definitions need not be considered.

COMPETITION ANALYSIS

Assessment of dominance

- 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 satisfied it will decline to give clearance.
- 19 Section 3(9) of the Act states that a person is in a dominant position in a market if:
- “... that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”
- 20 That section also states that a determination of dominance shall have regard to:
- Market share, technical knowledge and access to materials or capital;
 - The constraint exercised by competitors or potential competitors; and
 - The constraint exercised by suppliers or acquirers.
- 21 In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing non-exhaustive factors and any other relevant matters that may be found in a particular case. Specifically, with respect to the present case, entry barriers and the existence of near entrants to the market are important considerations in making any dominance assessment.³
- 22 The Court of Appeal stressed in *Port Nelson Ltd v Commerce Commission*⁴ that “...dominance reflects the ability to act to a large extent independently...”, but not necessarily to act totally without regard to competitors, suppliers, or customers. Nevertheless, to be dominant, a company must be able to act, within the limits of commercial reality, without significant competitive or consumer constraints.

³ See the Commerce Commission, *Business Acquisition Guidelines*, 1996.

Market Share

- 23 On the affected routes, Tranzrich will increase its market share from 40% to 60%. This figure is based on information provided by Tranzrich in its previous application to the Commission (Decision M2303). It is also consistent with figures provided by Mount Cook. However, in both Decision M2303 and the current application, market share figures were not provided for the Hamilton-Tauranga route. It is possible that the acquisition could lead to Tranzrich acquiring a 100% market share on this route.

Constraint from Existing Competitors

- 24 In addition to coach operators on these routes, the applicant faces competition from a number of other modes of transport. These are :

- rail;
- shuttle buses;
- rental cars; and
- air

- 25 Constraint from other coach operators on the relevant routes, and constraint from other modes of transport are each considered separately below.

Coach Operators

- 26 The principal direct competitor of the applicant is Mount Cook Landline Ltd (Mount Cook), which is a wholly owned subsidiary of Air New Zealand Ltd. Mount Cook re-entered the North Island market in August 1994 after a restraint of trade agreement expired. Mount Cook operates a long distance scheduled coach service on all of the affected routes with the exception of Hamilton to Tauranga. Mount Cook estimates its market share on the relevant routes to be approximately 20%.

⁴ *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554.

- 27 The applicant lists Newmans as a competitor. However, section 47(3) of the Commerce Act states that for the purpose of sections 47 and 48 of the Act “a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other”. Given the common ownership of Newmans and Tranzrich, Newmans is an associated person and cannot, therefore, be considered as a competitor for the purposes of this analysis.
- 28 The applicant lists a number of other coach operators as competitors on the relevant routes, such as Scenic and Great Sights. These firms, however, provide a packaged service which typically includes accommodation and meals. These firms are not therefore, competing within the relevant market.
- 29 Other coach operators, such as Kiwi Bus and Magic Bus, have chosen to focus on providing a flexible service to users who are mainly backpackers. Customers purchase a ticket for a certain period of travel rather than booking a seat on a scheduled service. Although these operators focus on backpackers, they have impacted on coach operations such as that run by the applicant and Guthreys, and may therefore be considered as competitors.

Shuttles/Mini Buses

- 30 Several coach operators commented that in recent years a large number of second hand Japanese vans and minibuses have been imported at low cost and had become a significant competitor to coach services. However, consultation with shuttle and mini bus operators suggested otherwise. Shuttle buses do not usually operate to set schedules and do not have connections to travel agencies. They rely on attracting travellers arriving at airports or making regular visits to city hotels, in a similar manner to taxis. Alternatively, shuttle and mini bus operators provide a chartered service whereby the bus or van is hired by groups of up to 11 persons for individually tailored excursions. Shuttle and mini buses are not, therefore, considered to be in direct competition with scheduled coach services.

- 31 Shuttle services operate on all of the relevant routes, and are particularly active on the Auckland - Hamilton route.

Rail

Tranz Scenic Ltd, a subsidiary of Tranz Rail, operates passenger rail services on the following routes:

- Auckland - Rotorua (*the Geyserland*)
- Auckland - Tauranga (*the Kaimai Express*)
- Auckland - Hamilton (*the Geyserland, the Kaimai Express, the Overlander, the Northerner*).

- 32 Rail fares tend to be lower than comparable coach fares. However, rail has the disadvantage of longer travel times and it does not have the flexibility of being able to stop anywhere along a route. Coach operators stated that this flexibility was of particular importance to domestic passengers, whereas tourists tended to travel the entire route.

- 33 It is clear, however, that for a number of passengers, rail and coaches will be substitutes, and they will “ring around” to find the least expensive mode.

Rental Cars

- 34 Rental cars have a distinct advantage over coaches in terms of flexibility. In addition, where a number of travellers travel together, the shared cost of hiring a car can be significantly lower than travelling individually by coach. As well as the established car rental firms such as Budget and Avis, there are presently a large number of rental car firms that use second hand Japanese imported vehicles. The entry of these firms has led to a lowering of rental car prices.

- 35 Travellers wishing to use rental cars must allow for the cost of insurance (including the 'excess' to which they will be liable in the event of an accident) and one way penalty fees. In addition, the hiring of a rental car is only open to those who hold a valid drivers licence. However, for a number of passengers, rental cars are clearly a substitute for scheduled coach services.

Air

- 36 There are regular passenger air services between Auckland and Rotorua and Auckland and Tauranga. While air travel results in considerable saving in time for longer journeys, the longest route affected by the application is Auckland - Rotorua. On this route air fares are twice that of rail and coach fares, and the saving in total elapsed time would not be large. Parties spoken to by Commission staff indicated that on the relevant routes air would only be a substitute for a small number of coach passengers.

Conclusion on Constraint from Existing Competitors

- 37 Although the acquisition will lead to aggregation of long distance coach services on a number of routes, there is strong competition on these routes from Mount Cook and appreciable constraint from other modes of transport such as shuttle buses, rental cars and rail.

Constraint From Potential Entrants

Intercity Franchisees

- 38 As previously outlined, the operation of the Intercity franchise system restricts other franchise holders from entering the routes affected by the acquisition. Other franchise holders are not, therefore, potential entrants.
- 39 In addition, a term of the acquisition restricts Guthreys from operating a chartered coach service on the routes being sold for three years. Guthreys cannot, therefore, be considered as a potential entrant for this period.

Other Entrants

- 40 The expansion of services by existing operators, either by providing more frequent services on existing routes or by adding new routes, appears feasible if sufficient business is available. Similarly, entry into the routes served by Tranzrich, by either firms presently operating in other regions or by new firms, would not face onerous entry conditions. We were advised by one party that a fully equipped new large coach could cost \$500,000 or more, but that much lower priced alternatives of second-hand coaches or smaller coaches, are available to operators and would allow an adequate service to be provided.
- 41 A new operator would need to arrange reservation facilities and stopping points or depots. Toll free lines could be established for reservations and local agents appointed for reservations and ticketing. These elements are not likely to pose major difficulties.
- 42 Regulatory requirements for the provision of bus and coach services are contained in the Transport Services Licensing Act 1989, and are not onerous. A prospective operator must obtain a passenger service licence. This verifies that the person is fit and proper to operate such a business, and has demonstrated appropriate knowledge of relevant law and practice.

Conclusion on Constraint from Potential Entrants

- 43 Although there has not been significant entry into the relevant market since Mount Cook re-entered the North Island in 1994, potential entrants spoken to by Commission staff indicated that the only barrier was the capital required to purchase coaches.
- 44 Other potential entrants stated that they had not entered the market as they believe that there are currently too many operators, and that there is not sufficient passenger growth.

Intercity Management Ltd

- 45 The acquisition would result in Tranzrich increasing its shareholding in IML from 21.42% to 39.45%. We do not consider that this raises any competition issues additional to those considered above.

Conclusions on Dominance

- 46 In the long distance bus and coach services market the proposal would result in aggregation of market share on all of the routes on which Guthreys operates. On the Hamilton-Tauranga route, it is possible that the acquisition may lead to Tranzrich acquiring a 100% market share. However, it is considered that on this route, Tranzrich will remain constrained by other modes of transport such as rail and potential market entrants. On all other routes affected by the acquisition, Tranzrich will face further constraint by existing competitors.

RECOMMENDATION

- 47 We have had regard to the factors set out in s 3(9) of the Commerce Act 1986 and are satisfied that the proposal, if implemented, would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market. It is recommended that in terms of s 66(3)(a) of the Commerce Act the Commission give clearance to the proposal.

J A Preston
Chief Investigator

Jo Bransgrove
Manager

DETERMINATION ON NOTICE OF CLEARANCE

We agree/disagree with the recommendation.

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

Accordingly, pursuant to s 66(3)(a) of the Commerce Act 1986, we hereby give clearance for Tranzrich Travel Ltd to acquire the assets of the Intercity business of Guthreys Intercity Coach Services Ltd.

Dated at Wellington this day of 1997

Peter Allport
Convenor

Roger Taylor
Member

The Seal of the Commerce Commission
was affixed hereto in the presence of:

Peter Allport
Deputy Chairman of the Commission

Date: / /1997