COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

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Statement of Preliminary Issues

Latitude / Humm

13 May 2022

Introduction

1. On 14 April 2022, the Commerce Commission registered an application (the Application) from Latitude Group Holdings Limited (Latitude) seeking clearance to acquire the consumer finance business of Humm Group Limited (Humm) (the proposed acquisition).[1]

2. The Commission will give clearance if it is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.[2]

4. We invite interested parties to provide comments on the likely competitive effects of the proposed acquisition. We request that parties who wish to make a submission do so by **27 May 2022**.

The parties

5. Latitude is a financial services company headquartered in Australia. It operates in New Zealand, Australia, Canada and Singapore and was listed on the Australian Securities Exchange (ASX) in April 2021. Latitude's New Zealand operations are based out of its Gem New Zealand offices in Auckland.

6. Latitude provides consumer lending products (such as personal loans) and instalment payment products. Latitude's instalment products include:

    6.1 "Gem Visa", a credit card with zero-interest over a certain period and instalment plan capabilities; and

    6.2 "Genoapay", which allows a customer to receive goods and services immediately and then pay them off in instalments (commonly known as a "buy now pay later" (BNPL) service).[3]

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1 A public version of the Application is available on our website at: http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/.

2 The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

3 The Application at [2.2].

7. Humm offers consumer and commercial lending products, with a focus on credit cards and instalment payment products. Humm is headquartered in Australia, and operates in Australia, New Zealand, Ireland, the United Kingdom and Canada. It was listed on the ASX in December 2006. Until late 2020, Humm was known as FlexiGroup in New Zealand.[4]

8. Humm's main products are credit cards and instalment payment products.

    8.1 Humm's credit cards include the "Q Mastercard" and white label credit cards offered through Farmers and Flight Centre. These white label cards can be used for general purchases outside the merchant offeror.[5]

    8.2 Humm's instalment payment products include "humm (Little things)", "humm (Big things)" and "bundll", which are BNPL products with differing terms based on loan amounts and repayment periods.[6]

9. Each of Latitude and Humm also contract with merchants to provide bespoke consumer finance offerings in-store.

Our framework

10. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[7] As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.

11. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).[8] This allows us to assess the degree by which the proposed acquisition might lessen competition.

12. If the lessening of competition as a result of the proposed acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:

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4 https://www.shophumm.com/humm-group/news/flexigroup-rebrands-as-humm-for-140m-buy-now-pay-later-push/. According to the article, this rebrand coincided with Humm's long term strategy of offloading its commercial leasing operation to transition into a fully focused BNPL provider. The commercial leasing arm of Humm is not being acquired in the Proposed Acquisition.

5 The Application at [3.2(a)]; https://www.farmersmastercard.co.nz/; https://www.flightcentremastercard.co.nz/.

6 The Application at [3.2(b)]. See **Attachment A** for examples of the branding used by Latitude and Humm for their consumer finance products.

7 Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz

8 *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

12.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

12.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

12.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

13. We define markets in the way that we consider best isolates the key competition issues that arise from the proposed acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.[9]

14. In the Application, Latitude submitted that it is not necessary to define the relevant market(s) as it believes there will be no substantial lessening of competition regardless of the market definition(s) adopted.[10] However, for the purpose of our assessment it considers that there is a national market for the supply of consumer finance products, including credit cards, personal loans and instalment finance.[11] This is primarily because, in Latitude's view:

14.1 Most consumer finance products are functionally similar. Instalment finance products, credit cards and personal loans can all be used to acquire goods and/or services without paying the full purchase price upfront, meaning there is a high degree of demand side substitutability. Latitude claims there is also a trend towards "open loop" models which allow customers to use BNPL products anywhere Visa and/or Mastercard is accepted, meaning direct merchant-BNPL provider relationships are becoming less important.[12]

14.2 There is a high degree of supply side substitutability for the supply of consumer finance products. Latitude considers traditional consumer finance providers and fintechs (firms that integrate technology into finance services) are becoming more closely aligned, as BNPL products begin to compete with traditional products. Latitude also claims banks have partnered with BNPL providers to introduce products integrated into the bank platforms.[13] Conversely, BNPL fintechs have branched out into more traditional products in partnership with the banks.[14] Latitude also expects digital platforms such as

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9 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

10 The Application at [1.2].

11 The Application at [18.2]. A breakdown of the different types of consumer finance products can be found at **Attachment B**.

12 The Application at [14.1], [14.2], [14.5] and [18.2].

13 The Application at [14.9] and [23.1(b)].

14 The Application at [23.1(b)].

Apple and PayPal to introduce their own BNPL products into New Zealand in the future.

15. We have previously considered a national market for consumer finance in the mergers context.[15] However, this was in 2006 and, given the significant changes to the industry since this time, we will consider whether this is the appropriate lens through which to assess the current transaction. In particular, we will consider:

    15.1 the relevant product dimension and whether it should be limited to particular consumer finance products (such as separate markets for credit cards and instalment finance products); and

    15.2 the relevant customer dimension and whether different customers have access to the same range of consumer finance products.

16. As part of this assessment, and in our competition assessment, we will have regard to the fact that consumer finance markets are often "two-sided". For example, providers of credit cards and some BNPL products charge consumers for the credit extended, and charge retailers for the facility to accept payments by each method.

17. One reason for this may be because BNPL products benefit both consumers and retailers: consumers can benefit from different payment methods by being able to defer and spread payments in ways that are convenient and affordable to them, while retailers benefit from accepting each payment method by attracting purchasers that they may not otherwise be able to.

18. As a result, when defining markets and assessing competition, we will assess which alternative payment methods are good substitutes for consumers who need to make purchases on credit, and for merchants who need to attract customers.

Without the acquisition

19. We will consider what the parties would do if the proposed acquisition did not go ahead. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo, or whether the parties would seek alternative options, for example, finding a different buyer for Humm's consumer finance business.

Preliminary issues

20. We will investigate whether the proposed acquisition would be likely to substantially lessen competition in the relevant market (or markets) by assessing whether horizontal unilateral, coordinated or vertical/conglomerate effects might result from the proposed acquisition. The questions that we will be focusing on are:

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15 *GE Finance and Insurance Limited and Pacific Retail Services Limited, Pacific Retail Finance Limited, Montreal Financial Services Limited and Supply Insurances Limited* (New Zealand Commerce Commission Decision 571, 18 January 2006).

20.1 unilateral effects: would the loss of competition between the parties enable the merged entity to profitably raise prices or reduce quality or innovation by itself?[16]

20.2 coordinated effects: would the proposed acquisition change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable?

20.3 vertical or conglomerate effects: would the proposed acquisition increase the merged entity's ability and/or incentive to foreclose rivals?

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

21. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase price above the level that would prevail without the merger without the profitability of that increase being thwarted by rival firms' competitive responses.

22. In the Application, Latitude submitted that the proposed acquisition would not be likely to substantially lessen competition in a national market for the supply of consumer finance products due to unilateral effects. On the basis of this wide market definition, Latitude argues in more detail that:[17]

22.1 the merged entity would have low combined market shares in a market defined to include all consumer finance products;

22.2 the merged entity would continue to face significant existing competition from competitors with greater market shares than the merged entity, together with the threat of new entry from large global companies;

22.3 merchants are able to exercise a significant degree of countervailing power over suppliers of consumer finance, and BNPL providers in particular;

22.4 there are low barriers to entry, including:

22.4.1 relatively straightforward regulatory and licensing requirements compared to more traditional consumer finance products;

22.4.2 a departure from the requirement for consumer finance providers to have a physical presence; and

[16] For ease of reference, we only refer to the ability of the merged entity to "raise prices" from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition, i.e. it could increase quality-adjusted prices.

[17] The Application at [19.1] and [19.2].

22.4.3 the rise of new models of consumer finance that make use of existing positions of banks and card schemes such as Visa and Mastercard;[18] and

22.5 the parties offer relatively complementary products.

23. We will consider how the merger could affect competition to serve consumers and merchants. Some key issues that we will consider are:

23.1 closeness of competition: the degree of constraint that Latitude and Humm impose upon one another. To the extent that any constraint is material, we will assess whether the lost competition between the merging parties could be replaced by rival competitors;

23.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on the merged entity;

23.3 entry and expansion: how easily rivals could enter and/or expand; and,

23.4 countervailing power: whether customers have special characteristics that would enable them to resist a price increase by the merged entity.

Coordinated effects: would the proposed acquisition make coordination more likely?

24. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.[19]

25. In the Application, Latitude submitted that the proposed acquisition would not be likely to substantially lessen competition in a national market for the supply of consumer finance products due to coordinated effects because the market does not currently exhibit signs of coordination. This is due to:

25.1 the degree of innovation in the relevant sector;

25.2 the threat of new entry; and

25.3 the countervailing power of merchants.

[18] The Application at [23.1]. These new models include "banking as a service" models, where non-licensed consumer finance providers such as Afterpay have partnered with a licensed bank to provide consumer finance products they otherwise would not be able to offer, and "open loop" models, which allow payment using BNPL products anywhere Visa or Mastercard is used.

[19] *Mergers and Acquisitions Guidelines* above n7 at [3.84].

26. In any event, Latitude submitted that there would be no increased potential for coordination, as the Proposed Acquisition does not remove a particularly aggressive or destabilising competitor.[20]

27. We will assess whether any of the relevant market/s are vulnerable to coordination, and whether the proposed acquisition would change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable.

Vertical or conglomerate effects: would the merged entity be able to foreclose rivals?

28. A merger between suppliers (or buyers) who are not competitors but who operate in related markets can result in a substantial lessening of competition due to vertical or conglomerate effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively.

29. In the Application, Latitude submitted that there would be no vertical or conglomerate effects as a result of the Proposed Acquisition because there is no relevant vertical or conglomerate relationship between the parties.[21]

30. Nevertheless, we will assess whether the Proposed Acquisition is likely to result in any foreclosure, or give the merged entity the ability or incentive to bundle or tie its products anticompetitively.

Next steps in our investigation

31. The Commission is currently scheduled to make a decision on whether or not to give clearance to the proposed acquisition by **15 June 2022**. However, this date may change as our investigation progresses.[22] In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.

32. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

Making a submission

33. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “Latitude / Humm” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **27 May 2022**.

34. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission’s website.

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[20] The Application at [25.1].

[21] The Application at [19.3].

[22] The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.

35. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

Attachment A: Latitude and Humm consumer finance products

humm

bundll
powered by humm

genoapay

Source: Application

Attachment B: Consumer finance products available in New Zealand

Feature	Personal loans	Credit cards[33]	Instalment payment/BNPL
Secured / unsecured	Unsecured or secured	Unsecured	Unsecured
Loan amount	Usually vary from $5,000 to $30,000	Average credit card limit is approximately $8,000[34]	Depending on the product, loan amounts can vary from a maximum of $1,000-$2,000 (most products) all the way up to, for example, $20,000 (for larger purchases), although, as above, the credit limit is commonly personalised to reflect a customer's individual circumstances.
Repayment period	Usually between 1 to 7 years	Variable, depending on the loan amount. Usually minimum monthly payments.	Variable, depending on the loan amount – usually 3 to 5 fortnights for smaller purchases, and between 6 to 60 months for large purchases.
Interest	Fixed rate or variable	Fixed rate, with most providers offering an interest free period	Interest free for a specified period of time (e.g. 6 weeks for a purchase up to $1,000). Fixed rate may kick in after this period depending on product offering (e.g. after 60 months for a larger purchase).
Fees	Establishment fee, Service fee, Payment handling fee, Late payment fee, Early termination fee	Annual or monthly fees and late payment fees	For smaller loan amounts all fees are avoidable. The only fee is typically the late payment fee. For larger loan amounts, establishment and monthly fees may apply, in addition to late payment fees.
Accessibility	Credit checks are required	Credit checks are required	While credit checks are not always required, Latitude and Humm will always conduct such checks.

Source: Application