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COMMERCE COMMISSION

DECISION NO. 298

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of s 105(1) of the Act, in the matter of an application for clearance of a business acquisition involving:

GENERAL ELECTRIC COMPANY

and

CHEP HANDLING SYSTEMS LTD

The Commission: P C Allport
R N Taylor

Summary of Proposed Acquisition: That General Electric Company, or any interconnected body corporate thereof, acquire either:

- (a) the business and assets of Chep Handling Systems Ltd, Chep Handling Systems Limited & Company (a special partnership) and the TCP Partnership, or,
- (b) up to 100% of the shares in Union Airways Limited and Freightways Equipment Ltd and up to 100% of the shares in Porter Square Limited and TCP Holdings Limited.

Determination: Pursuant to s 66(3)(a) of the Act, and in accordance with a delegation granted under s 105 of the Act, the Commission determines to give a clearance for the proposed acquisition.

Date of Determination: 18 June 1997

AUT/BA - G11/1
M2342

MEMORANDUM

To: Peter Allport
Roger Taylor

From: John Preston
Jane Chilcott

Date: 18 June 1997

Subject: **Commerce Act 1986: Business Acquisition: General Electric Company/Chep Handling Systems Ltd**

Working Day 10 : 23 June 1997

Confidential material in this report is contained in square brackets

THE PROPOSED ACQUISITION

- 1 On 9 June 1997 the Commission registered a notice in which clearance was sought for GE Capital, a wholly owned subsidiary of General Electric Company (GEC), to acquire either:
 - a) the business and assets of : Chep Handling Systems Limited (Chep), the special partnership known as Chep Handling Systems Limited & Company and The TCP Partnership (a partnership between Porter Square Limited and TCP Holdings Limited; or,
 - b) up to 100% of the shares in Union Airways Limited and Freightways Equipment Limited (which companies own all the shares in Chep and the units in the Special Partnership, in each case as to 34.43% and 65.57% shares respectively), and, up to 100% of the shares in Porter Square Limited and TCP Holdings Limited, which companies are the partners of The TCP Partnership (holding 34.43% and 65.57 %

partnership interests respectively).

The plan provided by the applicant which outlines these relationships is attached as an Appendix.

PROCEDURES

- 2 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 s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. As no extension of time has been agreed a determination is required by 23 June 1997.
- 3 The notice did not request confidentiality for the fact of the proposed acquisition. However shortly after the notice was lodged, the applicant's representative informed the Commission that GEC did not wish its proposal to be identified because of its Stock Exchange listing obligations. After discussions with Commission staff, the applicant's representative agreed that the fact that Chep was for sale was not regarded as confidential. It was agreed that limited fact confidentiality would be provided, that is, Commission staff would obtain information on the relevant markets and on the likely effects of the proposal without GEC's name being disclosed.
- 4 In the course of investigating this proposal, staff had discussions with Chep's two main competitors (The Fruit Case Company Ltd and Weck-Pack Hire Ltd), a smaller competitor (Greenleaf Growers), the manufacturer of plastic trays and crates (Reese Viscount Ltd) and with a representative of organisations which operate container pools for their own use (The NZ Apple and Pear Marketing Board and The Warehouse).

THE PARTIES

General Electric Company

- 5 GEC is a large multi-national company which has its corporate headquarters in Fairfield, Connecticut, USA. GEC is listed on the New York and Boston Stock Exchanges in the USA, and on some non-USA Stock Exchanges. The company

has 11 business groups involved in manufacturing(including aircraft engines, appliances and lighting), services and media. Another major business of GEC is conducted by its wholly owned subsidiary, GE Capital Services which provides a wide range of financial services, including equipment leasing, project and equity finance, consumer credit, specialised insurance and commercial equipment financing and leasing.

- 6 In recent years, GE Capital Services has made acquisitions in Australia, and has also commenced some new businesses there. Some of its Australian businesses have branches or subsidiaries in New Zealand, including Commercial Equipment Finance, Ferntree Computer Corporation and Loscam.
- 7 Loscam Ltd, which is incorporated in Australia, is owned as to 86% by GE Capital International Holdings Corporation. Loscam Ltd owns 66% of the shares in Loscam New Zealand Ltd (Loscam), which is engaged in hiring out pallets.

Chep Handling Systems Ltd

- 8 Chep, which was established in 1974 and which has its head office in Auckland, provides reusable packaging containers from its 7 company-controlled depots and 13 agency locations.
- 9 The share in Chep are held by Freightways Equipment Ltd, a wholly owned subsidiary of Freightways Limited, (65.6%) and Union Airways Limited, ultimately owned by Owens Group Limited, (34.4%).
- 10 The TCP Partnership operates in close association with Chep, and is described by Chep as its “mirror” organisation, in that it has the same ultimate ownership. The Partnership commenced business this year. It has a very small staff and operates from Chep’s premises in hiring out specialised containers to a small number of customers. Initially it had been intended that the Partnership would be developed into a more substantial organisation but this intention was abandoned when Freightways decided to sell its packaging hire operations.

THE RELEVANT MARKET

- 11 Chep describes its business as that of providing reusable packaging containers on

hire to a wide variety of industries. The major users are suppliers of food stuffs (especially fruit and vegetables), but the containers can be used for many products.

- 12 The principal types of containers supplied by Chep are pallets, trays and crates, cages, collapsible containers, liquid containers and bins.
- 13 Pallets are low wooden platforms (about 140mm deep) on which goods are stacked, and which are constructed in such a way that they may be moved readily by fork lift trucks.. A widely used size is a surface of 1 metre by 1.2 metres. The production of pallets is a straightforward process which requires little equipment. Apple packhouses use large numbers of pallets for the export of fruit. The NZ Apple and Pear Marketing Board has compiled a list of 60 approved pallet makers, although in any season only about half of these will be called on to supply. Pallets are relatively inexpensive, and cost about \$25 to produce.
- 14 Cages are constructed from steel frames and wire mesh, and are designed to contain loose goods and to be placed on pallets. The usual capacity of a cage is 0.57 cubic metres, and two-high and three-high versions, with a proportionate increase in capacities, are available. Shelves can be fitted to provide more secure carriage for small or fragile items or for use as lids. The production of cages is a straightforward manufacturing and assembly process.
- 15 Trays, crates and bins are generally made from plastic. For trays and crates the normal sizes are capacities of 25, 35, 47, and 75 litres. The principal producer is Reese Viscount Ltd of Auckland. Reese sells both to firms such as Chep which provide a hire service and to large users who wish to maintain their own pools. Plastic crates are relatively inexpensive, and typically cost about \$9 to purchase from the manufacturer.
- 16 Industry sources indicated to staff that a firm offering the supply by hire of reusable packaging containers must operate nationally to provide an effective service. This is because many users have a national branch network, and because fruit, vegetables and other items are often transported considerable distances from the point of production to the point of sale.
- 17 The basis on which the hire companies charge for the use of packaging containers varies. Chep charges a set rate per day, whereas The Fruit Case Company charges a refundable deposit plus a usage fee. The deposit is refunded when the item is

returned, but the cost does not vary with the time the container has been available for use.

- 18 **Conclusion on market.** We conclude that the relevant market is that for the hire of reusable packaging containers in New Zealand.

ASSESSMENT OF DOMINANCE

- 19 Section 66(3) of the Act, when read in conjunction with s47(1), requires the Commission to give clearance to a proposed acquisition if it is satisfied that it 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, it must decline clearance.
- 20 The three major suppliers of reusable packaging containers by hire are Chep, Weck-Pack Hire Limited of Auckland and The Fruit Case Company Limited of Auckland. There are some smaller suppliers, including Loscam.
- 21 The market share figures provided by the applicant as Schedule A to the notice state that Chep has a market share of [] and that Loscam's share is []. However, the table indicates that these percentages are based on the inclusion of several users (such as the NZ Apple and Pear Marketing Board, Associated Bottling Company, the Kiwi Fruit Board, the Dairy Board and brick manufacturers) who operate their own container pools and who do not use the services of the hire companies. Some other companies in the list, e.g. The Warehouse, operate similarly. Weck-Pack's turnover is [] but The Fruit Case Company stated that it was unable to estimate its turnover because of a recent major restructuring. The exclusion of organisations which use their container pools only for their own operations from the table in Schedule A, and the adjustment of Weck-Pack's turnover increase Chep's share to about [], and that of Loscam to [], a total of []. The recalculation would give The Fruit Case Company a market share of [], and Weck-Pack a share of [].
- 22 Those requiring reusable packaging containers may obtain their supplies from a hire firm such as Chep, or they may buy pallets and crates, which are readily available, and operate their own pools. Many organisations do this. A further possibility is to use disposable packaging, particularly corrugated cardboard containers, and many organisations do so.

- 23 The Commission's *Business Acquisitions Guidelines* indicate that a dominant position in a market is unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
- a) the merged entity has less than in the order of a 40% share of the relevant market;
 - b) the merged entity 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.
- 24 While the only industry-wide estimates of the market size are those of the applicant, as noted the estimates appear realistic. On this basis, the market situation appears to meet the second of the safe harbours outlined in the previous paragraph. That is, the merged entity would have a market share of about [], and there are two competitors with market shares of about [].
- 25 There do not appear to be any significant constraints on an expansion of activity by Chep's competitors, and new entry would not face onerous conditions.
- 26 A significant constraint on Chep's market power, at least in respect of large users, is their ability to purchase containers and operate their own pools.

CONCLUSION

- 27 The proposed acquisition would increase Chep's market share by a relatively small percentage. Chep would continue to face competition from two substantial competitors, The Fruit Case Company and Weck-Pack, and new entry is feasible. Many container users have the option of purchasing pallets and trays, and this would continue to provide a constraint on Chep.
- 28 We conclude that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening dominance in the New Zealand market for the hire of reusable packaging containers.

RECOMMENDATION

- 29 It is recommended that, pursuant to section 66(3)(a) of the Act, and in accordance with a delegation granted under s 105(1) of the Act, that clearance be given to the proposed acquisition.

Chief Investigator

Manager

**DETERMINATION TO GRANT NOTICE OF CLEARANCE:
GENERAL ELECTRIC COMPANY/CHEP HANDLING SYSTEMS LTD**

We agree/disagree with the recommendation.

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

Accordingly, pursuant to s66 (3) (a) of the Commerce Act 1986 (the Act), and in accordance with a delegation given under s105 (1) of the Act, we hereby give clearance for General Electric Company, or any interconnected body corporate thereof, to acquire either:

(a) the business and assets of Chep Handling Systems Limited, Chep Handling Systems Limited & Company (a special partnership) and the TCP Partnership, or,

(b) up to 100% of the shares in Union Airways Limited and Freightways Equipment Limited and up to 100% of the shares in Porter Square Limited and TCP Holdings Limited.

Dated at Wellington this day of 1997.

Peter Allport
Deputy Chairman

Roger Taylor
Member