



COMMERCE COMMISSION

Decision No. 499

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

PORTACOM NEW ZEALAND LIMITED

and

TRANSPORTABLES

The Commission: MJ Belgrave
Donal Curtin
Peter JM Taylor

Summary of Application: The acquisition by Portacom New Zealand Ltd (“Portacom”) to acquire business assets of Transportables (“Transportables”) a JV portable building hire operation owned by Washing Machine Services Nelson Limited and Coldstore Construction (1995) Limited.

Determination: Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

Date of Determination: 30 May 2003

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EXECUTIVE SUMMARY

The Proposal

1. A notice pursuant to section 66(1) of the Commerce Act 1986 ("the Act") was received on 16 May 2003. The initial notice sought clearance for an application from Portacom New Zealand Ltd ("Portacom") to acquire certain business assets of Transportables ("Transportables") which includes: hire contracts, a fleet of portable buildings, intellectual property of Peter McGrath and Malcolm Lowrie and the trade name Transportables.
2. On 27 May 2003, the owners of the trade name Transportables, Peter McGrath and Malcolm Lowrie amended the application to reflect the fact that Transportables is the trading name under which Washing Machine Services Nelson Limited ("WMSN") and Coldstore Construction (1995) Limited ("CC") operate a joint venture portable building hire service.
3. The owners of the business assets to be acquired by Portacom are Washing Machine Services Nelson Limited ("WMSN") and Coldstore Construction (1995) Limited ("CC"). WMSN is owned by Peter McGrath and John McGrath. CC is owned by Malcolm Lowrie and Carol Anne Lowrie. The two businesses each own a 50% interest in the Transportables JV.
4. The s66 application from Portacom now seeks clearance to acquire the business assets which include: hire contracts, a fleet of portable buildings, the trade name Transportables and intellectual property from the Transportables JV owned by Washing Machine Services Nelson Limited and Coldstore Construction (1995) Limited.

Market Definition

5. The Commission concludes that, for the purpose of analysing this application, the relevant markets are as follows:
 - The market for the provision of retail hire and distribution of modular portable buildings in the Nelson/ Marlborough region ("the market").

Counterfactual

6. As Transportables has indicated it can and will continue to operate as a going concern if the acquisition does not proceed, the Commission considers the appropriate counterfactual the status quo.

Competition Analysis

Existing Competition

7. Three firms compete in the Nelson/ Marlborough market. The third competitor, a Blenheim based operator, Glenroy Insulated Products ("GIP"), indicated it is willing to compete in the Nelson area if prices are raised by Portacom post acquisition.
8. As Portacom was a moderate competitor in the market, the change in the level of competition in the market is likely to be minimal.

Barriers to Entry

9. A number of potential entrants exist in the Nelson/ Marlborough market. These firms can quickly enter the market as they possess the required skills and equipment to construct portable units. It is likely a new entrant could enter the market in less than 3 months.
10. The Commission concludes that barriers to entry in the portable building hire market are insufficient to prevent new entry.

Overall Conclusion

11. In the market for the provision of retail hire and distribution of portable buildings in the Nelson/ Marlborough region, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as the merged entity would be constrained by existing competition and potential competition from entry.

THE PROPOSAL

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15. [

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16. The s66 application from Portacom now seeks clearance to acquire the business assets which include: hire contracts, a fleet of portable buildings, the trade name Transportables and intellectual property from the Transportables JV owned by Washing Machine Services Nelson Limited and Coldstore Construction (1995) Limited.

THE PROCEDURES

17. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. Accordingly, a decision on the application was required by 30 May 2003.
18. In its application, Portacom has not sought confidentiality for any aspects of the application.
19. The Commission's approach is based on principles set out in the Commission's *Practice Note 4*.¹

¹ Commerce Commission, *Practice Note 4: The Commission's Approach to Adjudicating on Business Acquisitions Under the Changed Threshold in section 47 – A Test of Substantially Lessening Competition*, May 2001.

THE PARTIES

Portacom New Zealand Ltd.

20. Portacom is a wholly owned subsidiary of Waco International Ltd (“Waco”). Waco is a South African company. It has a number of subsidiaries operating throughout the world although Portacom is the only one relevant to this application.
21. Portacom has been in the market since the late 1970’s. At that time the “Think Big” projects were creating demand for temporary on-site offices in remote areas. Portacom entered the market offering modular transportable buildings for hire or sale.² Its buildings are used for a variety of applications, but mainly as temporary on-site offices. Portacom has branches located in Auckland, Hamilton, New Plymouth, Wellington, and Christchurch.
22. Portacom’s turnover for the 2002 financial year in the South Island was []

Transportables

23. Transportables is the trading name WMSN and CC use to operate the portable building hire business. The business is a joint venture between the two companies.
24. Transportables has an established position in the modular portable building hire industry in the Nelson area. Transportables currently has no customers outside the Nelson region.
25. Transportables has no formal storage facilities available to it outside of the Nelson area. Transportables’ turnover for the 2002 financial year was []
26. Transportables does not manufacture any modular portable buildings following the divestment by Malcom Lowrie of the business assets of his Coldstore Construction business to David Younghusband. Mr Younghusband now operates as a limited liability company called Coldstore Construction 2003 Limited.

THE INVESTIGATION

Other relevant parties

27. In the course of the investigation of the proposed acquisition, Commission staff have discussed the application with a number of parties.

Other suppliers of portable buildings for hire

Auckland

- Rhino Portable Buildings (“Rhino”) is based in Auckland and has turnover of [] comprising of revenue from sale and hire. Currently, it competes only in the North Island and has [] portable units available for sale and hire.
- Leisurecom operates in the Auckland area and competes against Rhino and Portacom.

² On its website it proclaims itself to be the originator of relocatable buildings in New Zealand. See <www.portacom.co.nz>.

Tauranga

- Modcom operates in Tauranga and manufactures portable units that it then sells or hires. It currently operates exclusively in the North Island and has approximately [] portable units available for sale and hire.

Wellington

- Portacabin Portable Building Hire is based in Wellington and has approximately [] portable units available for hire and operates in the Wellington area.

Blenheim

- Glenroy Insulated Products (“GIP”) is based in Blenheim and manufactures its own portable units for hire. GIP has [] portable units available for hire and operates primarily in the Blenheim area.

Christchurch

- Portabuild is based in Sockburn, Christchurch. It entered the market in 1993 and currently has approximately [] portable buildings for hire, of its own construction.
- Cottage Co Canterbury based in Christchurch manufactures high end residential portable buildings for sale in the South Island area.
- Paneltech is based in Islington, just outside Christchurch. Its core business is making insulated industrial fixtures such as freezers and cold stores. As a side business Paneltech operates a portable hire operation with [] units available for hire.

Dunedin

- Contract Coolstores is based in Dunedin. It has [] units available for hire in Dunedin and sold around [] units in the last financial year.

Potential suppliers of portable buildings for hire and sale:

Nelson

- Coldstore Construction Limited 2003 (“CC2003”) is the portable building manufacturing business that Malcolm Lowrie of Transportables divested. The firm currently builds cool store units and the portable units for Transportables. []
- Leviglass Buildings operates on the West Coast building high end residential units that it exports and sells throughout New Zealand.
- Skyline Garages is located in Nelson and manufactures garages.
- Kidson Construction Limited is located in Nelson and is involved in general construction projects.
- Thelin Construction is located in Nelson and is a general contractor.

Christchurch

- Insulated Commercial Environments (“ICE”) operates in Belfast, Christchurch. It specialises in insulated industrial fixtures such as freezers and cold stores.
- Hirequip operates throughout New Zealand offering construction equipment for hire. It has expressed an interest in entering the market for hire of portable buildings, as it believes portable buildings will complement its other range of goods.

Purchasers and hirers of portable buildings

- Fletcher Construction operates on a project basis in Nelson and does not maintain a permanent base in the area. Fletcher uses both Portacom units and its own units when supplying units on a project site.
- Hawkins Construction is based in Christchurch and operates in Nelson only for occasional projects.
- Fulton Hogan is a general contractor located throughout New Zealand.
- David Brown Contracting is a Christchurch based contractor.
- Sealord is a seafood processing, distribution and exporting company located in several locations throughout New Zealand.

PREVIOUS INVESTIGATIONS

Decision 409: Portacom New Zealand Limited / Portable Buildings Limited

28. Portacom applied for a clearance in Nov 2000 to acquire Portable Buildings Limited (“PBL”) a Christchurch based firm that manufactured portable units for sale and hire.

29. A clearance was given on the following basis:

“Although the merged entity is likely to have high market share it will face the following constraints:

- Ease of expansion by current competitors;
- Ease of entry by potential competitors; and
- Countervailing power by purchasers.

The Commission considers these factors to be sufficient to allay any dominance concerns.”

INDUSTRY BACKGROUND

Structure

30. The standard portable building measures 6x3m. It has a steel box-like frame and “sandwich panel” walls.³ The base will be made of wood or steel. The building is

³ Sandwich panels consist of polystyrene encased in Colour-Steel sheets. Sandwich panels are also used in making industrial cool stores and chillers.

manufactured within a warehouse, and then transported by truck, rail, helicopter, or barge to where it is required. A standard unit can be built within a week with a crew of two to three labourers.

31. A large number of competitors produce and hire portable buildings throughout New Zealand. Only Portacom has a national presence with manufacturing and distribution centres in major cities in both the North and South Islands. Portacom carries a wide range of portable units so is able to offer a wider selection of units than the average local firm.
32. The majority of firms are relatively small operations with 5-20 portable buildings available for hire. The hire business is often a non-core business for these smaller firms and is used to generate additional revenue.
33. Portable buildings are built for both high and low end uses. High end units sell for \$25,000 while low end units like those made by Transportables and Portacom usually average a sale price between \$6,000 and \$10,000.
34. The cost of transporting portable units from Christchurch to Nelson is \$600-\$800 each way with a charge from \$1,000-\$1,500 for transport across the Cook Strait. Because of this transport cost Portacom has advised that it keeps 2-3 units in Nelson that it shifts from job to job and trucks in specialty units that local firms cannot offer.
35. The main demand for portable buildings would appear to be as temporary offices. For example, construction firms, such as Fletchers and Hawkins, use portable buildings on-site and will shift them to other locations as required. Firms also use portable buildings while their main offices are being renovated.
36. In interviews with construction firms from Nelson most indicated they use their own portable units on job sites rather than hire portable units.
37. Demand for portable units also comes from the agriculture industry and seafood and meat processors. Agriculture firms and seafood and meat processors rely on portable buildings more for storage than as on-site offices.
38. A secondary demand is for portable buildings of a more permanent nature. Schools, for example, purchase portable buildings because they are quite cheap compared to more permanent materials, can be quickly constructed, and can be added to or shifted as required. Portable buildings are often placed next to warehouses to create more office space. Portable buildings are also purchased for use as a sleep-out or bach.
39. Demand for portable units for residential purposes is a niche segment of the industry. Units produced for residential needs are typically a higher end product than units designed for offices or storage. Firms making residential units usually focus on this niche exclusively and do not manufacture or hire units for use as offices or storage containers.
40. Industry sources have advised the Commission that barriers to entry are low. The evidence supporting this claim is the amount of entry shown around New Zealand in the last ten years. This includes PBL (1993, Canterbury), Portabuild (1993, Canterbury), Kiwi-Hire (1999, Canterbury), Rhino (1994, Auckland), Modcom (1998, Tauranga), Hirecom (1999, Auckland) and Portacabin Portable Building Hire (2001, Wellington).
41. A large number of firms are potential entrants into the industry. These firms include coolstore manufactures, container firms and construction companies.
42. Industry sources advised that up to 95% of the cost of manufacturing a portable unit is variable. This includes labour and material. Given this high variable cost component,

there are few economies of scale. This implies that there is no need to start on a large scale to be able to compete efficiently.

43. Some sunk costs may be incurred in establishing a hire fleet. Once the units have been built there is little that can be done with them if not on hire. Some participants interviewed advised that to mitigate the risk, they operate a hire fleet as a non-core business activity.

Conduct

44. Industry participants interviewed indicate that price is the primary basis for competition in the industry.

MARKET DEFINITION

45. The Act defines a **market** as:

... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

46. For the purpose of competition analysis, a relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry, could impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the ‘*ssnip* test’). For the purpose of determining relevant markets, the Commission will generally consider a *ssnip* to involve a five percent increase in price for a period of one year.
47. The Commission defines relevant markets in terms of four characteristics or dimensions:
- the goods or services supplied and purchased (the product dimension);
 - the level in the production or distribution chain (the functional level);
 - the geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic extent); and
 - the temporal dimension of the market, if relevant (the timeframe).

Relevant Market

Product Market

48. The applicant has submitted that the area of activity that Portacom and Transportables have in common is the hire of modular portable buildings.
49. The Commission has considered whether other products could be considered close enough substitutes to be included in the market. For example:
- Firms such as the Cottage Co Canterbury are known to make high end transportable buildings for residential purposes. These buildings are often built in situ but are transportable. These buildings, however, cost around \$25,000 and are likely to be far in excess of what is required by a typical user of a Portacom or Transportable portable building.

- Firms do offer converted shipping containers as temporary construction site buildings. These containers are understood to offer better security than portable buildings. Fletcher Construction and other industry participants have advised, however, that containers are used primarily for storing equipment rather than being used as offices, and are substitutable in few instances.

50. The Commission concludes that the above products are only likely to compete at the fringes of the market.

Functional Market

51. Industry sources have advised that the period in which firms start switching from hiring to buying is when ongoing use of portable buildings exceeds 1-2 years. Firms with these requirements could be considered the “marginal customers” for hiring and buying. Switching would occur among marginal customers if the relative hire/sale prices were out of sync. If the cost of hireage increased to a point where the cost to purchase a portable unit and its associated maintenance and depreciation cost was less than hireage over say a two year period switching would be an option.
52. The ability of a supplier to switch to and from hiring or selling a unit provides a constraint on firms servicing long term hire customers and is likely to ensure hire/sale prices remain constant. The only area of aggregation between the two firms is the hire of modular portable buildings. The Commission intends to take the conservative approach in the consideration that if no market power is found in the narrow market it is unlikely to exist in the broader market. Therefore the Commission will only consider the hiring of modular portable units in its analysis.
53. The relevant functional market is that for the provision of retail hire and distribution of modular portable buildings.

Geographic Market

54. The Applicant has put forward arguments that the market is national in extent. It claims that the cost of transportation does not prohibit manufacturers of portable buildings from economically competing for contracts in different islands. Comments made from industry sources, however, tend to contradict this view.
55. In general, the view of the industry is that transport costs of portable buildings for hire are high relative to the value of the product, which significantly limits distances they can be economically transported. In addition, the Commission has found little evidence of portable buildings crossing the Cook Strait on barges or ferries.
56. Portacom does not currently have a branch presence in the Nelson/ Marlborough region. Their closest distribution centre is located in Christchurch. Portacom stated it made [] hire transactions in Nelson in the last financial year. Portacom has indicated it shipped the units to and from Christchurch for some of these sales with a couple of units 2-3 that were rotated from job to job. Portacom has an advantage in terms of the range of units it can provide for rental compared to those Transportables owns. As a comparison, Transportables estimates [] short term rental transactions annually in the Nelson/ Marlborough region, with [].
57. It is likely that the geographic market for the hire of portable buildings is a regional one for two reasons. First, revenue gained for a hire contract is small relative to the transport cost. Second, in most circumstances, transport costs will have to be paid twice; that is, transporting the unit to the customer and transporting it back at the end of the contract.

58. Industry sources have advised that the transport cost for a standard 6x3 m unit is around \$1,000 to \$1,500 to transport from Wellington to Nelson, and around \$600 to \$1,000 from Christchurch to Nelson (each way). Using Portacom's price list for a 6x3 unit, a weekly rental is [] so for a six month rental period, the total rental cost is []. If a conservative transport fee of \$600 is applied for each way then the total cost of the rental is [].
59. The equivalent cost for a 6x3 unit from Transportables for six months is []. A firm using a locally based portable building hire firm will be able to rent a unit for six months for a price up to [] cheaper than it would using the same type of unit transported from Christchurch. Transportables indicated that Portacom was able to make several sales in Nelson from Christchurch because Portacom has a wide range of portable building unit sizes that Transportables does not currently possess.
60. With the transport cost making up such a large portion of the rental cost for short term rentals it is unlikely Portacom would be able to ship units back and forth from Nelson to Christchurch and remain competitive with a locally based firm like Transportables.
61. The cost involved in transporting units from Christchurch, implies a hypothetical monopoly supplier in Nelson could potentially raise prices at least [] and still have a cost advantage over Christchurch suppliers. Potential North Island suppliers would have an even higher transportation cost making it unlikely they could compete on price with a locally based hire firm. This pricing differential suggests the geographic extent of the market for hire is regional and likely limited to the Greater Nelson/ Marlborough area.
62. Considering that travel times from Christchurch to Dunedin are shorter than Christchurch to Nelson and Portacom does service Nelson with units from Christchurch, albeit on a minor level, an appropriate market definition has to either exclude Christchurch which would result in a Nelson/ Marlborough regional market or include Christchurch and accept a South Island market definition.
63. As the transportation cost is likely to make units shipped from Christchurch to Nelson uncompetitive, the Commission considers Portacom's competitive presence in Nelson must be limited to the units it keeps in Nelson and shifts from job to job.
64. Therefore, the Commission has taken the conservative option and considered a narrow regional market, the Nelson/ Marlborough area with the boundaries extending from Takaka to Blenheim. This is on the basis that if no market power is found in the narrower market, it is unlikely market power exists in the wider market.

Conclusion on the Relevant Markets

65. The Commission concludes that, for the purpose of analysing this application, the relevant market is as follows:
- The market for the provision of retail hire and distribution of modular portable buildings in the Nelson/ Marlborough region ("the market").

FACTUAL

66. The Commission uses a forward-looking, counterfactual, type of analysis in its assessment of business acquisitions, in which two future scenarios are postulated: that with the acquisition in question (the factual), and that in the absence of the acquisition (the counterfactual). The impact of the acquisition on competition can then be viewed as the difference between those two scenarios. It should be noted that the status quo cannot

necessarily be assumed to continue in the absence of the acquisition, although that may often be the case. For example, in some instances a clearly developing trend may be evident in the market, in which case the appropriate counterfactual may be based on an extrapolation of that trend.

67. In the factual scenario, Portacom and Glenroy Insulated Products will be the only two firms in the Nelson region specifically offering portable units for hire post-acquisition. Portacom will establish a permanent local presence and gain an established customer base overnight.
68. Post acquisition, Portacom will gain a permanent site presence in Nelson and acquire Transportables' 17 portable units. Previously, Portacom competed as a small player in the market by shipping units in from Christchurch or rotating units from job to job. The transportation cost incurred in shipping the units to Nelson meant that Portacom was likely to use these units only for long term rental jobs (a period greater than 12 months) requiring specialised units. Portacom has advised that it keeps 2-3 units in Nelson that it shifts from job to job to compete for short term rentals.

COUNTERFACTUAL

69. The applicant has not recommended a counterfactual in its clearance. However, in an interview with Transportables, Peter McGrath stated that if the acquisition did not proceed the business would continue to operate.
70. This would leave three firms, Transportables, Portacom and Glenroy Insulated Products, in the Nelson/ Marlborough region offering portable buildings for hire.
71. As Transportables has indicated it can continue to operate as a going concern if the acquisition does not proceed, the Commission considers the appropriate counterfactual the status quo.

COMPETITION ANALYSIS

72. For each relevant market, the Commission will assess:
 - the probable nature and extent of competition that would exist in a significant section of the market, but for the acquisition (the counterfactual);
 - the nature and extent of the contemplated lessening; and
 - whether the contemplated lessening is substantial.⁴
73. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used. All measures may yield similar results in some cases. Where they do not, the Commission may, for the purposes of its assessment, adopt the measure which yields the highest level of market share for the combined entity. The Commission considers that this will lead to an appropriately conservative assessment of concentration, and that the factors which lead to the other

⁴ See *Dandy*, supra n 5, pp 43–887 to 43–888 and adopted in New Zealand: *ARA v Mutual Rental Cars* (1987) 2 NZLR 647; *Tru Tone Ltd v Festival Records Retail Marketing Ltd* (1988) 2 NZLR 352; *Fisher & Paykel Ltd v Commerce Commission* (1990) 2 NZLR 731; *Commerce Commission v Carter Holt Harvey*, unreported, High Court, Auckland, CL 27/95, 18/4/00.

different market share results are more appropriately considered elsewhere during the assessment of the acquisition.⁵

74. In determining market shares, the Commission will take into account the existing participants (including ‘near entrants’), inter-firm relationships, and the level of imports. This is followed by an application of the Commission’s ‘safe harbours’
75. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- where the three-firm concentration ratio (with individual firms’ market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of a 40% share; or
 - where the three-firm concentration ratio (with individual firms’ market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

Market Concentration

76. The Applicant submitted market shares based on a national market for the hire of portable buildings. As the Commission has defined a Nelson/ Marlborough regional market, the Commission intends to use portable buildings available for hire in the region as the measure of market share. The Applicant advised the Commission that to service the [] hire transactions it made in Nelson last year it ships units to and from Christchurch and has 2-3 units in Nelson it rotates from job to job. The Commission considers that only the 2-3 units Portacom shifts from job to job in Nelson will be price competitive with the hire rates offered by other competitors in the Nelson/Marlborough market.
77. Transportables advised the Commission that of its 17 units, [] are currently on long term hire. In the interest of providing a complete picture of the nature of competition in the market the market shares in Table 1 display two scenarios, the first with total units available for hire and the second with the units actually available for short term hire. While the market shares do change using the different scenarios, the Commission intends to take a conservative approach and use the measure that results in the highest level of aggregation.

⁵ See the Commission’s Practice Note 4 for further explanation of the Commission’s approach to market share.

TABLE 1: Market Shares for a Nelson/ Marlborough Portable Hire Market

Participant	Commission Estimates of Nelson/ Marlborough Market Share	Total Units Available for Hire in Nelson/Marlborough Market	Commission Estimates of Nelson/ Marlborough Market Share	Units Available for Short Term Hire in Nelson/Marlborough Market
Portacom (Nelson/ Christchurch)	[]	[]	[]	[]
Transportables (Nelson)	[]	[]	[]	[] ⁶
Sub-Total	[]	[]	[]	[]
Glenroy Insulated Products (Blenheim)	[]	[]	[]	[]
Total	100%	[]	100%	[]

78. While Portacom’s market share is relatively minor, Table 1 indicates the merged entity would have a market share of [], using total units available for hire as a measure, which is outside the Commission’s safe harbour guidelines of 40% where the three firm concentration ratio is above 70%.

79. The acquisition will result in a reduction of market participants from three to two. However, the share of the market illustrated by Table 1 reflects a conservative approach as a number of small firms throughout the Nelson/ Marlborough area have a small number of portable units (less than 5) that are privately owned and potentially available for hire or sale. If these firms were factored into the market share analysis, Portacom’s market share is likely to be further reduced.

80. Market shares are insufficient in themselves to establish whether competition in a market has been lessened. It is the interplay between a number of competition factors, of which seller concentration is only one, that has to be assessed in determining the impact of a business acquisition on competition. Other competition factors include the constraint provided by existing or potential competitors as well as other competition factors such as the countervailing power of buyers and suppliers. These are considered for the relevant market in subsequent sections.

Existing Competition

81. Transportables, Portacom and Glenroy Insulated Products (“GIP”) are the only three firms in the Nelson/ Marlborough region currently offering portable buildings for hire. While Portacom has made hire sales in Nelson in the last financial year, the small number of sales [] suggests Portacom is a fringe player at best.

⁶ []

82. Transportables and GIP both stated the level of demand in the market is steady, but prone to seasonal fluctuations. Both firms stated competition in the market is mainly on the basis of price. GIP operates its building hire operation as a non-core business (its core business being the construction of coolstore units).
83. If Portacom increased hire prices post acquisition, GIP stated it would consider such a move an attractive opportunity to enter the Nelson area and would not have difficulty expanding its portable units to meet demand. Other market participants interviewed in the portable hire industry indicate the price of portable building hire is highly competitive and they do not see how the Portacom acquisition could result in the ability of Portacom to substantially increase the price of portable building hire.
84. In comparing the effects of the acquisition against the counterfactual, the impact on short term rentals is likely to be minimal as Portacom was a moderate competitor in the Nelson area which left Transportables as the main source of portable hire in the Nelson area.
85. To a certain degree the level of competition is not significantly altered by the acquisition as Portacom was a moderate competitor and the other portable hire firm, GIP, did not actively compete in the Nelson area specifically. As Portacom has a moderate presence with the 2-3 units it shifts from job to job and GIP does not aggressively compete for portable hire jobs in Nelson, the level of competition pre-acquisition can be characterised as moderate.
86. The fact that Transportables' hire prices were competitive with prices of other portable hire firms both in Christchurch and throughout New Zealand suggests the threat of entry acts as a significant constraint on the behaviour of portable hire firms.
87. For longer term rentals customers can still seek quotes for portable hire from several firms in the Christchurch area. With the number of hire firms in Christchurch it is unlikely Portacom could sustain a price increase without providing an incentive for those firms to enter the Nelson area with a 2-3 portable unit presence.
88. In addition, a further constraint exists from the several local construction companies who have indicated they have units on hand that are potentially available for hire when not in use.

Conclusion on Existing Competition

89. The Commission considers that the level of existing competition does not substantially change post acquisition due to the fringe nature of the Portacom presence in the market. The Commission notes the willingness of GIP and construction firms to take advantage of any Portacom price increases post acquisition. These factors pose a significant constraint on the actions of Portacom post acquisition.

Potential Competition

90. A business acquisition is unlikely to result in a substantial lessening of competition in a market if behaviour in that market continues to be subject to real constraints from the threat of market entry.
91. The likely effectiveness of the threat of new entry in constraining the conduct of market participants, following a business acquisition that might otherwise lead to a substantial lessening of competition in a market, is determined by the nature and height of barriers to entry into that market.

92. The Commission considers that, for the purpose of considering this issue, a barrier to entry is best defined as an additional or significantly increased cost or other disadvantage that a new entrant must bear as a condition of entry.
93. In order for the threat of market entry to be such a constraint on the exercise of market power as to alleviate concerns that a business acquisition could lead to a substantial lessening of competition, entry of new participants in response to the exercise of market power must be likely, sufficient in extent and timely (the *let* test). If they are to act as a constraint on market participants following a business acquisition, which might otherwise lead to a substantial lessening of competition in a market, entry must be relatively easy, or to put it another way, barriers to entry must be relatively low.

Barriers to Entry

94. Potential barriers to entry in the portable hire market are the sunk costs incurred in acquiring a fleet of portable units (whether manufactured or purchased) and the Portacom brand name. These factors are discussed below.
95. A small capital outlay is required to establish a portable building manufacturing operation. This would include renting a small warehouse, purchasing suitable tools, and hiring of labour. These requirements are generic to many building/manufacturing firms so it is likely there would be a very small sunk cost component, if any, should a new entrant fail.
96. The brand name “Portacom” is well known throughout New Zealand. Portacom is a particularly strong brand, having been in the market since the 1970’s. Industry sources note that many customers refer to a portable building as “a portacom”.
97. The Commission, however, does not believe this would significantly inhibit a current or potential competitor’s ability to compete. Evidence from industry sources suggests that the market is price driven. In addition, the range of similar brand names to emerge over the last ten years (Portabuild, Portacabin, Hirecom, Modcom, and Leisurecom) in New Zealand also serves to mitigate the strength of Portacom’s brand name.

Likelihood of Entry

98. The prices charged by Transportables and Portacom in the Nelson area approximate the charges for portable hire throughout New Zealand. Since Portacom is a fringe player in the market currently, the fact that Transportables’ prices are equal to those charged in regions with larger number of competitors suggests the threat of entry acts as a constraint on local firms.
99. Industry sources have advised the Commission that barriers to entry are low. This is evidenced by the amount of entry shown around New Zealand in the last ten years. This includes PBL (1993, Canterbury), Portabuild (1993, Canterbury), Kiwi-Hire (1999, Canterbury), Rhino (1994, Auckland), Modcom (1998, Tauranga), Hirecom (1999, Auckland) and Portacabin Portable Building Hire (2001, Wellington).
100. In addition to recent entry, the Commission has identified a number of firms that are likely to be potential competitors in the market. These firms are outlined below.
101. CC2003 as a manufacturer of portable units in Nelson could quickly enter the market for hire in the event Portacom increases portable hire prices. []
102. Several Nelson construction companies (Kidson Construction, Nelson Construction, Thelin Construction) interviewed stated they presently own portable units. These firms

also noted they could build units themselves or subcontract the construction of new units if the cost of hiring portable units was increased.

103. In Christchurch a number of potential entrants stated they were willing to enter the market if given sufficient reason. Portabuild, Hirequip, Insulated Commercial Environments, Paneltech and the Cottage Co Canterbury all indicated they would consider entering the Nelson/ Marlborough hire market if the returns justified entry.
104. A further threat to the combined entity is likely to come from firms outside the region “cherry-picking” contracts. The Commission understands that for a reasonable sized contract in (say) Nelson, firms outside the region will tender for them with the intention of employing subcontractors in Nelson to build them. [] based firm indicated they would consider this type of entry if the financial returns justified the effort.
105. In addition, as noted in paragraph 83, GIP indicated its potential to expand into the Nelson area from its base in Blenheim if Portacom increased the prices of portable building hire.

Extent of Entry

106. Industry participants have advised the Commission that up to 95% of the cost of manufacturing portable buildings is variable. Given this high variable cost component, there are few economies of scale. This implies that there is no need to start on a large scale to be able to compete efficiently. A small firm can compete with a larger firm like Portacom and this is demonstrated by the parity in the portable hire price list of Transportables compared to Portacom.
107. Firms can also avoid the capital costs of a manufacturing facility by employing subcontractors to manufacture portable units. In this way, a firm can quickly gain a presence in a region without having to invest in facilities and equipment to assemble a fleet of portable units.
108. In addition, local construction companies have the required skills to quickly construct units for hire if Portacom increased hire prices. Industry sources have advised units can be constructed within a week.

Timeliness of Entry

109. Given the small amount of equipment and capital required to start a portable hire business a new entrant could establish a presence well under the Commission’s two year time frame. It is likely a new operation could be set up in less than three months.

Conclusion on Constraint from Potential Competition

110. The Commission concludes that barriers to entry in the portable building hire market are insufficient to prevent new entry.

Other Competition Factors

Constraint from Buyers or Suppliers

111. The potential for a firm to wield market power may be constrained by countervailing power in the hands of its customers, or alternatively, when considering buyer (oligopsony or monopsony) market power, its suppliers. In some circumstances, it is possible that

this constraint may be sufficient to eliminate concerns that a business acquisition may lead to a substantial lessening of competition.

112. Where a combined entity would face a purchaser or supplier with a substantial degree of market power in a market affected by the acquisition, the Commission therefore considers whether that situation is such as to constrain market participants to such an extent that competition is not substantially lessened.
113. The ability to shift to alternative suppliers is likely to constrain the merged entity. For example, [] are two users of Portacom portable buildings. [] advised that it typically does one off jobs in Nelson where it brings in its own portable units. Both firms stated they are not wedded to using Portacom and would be comfortable using local firms as subcontractors to build units.
114. [] stated it would be comfortable subcontracting local firms to build units if Portacom attempted to increase prices. [] also indicated it has its own units it could transport to Nelson for large projects.
115. Several construction firms interviewed in the Nelson area stated they own their own units for use on site when required. The parties interviewed did not express concern over the proposed acquisition.

OVERALL CONCLUSION

116. The Commission has considered the probable nature and extent of competition that would exist in the market for:

- The market for the provision of retail hire and distribution of modular portable buildings in the Nelson/ Marlborough region (“the market”).

117. The Commission considers that the appropriate counterfactual for comparison is the status quo.

118. The Commission has considered the nature and extent of the contemplated lessening. In the supply of modular portable buildings for hire the proposed acquisition would result in the merged entity obtaining a market share which falls outside the Commission’s safe harbour guidelines.

119. The Commission has also considered the nature and extent of the contemplated lessening, in terms of the competitive constraints that would exist following the merger from:

- Constraint posed by existing competition;
- Ease of entry by potential competitors; and
- Countervailing power by purchasers.

120. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the market for the provision of retail hire and distribution for modular portable buildings in the Nelson/ Marlborough region.

DETERMINATION ON NOTICE OF CLEARANCE

121. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition of Transportables by Portacom New Zealand Limited.

Dated this 30th day of May 2003

MJ Belgrave

Chair