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**Notice
under s66 of the
Commerce Act 1986**

**Application by GE Fleet for
clearance to acquire the
business of Custom Fleet (NZ)
Limited**

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

06 June 2006

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
Wellington

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

CONTENTS

EXECUTIVE SUMMARY

PART 1: TRANSACTION DETAILS

- 1 The business acquisition for which clearance is sought
- 2 The person giving this notice
- 3 Confidentiality
- 4 Participants
- 5 Interconnected and associated persons
- 6 Beneficial interests
- 7 Links between participants
- 8 Common directorships
- 9 Business activities of the participants
- 10 Reasons for the proposed acquisition

PART II: IDENTIFICATION OF MARKETS AFFECTED

- 11 Horizontal aggregation
- 12 Differentiated product markets
- 13 Differentiated product markets
- 14 Vertical integration
- 15 Other business acquisitions

PARTS III, IV AND V: CONSTRAINTS ON MARKET POWERS BY EXISTING AND POTENTIAL COMPETITION AND OTHER POTENTIAL CONSTRAINTS

- 16 Existing competitors
- 17 Conditions of entry and expansion
- 18 Countervailing Power of customers
- 19 Co-ordination Effects

CERTIFICATE

GLOSSARY

The following are the meanings of various terms used in this Application.

CHP	Commercial hire purchase
Custom Fleet	Custom Fleet (NZ) Limited
Corporate Customers	Business and government customers for fleet leasing or fleet management services
Commercial vehicles	Large vehicles such as trucks and forklifts
Commercial vehicle leasing	Leasing of fleets of large vehicles
Fleet leasing services	Leasing of fleets of passenger vehicles and/or commercial vehicles
Fleet management services	Fleet management of passenger vehicles
GE Fleet	Includes references to GE Fleet New Zealand and GE Capital Fleet Services New Zealand Limited
FMA	Fleet management agreement
FMOL	Fully maintained operating lease – a fleet lease arrangement which includes aspects of fleet management
NAB Group	National Australia Bank Limited
Passenger vehicles	Traditional motor vehicles and light commercial vehicles
Passenger vehicle leasing	Leasing of fleets of traditional motor vehicles and light commercial fleets

Executive Summary

Proposal

- 1 Clearance is sought for the acquisition by GE Fleet New Zealand of the business of Custom Fleet (NZ) Limited (*Custom Fleet*) (the *Proposed Transaction*).

The parties

- 2 GE Fleet New Zealand is incorporated in New Zealand and is ultimately owned by the General Electric Company (*General Electric* or *GE*) in the United States, which is listed on the New York Stock Exchange. GE Fleet New Zealand was incorporated in 2004 but until recently was a dormant GE company.
- 3 GE Capital Fleet Services New Zealand Limited, another wholly owned subsidiary of General Electric, operates a fleet leasing and management business in New Zealand. In this Notice, where the context requires, "GE Fleet" refers to either GE Capital Fleet Services New Zealand Limited or that company together with GE Fleet New Zealand.
- 4 GE Fleet's business is relatively small compared to other industry participants, with only around [] vehicles under lease or management contracts (comprising [] funded and [] managed only units), []. GE Fleet's customers are corporate and government customers (*Corporate Customers*).
- 5 Custom Fleet is 100% owned by the Bank of New Zealand (*BNZ*), which in turn is a wholly owned subsidiary of National Australia Bank Limited (*NAB Group*). Custom Fleet's main business functions are also the funding and management of vehicle fleets to Corporate Customers. In New Zealand, Custom Fleet has approximately [] vehicles under lease or management contracts (comprising approximately [] funded units and [] managed only units).

Relevant markets

- 6 For the purpose of this Notice and its assessment of the competition effects of the Proposed Transaction, GE Fleet has adopted the market definitions used by the Commerce Commission in 2002 in Decision 478 (Custom Fleet's acquisition of Hertz Fleetlease), that is:
 - 6.1 the market in New Zealand for the provision of fleet leasing services; and
 - 6.2 the market in New Zealand for the provision of fleet management services.¹

¹ However, in assessing the market size and respective shares of the market participants, figures for the 'fleet management' market include only 'management-only' arrangements (ie arrangements where fleet management is not bundled together with a lease from the same supplier.) The reason for this is that around []% of GE Fleet's fleet leases are fully maintained operating leases (*FMOL*), which include components of fleet management services. GE Fleet

No Substantial Lessening of Competition

7 Even on the narrow markets found by the Commerce Commission, GE Fleet submits that no lessening of competition will result from the Proposed Transaction.

8 The Commerce Commission has previously identified the strong competitive dynamic, low barriers to entry and strong countervailing power of customers in the fleet leasing and fleet management markets. These strong structural and behavioural constraints have not changed to any material degree since the Commerce Commission granted clearance for Custom Fleet to acquire the Hertz Fleetlease business in 2002. In summary:

Market concentration/large number of competitors

8.1 On the basis of GE Fleet's market share estimates, the post acquisition concentration thresholds are just within the Commission's "safe harbour" thresholds in respect of fleet leasing, and only just outside in respect of fleet management. Accordingly, following the acquisition, numerous participants, large and small (regardless of their size) will continue to compete vigorously and effectively with the merged entity, including a range of international and local competitors such as:

- o LeasePlan, Orix, Esanda FleetPartners, and Fleetsmart (formerly Cardlink Systems);
- o providers linked to motor vehicle manufacturers, such as Toyota Financial Services, Ford Credit, Holden Financial Services, Diamond Finance (through Mitsubishi and DaimlerChrysler) and Honda Lease Direct; and
- o a number of smaller participants focusing on fleet leasing.

Low barriers to entry and expansion

8.2 The requirements and costs of entry into the markets are comparatively very low. The major requirements for entry are knowledge of the industry, basic IT capabilities, a source of funding to provide fleet leasing, availability of customers and a network of sub-contractors and independent suppliers to provide services – all of which are readily available. Further, current software and telecommunications facilities mean that it is feasible that both leasing and fleet management can be offered and managed from Australia by the use of local New Zealand contractors for providing services, with all call centres and administration centrally controlled in Australia.

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believes that this will be the case with other fleet leasing companies but is not able to estimate what proportion of their leases are FMOL. It can, however, estimate the number of fleet management only contracts.

Significant countervailing power of customers

- 8.3 All customers have significant alternative choices due to the multiplicity of competitors, the general absence of exclusivity terms in contracts, the ability to use tenders and panels, and industry characteristics that involve few transaction costs in switching suppliers. The combination of each of these factors results in significant countervailing power of customers and considerable constraints in place on activities of the merged entity.

Additional constraints on market participants

- 8.4 As well as constraints from competitors in the markets, there are considerable additional constraints as follows:
- o customers who are contemplating leasing their fleet also have the option of owning the vehicles themselves or using one of the many other forms of finance available (e.g. bank loans or funding from their own cash flows); and
 - o customers contemplating the use of fleet management services also have the option of managing their fleets "in-house" (using readily available and affordable IT packages).
- 8.5 Analysis of Land Transport New Zealand data indicates that there are a significant number of Corporate Customers that fund their fleets otherwise than by way of fleet lease and/or who manage their fleets in-house.

Markets not susceptible to collusion

- 8.6 The moderate levels of concentration in these (narrowly drawn) markets, the low barriers to entry and countervailing customer power, together with pricing that is frequently set by tender (and consequently not transparent) indicate that the markets are unlikely to be susceptible to collusive conduct.

Conclusion

- 9 As the Commerce Commission has previously identified, there is a strong competitive dynamic, low barriers to entry and strong countervailing power of customers in the fleet leasing and fleet management markets. These factors result in significant constraints on the ability of a merged GE Fleet/Custom Fleet to increase prices or margins or reduce services following the merger. Therefore, GE Fleet submits that no lessening of competition will result from the Proposed Transaction.

PART I: TRANSACTION DETAILS

1 What is the business acquisition for which clearance is sought?

- 1.1 Clearance is sought for the acquisition by GE Fleet New Zealand of the business of Custom Fleet (NZ) Limited (*Custom Fleet*).
- 1.2 The acquisition of the Custom Fleet business in New Zealand forms part of a wider transaction involving the acquisition by related entities of GE Fleet of the Custom Fleet business in Australia and the United Kingdom.
- 1.3 In New Zealand, Custom Fleet's business comprises an integrated business which provides:
 - o fleet leasing of traditional motor vehicle and light commercial fleets (*passenger vehicle leasing*) and leasing facilities for large commercial vehicles such as trucks and forklifts (*commercial vehicle leasing*), collectively referred to as *fleet leasing services*; and
 - o fleet management of passenger vehicles (*fleet management services*).
- 1.4 GE Fleet is seeking to acquire the entire Custom Fleet business in New Zealand. The acquisition in Australia will not include NAB's Commercial Fleet division, which provides commercial vehicle leasing in Australia as a separate entity from Custom Fleet.

2 Who is the person giving this Notice?

2.1 This Notice is given by:

GE Fleet New Zealand

C/- Alexander James Cock
Director
GE Fleet New Zealand
106 Customs Street West
Viaduct Basin
Auckland, New Zealand

Phone: 09 363 1350
Mobile: 029 212 8967

And

C/- Shane Van Velzen
General Manager
GE Capital Fleet Services New Zealand Limited
12 Maidstone Street
Grey Lynn
PO Box 68969
Newton
Auckland

Phone: 09 376 7604
Facsimile: 09 378 6160

2.2 All correspondence and notices in respect of this Notice should be directed in the first instance to:

Chapman Tripp Sheffield Young
Level 35
ANZ Tower
23-29 Albert Street
Auckland

Telephone: 09 357 9020
Facsimile: 09 357 9099

Attention: Lindsey Jones / Jane Baker

3 Confidentiality

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No. Confidentiality is not required for the fact of the Proposed Transaction.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the Notice? If so, for how long? Why?

- (a) Yes. Confidentiality is sought in respect of the information contained in this Notice, which is set out in square brackets and marked "Confidential" in the margin. Confidential information has been deleted from the Public Copy of this Notice.
- (b) Confidentiality is sought under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982 on the grounds that:
 - (i) the information is commercially sensitive and contains valuable information which is confidential to GE Fleet; and
 - (ii) disclosure of it is likely to give an unfair advantage to GE Fleet's competitors and unreasonably prejudice GE Fleet's commercial position.
- (c) GE Fleet also requests that it is notified of any request made to the Commission under the Official Information Act for the confidential information, and that the Commission seeks GE Fleet's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.
- (d) GE Fleet notes, however, that the Commerce Commission may contact the ACCC (which is considering the impact of the Australian aspects of the global acquisition). GE Fleet consents to the Commerce Commission sharing and discussing with the ACCC (on a confidential basis) the information contained in this Notice.

GE Fleet

GE Fleet New Zealand
C/- Shane Van Velzen
General Manager
GE Capital Fleet Services New Zealand Limited
12 Maidstone Street
Grey Lynn
PO Box 68969
Newton
Auckland

Phone: 09 376 7604

Facsimile: 09 378 6160

4.1 Custom Fleet

Custom Fleet (NZ) Limited
C/- General Counsel
National Australia Bank Limited

Telephone: 0061 3 8641 2048

Facsimile: 0061 3 8641 4902

Mobile: 0061 414 449 492

Attention: Nathan Butler

All correspondence and enquiries should be directed in the first instance to:

Minter Ellison Rudd Watts:
PO Box 3798
Auckland

Telephone: 09 353 9847

Facsimile: 09 353 9700

Attention: Andrew Matthews / Oliver Meech

GE Fleet

- 5.1 GE Fleet New Zealand is a holding company incorporated in New Zealand and is ultimately owned by the General Electric Company (*General Electric* or *GE*) based in Connecticut, USA and listed on the New York Stock Exchange.
- 5.2 GE Capital Fleet Services New Zealand Limited, another wholly owned General Electric subsidiary, presently operates a fleet leasing and management business in New Zealand. However, GE Fleet New Zealand will complete the Proposed Transaction. Ultimately, the Custom Fleet NZ business and the GE Fleet businesses in New Zealand will be amalgamated to form one business.
- 5.3 GE Equipment Finance is a separate corporate entity to both GE Fleet New Zealand and GE Capital Fleet Services New Zealand. GE Equipment Finance provides plant and equipment financing and has around 350 commercial vehicles (largely trucks and forklifts) under operating and finance lease arrangements.
- 5.4 General Electric operates a wide range of manufacturing and service divisions around the world through six business units:
- (a) **GE Commercial Finance:** offers an array of financial products. GE Commercial Finance provides loans, leases, financing programs, commercial insurance and reinsurance, and other financial services. GE Fleet is an entity under the Commercial Finance umbrella that provides vehicle leasing and fleet management services for Corporate Customers. GE Fleet New Zealand, the Applicant, is also part of GE Commercial Finance, as is GE Equipment Finance (described above);
 - (b) **GE Infrastructure:** provides fundamental technologies to developed, developing and emerging countries, including aircraft engines, energy, oil and gas, rail and water process technologies and services. GE Infrastructure also provides aviation and energy leasing and financing services;
 - (c) **GE Industrial:** provides a broad range of products and services throughout the world, including appliances, lighting and industrial products, factory automation systems, plastics, silicones and quartz products, security and sensors technology, and equipment financing, management and operating services;
 - (d) **NBC Universal:** one of the world's leading media and entertainment companies in the development, production and marketing of entertainment, news and information to a global audience;
 - (e) **GE Healthcare:** provides expertise in medical imaging and information technologies, medical diagnostics, patient monitoring systems, disease research, drug discovery and biopharmaceutical

manufacturing technologies and is dedicated to detecting disease earlier and helping physicians tailor treatment for individual patients; and

- (f) **GE Consumer Finance:** provides, under the “GE Money” brand, credit services to consumers, retailers and auto dealers in countries around the world, offering financial products such as private label credit cards, personal loans, bank cards, auto loans and leases, mortgages, corporate travel and purchasing cards, debt consolidation and home equity loans and credit insurance.

Custom Fleet

- 5.5 Custom Fleet is 100% owned by the BNZ, which in turn is a wholly owned subsidiary of the NAB Group.

6 Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

- 6.1 Neither GE Fleet nor any of its interconnected bodies corporate has any beneficial interest in shares or any other pecuniary interest in Custom Fleet or any of its interconnected bodies corporate.
- 6.2 The NAB Group in New Zealand and in Australia is a diverse financial services group and in the ordinary course may have beneficial interests and pecuniary interests in the GE group of companies. This can involve, for example the provision of banking services, as well as the holding of investments through its wealth management, collective investment and life insurance activities. GE Fleet understands that the Custom Fleet entities being sold do not have any such interests.

7 Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 Except for those items listed in paragraph 7.2 below:

- (a) GE Fleet does not have any links, formal or informal, with any other provider of fleet leasing or fleet management services in New Zealand; and
- (b) none of the other trading subsidiaries of General Electric in New Zealand have any links, formal or informal, with any of their own, or their related companies' competitors in New Zealand.

7.2 Arrangements between GE Fleet, or other members of the General Electric group in New Zealand, and its/their competitors are as follows:

- (a) GE Fleet has a referral arrangement with [] under which it pays [] for fleet lease business referred to it. [] is a competitor in the fleet leasing services market to the extent that it competes with others for the direct relationship with the customer;
- (b) GE Money, from General Electric's Consumer Finance division, has a 50/50 joint venture (called AA Financial Services) with the Automobile Association of New Zealand to provide loan products, primarily to consumers;
- (c) GE Money is a member of the Financial Services Federation. A number of other GE businesses operating in New Zealand are likely to have similar types of affiliations with trade and professional organisations for the purposes of obtaining further business and for promoting industry issues;
- (d) GE Equipment Finance (part of the GE Commercial Finance division) had a historical relationship with [] whereby GE Equipment Finance would provide the lease funding for customers and [] provided the residual value investment for IT related products. No fleet vehicles, trucks or heavy equipment were the subject of any of these arrangements. Although this relationship ceased in 2004, there are still several lease-funding arrangements that have not as yet expired and so the relationship continues to that extent. GE Equipment Finance estimates that the value of the leases still to run is approximately [];
- (e) GE Fleet purchases vehicles from vehicle manufacturers, a number of which also have financing/leasing divisions; and
- (f) The Agreement for Sale and Purchase relating to the Proposed Transaction contains a restraint of trade clause. GE will provide a

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copy of this restraint clause separately to the Commerce Commission on a confidential basis.

- 7.3 Custom Fleet purchases vehicles from vehicle manufacturers, a number of which also have financing/leasing divisions. These include Ford NZ Limited (Ford Credit), Toyota Motor Corp NZ (Toyota Finance) and Holden NZ Limited (Interleasing NZ). Other than the above and normal financial system arrangements between banks, GE Fleet is not aware of any links, formal or informal, between Custom Fleet or any of its interconnected bodies corporate and any of their competitors in New Zealand.

8 Do any directors of the 'acquirer' also hold directorships in any other companies, which are involved in the markets in which the target company operates?

- 8.1 Except as noted at paragraph 8.2 below, no directors of GE Fleet hold directorships in any other companies that operate in the fleet leasing or fleet management markets.
- 8.2 GE Fleet advises that Shane Van Velzen, General Manager of GE Fleet, although not a GE Fleet director, is a director of the AA Financial Services 50/50 joint venture company that GE Money has with the Automobile Association of New Zealand.

9 What are the business activities of each participant?

Activities of General Electric subsidiaries in New Zealand

- 9.1 GE Fleet is a member of the GE Commercial Finance group. It was incorporated as a holding company in 2004.
- 9.2 GE Fleet established itself in the fleet leasing and management industry in New Zealand in 1998 through the purchase of Corporate Leases Limited, part of the Giltrap Group.
- 9.3 GE Fleet's main business functions are the leasing and management of vehicle fleets for *Corporate Customers*. GE Fleet does not generally provide its services to individual consumers.² In New Zealand, GE Fleet has around [] vehicles under leasing arrangements and around [] vehicles under [].
- 9.4 Other parts of the General Electric group in New Zealand also provide finance by way of lease products to other industry sectors, including:
- (a) GE Equipment Finance provides plant and equipment financing, including commercial vehicle leasing. GE Equipment Finance has around [] trucks and forklifts on its books for lease finance. This is small in comparison to other providers of commercial vehicle lease finance and unlikely to amount to more than a []% share of total commercial vehicle lease transactions, and an even smaller proportion of total fleet lease transactions.
 - (b) GE Consumer Finance, under the brand GE Money, provides finance, including by way of finance lease (but not operating lease), primarily to consumers. It has some business customers but these are largely limited to GST registered self-employed or small company customers with a single vehicle.
- 9.5 GE Fleet is located at, and operates its business from, 12 Maidstone St, Grey Lynn, Auckland.
- 9.6 GE Equipment Finance is located at, and operates from, 106 Customs St West, Viaduct Basin, Auckland. It also has offices in Whangarei, Hamilton, Tauranga, Wellington, Christchurch and Dunedin.
- ### CustomFleet
- 9.7 Custom Fleet is 100% owned by the BNZ, which in turn is a wholly owned subsidiary the NAB Group. Custom Fleet Australia was created in 1978 as the specialist passenger vehicle fleet management and leasing arm of NAB in Australia, after NAB acquired Fleetways Finance Ltd from Jardine

² GE Fleet generally does not provide its services to individual customers. For historical reasons (stemming from the former Giltrap business), GE Fleet has a small number of customers with only one or two vehicles.

Matheson (Australia) Limited. Custom Fleet established operations in New Zealand in 1996.

9.8 In 2002, BNZ/NAB acquired Hertz Fleetlease (New Zealand) Limited, Hertz Lease Limited (Australia) and subsidiaries, which were integrated into the Custom Fleet businesses in New Zealand and Australia respectively.

9.9 Custom Fleet specialises in vehicle fleet management and leasing and (like GE Fleet) only offers its services to Corporate Customers, not directly to individual consumers. In New Zealand, Custom Fleet has approximately [] vehicles under lease or management contracts.

9.10 Custom Fleet operates its business from premises in Auckland, Christchurch, Wellington and Lower Hutt. It presently has one staff member located in Hamilton who is based in the BNZ branch there.

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10 What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

10.1 The Proposed Transaction is based on the sale of Custom Fleet's operations in both Australia and New Zealand. In New Zealand, the addition of Custom Fleet's experienced management will be complementary to GE Fleet's existing core of knowledge and experience and should assist in enabling the merged entity to build on the strengths and skills of both companies. In addition, GE Fleet sees significant additional benefits in:

- (a) having the opportunity to expand the size of its business and the range of products and services that it offers to its customers in New Zealand, in order to match the product offerings of its major competitors;
- (b) the use of Custom Fleet's existing IT infrastructure thereby enabling service upgrades for customers; and
- (c) Custom Fleet's in-house infrastructure for the sale of vehicles at the end of their lease term, which GE understands allows Custom Fleet to optimise the remarketing of motor vehicles through a combination of internal and third party sales.

10.2 Overall, the acquisition of Custom Fleet is designed to make GE Fleet a more effective competitor in a very competitive and dynamic industry.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

Areas of overlap

- 11.1 In New Zealand, Custom Fleet's business is an integrated business comprising:
- (a) fleet leasing of traditional motor vehicle and light commercial fleets (*passenger vehicle leasing*) and leasing facilities for large commercial vehicles such as trucks and forklifts (*commercial vehicle leasing*), collectively referred to as *fleet leasing services*; and
 - (b) fleet management of passenger vehicles (*fleet management services*).
- 11.2 Custom Fleet offers both operating and finance lease products (explained in further detail below) for both passenger vehicle leasing and commercial vehicle leasing.
- 11.3 GE's equivalent business in New Zealand is conducted through several entities:
- (a) GE Fleet provides passenger vehicle leasing and fleet management services to Corporate Customers, but it does not presently offer a finance lease product;
 - (b) GE Equipment Finance provides commercial vehicle leasing.³ Leases of large commercial vehicles, such as trucks and forklifts tend to involve smaller numbers per customer than leases of cars and light commercial vehicles, but larger values. In some instances, the customer may have only one large commercial vehicle under lease. However, the structure of the lease arrangements (as detailed further below) is largely the same irrespective of the type or number of vehicles; and
 - (c) GE Money has some finance leases in place with small business customers/sole traders that do not strictly fall within GE Money's consumer focus. GE Fleet refers small business customers (i.e. non Corporate Customers) requiring lease services to GE Money, generally around 10 referrals per year.
- 11.4 The fleet leasing and fleet management customers of the various GE Fleet entities in New Zealand and of Custom Fleet are Corporate Customers.

³ GE Equipment Finance does not provide leases for passenger or light commercial vehicles and it does not provide any fleet management services.

11.5 GE Fleet, GE Equipment Finance and Custom Fleet all provide their services on a nationwide basis.

11.6 Custom Fleet provides both passenger vehicle leasing and commercial vehicle leasing through the one entity, whereas GE does this through separate business divisions. For the purposes of this Notice, we have combined the leasing of passenger and commercial vehicles on the basis that on both the demand and supply sides, lease funding of passenger and commercial vehicles are in the same market. A supplier of passenger vehicle lease funding can easily also supply lease funding for commercial vehicles. On the demand side, customers simply seek a lease-funded vehicle, whether it is a commercial vehicle or a passenger vehicle. Accordingly, the areas of overlap between the businesses of Custom Fleet, GE Fleet and the other divisions of General Electric in New Zealand are:

- (a) fleet leasing services; and
- (b) fleet management services.

These services are described in further detail below.

Fleet leasing

11.7 A fleet lease refers to an agreement entered into by a financier, such as GE Fleet or Custom Fleet (or another competitor), with a Corporate Customer to fund the acquisition or use of vehicles. Financiers enter into this kind of arrangement with a customer to provide leases for all, or some of, the company's vehicles.

11.8 Two types of fleet lease are commonly available to Corporate Customers in New Zealand, namely, operating leases and finance leases. Typically, customers enter into a master contract (usually for a term of two to three years) under which any number of individual leases can be provided.

11.9 The choice between lease types is usually dictated by the customer's balance sheet requirements, cash flow, tax considerations and willingness to accept residual value risk, the latter of which is subject to the vagaries of the used car market. Set out below are some typical features of the two leases available in New Zealand.

Operating Lease

- o The individual vehicles provided under the master lease contract are provided to the customer for a specified lease period (usually three to four years), for a fixed monthly rental and specified kilometre distance allowance.
- o Title to the vehicle remains with the lessor (the financier). Accordingly, the risk associated with any loss or gain over the residual value set at the commencement of the vehicle lease and its ultimate sale price at lease end resides with the lessor.

- Accounting rules allow this type of lease to be 'off balance sheet' for a corporate customer, allowing them to maintain a better debt to equity ratio thereby allowing greater borrowings.
- There are variations on operating leases, for example the Fully Maintained Operating Lease (*FMOL*), where the monthly lease payment also contains a set charge for servicing and maintaining the vehicle based on the lessor's estimate of costs to service. Under an FMOL arrangement, in addition to assuming the residual value risk for the vehicle, the lessor also assumes the "maintenance risk" shortfall (or gain) between the set amount charged to the lessee and the amount actually spent in servicing a fully maintained vehicle.

Finance Lease

- The lessor will retain title to the vehicle but the vehicle will be 'on balance sheet' for the lessee.
- The residual value risk (possible gain or loss) on sale of the vehicle resides with the lessee.
- Much like the master operating leases, finance leases can also be provided with a fully maintained option.⁴

11.10 In addition to finance leases and operating leases, companies active in this sector may also offer a range of other finance products, such as, chattel mortgages, factoring arrangements or commercial hire purchase (*CHP*).

11.11 In Decision 478, the Commission concluded that operating leases and finance leases were substitutable on both the demand and supply side and therefore fall within the same market.⁵ This remains the case today and GE Fleet sees no reason for the Commission to depart from that conclusion.

Fleet management

11.12 The term fleet management is used to describe the provision of 'outsourcing solutions' covering all aspect of an organisation's vehicle fleet, with fleet managers effectively running the entire fleet operations of their customers. Fleet management of a Corporate Customer's vehicle fleet is generally provided under a master fleet management agreement (*FMA*). An FMA generally provides for a set monthly administration fee per vehicle for the term of the agreement, subject only to CPI increases.

11.13 A customer's decision to purchase fleet management services is separate to their decision on how to fund their vehicles, i.e. the service can be provided regardless of whether the customer owns the fleet itself or whether the fleet is financed externally.

⁴ This is not a particularly common option in New Zealand as most finance leases (as opposed to operating leases) are for a single vehicle.

⁵ Decision 478 at paragraph 44.

11.14 The benefit of an FMA is that for a set administration fee per month per vehicle, the service provider monitors, organises, manages and reports on the service and maintenance needs of the corporate fleet. The service provider pays all service invoices received on behalf of the corporate customer and then passes the invoice costs on to the customer – effectively funding the customer's fleet service requirements until the customer pays the service provider.

11.15 Typical fleet management services include:

- *vehicle acquisitions*: assisting customers with acquisition of the most appropriate fleet vehicle(s) depending on need and intended use. This service includes, amongst other things, the co-ordination of the supply and fitting of special equipment and accessories, monitoring and reporting on production and delivery and undertaking payment for the vehicle from the supplier;
- *maintenance and servicing packages*: maintenance and service management of fleet vehicles and liaising with manufacturers and maintenance providers with respect to customer warranty claims;
- *registration and infringement management*: overseeing the registration of customers' fleets and monitoring traffic infringements and penalty notices relating to those fleets;
- *accident management, roadside services and driver assistance*: assisting customers to resolve issues arising out of accidents and breakdowns involving fleet vehicles;
- *insurance options and protection plans*: offering customers various types of third party provided motor vehicle insurance options for vehicles. (GE Fleet does not presently provide this service);
- *comprehensive fleet management reporting*: provision of electronic reporting services, enabling customers to review information pertaining to the costs, taxes, reliability and operation of their fleet;
- *remarketing*: assisting customers to obtain the best possible return on their fleet investment on an ongoing basis through management of vehicle disposal channels such as auction and tender sales; and
- *fuel cards*: provision of fuel cards for customers to purchase fuel and monitor the fuel usage of their fleets and liaising on the customer's behalf with oil company suppliers with respect to product issues (for example quality of fuel), invoices and other related matters. (GE Fleet does not currently provide this service, but merely facilitates the introduction to the relevant oil company).

11.16 GE Fleet provides a range of fleet management services through its FMOL products but has only recently (March 2006) commenced supplying fleet management services as a separate product not attached to a leasing arrangement. [

].

Market Definition

11.17 As noted earlier, the areas in which the activities of GE Fleet and the other divisions of General Electric in New Zealand and Custom Fleet overlap are the provision of fleet leasing and fleet management services. Having regard to the overlap between the merger parties, GE Fleet considers that an appropriate basis on which to delineate the market for the purposes of this Notice would be the "fleet management and leasing market" (the *FML market*).

11.18 The reason for this view, is that the 'market reality' is that a large proportion of customers that decide to have their fleets managed seek a 'holistic solution' involving both the leasing and managed elements. Consistent with this view, all but one of the major participants (Fleetsmart) have set up their infrastructures to be capable of providing an entire FML solution. Indeed, []% of GE Fleet's fleet leases are FMOL, which include components of fleet management services. GE Fleet believes that this will be the case with other fleet leasing companies.

11.19 However, for the purpose of this Notice, GE Fleet has elected to assess the competition effects of the Proposed Transaction by reference to two separate market definitions - on the basis that these were the market definitions adopted by the Commerce Commission in Decision 478:

- (a) the market in New Zealand for the provision of fleet leasing services;
and
- (b) the market in New Zealand for the provision of fleet management services.

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Differentiated Product Markets

12 **Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).**

12.1 Fleet leasing and fleet management services are standardised to the extent that price forms a key part of customers' purchasing decisions.

12.2 As in most markets, the market participants seek to differentiate themselves in a variety of ways, including, in fleet leasing by the range of financing options and vehicles they offer, service quality and, in fleet management by reliability, speed of service, and rapport with the customer. Most major participants in the fleet leasing market also seek to enhance the service element of their products by offering fleet management services in addition to the leasing service.

12.3 However, within each of these two markets, the products offered by the various competitors are regarded by customers as close substitutes for one another.

12.4 In Decision 478, the Commission concluded that each of the fleet leasing and fleet management markets is largely undifferentiated, given that customers have multiple contracts with various fleet management and fleet leasing firms and consumption decisions are based predominantly on price. GE Fleet concurs with the Commission's view that the fleet leasing and fleet management markets are not sufficiently differentiated to warrant the special analysis associated with fully differentiated products.⁶

⁶ Decision 478 at paragraph 49.

13 For differentiated product markets:

- Please indicate the principle characteristics of products that cause them to be differentiated one from another.
- To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?
- Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?
- Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

Not applicable.

14 Will the proposal result in vertical integration between firms involved at different functional levels?

The proposal will not result in any vertical integration.

15 **In respect of each market identified in questions 11 identify briefly:**

- ❑ **all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,**
 - **the outcome of the notification (e.g. cleared, authorised, declined, withdrawn)**
 - **whether the proposed acquisition has occurred.**
- ❑ **any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

GE

- 15.1 GE Fleet has not been involved in any acquisitions in the relevant markets in New Zealand in the last three years.
- 15.2 The most recent acquisition of assets of a business or shares undertaken by interconnected bodies corporate of GE Fleet in New Zealand is the acquisition in February 2006 by GE Finance and Insurance Limited of the business and assets of the Pacific Retail Finance Group (which the Commerce Commission granted clearance for in Decision 571).
- 15.3 The most recent acquisitions before that were in 2005 when a substantial real estate acquisition was completed, in 2004 when GE Money acquired Wizard Finance and in 2003, when GE Money acquired the commercial property portfolio of AMP.

Custom Fleet/NAB

- 15.4 GE Fleet has been advised that Custom Fleet has made no acquisitions in New Zealand in the last three years. The last NAB Group acquisition in New Zealand was the Hertz Fleetlease acquisition.

15.5 PARTs III, IV and v: CONSTRAINTS ON MARKET POWER BY EXISTING and potential COMPETITION and other potential constraints

16 Existing Competitors

16.1 As was the case in 2002, when the Commission considered Custom Fleet's acquisition of Hertz Fleetlease, both the fleet leasing and fleet management markets are vigorously contested.

16.2 The following list of competitors and examples of competitive behaviour demonstrate that post merger, there will continue to be:

- (a) constraints from large and international competitors; and
- (b) constraints from (currently) smaller but highly competitive participants including companies associated with vehicle manufacturers themselves who offer FML services principally to ensure throughput of their particular make of motor vehicle.

16.3 For these reasons, the Proposed Transaction is unlikely to have any appreciable impact on the level of competition in the fleet management and fleet leasing markets.

Fleet leasing

16.4 There is a wide range of competitors in the market for fleet leasing services, from specialist fleet lessors to those offering a more general range of products.

16.5 Specialist fleet lessors include:

- (a) **LeasePlan New Zealand Limited** (*LeasePlan*): LeasePlan was established in New Zealand in 1993 and is a wholly owned subsidiary of LeasePlan Corporation of the Netherlands.⁷ LeasePlan Corporation's international network of companies is engaged in all aspects of vehicle management and employs more than 6,400 people in 26 countries around the world. It manages more than 1.2 million vehicles and has a consolidated lease portfolio worth 12.5 billion euro. LeasePlan is a major provider of fleet leasing services (such as operating leases and finance leases) and fleet management services in Australia and New Zealand. LeasePlan's head office is located in Auckland and it also has branch offices in Hamilton and Wellington.⁸
- (b) **Orix New Zealand Limited** (*Orix*): Orix was incorporated in New Zealand in 1989, after the ORIX Corporation entered the New Zealand market in 1988 by purchasing the operating lease division of an international car rental company. Orix is a wholly owned subsidiary of the Orix Corporation of Japan, which is one of the world's largest non-bank finance and leasing organisations. Orix is

⁷ LeasePlan Corporation is owned by a consortium consisting of the Volkswagen Group (50%), Mubadala Development Company (25%) and the Olayan Group (25%).

⁸ <http://www.leaseplan.co.nz/default.asp?s1=about>

one of the leading providers of leasing and financial solutions in New Zealand and Australia. Orix states it has a fleet of over 10,000 vehicles "on the road" in New Zealand.⁹ Orix provides fleet leasing services (such as operating leases, finance leases, hire purchase, chattel mortgages and sale and lease back) and fleet management services, car rentals and factoring services in Australia and New Zealand. Orix has offices in Auckland, Palmerston North, Wellington, Christchurch and Dunedin.

- (c) **Esanda FleetPartners** (*Esanda*): Esanda was established in New Zealand in September 1998 from an amalgamation of two vehicle leasing companies: Avis Lease and Truck Leasing Limited. Esanda is a wholly owned subsidiary of the ANZ Bank and is one of the largest vehicle lessors in Australasia. Esanda's website¹⁰ notes that it "manages" approximately 30,000 vehicles in Australia, and a "similar number of vehicles" in New Zealand. Esanda offers customers a range of services including fleet leasing services (such as operating leases, multilease and sale and leaseback) and comprehensive fleet management services. Esanda has offices in Auckland, Palmerston North (Heavy Commercial Division), Wellington and Christchurch.

16.6 Other providers of fleet leasing services include:

- (a) Providers associated with motor vehicle manufacturers. For example:
- o **Toyota Financial Services New Zealand** (*TFS*), through the Toyota dealer network, TFS commenced operations in New Zealand in 1989 and is now the largest motor vehicle manufacturer-owned finance company in New Zealand. TFS is owned by Toyota Financial Services Corporation of Japan, part of the Toyota Motor Corporation group of companies. TFS provides fleet leasing services such as operating leases, finance leases and "Vantage" leases (hybrid finance lease/operating lease product) and comprehensive fleet management services;¹¹
 - o **Ford Credit New Zealand** (*Ford Credit*), through the Ford dealer network: Ford Credit was established in 1979 and is a wholly owned subsidiary of Ford Motor Credit (US). Ford Motor Credit (US) is the largest company in the world dedicated to automotive finance, serving more than 11 million individual and corporate customers in 36 countries. In 2003 it financed the sale or lease of more than 3.5 million new and used vehicles. Ford Credit provides fleet leasing services (such as credit agreements, flexible loan agreements and operating leases) and fleet management services;¹²

⁹ www.orix.co.nz/orix/index.php?id=158&printversion=1

¹⁰ <http://www.esanda.com/business/newfleetpartners/AboutUs.asp>

¹¹ <http://www.tfs.co.nz/site.nsf>

¹² <http://www.fordcredit.co.nz/about/72.html>

- **Holden Financial Services** (*Holden Financia*), through the Holden dealer network: Holden Financial is a wholly owned subsidiary of GMAC Financial Services, which is in turn a wholly owned subsidiary of the General Motors Corporation. Holden Financial provides fleet leasing services (such as hire purchase, operating leases, finance leases) and fleet management services;¹³ and
 - **Diamond Finance**: through the Mitsubishi Network, Diamond Finance was established in 1998 as a strategic partnership between DaimlerChrysler Financial Services and Mitsubishi Motors. Globally, DaimlerChrysler Financial Services operates in 39 countries and is the finance arm of the global DaimlerChrysler Group. Diamond Finance offers operating leases and "flexi-leases" for those wanting to purchase new vehicles for business purposes.¹⁴
- (b) Other finance companies, including:
- **South Canterbury Finance** and its subsidiaries Auckland Finance and Flexi Lease: South Canterbury Finance has been providing vehicle finance since 1926.¹⁵ Auckland Finance offers motor vehicle finance and plant and machinery finance (amongst other things).¹⁶ Flexi Lease started business in New Zealand in 1989. Flexi Lease's website states that it now provides leasing services to hundreds of customers throughout New Zealand;¹⁷
 - **Speirs Finance**: Speirs Finance is a division of Speirs Group Limited, which was founded in 1966 and is listed on the NZX. Speirs Finance offers (amongst other things) a range of "finance packages" including fleet operating leases and finance leases, specifically tailored to meet the needs of small-medium sized companies;¹⁸
 - **MARAC**: MARAC is the financial services subsidiary of the NZX listed Pyne Gould Corporation group of companies. MARAC was formed in 2003 when Allied Finance (trading since 1953) and MARAC Finance (trading since 1983) amalgamated. MARAC indicates that it has been providing finance solutions for the motor vehicle industry for over 50 years.¹⁹ MARAC offers customers finance, leasing and insurance packages for the funding of new and used vehicles, through a dealer or direct to the customer.²⁰ The leasing division at MARAC specialises in

¹³ <http://www.holden.co.nz/myholden/finance/business.html>

¹⁴ <http://www.powerupdates.com/clients/mfinance/pages/print>

¹⁵ <http://www.southcanterburyfinance.co.nz/finance/new-zealand-car-finance>

¹⁶ http://www.aucklandfinance.co.nz/commercial_lending.php

¹⁷ www.carlease.co.nz/about.html

¹⁸ http://www.speirs.co.nz/SITE_Default/SITE_Finance/Business/Fleet_Finance.asp

¹⁹ www.marac.co.nz

²⁰ http://www.marac.co.nz/index.aspx?S=3&I=1&URL=Section3_VehicleBusiness

smaller fleets and personally selected vehicles for individuals. MARAC offers both maintained and non-maintained leases; and

- o **LeaseCar:** LeaseCar was formed in 1997 to "provide an alternative to the established mainstream leasing facilities".²¹ LeaseCar offers funding for company vehicles in the form of "bonus" leases (hybrid operating lease/finance lease), hire purchase and lease back options. LeaseCar also provide 'total finance packages' which combine financing with fleet management services such as insurance and repairs.

16.7 Companies that provide commercial vehicle leasing include:

- o LeasePlan;
- o Esanda FleetPartners;
- o Hanover Finance and its related company Nationwide Finance;
- o Major Trading Banks (Westpac, BNZ, ANZ National);
- o TR Group, with approximately 2,000 truck & trailers under lease;
- o Gough Finance; and
- o UDC Finance (owned by ANZ National Bank, but independently operated).

Market share estimates

16.8 Market shares, based on estimated fleet size are set out in Table 1 below.²² These estimates are based on GE Fleet management's understanding of the New Zealand market. Unlike Australia, there is no industry association or third party that collects data specifically from major fleet leasing companies.

16.9 The estimates are only provided for those competitors who offer fleet leasing services as part of their core business. GE Fleet is not able to accurately estimate market share data for leasing products provided by parties who offer fleet leases, but who do not consider 'fleet' leasing (as distinct from the provision of finance leases for individual vehicles) to be their core business. Examples of such companies include leasing finance provided through non-specialist leasing divisions of the major trading banks and other financiers. For example, UDC provide finance leases for Esanda FleetPartners, but we are unable to get any accurate data on the amount of finance leases held by them with respect to corporate or government fleets. Accordingly, the market shares set out below are overstated due to the inability to obtain accurate data on the leased units held by these other participants which may be anything up to [] (after subtracting the [] leased units that GE Fleet can account for from its internal estimates and market inquiries) of the estimated 200,000 corporate or government registered vehicles on the road in New Zealand (based on GE Fleet's analysis of Land Transport New Zealand figures).

²¹ www.leasecar.co.nz/view_page.php?id=about

²² GE does not have estimates of the book value of its competitors. However, in Decision 478 at paragraph 77, the Commission noted that the estimated market share by book value of the participants was similar to the market share by fleet size.

Table 1
Fleet Leasing Services²³

	Company name	No. of vehicles (approx.)	Market share (%)
1	Custom Fleet	[]	[]%
2	Esanda FleetPartners	[]	[]%
3	LeasePlan	[]	[]%
4	Orix	[]	[]%
5	Toyota	[]	[]%
6	Ford Credit	[]	[]%
7	GE Fleet and GE Equipment Finance	[]	[]%
8	TR Group	[]	[]%
9	Honda Lease Direct	[]	[]%
10	MARAC	[]	[]%
11	Others including: <ul style="list-style-type: none"> o Better Rentals & Leasing o Corporate Fleet Care NZ Ltd o Driveline Finance o Fleet Direct o Flexi Lease o Lease Car (NZ) Limited o Lease Direct (Christchurch) o Performance Finance & Leasing Ltd o Priority Rentals & Leasing New Zealand Limited o Speirs Finance o Spencer Cars Rental – Leasing – Sales o Vehicle Finance & Leasing (VFL Ltd) owned by Garry Donnithorne o Xpress Vehicle Lease o Donnithorne Garry Group (The Outpost Ltd) 	[]	[]%
	TOTAL LEASED FLEET	[]	100.00%

Source of estimates: GE Fleet management in New Zealand. Custom Fleet's own data.

16.10 Based on the estimates in Table 1, the current three firm concentration is []%. Post merger, the three firm concentration ratio would be []% with the merged entity having approximately a []% share. While these figures are just within the Commission's safe-harbours, the total market size in the above table does not take into account the unquantified but, what GE Fleet believes to be, significant number of fleet

²³ As noted elsewhere, the term "fleet leasing services" includes operating and finance leases for passenger vehicles and commercial vehicles.

leases provided by financiers other than those that are recognised as having 'fleet' leasing as a core part of their business. In any event, even on the above market share figures, the incremental increase in market share for the merged entity is only []%.

Fleet Management

16.11 Providers of fleet management services include:

- (a) **LeasePlan**: (refer comments at paragraph 16.5 above);
- (b) **Orix**: (refer comments at paragraph 16.5 above);
- (c) **Esanda FleetPartners** (refer comments at paragraph 16.5 above);
- (d) **Fleetsmart Fleet Management Limited** (*Fleetsmart*): Fleetsmart is the fleet management division of Cardlink Systems Limited, which has been in the New Zealand market for over 24 years. Fleetsmart offers a comprehensive range of fleet management services and has offices in Auckland and Wellington. Fleetsmart's website indicates that they are responsible for the day-to-day management of over 10,000 vehicles from New Zealand's largest public and private fleets; and²⁴
- (e) **Fleetwise Holdings Limited** (*Fleetwise*): Fleetwise is New Zealand's leading independent vehicle fleet management company, specialising in "outsourced fleet management solutions."²⁵ Fleetwise operates nationally. Fleetwise provides comprehensive fleet management solutions for passenger vehicles, heavy vehicles and a range of plant assets. Fleetwise's head office is based in Palmerston North. Customers of Fleetwise include CablePrice, Massey University, West Coast District Health Board, EFTPOS New Zealand, FMG, MidCentral District Health Board²⁶ and BP. GE Fleet understands that whilst a large proportion of Fleetwise's current customers are Government departments, Fleetwise is looking to expand both geographically and in terms of customer base.

Market shares

16.12 The estimated market shares, based on estimated fleet size under management, are set out in Table 2 below.

²⁴ www.cardlink.co.nz/news/news_3.htm

²⁵ www.fleetwise.co.nz

²⁶ Fleetwise has managed MidCentral District Health Board's tendering process and pool of vehicles for ten years.

Table 2
Fleet Management²⁷

	Company name	No. of vehicles (approx.)	Market share (%)
1	Custom Fleet	[]	[]%
2	Fleetsmart	[]	[]%
3	Esanda FleetPartners / ANZ	[]	[]%
4	Fleetwise	[]	[]%
5	LeasePlan	[]	[]%
6	GE Fleet	[²⁸]	[]%
7	Orix	[]	[]%
8	Other	[]	[]%
9	TOTAL MANAGED FLEET	[]	100.00%

Source of estimates: GE Fleet management in New Zealand. Custom Fleet's own data.

16.13 Based on the estimates in Table 2, the current three firm concentration is approximately []%. Post merger, the three firm concentration ratio would be []% with the merged entity having a []% share. This is only just outside the Commission's safe-harbours and the actual increase in market share for the merged entity is only []%.

16.14 Further, it is worth noting that the [] funded units and the [] managed units represent only around []% of the 200,000 estimated commercial and government vehicles on the road in New Zealand. The remaining []% of these vehicles may be funded by banks and other financial institutions under loan or leasing finance or self-funded and/or self-managed, but GE Fleet is unable to get accurate data on how this segment of vehicles is funded or managed.

Relevance of market shares in fleet leasing and fleet management

16.15 GE Fleet notes that using the number of vehicles under leasing or management is of limited value when assessing the market position of any individual entity. The number of vehicles currently under lease or management with any supplier is constantly changing, due to the nature of master lease contracts (outlined further in section 18 of this Notice), the relatively short lease terms and the ongoing number of contracts that are being tendered during the course of a year. (For further details on the use of tenders and panels by NZ Corporate Customers, see section 18). Further, the number of vehicles currently under lease with any supplier has little influence on the bidder's ability to win the "next bid".

²⁷ This table represent GE Fleet's estimate of the number of passenger vehicles that are under separate fleet management contracts – i.e. does not include managed vehicles that are also under lease arrangements with the same provider. That data is not available.

²⁸ [

].

Competitor behaviour

16.16 All of GE Fleet's competitors, large and small, have the opportunity to compete vigorously for most customers regardless of their size. Amongst the major providers, LeasePlan is known to be particularly aggressive on pricing and has built a profit share component into its operating lease, which has resulted in it succeeding in a number of tenders in the last year, which are described in further detail in section 18 below.

16.17 In addition, it is worthwhile to note that [].

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Entry conditions

- 17.1 Barriers to entry to the fleet leasing and fleet management markets are comparatively very low. There are no mandatory regulatory requirements specific to either fleet leasing or fleet management.
- 17.2 The main requirements to establish a business providing fleet leasing services are:
- (a) a source of funding at a competitive rate that enables cost plus financing;
 - (b) access to customers;
 - (c) access to motor vehicles at competitive rates;
 - (d) an understanding of the residual value (RV) dynamics;
 - (e) an ability to price for risk; and
 - (f) channels through which to sell the vehicles at the end of the lease term.
- 17.3 The main requirements to establish a fleet management business are:
- (a) staff with some industry knowledge;
 - (b) a network of subcontractors (outsourced service providers such as maintenance support centres, suppliers and repairers) in locations where the customer's fleet moves;
 - (c) a relationship for sourcing of tyres, batteries and other fleet requirements;
 - (d) access to customers; and
 - (e) channels through which to sell the vehicles at the end of the lease term.
- 17.4 For both fleet leasing and fleet management, reporting required by customers can be performed by simple 'off the shelf' IT software which is readily available and not costly. Microsoft Business Tools such as Access and Excel can easily handle fleets of up to 5,000 – 10,000 units and can be used for larger fleets as well. GE Fleet is aware, for example, that Fleetsmart and Fleetwise both have successfully relied on the Microsoft Access database or Excel to run their businesses, which GE Fleet understands consists of [] and [] vehicle fleets respectively. Other software programs available in New Zealand include Systime and NAFA Asset Management (developed at Hertz Fleetlease, but now made freely available to other participants after Custom Fleet replaced that software program with another, LeaseBase).
- 17.5 A recent entrant in New Zealand is Mr Mike Dempsey's Fleet Management, which recently commenced operations in the Wellington region, providing fleet management services. GE Fleet understands that Mr Dempsey previously worked as an accountant or procurement manager for Johnson Diversey New Zealand (formerly Diversey Wallace, a provider of cleaning and hygiene products). Johnson Diversey is the foundation customer for the new company's entry into this segment.

Sources of funding

- 17.6 Funding is not difficult to obtain, and is available from financial service providers such as Macquarie, MARAC Finance, UDC Finance and Esanda FleetPartners.
- 17.7 A number of new entrants have obtained funding from Macquarie Bank, MARAC Finance and other providers, including LeaseCar and Driveline.²⁹

Access to customers

- 17.8 The nature of the contractual arrangements in the fleet leasing services and fleet management markets is such that, at any time, there is likely to be a large pool of customers available to potential entrants or those competitors who seek to expand their existing business.
- 17.9 As described in further detail in section 18 below, this "pool" arises due to the nature of the master lease contracts, the relatively short lease terms and the increasing use of tenders and panels, with the result that every competitor has the opportunity to tender for and win the next contract, regardless of their existing market share. Accordingly, the current market shares of competitors will not operate to prevent access to customers for new or smaller players.
- 17.10 In addition, GE Fleet considers that there is a real likelihood that the fleet leasing and fleet management markets will experience significant growth in the coming years for the following reasons:
- (a) There are a significant number of vehicles purchased each year that are assigned to business, government or rental (approximately 67,000 annually) that (GE Fleet believes) are not currently leased or managed funded by an external fleet management provider. Of the new vehicles purchased each year in New Zealand and assigned to business, based on Motor Industry Association and Land Transport New Zealand data, approximately 32% are managed or funded by a fleet management or fleet leasing provider, leaving approximately 68% available to be managed or funded in-house or through an external provider. Accordingly, the number of "new" opportunities annually, is significant.
 - (b) There is an even greater opportunity for expansion in respect of the leasing or management of vehicles already on the road (not new vehicles) that are assigned to business, government or rental, but which are not currently managed or leased. Based on information from Land Transport New Zealand, there were in excess of three million registered vehicles as at June 2005. GE Fleet's analysis suggests that approximately 201,000 of these were assigned to business. Subtracting the approximately [] which GE Fleet believes are currently managed or funded by a fleet management or fleet lease provider, there are approximately [] vehicles which are assigned to business but which are not currently financed or managed by a fleet management or fleet leasing provider.

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²⁹ Lease Car and Driveline are primarily fleet leasing brokers but also provide lease finance solutions themselves and retain the residual value risk associated with operating leases.

17.11 The above evidence of the potential for expansion of the market suggests that a large number of new customers will potentially be available to new entrants offering fleet management and/or fleet leasing services.

Access to motor vehicles at competitive rates

17.12 In addition, as the Commission noted in Decision 478, a new entrant in the market is not prohibited from competing on similar terms with existing players because of potential economies of scale in sourcing new vehicles, i.e. existing players cannot necessarily purchase new vehicles at a lower price than a new entrant. This is because discounts from vehicle distributors are based on the fleet size of the client, rather than the number of leases funded through a particular leasing company. A new entrant is therefore capable of sourcing new vehicles from a distributor at similar rates to existing competitors, and clients will have no reason to discriminate between a new entrant and an existing competitor because of a difference in the price of a new vehicle. Thus, there is no barrier to entry arising from existing economies of scale in purchasing new vehicles.³⁰

Re-marketing channels

17.13 At the conclusion of a lease or management contract, the supplier will often be responsible for disposing of the used vehicle, whether on the customer's behalf or its own. This activity is known as "remarketing". Some companies have developed in-house infrastructure for selling vehicles themselves. Others remarket vehicles through the use of dealers, in-house auctions (such as Turners, Hammer Auction, Fowles) and tenders with motor vehicle wholesalers or direct to consumers through classified advertisements.

17.14 All auction houses, a remarketing outlet favoured by the vehicle manufacturers, charge a set fee to dispose of each vehicle, regardless of value. As auction house charges are not particularly high (usually around \$250 - \$400 per vehicle), they do not deter the smaller industry participants from using them as and when needed. Most of the smaller start-up entrants will use auction houses to sell vehicles.

Estimated costs of establishing a business

17.15 GE Fleet considers that the costs of setting up a fleet leasing or fleet management business are comparatively very low.

17.16 Essentially, the costs are those associated with incorporation of a company, acquisition of a personal computer and the software described above, and the costs involved in acquiring a line of credit from a financier. In short, the set-up costs are extremely low, as the business can be run from any location. It is, however, necessary to have an acceptable balance sheet backing or finance security arrangements to commence fleet leasing.

17.17 In addition, there is no readily identifiable minimum scale necessary for viable entry into these markets. GE Fleet considers that all that is necessary in order to enter (whether into fleet leasing, fleet management or both), is to obtain a "foundation customer" of a size and complexity that, if successfully serviced, can be a reference point for future business. Whilst there is no minimum scale, for a new entrant, this would ideally be an

³⁰ Decision 478 at paragraph 105.

average size corporate fleet of approximately 100 vehicles which could be secured by forming a relationship with a larger dealer or by obtaining a foundation customer.

17.18 Accordingly, to be an effective constraint in a tender against an entity such as GE Fleet or the merged entity, only a comparatively small investment is required.

17.19 The entry of Dempsey's Fleet Management in Wellington, Supply Corp and GE Fleet's most recent entry into the fleet services segment earlier this year all provide evidence of the fact that barriers to entry to these markets are comparatively very low.

Potential new entrants

17.20 Potential entrants to the New Zealand industry include:

- o Summit Fleet Leasing and Management (*Summit*): part of the Japanese Sumitomo Corporation Group, Summit currently provides fleet management and leasing services in Australia;
- o Mazda: through an arrangement with Sumitomo Bank;
- o FleetCare: with funding provided by Macquarie: FleetCare is currently a strong competitor (top 10) in the Australian market for fleet management and leasing services;
- o The Giltrap Group: which sold its fleet leasing business to GE Fleet in 1998;
- o Super Group Limited: a large South African company which has a majority interest in two of Australia's leading fleet management and leasing companies (Fleet Australia and SMB Fleet Management Group); and
- o Hyundai: a leading motor vehicle manufacturer.

17.21 New entry can also be achieved by individuals who have either previously worked for a fleet leasing services or fleet management company or who worked within unrelated business managing or overseeing the funding or management of fleets. An example of this is Mike Dempsey's Fleet Management.

17.22 In addition, those who manage their own fleet internally would be capable of entering the fleet management market in New Zealand at any point. Supply Corp is an example of a former government body that recently joined the commercial segment of the industry. Supply Corp previously confined its activities to assisting government departments in procuring fleet leasing and management services. However, GE Fleet understands that Supply Corp is now offering its services to commercial businesses as well.

17.23 Finally, current software and telecommunications facilities mean that it is feasible that both leasing and fleet management can be offered and managed from Australia by the use of local New Zealand contractors for providing services, with all call centres and administration centrally controlled in Australia.

Conclusion on conditions of entry and expansion

17.24 Conditions in the New Zealand market have not changed in any material way since the Commission considered Custom Fleet's acquisition of Hertz Fleetlease in 2002. Accordingly, GE Fleet submits there are no reasons for the Commission to alter its previously stated conclusions about new entry:

- (a) "Entry is likely to occur by a fleet leasing and fleet management company with the backing of a major bank ... such as Summit or the Macquarie Bank."³¹
- (b) "the market could be entered to a significant extent within a reasonable timeframe."³²
- (c) "there are no significant barriers to entry likely to deter expansion or new entry. Potential competition, in addition to the strength of existing competition in the fleet leasing market, is likely to provide a constraint on the merged entity, and the industry as a whole."³³

³¹ Decision 478 at paragraph 112.

³² Decision 478 at paragraph 117.

³³ Decision 478 at paragraph 121.

Nature of the customer base

18.1 Customers of providers of fleet leasing services and fleet management can be categorised as follows:

- (a) *Corporate clients:* companies with in excess of 200 vehicles for example, [];
- (b) *Medium enterprises:* companies with 100-200 vehicles for example, [];
- (c) *Small businesses:* companies with less than 100 vehicles for example, []; and
- (d) *Government and quasi-government bodies:* these range from very large to very small government enterprises

Customer behaviour and priorities

18.2 GE Fleet's view is that the following factors are all important to customers seeking a supplier of fleet leasing or fleet management services:

- (a) *The ability to meet the customers' specific product/service requirements:* GE Fleet believes that in some circumstances, this is the primary factor for customers in selecting a supplier (followed closely by pricing). For example, some customers prefer a CHP product to a finance lease. Accordingly, customers are prepared to separate the funding/leasing and fleet management components of their requirements and offer them separately to the provider that can best meet their specific criteria.
- (b) *Price:* Price is also a major factor for customers in selecting a supplier of fleet leasing or fleet management services. Price is particularly important for government contracts. By way of example, the District Health Boards tend to select fleet leasing providers based only on price.
- (c) *Quality of service:* Relevant primarily to the fleet management market, as in many markets, quality of service is one of the key catalysts for changing supplier, particularly in the case of larger Corporate Customers. An inability to meet agreed product/service criteria will often result in business being re-tendered.

Contractual arrangements

18.3 The contractual arrangements entered into by fleet leasing and fleet management suppliers support GE Fleet's view that the markets are highly competitive. Some of the features of these arrangements are described below.

18.4 Key features of the contractual arrangements for the provision of fleet leasing and fleet management services which make the markets so highly competitive are:

- (a) tenders for the supply of services;
- (b) use of panels of suppliers;
- (c) the non-exclusive nature of master lease agreements and the short terms of the master agreements and vehicle leases; and

(d) no obligation to place any orders for leased vehicles at all.

Tenders

18.5 Where companies have invited tenders, suppliers have the opportunity to 'bid' for the leasing or management in question. Tenders are offered as either 'open' (available to all providers) or 'closed' (where the customer has already undergone an internal process pre-selecting a group of possible providers). There is usually only one round of bidding before the customer will consider the tenders and nominate the successful tenderer. However, on occasions, customers will short-list a few suppliers and then negotiate with each supplier in parallel, to see which provider gives the best terms. [] are examples of customers who have used this type of (short-list) process.

18.6 Both large and smaller customers can (and do) invite tenders for leasing and/or management of vehicles. A number of customers are now advertising fleet leasing and fleet management business on tender websites, which providers are either invited to view or alternatively pay a subscription fee and have permanent access to the site. These websites include:

- o www.reedinfoservices.com.au for commercial tenders; and
- o www.gets.govt.nz for NZ government tenders.

18.7 Tenders are very competitive and are often mandatory to secure any government or council contracts. Recent examples of tenders in which GE Fleet has participated include:

- (a) **The Cable Talk Group**: with a fleet of approximately [] vehicles, awarded its 2005 tender to a panel of three fleet lease providers: LeasePlan, Custom Fleet and Esanda FleetPartners;
- (b) **PPCS Richmond**: with a fleet of [] vehicles, recently tendered for fleet management services and has awarded the contract to Fleetsmart;
- (c) **PGG Wrightson**: has moved the provision of fleet management services for [] vehicles from Custom Fleet to Fleetsmart;
- (d) **Heinz Watties**: which has a panel of providers bidding for fleet leasing of tranches of vehicles via an Internet based live auction;
- (e) **SGS**: a provider of marine services, with a fleet of approximately [] units the financing and management of which were awarded to LeasePlan;
- (f) **Tyco**: which moved the leasing of [] vehicles from Custom Fleet to LeasePlan along with two other panel providers;
- (g) **Capital Coast Health**: leasing and management of [] units;
- (h) **Ministry of Justice**: [] units. This contract was ultimately kept in-house;
- (i) **Kodak**: leasing and management of [] units. This contract was won by Orix, the existing fleet lease provider;
- (j) **3M**: [] units for leasing only. The fleet management business is subject to a separate tender; and

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- (k) **Christchurch City Council:** leasing and management of [] units, with Fleetsmart successfully winning the fleet management contract and LeasePlan winning the fleet leasing contract.

18.8 In addition to the increasing use of tenders, customers are increasingly using professional consultants to assist them in the tender and negotiation process. Tender consultants bring significant technical expertise and knowledge of other tenders to the negotiating table, whilst at the same time reducing any advantage that the incumbent supplier may hold against other tenderers. Some examples of organisations who have used external consultants to assist them with their tenders include:

- (a) **Transfield:** which engaged consultants Spectra Financial Services Pty Ltd;
- (b) **Fisher and Paykel** and **Fletcher Challenge:** which engaged Management Toolbox to provide consultancy services for their large fleets; and
- (c) **Supply Corp:** performs a similar function (tender consultant) for government and quasi government bodies in New Zealand. The majority of fleet management and fleet leasing work for government bodies is secured through regular tenders conducted by Supply Corp, formerly a government owned entity. As a result, Supply Corp effectively controls the procurement of fleet leasing and fleet management for a large number of government and quasi government bodies.

Panels of suppliers

18.9 A panel arrangement typically involves the appointment of several preferred suppliers for a period of time. A panel is often formed by large customers, following an invitation to tender for a place on the panel, but is also a method used by small and medium business to obtain the best pricing.

18.10 During the term of the appointment of the panel, the customer seeks quotations from each panel member each time a new vehicle is required. Some customers "split" their panels based on product, i.e. appoint separate panel members for leasing and management services.

18.11 Some examples of customers currently using panels are as follows:

- (a) **Cable Talk Group:** use a panel of Custom Fleet, Esanda and LeasePlan for leasing, whilst LeasePlan provides overall fleet management;
- (b) **PGG Wrightson:** has appointed separate leasing and fleet management providers. GE Fleet understands that Custom Fleet provides fleet leasing services with Fleetsmart providing fleet management services;
- (c) **Tyco:** both uses a panel of three different lease providers, all competing for each bundle of lease requests each month. They also use a separate provider for overall management and consolidation;
- (d) **Griffins Foods:** has a panel of four lease providers, namely GE Fleet, Custom Fleet, Orix and Esanda FleetPartners);

- (e) **Heinz Watties:** has a panel of providers bidding for fleet leasing of tranches of vehicles via an Internet based live auction. GE Fleet has bid for each batch of vehicles, but has not as yet been successful in securing any leasing or fleet management business from Heinz Watties;
- (f) **Tourism Holdings:** has a total fleet of around [] units funded by various lease and other financial providers and its fleet management services provided by GE Fleet [];
- (g) **Pearson NZ:** has [] vehicles which it splits between two panel members; and
- (h) **Apollo Car Rental:** with a fleet of [] units (mostly campervans), uses four or five different lease providers, including GE Fleet and has its fleet managed through GE Fleet.

18.12 The fact that a fleet leasing or fleet management services provider is appointed to the panel of a major customer does not guarantee significant (or, in fact, any) volumes of business from that customer. For example:

- (a) GE Fleet is on the panel to provide fleet leasing to Griffins Foods, [];
- (b) GE Fleet is also on the panel to provide fleet leasing to Tegel Foods, [].

Contract terms

Fleet Leasing

18.13 Corporate Customers usually enter into a Master Leasing Agreement with a supplier, generally having the following terms:

- (a) provision for the customer to place orders for individual leases, known as "Lease Orders". However, there is generally no obligation on the customer to place any Lease Orders;
- (b) the ability for the customer to terminate the master lease agreement on 30-90 days notice, or earlier if service levels are not met (leaving the individual leases to run until expiry of the individual lease terms); and
- (c) an agreement as to the interest rate (or margin over a market benchmark interest rate) for all Lease Orders placed under the agreement. The disclosure of interest rates is not as common in NZ as it is in Australia but open disclosure is being required by customers more frequently.

18.14 Under GE Fleet's master leasing agreements, [

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18.15 Historically, master leasing agreements used to be "evergreen arrangements". However, [

].

Fleet management

- 18.16 Much like the master leasing agreements, fleet management agreements used to be "evergreen arrangements". Now, there is a tendency among Corporate Customers to set a defined term (usually 2-3 years). At agreement end, customers either re-negotiate terms and conditions or seek tenders.
- 18.17 Generally fleet management agreements do not have an agreed number of vehicles to be managed by the provider and the customer is usually free to terminate on 30-90 days notice. Once a master contract is terminated all vehicles under management are then transferred to replacement fleet management provider.
- 18.18 In practice, customers often use one fleet management provider at a time to save on the administrative costs of monitoring two providers.

Pricing

- 18.19 Pricing pressure is exerted by customers during the contractual negotiation phase and is a major part of every customer's selection of supplier.
[

]. This can reflect trans-Tasman or global procurement influences.

- 18.20 In the case of large customers, [

].

- 18.21 [

].

- 18.22 [GE Fleet is aware that LeasePlan is offering operating lease profit share arrangements to entice customers.]

No exclusivity and low switching costs for customers

- 18.23 As set out above, master leasing agreements do not require the customer to place any orders at all. They are in place simply to specify the terms on which a supplier will lease a vehicle to a particular customer.

- 18.24 []

- 18.25 In practice, switching is relatively simple, as both master leasing and management contracts are usually mutually terminable on 30-90 days notice, or earlier if there is a failure by the supplier to meet agreed service levels.

- 18.26 For leasing arrangements, it is more common for a customer to change suppliers for future business (i.e. new tranches of vehicles) and to allow the existing leases to continue until expiry of each individual lease.

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18.27 In the case of fleet management, one of the real alternatives for a customer, in addition to switching to a competitor, is to move the management of its fleet back in-house, as was the case with Hamilton City Council which, GE Fleet understands, had contracted Fleetwise to provide in house fleet management. The arrangement with Fleetwise was terminated and fleet management is now handled by City Council employees.

18.28 Switching of suppliers is also made easy by the fact that suppliers generally provide customers with detailed reporting on their fleet under lease or management. This detailed data not only empowers the customer to make decisions about switching suppliers (by enabling a direct comparison between the costs/services of their current supplier) but it also facilitates a seamless transition between suppliers, with all historical data on the vehicle fleet being transferred to the new supplier. The customer will not lose any historical information on its fleet, as a result of switching suppliers.

18.29 Recent examples of customers switching suppliers are:

- (a) PGG Wrightson negotiating with Fleetsmart for provision of fleet management services instructed all current fleet management providers to provide fleet data to Fleetsmart. Fleetsmart was awarded the contract to provide fleet management services.
- (b) Bridon, a UK based wire rope supplier with a longstanding relationship with an existing supplier, switched to GE Fleet after a benchmarking exercise.
- (c) AFFCO terminated its contract with Hertz Fleetlease in 1999, switched to Orix, and has now resorted to purchasing vehicles outright rather than leasing.
- (d) Other examples of customers switching suppliers are noted at paragraph 18.7 above.

Additional constraints on market participants

18.30 As the Commission concluded in Decision 478³⁴, as well as constraints from competitors in the market, there is considerable additional constraint from customers who are contemplating leasing their fleet who have the option of:

- (a) owning the vehicles themselves; or
- (b) one of the many other forms of finance available (e.g. bank loans or funding from their own cash flows).

18.31 The recent trend of “cashing-up” employees, illustrates option (a) above. This is a practice that has arisen in response to FBT (fringe benefit tax) changes, whereby employers offer higher salaries rather than providing a company vehicle. Both Carter Holt (400 vehicles) and Corporate Express “cash up” employees, where previously they provided leased vehicles for those employees using a fleet lease services provider.

18.32 In addition, customers contemplating the use of a fleet management provider also have the option of managing their vehicles in-house.

³⁴ At paragraph 83.

Conclusion on countervailing power of customers

- 18.33 Fleet leasing services customers clearly have a choice of a range of fleet leasing service providers as well as a range of other financing options. Fleet management customers also have a choice of a range of providers or of bringing the function back "in-house".
- 18.34 The power that customers have over their suppliers is demonstrated in:
- (a) the use of panels;
 - (b) the growth in the use by customers of third party industry consultants;
 - (c) the absence of exclusivity in the contracts;
 - (d) the relatively short contract terms;
 - (e) the ability to terminate contracts on short (30–90 days') notice; and
 - (f) the requirement to provide detailed data to customers, facilitating comparisons between suppliers as well as enabling a seamless transition to a new supplier, if that decision is made.
- 18.35 In short, even while contracts are on foot, customers can and do exercise a credible threat to move their business to a competitive supplier, should their supplier attempt to increase prices or decrease service levels.

19 Co-ordination Effects

- 19.1 In Decision 478, the Commission considered, in relation to the fleet leasing market, the various structural and behavioral factors that are usually considered to be conducive to collusion and concluded that the market is not particularly likely to be susceptible to collusion, even after the acquisition.
- 19.2 GE Fleet considers that this remains the case today and is also the case in the fleet management market. The structural and contractual features of these markets have not changed in any significant respect since 2002 as illustrated in the following table.

Table 3
Testing the Potential for Collusion in the Fleet Leasing and Fleet Management Markets

Factors conducive to collusion	Presence of factors in all relevant markets
High seller concentration	Moderate.
Undifferentiated product	Yes
Static production technology	Some – small-scale changes occur and are made to products, driven by customer demand.
New entry slow	No – entry barriers are low and there are no barriers to expansion.
Lack of fringe competitors	No – customers have a variety of funding options and the ability to bring management back 'in-house'.
Acquisition of a maverick business	Neither business is a "maverick" within the meaning of the Commission's Guidelines.
Price inelastic market demand	No – customers shop for the best and have a range of funding and management options.
History of anti-competitive behaviour	No
Countervailing power of buyers	Yes

- 19.3 While the level of concentration is moderate, the markets have been defined very conservatively. For the fleet leasing market, there is considerable constraint from competition outside the market as defined. Barriers to entry are low and customers have considerable countervailing power. In addition, prices are often set by tender, meaning that prices are not transparent to others in the market.
- 19.4 On the basis that the Commission has previously found that the markets are not susceptible to collusion, which GE Fleet considers is still the case, consideration has not been given to the "detection" or "retaliation" elements of the analysis of co-ordinated market power.

THIS NOTICE is given by Alexander James Cock and Shane Van Velzen, on behalf of GE Fleet New Zealand

We confirm that:

- all information specified by the Commission has been supplied;
- all information known to the parties which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

We undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of June 2006

Signed by: **Alexander James Cock**

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