

COMMERCE COMMISSION

DECISION NO. 296

Determination pursuant to the Commerce Act 1986 (the Act), in the matter of an application for clearance of a business acquisition involving:

NEW ZEALAND POST LIMITED

and

FREIGHTWAYS LIMITED

- The Commission:** Alan Bollard
Peter Allport
Kate Brown
- Summary of Proposal:** That New Zealand Post Limited acquires the Express Freight Services businesses of Freightways Limited, comprising 100% of the shares in New Zealand Couriers Ltd, Post Haste Ltd, Castle Parcels Ltd, Messenger Services Ltd, Stocklink Distribution Ltd, Parceline Express Ltd, Freightways Properties Ltd, Freightways Information Services Ltd, New Zealand Document Exchange Ltd; and 320,620 ordinary shares (23% of the shares) in Air Freight NZ Ltd.
- Determination:** Pursuant to s66(3)(a) of the Act, the Commission determines to give a clearance for the proposed acquisition, subject to divestment of New Zealand Document Exchange Ltd by the nominated date.
- Date of Determination:** 16 June 1997

AUT/BA-N1/3
M2340

MEMORANDUM

To: Alan Bollard
Peter Allport
Kate Brown

From: John Preston
Jane Chilcott

Date: 16 June 1997

Subject: **Commerce Act 1986: Business Acquisition: New Zealand Post Ltd/Freightways Ltd Express Freight Services Businesses**

Working Day 10: 16 June 1997

Confidential material in this report is contained in square brackets.

THE PROPOSED ACQUISITION

- 1 On 30 May 1997, the Commission registered a notice in which clearance was sought for New Zealand Post Limited ("NZ Post") to acquire the Express Freight Services Businesses of Freightways Limited ("Freightways"). The Express Freight Services Businesses ("Express Services division") comprise 100% of the shares in New Zealand Couriers Ltd, Post Haste Ltd, Castle Parcels Ltd, Messenger Services Ltd, Stocklink Distribution Ltd, Parceline Express Ltd, Freightways Properties Ltd, Freightways Information Services Ltd, New Zealand Document Exchange Ltd; and 320,620 ordinary shares (23% of the shares) in Air Freight NZ Ltd.
- 2 The tender process which Freightways is engaged in requires bidders to purchase the entire Express Services division, which includes New Zealand Document Exchange Ltd ("NZDX"). NZDX provides business-to-business mail box

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delivery services and mail facilities management services for over 8,000 members/box holders. Physical delivery is contracted out to Parceline Express, Freightways' line haul operator. NZ Post operates Box Link which provides the same services as NZDX.

3 As a condition of the notice seeking clearance, NZ Post undertakes to divest NZDX []. After divestment, NZ Post will try to retain the line haul contract with Parceline, although the applicant notes that the new owner of NZDX would be free to contract with another service provider or establish its own line haul arrangements.

4 It is noted that had the applicant not offered NZDX for divestment the acquisition of NZDX by NZ Post would have raised competition issues, as NZDX and Box Link are the only two providers of business-to-business mail box delivery services.

5 An undertaking of divestiture was received from the applicant on 12 June 1997. A copy of the undertaking is attached as an Appendix to this report.

PROCEDURES

6 Section 66(3) of the Commerce Act 1986 ("the Act") requires the Commission either to clear or to decline to clear a notice given under s66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period.

7 In the notice, the applicant sought confidentiality for the fact of the proposed acquisition until a decision was made by the Commission clearing the proposal or the application was withdrawn, but the request was later waived.

THE PARTIES

New Zealand Post Ltd

- 8 NZ Post is a state-owned enterprise with its head office in Wellington. All of the shares in NZ Post are owned by the Minister for State-Owned Enterprises and the Minister of Finance on behalf of the Crown.
- 9 NZ Post is involved in three broad business activities:
- Communications, driven mainly by communications to and from business;
 - Logistics, concerned with the physical storage, distribution, and delivery of goods; and
 - Retail and financial services, for the provision of agency payment services, stationery and postal supplies through Post Shops.
- 10 The activities of NZ Post include operation of the CourierPost, Parcel Post, and Fast Post Parcels businesses.
- 11 The subsidiaries of NZ Post include:
- Circular Advertising Nationwide Ltd
 - Datacom Group Ltd
 - Datamail Ltd
 - Datapost Ltd
 - Dukewood Investments Ltd
 - ExpressPost Enterprises Ltd
 - Fastpost Enterprises Ltd
 - Hilt Properties Ltd
 - Neilcom Trading Ltd
 - New Zealand Post International Ltd
 - New Zealand Post Nominees Ltd
 - New Zealand Post Properties Ltd
 - November Communications Ltd
 - NZ Post Air Freight Ltd
 - PAC Communications Ltd
 - Postlink Ltd
 - Rua Post Ltd
 - Speedlink Carriers Ltd (shell company)
 - Speedlink Parcels Ltd (shell company)

- Speedpost Enterprises Ltd
- Street Fax Couriers Ltd
- Synet Communications Ltd
- Teera Properties Ltd
- The Rural Delivery Company Ltd
- Welm Properties Ltd
- Zura Properties Ltd

- 12 NZ Post also owns 50% of the shares in AirPost Ltd and Smack On Time Ltd. AirPost Ltd is a joint venture company with Airwork Ltd, providing aircraft principally for NZ Post's Fast Post and CourierPost operations.

Freightways Ltd

- 13 Freightways is a private company owned by Tappenden Holdings Ltd and Tappenden Investments Ltd. The ultimate beneficial owners are the families of Alan Gibbs and Trevor Farmer.
- 14 Freightways is involved in three distinct service areas:
- Express Services is an integrated group of courier, business mail and inventory management businesses;
 - Security Services covers cash handling, patrol, guard and alarm services marketed under the Armourguard brand;
 - Distribution Services relates to the supply of certain building supplies and the management of a pallet pool.
- 15 The target companies are those in the Express Services division of Freightways, as set out in paragraph 1 above.
- 16 The relevant interconnected companies of Freightways are listed below. Freightways has a 100% shareholding in the listed companies unless otherwise indicated:

- Armourguard Security Ltd
- Castle Parcels Ltd
- Chemcourier Services Trust (non trading)
- Chep Handling Systems Ltd (65.57% shareholding)
- Exotic Building Supplies Ltd
- Freightways Express Trust (non trading)
- Freightways Information Services Ltd
- Freightways Properties Ltd
- Messenger Services Ltd
- New Zealand Couriers Ltd
- New Zealand Document Exchange Ltd
- Parceline Express Ltd
- Post Haste Ltd
- Stocklink Distribution Ltd
- Transfin Investments Ltd (non trading)

17 Freightways also has a 23% shareholding in Air Freight NZ Ltd.

Air Freight NZ Ltd

18 Air Freight NZ Ltd is a private company. Its principal assets are four Convair 580 aircraft which it charters exclusively to Freightways' Parceline Express Ltd for its overnight service.

REASONS AND INTENTIONS FOR THE ACQUISITION

19 []

20 []

OTHER INDUSTRY PARTICIPANTS CONTACTED BY THE COMMISSION

Fastway Express Parcels (NZ) Ltd

- 21 Fastway Express is a private Napier-based company with 23 shareholders. The company has franchise operations in 21 locations around the country, and has a fleet of approximately 350 vehicles on the road. The Managing Director for Fastway Express, Bill McGowan, considered that []

First Express

- 22 First Express, a division of Air New Zealand, provides local express and national express parcel delivery services.

Ansett NZ Air Freight Ltd

- 23 Ansett NZ Air Freight Ltd provides intra-city urgent, local express and national express parcel delivery services.

XP Group (NZ) Ltd

- 24 XP is a private company providing local and national parcel delivery services.

Phoenix Parcels

- 25 Phoenix Parcels is a private company with its head office in Auckland. It also provides local and national parcel delivery services.

Kiwi Corporation

- 26 Kiwi Corporation, a private Wellington-based company operating Kiwi Express and Office Express, provides intra-city urgent and national express parcel delivery services.

LINKS BETWEEN PARTICIPANTS AND COMPETITORS

27 The parcel delivery industry is characterised by a variety of contracts and arrangements between the industry participants. NZ Post has a number of different arrangements with its competitors, which are described as being non-exclusive, fluid and of a short-term nature.

28 []

29 NZ Post also has statutory obligations under the Postal Services Act 1987 to carry mail for all of its competitors.

THE RELEVANT MARKETS

30 NZ Post and Freightways both provide time-sensitive parcel delivery services throughout New Zealand. That is, services are provided across a range of time frames varying from urgent (15 minutes to 2 hours) delivery in the major cities, to national 2-3 day delivery services. The proposed acquisition will result in aggregation of market share for parcel delivery services in a number of specific markets.

31 NZ Post submitted that there are seven markets relevant to the application; the markets for:

- national line haul;
- national contracting logistics;
- Auckland, Wellington and Christchurch intra-city urgent parcel delivery;
- national urgent (same day) parcel delivery;
- local express (same day) parcel delivery;
- national express (overnight) parcel delivery;

- national deferred (2-3 days) parcel delivery.

38 There was agreement from the industry participants contacted that the market definitions provided by the applicant were realistic delineations of the total parcel delivery industry, with each market having definite time-sensitivity and geographic characteristics.

39 A brief discussion of the relevant market definitions follows.

National Line Haul Market

40 The national line haul market is the market for the transportation of container freight throughout the country. The market is serviced by a wide variety of operators, and is inter-modal in nature with freight being carried by road, rail, sea and air. The applicant has submitted that, as a result of the proposed acquisition of the shares in Air Freight NZ Ltd and the assets of Parceline Express Ltd, NZ Post will be acquiring an interest in some line haul assets, but that the acquisition will have no significant impact on the market. Those assets, currently used by Freightways to serve its businesses in the parcel delivery market, will continue to be used for that purpose.

41 It is noted that the line haul business is considered competitive, with relatively low barriers to entry. The Commission, in its decision in *Mainfreight Transport Ltd/Daily Freightways Ltd and Chemcourier Services Ltd*, 3 March 1994, commented that there are a number of road transport operators which provide strong competition in the intra-island line-haulage markets. Further, that there are no significant barriers to entry or expansion into the intra-island line-haulage markets.

National Contracting Logistics Market

- 42 The applicant submits that the acquisition does not raise any competition issues in the national contracting logistics market, which the Commission understands to be the market for national contract distribution. That is, the market for the storage and distribution of goods on a contract basis.
- 43 Stocklink Distribution Ltd, 100% owned by Freightways, provides contract logistics, fulfilment and inventory management services. The company arranges for the physical storage, management, distribution and delivery of goods and maintains records of stock moved. While NZ Post also provides similar services through subsidiaries, the bulk of the services continue to be performed either by companies “in-house” or by firms involved throughout all aspects of physical logistics and distribution markets.

Auckland, Wellington and Christchurch Urgent Parcel Delivery Markets

- 44 Urgent parcel delivery services are provided in Auckland, Wellington and Christchurch. Parcel delivery is made within a 15 minute to 2 hour time frame on a “point-to-point” or “direct-drive” basis. The market is characterised by a large number of participants providing services by van, car, motorcycle and bicycle.

National Urgent Parcel Delivery Market

- 45 Air New Zealand and Ansett New Zealand are the only providers of urgent (same day) parcel delivery.¹ There are no alternative air operations dedicated to same day freight services. Therefore all parcel delivery service operators who wish to provide national same day delivery must arrange for the carriage of parcels by air with either Air New Zealand or Ansett New Zealand.
- 46 There will be no aggregation of market shares in the national urgent parcel delivery market as a result of the acquisition.

¹ The Commission, in the *Air New Zealand/Ansett* decision, June 1996, Decision No 278, concluded that the same day delivery market for which air transportation is necessary, is a separate market.

Local Express Parcel Delivery Market

- 47 This market comprises the delivery of parcels within a 2-8 hour time frame within a city or region. Delivery is normally provided by the various market operators through regular pick-up and delivery rounds and central consolidation, as distinct from the point-to-point delivery which characterises the urgent parcel delivery market. The geographic extent of the “local” areas varies between regions. For example, NZ Post defined the “local” Wellington market as including Porirua, Kapiti, Lower Hutt, Upper Hutt, and Te Marua. The Christchurch market included Kaiapoi and Rangiora.

National Express Parcel Delivery Market

- 48 The national express parcel delivery market provides a national overnight parcel delivery service. For example, a parcel is picked up in Auckland before 5pm on Monday and is delivered in Wellington on Tuesday.
- 49 This overnight service is provided by local, regional, and national operators, utilising a combination of air, land and sea transport. Local operators are able to provide a national service through an interconnecting web of contractual arrangements with other operators. Such arrangements exist between, for example, XP and First Express, ART Parcels and Peter Baker Transport, and TNT Express and Ansett.
- 50 As stated earlier, Freightways charters four Convair 580 aircraft from Air Freight NZ Ltd for its overnight parcel delivery service. Other operators contract with Air New Zealand or Ansett for overnight air services, or alternatively, have the option of leasing their own aircraft.

National Deferred Parcel Delivery Market

- 51 The national deferred parcel delivery market provides parcel delivery which is less time-sensitive and where delivery within 2-3 days is acceptable. There is a large number of operators providing deferred parcel delivery services.

Conclusion on Market Definition

- 52 As industry participants raised no objections to the market definitions provided by the applicant, the Commission accepts, for the purposes of this report, that the relevant markets are those for:

- national line haul;
- national contracting distribution/logistics;
- Auckland, Wellington and Christchurch intra-city urgent parcel delivery;
- national urgent (same day) parcel delivery;
- local express (same day) parcel delivery;
- national express (overnight) parcel delivery;
- national deferred (2-3 days) parcel delivery.

ASSESSMENT OF DOMINANCE

- 53 Section 66(3) of the Act, when read in conjunction with s47(1) of the Act, requires the Commission to give clearance to a proposed acquisition if it is satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market. If the Commission is not so satisfied, clearance must be declined.

- 54 Section 3(8) of the Act states that a person is in a dominant position if:

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

- (a) The share of the market, the technical knowledge, the access to materials

- or capital of that person ... :
- (b) The extent to which that person is constrained by the conduct of competitors or potential competitors in that market:
 - (c) The extent to which that person is constrained by the conduct of suppliers or acquirers of goods or services in that market.”

EXISTING COMPETITION

Market Shares

Total Parcel Delivery Industry

- 55 There is no parcel delivery market share information available on an industry basis. However, the applicant provided a detailed breakdown of market shares for industry participants based on a total parcel delivery industry size of approximately []. Figures have also been obtained from a number of the larger industry participants. On the basis of all figures provided, the total parcel delivery industry is estimated to be [].
- 56 There is a large number of industry participants currently operating in one or more of the parcel delivery markets. A list of the largest operators is attached as an Appendix to this report. The applicant estimates that aggregated industry shares for those industry participants are as follows:

Operator	Industry Aggregate
	\$ (millions) %
<i>Freightways</i>	<i>[</i>
<i>]</i>	

- 57 Freightways and NZ Post are the two largest operators in the parcel delivery markets with total industry shares of approximately [] and [] respectively. As such, their combined industry share will be just over [].

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- 58 One industry participant [] was concerned that the combined entity's industry share could be as high as [], making the entity "potentially dominant". This estimate was based on a considerably smaller total industry size of between [] and it was considered that the combined entity would have approximately [] of that total industry.
- 59 Another industry participant [] estimated that the combined entity would have an aggregated industry share of between [].
- 60 In the Commission's view², a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
 - the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.
- 61 Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of market shares, fall within these "safe harbours".
- 62 Although concerns were expressed by a number of industry participants that the merged entity would be the largest player in the parcel delivery industry by a substantial margin, the post-acquisition total industry share, (a reasonably based estimate by NZ Post), falls just outside the Commission's "safe harbours". As such, it is necessary to consider additional factors such as constraints from market entry, to determine whether the acquisition is likely to result in the merged entity acquiring a dominant position in the industry.

² Refer to the Commerce Commission's "Business Acquisitions Guidelines", 1996, p17.

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63 It is noted that the combined entity of Freightways and NZ Post will have a significant presence in each of the five defined parcel delivery markets. Peter Baker Transport/PBT Intercity would appear to be the only other operator currently providing services in the majority of the relevant markets, that is in the Auckland and Wellington urgent delivery, local express, national express, and national deferred parcel delivery markets. However, Peter Baker Transport is operating on a much smaller scale than NZ Post or Freightways, with an estimated total industry share of only []. Fastway Express considers that it also competes in all of the relevant parcel delivery markets, but only operates in the intra-city urgent parcel delivery markets on a very small scale.

National Line Haul Market

64 It is concluded that there will be no aggregation of market share in the national line haul market as a result of the acquisition.

National Contracting Distribution/Logistics Market

65 It is similarly concluded that there will be no aggregation of market share in the national contracting distribution/logistics market as a result of the acquisition.

Auckland, Wellington, Christchurch Urgent Parcel Delivery Market

66 The applicant estimates that industry participants would have the following market shares in the “intra-city” urgent parcel delivery markets:

Operator	Auckland		Wellington		Christchurch	
	\$ million	%	\$ million	%	\$ million	%
<i>Freightways - Messenger Services</i>	[
<i>NZ Post - CourierPost Urgent</i>						
<i>NZ Post/Freightways</i>						

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Ansett Pace ³						
Kiwi Express Ltd						
PBT Intercity						
ART Couriers Ltd						
Auckland Urgent Couriers Ltd						
Deadline Express Ltd						
Under Hour Express Ltd						
Express Urgent Couriers						
Others						
TOTAL]

67 The combined entity’s post-acquisition market shares will be [] in the Auckland urgent parcel delivery market and [] in the Wellington urgent parcel delivery market. The applicant submits that there will be no aggregation of market share in the Christchurch market as Freightways has only recently entered the urgent parcel delivery market in Christchurch and has not yet established a market presence.

68 Although high in relation to the market shares of other participants, the combined entity’s market share for the Auckland urgent parcel delivery market falls within the Commission’s “safe harbours”. In the Wellington market, the combined market share also falls within a “safe harbour” as the combined entity would face competition from Kiwi Express, which has a market share of approximately [].

National Urgent Parcel Delivery Market

69 As stated earlier, there will be no aggregation of market share in the national urgent parcel delivery market as a result of the acquisition.

Local Express Parcel Delivery Market

³ Ansett estimates that it would have an annual turnover of approximately [] in this market. As such, its market share would be higher than that estimated by NZ Post.

70 There is a large number of participants in the local express parcel delivery market and the applicant estimates market shares to be:

Operator	Market Share	
	\$ millions	%
<i>Freightways - New Zealand Couriers</i>	[
<i>Freightways - Post Haste</i>		
<i>Freightways - Castle Parcels</i>		
<i>NZ Post - CourierPost</i>		
<i>NZ Post - Parcel Post</i>		
<i>NZ Post - Fast Post Parcels</i>		
<i>NZ Post/Freightways</i>		
Fastway Express Parcels NZ Ltd ⁴		
First Express ⁵		
Ansett Couriers ⁶		
XP		
Mainfreight Ltd		
Phoenix Parcels Ltd		
TNT Express Worldwide NZ Ltd		
PBT Intercity		
Peter Baker Transport		
ART Parcels		
Wanganui Couriers Ltd		
Advance Freight & Couriers		
TNL Group Ltd		
The Parcel Company		
Road Freighters; HB Freighters		
Road Star		

⁴ Actual figure provided by Fastway Express, although it is noted that the figure combines some local urgent parcel deliveries with local same day deliveries. No distinction has been made between deliveries within 2, 4 or 8 hours.

⁵ Actual figure provided by First Express.

⁶ Actual figure provided by Ansett Air Freight.

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Fliway		
Parcel-Link Ltd		
Prism Freighters Ltd		
Own account		
Others		
TOTAL]

71 As a result of the acquisition, the merged entity’s market share will be [].

National Express Parcel Delivery Market

72 The applicant estimates that market shares for operators in this market would be:

Operator	Market Share	
	\$ million	%
<i>Freightways - New Zealand Couriers</i>	[
<i>Freightways - Post Haste</i>		
<i>Freightways - Castle Parcels</i>		
<i>NZ Post - CourierPost</i>		
<i>NZ Post - Parcel Post</i>		
<i>NZ Post - Fast Post Parcels</i>		
<i>NZ Post/Freightways</i>		
Fastway Express Parcels NZ Ltd ⁷		
First Express ⁸		
Ansett Couriers ⁹		
XP		
Mainfreight Ltd		
Phoenix Parcels Ltd		
TNT Express Worldwide NZ Ltd		

⁷ Actual figure provided by Fastway Express although the estimate only includes air freight services. It is accepted that the market share for the merged entity would be lower if consistent figures were provided for the defined market.

⁸ Actual figure provided by First Express.

⁹ Actual figure provided by Ansett Air Freight.

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Owens Freight		
PBT Intercity		
Peter Baker Transport		
ART Parcels		
Wanganui Couriers Ltd		
Advance Freight & Couriers		
TNL Group Ltd		
The Parcel Company		
F W McDowell Ltd		
NZ Rail Ltd		
Road Freighters; HB Freighters		
Road Star		
Fliway		
Parcel-Link Ltd		
Ivory Transport		
Prism Freighters Ltd		
Own account		
Others		
TOTAL]

- 73 Based on the above figures, the market share for the merged entity could be as high as []. This concentration of market share would appear to raise some concerns as there are no market participants in competition with the merged entity having market shares of no less than in the order of 15%.
- 74 Concern was expressed by Kiwi Express that, as a result of the acquisition, there will be only one operator in the national express parcel delivery market with a comprehensive national distribution network. It was argued that NZ Post and Freightways are currently the only two market participants with comprehensive distribution networks.

75 The Commission considers that this national coverage may provide NZ Post and Freightways with a competitive advantage which may be marginally strengthened as a result of the acquisition, assuming a greater market presence continues to be maintained. However, smaller operators who do not offer national coverage are able to compete in the market and would continue to be able to do so. It would also appear feasible for Ansett and Air NZ to expand their services to provide greater national coverage. Further, if the combined entity was to increase prices or reduce services, users would have the option of switching to other market operators (although this may necessitate dividing their business between operators for the required service coverage).

National Deferred Parcel Delivery Market

76 The applicant estimates market shares in this market to be:

Operator	Market Share	
	\$ millions	%
<i>Freightways - Castle Parcels</i>	[
<i>NZ Post - CourierPost</i>		
<i>NZ Post - Parcel Post</i>		
<i>NZ Post - Fast Post Parcels</i>		
<i>NZ Post/Freightways</i>		
Fastway Express Parcels NZ Ltd ¹⁰		
Ansett ¹¹		
XP		
First Express ¹²		
Mainfreight Ltd		
Phoenix Parcels Ltd		
Owens Freight		

¹⁰ Actual figure provided by Fastway Express which is considerably larger than that estimated by NZ Post, however the market for which the statistics have been collated by Fastway Express is different to that defined by NZ Post.

¹¹ Actual figure provided by Ansett.

¹² Actual figure provided by First Express and referred to as a “within the Island” market.

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PBT Intercity		
Peter Baker Transport		
Wanganui Couriers Ltd		
Advance Freight & Couriers		
TNL Group Ltd		
The Parcel Company		
NZ Rail Ltd		
Road Freighters; HB Freighters		
Road Star		
Fliway		
Parcel-Link Ltd		
Ivory Transport		
TOTAL]

- 77 The combined entity’s market share will be approximately [], although NZ Post estimated that it would be in the region of []. The discrepancy in these shares would appear to be due to the fact that the figures provided by Fastway Express are for a slightly differently defined market.
- 78 However, on the basis of the above table of figures, the acquisition would not appear to raise any dominance concerns.

Constraints from Existing Competitors

79 NZ Post contends that all markets are characterised by a large number of participants and the absence of barriers to expansion. The applicant also submits that the ability of small local operators to provide nationwide services through contractual and informal arrangements with other operators has resulted in vigorous competition in all markets. As such, NZ Post argues that the merged entity would not be able to impose a small yet significant non-transitory increase in price without eroding its market share with the shift of customers to other operators.

- 80 In arguing ease of market expansion, NZ Post submits that the costs to the customer of switching between competitors is low and that customer loyalty is limited to a company's ability to meet service and price expectations. That is, it is a feature of the market that customers compare the services and value offered by different operators. It is also a feature of the market that many customers maintain multiple relationships with operators in order to compare rates and to select service providers to handle their delivery requirements, overflow requirements, and to take advantage of specialised services offered.
- 81 In terms of the time frame for existing competitors to expand their supply of services, NZ Post considers that local services could be increased immediately and at little cost. An increase of national services would take considerably longer but would still provide a constraint on the conduct of the merged entity.
- 82 A number of industry participants agreed that there are few barriers to expansion, although an established or increasing customer base would be required before expansion of existing vehicle fleets or networks would be considered viable.
- 83 As previously stated, the Commission considers that it would be feasible for Air NZ and Ansett to expand their current operations to provide greater national coverage to compete with the combined entity. Both industry participants would have access to air services and the necessary capital for such expansion.

Constraints from Potential Competitors

Potential substitutes

- 84 The applicant submits that there is a number of alternative services which a business wishing to deliver parcels and documents in a short period of time could use including:
- “self delivery” (ie: companies delivering their own correspondence);

- facsimile machines;
- electronic transmission of information;
- taxis.

85 Of course, electronic transmission of information is a substitute only in the case of some documents; those capable of being transmitted electronically rather than those requiring physical delivery. It is also relevant to note that the advent of telephone banking has seen a significant change in financial transacting which previously required a postal link.

86 The applicant has also distinguished a group of operators (“own account” operators) which provide alternative services. These “own account” operators range from motor parts wholesalers and dry cleaners to specialist bakers and freshly squeezed juice wholesalers. It is argued that these operators are well placed to provide third party services, particularly in the local express parcel delivery market. NZ Post estimates that “own account” operators currently have a total parcel delivery industry share of [], which equates to approximately [] of the total industry, and would have just over [] market share of the local express parcel delivery market.

87 Taxi companies provide parcel delivery services, largely outside the normal hours of operation of those in the parcel delivery industry. It was noted by NZ Post that taxi companies also provide supplementary services to industry participants, such as recovery services, and could provide a full range of parcel delivery services by establishing links with line haul operators. NZ Post currently uses taxis to distribute “overflow” bags to its postal delivery staff on their delivery runs.

Potential competitors

88 NZ Post argues that the international express and delivery companies are one set of potential competitors which could expand into the relevant parcel delivery markets. Many of these multinational businesses are already represented in New

Zealand, either directly or through partnerships and alliances with local companies. These suppliers, it is argued, have the financial, managerial and business capacity to increase services in response to changing market conditions.

89 For example, DHL, estimated to be the world leader, is actively involved in the New Zealand parcel delivery market for exports and is in the process of leveraging this for a major expansion into freight forwarding. Federal Express and United Parcel Services both have a limited presence in New Zealand that could be used as a base for expansion. Corporate Express, a multinational office supplies/service company has recently established itself in New Zealand, and owns US Delivery, which is a US local and same day inter-city delivery service.

90 The applicant argues that it would be quite easy for such international companies to expand into new markets through the purchase of smaller existing companies or through strategic alliances. These companies also have the ability to recognise and respond rapidly to any changes in competitive market conditions. The applicant also notes that these companies have invested substantial amounts in new technologies, and would be in a position to offer a full range of logistics services, encompassing value-added services such as expedited shipping programmes for high-value or time-sensitive goods, inventory management and electronic data interchange links (EDI).

Barriers to entry

91 NZ Post submitted that there are only low barriers to entry into the parcel delivery markets, illustrated by the fact that there are a variety of firms of different sizes and market positions in the industry. There are no tariff barriers, onerous licensing requirements, or legislative or regulatory restrictions that limit entry into the market.

92 This view was generally supported by the industry participants spoken to, although a distinction was drawn between entry barriers in the local parcel delivery markets compared with those in the national parcel delivery markets.

That is, there are only low barriers to entry for a company wishing to enter a local market on a small scale, but entry barriers are considerably higher for entry into national markets.

- 93 It is accepted that capital requirements for a new firm to enter the market will vary according to the nature and scale of the operation that a new entrant wishes to establish. The length of time for de novo entry will also depend on the nature and scale of the new operation.
- 94 In the local urgent and local express parcel delivery markets, capital requirements are minimal. Competition can be provided by people delivering parcels on foot, by bicycle or through a fleet of owner-operator vans. The practice of providing services through owner-operated vehicles means that fixed asset start-up costs and fixed employee costs are minimised.
- 95 Apart from the necessary vehicle fleet, an operator providing a local express parcel delivery service may require a central sorting or “hub” facility for parcel sorting prior to delivery. An appropriate computer software package may also be required. These would not appear to be onerous requirements, and the applicant notes that it would be possible for new entrants to provide effective competition by sharing office space, computer software, and staffing costs.
- 96 Start-up costs for a new entrant are further minimised by the industry practice of using pre-paid tickets. For example, customers can purchase a supply of “pre-paid” envelopes from different firms allowing them to immediately package, address and send materials without the inconvenience of waiting for supplies or arranging payment. The industry practice also results in a portion of an operator’s working capital requirements being financed by customers.
- 97 The applicant also states that entry into the various markets is conducive to the franchising concept. For example, Fastway Express Parcels has become a very effective competitor in the local and national markets through a franchise system

that links locally-owned delivery businesses through a network of other franchises throughout New Zealand.

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- 98 In the national express and national deferred parcel delivery markets, higher capital costs would be incurred including the establishment of the necessary infrastructure required to operate on a national scale. For example, Fastway Express Parcels Ltd established a road line haul network approximately 10 years ago at a cost of []. It was estimated that establishing the same infra-structure today would cost between []. However, it was noted by NZ Post that an entrant at the local level could offer national services through arrangement with other operators, rather than establishing its own national infra-structure.
- 99 The requirement for entrants in the national parcel delivery markets to have an appropriate computer system with a “track and trace” facility would also be costly. The General Manager for Ansett NZ Air Freight, John Sheridan, was of the opinion that such computer systems were becoming more widespread in the industry and reflected the expectations of parcel delivery services users.
- 100 A further barrier to entry is that of adequate access to air services, particularly in the national urgent and national express parcel delivery markets. A number of industry participants expressed their concern that there is little option but to deal with Air New Zealand or Ansett if they wish to provide overnight parcel delivery, while NZ Post and Freightways have access to AirPost Ltd and Air Freight NZ Ltd aircraft. As such, it was considered that the merged entity would have a much stronger position in the national parcel delivery markets and it would be increasingly difficult for the smaller operators to compete in those markets.
- 101 Other market participants spoken to considered that there was little difficulty in gaining access to air services as an operator had the choice of using the services provided by Air New Zealand or Ansett, or purchasing or leasing their own aircraft.¹³ Aircraft are available for lease from operators such as Sounds Air,

¹³ It is also relevant to note that Phoenix Parcels considers that the use of trucks and the inter-island ferry provide an efficient and less costly overnight parcel delivery option.

Vincent Aviation and Air Chathams, but it is noted that the viability and long-term nature of any lease would need to be ascertained before any lease would be granted.

102 The Commission considers that the option of leasing aircraft for an overnight delivery service is viable for a competitor operating on a reasonably large scale but does not appear viable for the smaller market operators. However, as pointed out by one industry participant, it is feasible for a number of the smaller operators to get together and lease or purchase an aircraft for their combined use.

103 In relation to the national urgent parcel delivery market, Ansett was of the view that there is satisfactory access to Air New Zealand and Ansett air freight services, although freight space is not always available on scheduled flights. This may occur where priority is given to passengers and their baggage, or due to operational requirements. An example of the latter is where landing conditions at the destination are known to be marginal, so the aircraft carries additional fuel in case diversion to another airport or return to the departure point is necessary. In such cases, freight cargo would not be loaded, affecting parcel services provided by Air New Zealand, Ansett, and other competitors.

104 NZ Post and Freightways regularly purchase space from Air NZ and each other on an ad hoc basis, as there are no reserved space arrangements between the parties.

CONCLUSION

105 The parcel delivery markets are characterised by vigorous competition. There are a large number of operators in the various markets, and customers commonly deal with more than one operator in order to have access to a range of services. Customer loyalty is limited to a company's ability to meet service and price expectations.

- 106 The proposed acquisition would result in NZ Post being the largest provider of parcel delivery services across the range of local and national parcel delivery markets, with a total parcel delivery industry share of approximately []. Nevertheless, on the basis of our discussions with industry participants, we consider that there would remain strong competition (actual and potential) from existing competitors of parcel delivery services.
- 107 The relative ease of entry into the parcel delivery markets and the lack of entry barriers is demonstrated by the sheer number of firms competing in the industry. It is also accepted that there are existing and potential competitors with the financial, managerial and business capacity to increase services by increasing utilisation of existing capacity or through expansion.
- 108 The low barriers to entry into the market mean that the potential competitive response of these suppliers already constrains market participants, and would continue to constrain the merged entity. The possibility of de novo entry also serves to constrain market participants and would continue to constrain the merged entity.
- 109 Accordingly, it is concluded that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening dominance in the markets for:
- national line haul;
 - national contracting distribution/logistics;
 - Auckland, Wellington and Christchurch intra-city urgent parcel delivery;
 - national urgent (same day) parcel delivery;
 - local express (same day) parcel delivery;
 - national express (overnight) parcel delivery;
 - national deferred (2-3 days) parcel delivery.

RECOMMENDATION

- 110 It is recommended that pursuant to s66(3)(a) of the Act, clearance be given to the proposed acquisition subject to divestment of New Zealand Document Exchange Ltd by the nominated date.

Investigator

Chief Investigator

Manager

**DETERMINATION TO GRANT NOTICE OF CLEARANCE:
NEW ZEALAND POST LIMITED/FREIGHTWAYS LIMITED**

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposed acquisition, subject to divestment of the business described in paragraph 2 of this report, 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 s66(3)(a) of the Commerce Act 1986 (the Act), we hereby give clearance for New Zealand Post Limited to acquire the Express Freight Services businesses of Freightways Limited, comprising 100% of the shares in New Zealand Couriers Ltd, Post Haste Ltd, Castle Parcels Ltd, Messenger Services Ltd, Stocklink Distribution Ltd, Parceline Express Ltd, Freightways Properties Ltd, Freightways Information Services Ltd, New Zealand Document Exchange Ltd; and 320,620 ordinary shares (23% of the shares) in Air Freight NZ Ltd.

Dated at Wellington this day of 1997

Alan Bollard
Chairman

Peter Allport
Deputy Chairman

Kate Brown
Member