



COMMERCE COMMISSION

Decision No. 539

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

VEHICLE TESTING NEW ZEALAND LIMITED

and

ON ROAD NEW ZEALAND LIMITED

The Commission: David Caygill
Denese Bates
Donal Curtin

Summary of Application: The acquisition by Vehicle Testing New Zealand Limited (VTNZ) of all of the assets and business of On Road New Zealand Limited (On Road)

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

Date of Determination: 17th November 2004

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EXECUTIVE SUMMARY

The Proposal

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 1 October 2004. The notice sought clearance for the acquisition by Vehicle Testing New Zealand Limited (VTNZ) of all the assets and business of On Road New Zealand Limited (On Road).
2. On 16th November 2004, VTNZ varied its Application for clearance by including two divestment undertakings. The divestment undertakings are attached as Appendix 1 and 2.
3. The Commission is able to accept the Undertaking in accordance with section 69A(1). The Undertaking forms part of the Application considered below.

Market Definition

4. The Commission concludes that the relevant markets for this acquisition are as follows:
 - The market for entry certification in New Zealand;
 - The market for Land Transport Safety Authority (LTSA) administration services in New Zealand;
 - The market for driver licensing services in Manukau;
 - The market for pre-purchase inspection services in New Zealand;
 - The market for Warrants of Fitness (WOF) in:
 - Ashburton;
 - Auckland City;
 - Christchurch;
 - Manukau;
 - Napier;
 - Nelson;
 - New Plymouth;
 - North Shore City;
 - Palmerston North;
 - Tauranga;
 - Waitakere City; and
 - Wanganui (the relevant WOF markets).
 - The market for Class A Certificates of Fitness (COFA) in:
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier;

- Nelson City;
- New Plymouth;
- Palmerston North City;
- Waitakere City; and
- Wanganui.
- The market for Class B Certificates of Fitness (COFB) in
 - Manukau City; and
 - New Plymouth.

Counterfactual

5. The Commission is of the view that the appropriate counterfactual scenario is the status quo.

Competition Analysis

Entry Certification

6. The Commission considers that existing competition in the form of VINZ and AA would be likely to constrain the combined entity due to their [] in the entry certification market.

LTSA Administration Services

7. The Commission considers that both the LTSA, which sets the price for the LTSA administrative services, and existing competition in the form of AA and New Zealand Post, with their combined [] market share [], would be likely to constrain the combined entity in the market for LTSA administration services.

Driver Licensing Services

8. The Commission considers that both the LTSA, which sets the price for driver licensing services, and existing competition in the form of AA and New Zealand Post, with their combined [] market share [], would be likely to constrain the combined entity in the markets for driver licensing services in Manukau.

Vehicle Pre-purchase Inspection

9. The Commission considers that existing competition by way of AA and New Zealand mechanics – both individual and local workshops – would be likely to constrain the combined entity in the vehicle pre-purchase inspection market.

WOFs

10. The Commission considers that existing competition in the form of independent WOF issuers, whose substantial market share ranges from [], would be likely to constrain the combined entity in the relevant WOF markets.

COFAs

11. The Commission considers that existing competition in the form of VTNZ and AA would be likely to constrain the combined entity in the following markets for COFA services:

- Auckland;
 - Christchurch;
 - Manukau; and
 - Nelson.
12. The Commission considers there is sufficient potential competition in the form of AA to constrain the combined entity from exercising market power in the following markets for COFA services:
- Napier
 - Palmerston North; and
 - Waitakere.
13. In the remaining COFA New Plymouth and Wanganui markets, the Commission is concerned there are no likely potential entrants. Combined with the fact there is no existing competition, this means that based on the original application, the Commission is not satisfied that the proposed acquisition is unlikely to result in a substantial lessening of competition in those markets. However, the Commission did not have to decide finally on the matter. VTNZ undertook to divest itself of the COFA New Plymouth and Wanganui operations. The Commission considers that the proposed acquisition with the proposed divestments does not raise competition issues in regard to the COFA New Plymouth and Wanganui markets.

COFBs

14. The Commission considers that existing competition in the form of VTNZ would be likely to constrain the combined entity in the COFB Manukau market.
15. The Commission considers that barriers to entry into the COFB New Plymouth market are high, and the Commission has been unable to identify any likely entrants into that market, and considers given the barriers are high a hypothetical entrant is unlikely to enter. The Commission therefore concludes that potential competition provides no constraint on the market for COFB New Plymouth.
16. However, the Commission did not have to decide finally on whether there is likely to be a substantial lessening of competition in the COFB New Plymouth market. VTNZ undertook to divest itself of the New Plymouth operations, and this has satisfied the Commission's concerns. Therefore, the Commission considers that the proposed acquisition does not raise competition issues in regard to the COFB New Plymouth market.

Overall Conclusion

17. Therefore, the Commission is of the view that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening of competition in the following markets:
- Entry certification in New Zealand;
 - LTSA administrative services in New Zealand;
 - Driver licensing services in Manukau;
 - Pre-purchase inspection services in New Zealand;

- The relevant WOF markets;
 - COFA services in:
 - Auckland;
 - Christchurch;
 - Manukau; and
 - Nelson.
 - COFB services in Manukau.
18. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition by VTNZ of all the assets and business of On Road subject to the divestment of facilities in both New Plymouth and Wanganui.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 was registered on 1 October 2004. The notice sought clearance for the acquisition by Vehicle Testing New Zealand Limited of all the assets and business of On Road New Zealand Limited.
2. On 16th November 2004, VTNZ varied its Application for clearance by including two divestment undertakings. The divestment undertakings are attached as Appendix One and Two.
3. Section 69A of the Act states:
 - Commission may accept undertakings –
 - (1) In giving a clearance or granting an authorisation under section 66 or section 67 of this Act, the Commission may accept a written undertaking given by or on behalf of the person who gave notice under section 66(1) or section 67(1) of this Act as the case may be, to dispose of assets or shares specified in the undertaking.
 - (2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorisation under section 66 or section 67 of the Act, other than an undertaking given under subsection (1) of this section.
 - (3) An undertaking given to the Commission under subsection (1) of this section is deemed to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates.
4. The Commission is satisfied that the Undertaking has been given by or on behalf of the Applicant in this case, and that it relates to the disposal of assets or shares. Accordingly the Commission is able to accept the Undertaking in accordance with section 69A(1). The Undertaking forms part of the Application considered below.

PROCEDURE

5. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice under s 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 18 November 2004.
6. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
7. The Commission's approach to analysing this proposed acquisition is based on principles set out in the Commission's Merger and Acquisition Guidelines.¹

STATUTORY FRAMEWORK

8. Under s 66 of the Act, the Commission may grant clearances for acquisitions where it is satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a market.

¹ Commerce Commission, *Mergers and Acquisition Guidelines*, January 2004.

The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²

9. The Commission considers that it is necessary to identify a real lessening of competition that is not minimal.³ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis, the Commission is of the view that a lessening of competition and the creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.
10. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and able to be sustained for a period of at least two years.
11. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced service, quality or innovation, for there to be a substantial lessening, or likely substantial lessening, of competition, these also have to be both material and sustainable for at least two years.

ANALYTICAL FRAMEWORK

12. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - a) with the acquisition in question (the factual); and
 - b) in the absence of the acquisition (the counterfactual).
13. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
 - a) existing competition;
 - b) potential competition; and
 - c) other competition factors, such as the countervailing market power of buyers or suppliers.

² Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission (1992) 4 TCLR 713-722.

³ See Fisher & Paykel Limited v Commerce Commission (1996) 2 NZLR 731, 758 and also Port Nelson Limited v Commerce Commission (1996) 3 NZLR 554.

THE PARTIES

Vehicle Testing New Zealand Limited

14. VTNZ was established in 1994 as a State Owned Enterprise (SOE). VTNZ is New Zealand's largest supplier of independent motor vehicle safety inspections. It was the first approved Certification of Fitness issuer and its present market position is largely as a result of this historic position.
15. VTNZ was privatised in 1999 when its shares were purchased by the Motor Trade Association (MTA). VTNZ now has over 600 staff and a nationwide network of 60 permanent testing sites. VTNZ also operates a periodical mobile vehicle inspection service for COFAs and COFBs for remote areas. VTNZ is also an accredited WOF issuer.
16. Through its background as an SOE, and as a result of service delivery agreements it has with the LTSA, VTNZ is obliged to provide national coverage of COFA and COFB testing services. These testing stations are of various sizes and varying profitability. The services that VTNZ supplies include:
 - WOF, COFA and COFB inspections;
 - pre-purchase vehicle inspections;
 - entry certification;
 - administering LTSA administration services; and
 - administering various driver licensing services (the relevant services).

On Road New Zealand Limited

17. On Road is a private company based in Auckland. It was set up in 1992 and began with the purchase of the North Shore Vehicle Testing Station. This station was sold by the North Shore City Council when, following deregulation of the industry, many local authorities ceased providing vehicle testing services. On Road has expanded, through acquisitions and organic growth, and it now has 15 vehicle testing stations throughout the country. On Road supplies all of the relevant services.

Motor Trades Association (MTA)

18. The MTA was established as an industry association in 1917. The MTA merged with the Motor Vehicle Dealers' Institute in June 2003 and now has over 5,500 members. These members come from all parts of the motor vehicle industry including repair workshops, vehicle sales and service stations. The MTA has two major roles:
 - a) to help its members' businesses succeed; and
 - b) to protect the interests of its members' customers (the motoring public).
19. The business activities of the MTA include industry-specific research, training and education programmes, consultancy services for members, public relations and law reform.
20. Approximately 2,300 members of the MTA are accredited with the LTSA as Authorised Vehicle Inspection Centres to issue WOFs.

21. For the reasons set out in the Commission’s Decision 365, the MTA is not “associated” with its members in terms of section 47(2) of the Act. The members of the MTA who provide WOF services are independent competitors to VTNZ.

Other Relevant Parties

Automobile Association (AA)

22. AA is an organisation representing the interests of members and motorists to parties such as Government and other motoring sector and industry groups. AA provides a range of services and facilities to both its members and the public. AA provides all of the relevant services.
23. AA Auto Service is a franchised operation providing fast, fixed price basic motor vehicle servicing, such as oil and filter changes. These centres do not currently provide repair services. However, a change to the franchise is currently being undertaken to expand the basket of services and rename it AA Auto Service and Repair. AA does not actually have any control or involvement in the operation of these outlets.

Vehicle Identification New Zealand Limited (VINZ)

24. VINZ is a private company originally set up in connection with and as a member of the Imported Motor Vehicles Dealers Association Inc (IMVDA). It no longer has any commercial or business ownership ties with the IMVDA (other than the IMVDA being a shareholder). VINZ’s ownership consists of 259 shareholders with 1,000 shares each. Shareholders were all originally members of the IMVDA. Some shareholders have since left the industry and are therefore no longer members of the IMVDA.
25. VINZ provides all of the relevant services.

Land Transport Safety Authority (LTSA)

26. As set out in the Commission’s Decision 370, the LTSA is a Crown entity and the regulatory authority responsible for ensuring the safe operation of motor vehicles in New Zealand. In furtherance of its obligation to deliver land transport safety services to the public, the LTSA appoints agents to perform certain functions on its behalf.
27. The vehicle testing system in New Zealand is regulated under various pieces of legislation administered primarily by the LTSA. The LTSA sets both the vehicle standards, and the regulations on how and by whom vehicle testing is conducted. This is discussed more fully in the industry background section.

INDUSTRY BACKGROUND

Entry Certification

28. All imported used vehicles are required to obtain independent certification as to road worthiness. When imported cars enter New Zealand an entry certification and registration process must be completed. Entry inspection involves stripping the car down and carrying out a safety inspection. It can be done at an inspector’s facilities or off-site.
29. The entry certification regime has recently been reviewed by the LTSA. As a result the market is about to undergo significant restructuring. A Request for

Proposals for the provision of used light vehicle entry certifications was issued by the LTSA in September 2004. Responses to that proposal were to be submitted by 15 October 2004. The LTSA intends to begin negotiating with preferred respondents by 15 November 2004. Contracts awarded under this tender process are expected to be for five years with ongoing rights of renewal for further three year periods. The final process and the service providers are not likely to be known until the end of November 2004, with implementation scheduled for about May 2005.

30. The Commission considers it appropriate to make its assessment in relation to this particular application on the basis of the existing market structure of the entry certification market.

LTSA Administration services

31. The provision of LTSA administration services includes providing relevant documentation and processing motor vehicle registrations (which includes changes of ownership and re-registration on an annual basis) and road user charges.
32. Certain vehicles attract road user charges. All these vehicles must display current road user licences while operating on public roads.
33. The LTSA sets a fixed national price for agency services. Agents providing these services are paid a set commission by the LTSA.

Driver Licensing

34. Driver licensing services involve driver testing, eye examinations and the provision of the administrative functions associated with driver licences, such as taking bookings for tests, licence photos, and receipt of fees.
35. The LTSA sets a fixed national price for driver licensing services. Agents providing these services are paid a set commission by the LTSA for providing the service.

WOFs

36. WOFs are required for private vehicles under 3.5 tonnes and are required annually (where a vehicle is less than six years old) or every six months (for vehicles six or more years old). These vehicles are tested for compliance with WOF standards set out in the Vehicle Inspection Requirements Manual ("VIRM") by WOF approved issuers. WOF testing takes place at a vehicle testing station or at a local garage. WOFs can be provided through drive-in services or by appointment.
37. The pricing of WOFs is a regulated fee of 81 cents, but this is to cover only the cost of the certification sticker. The service provider is able to determine the final price charged for undertaking a WOF certification.
38. The price of a WOF generally ranges from \$ 25-45, although some providers will offer heavily discounted WOF services in anticipation of obtaining any repair work identified.
39. In the 1970s the WOF market was deregulated. Following deregulation, WOFs can be issued by any person who meets criteria established by the LTSA. There are approximately over 3,000 WOF issuers in New Zealand. Nationally, in the

12 months to December 2003, LTSA data shows there were 4,860,092 WOFs issued.

COFAs

40. COFA services involve testing vehicles used for taxi, rental or hire purposes against the COFA standards set out in the VIRM. These standards are higher than those for WOFs. COFAs are required every six months and can be provided as either a drive-in service or by appointment.
41. The price of a COFA ranges from \$35-55.

COFBs

42. Vehicles over 3.5 tonnes need to obtain COFBs every six months. COFB services involve testing vehicles against COFB standards set out in the VIRM. COFB testing stations operate either a drive-in or appointment service.
43. The price of a COFB ranges from \$ 70-110.
44. The issuing of COFAs and COFBs was deregulated in 1994. Prior to this, COFs could be issued only by the Ministry of Transport or a local authority. COF issuers must also meet criteria set by the LTSA. There are presently four COF issuers in New Zealand. Nationally, in the 12 months to December 2003, LTSA data shows there were 86,114 COFAs and 239,236 COFBs issued.

Pre-purchase vehicle inspection

45. Pre-purchase vehicle inspection is a non-regulated service, and does not involve LTSA accreditation or regulation. Vehicles are inspected at the request of potential purchasers who want information on the vehicle's mechanical health before buying. Such inspections are usually performed by mechanics. What items are checked varies according to service provider.

LTSA Accreditation

46. In 1998 the LTSA made changes to the vehicle certification system and decided to create a new type of accreditation known as a Transport Service Delivery Agent ("TSDA"). Being appointed a TSDA enables a party to provide all of the following services ("vehicle services"):
 - WOF, COFA and COFB inspections;
 - entry certification;
 - administering LTSA administration services; and
 - administering various driver licensing services.
47. VTNZ, AA, On Road and VINZ were subsequently appointed as TSDAs.
48. TSDA accreditation does not automatically mean these four parties have the right to establish operations anywhere at any time; it merely gives them the right to provide vehicle services and permits them to negotiate and execute contracts (deeds of appointment) with the LTSA to enter certain regions. The LTSA makes a judgement call with reference to its objectives (discussed below) as to whether it is appropriate a TSDA provides all or some of the vehicle services in a region. Consequently, the deed of appointment is different for each TSDA. For instance, [

]

49. More specifically, [

] Agreements were entered into earlier this year with various parties for the provision of agency/administration and driver licence services following a tender process.

50. The LTSA is also empowered to appoint other parties to provide one or more of the various vehicle services providing the party meets the LTSA criteria and the LTSA deems it is appropriate. The main objective, relevant to this Application, that the LTSA has in mind when considering an application for accreditation or the negotiation of the TSDA's deed of appointment is maintaining national coverage to make it as easy as possible for the New Zealand public to comply with the law relating to motor vehicle safety certification and registration.
51. Other considerations as to whether to grant a party permission to open a site include existing suppliers and any related closure, downsizing, relocation and/or expansion.

MARKET DEFINITION

52. 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.”⁴

53. For competition purposes, a market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.⁵
54. For the purpose of competition analysis, the internationally accepted approach is to assume the 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 would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

⁴ s 3(1) of the Commerce Act 1986.

⁵ Australian Trade Practices Tribunal, *Re Queensland Co-operative Milling Association*, above note 10; *Telecom Corporation of NZ Ltd v Commerce Commission & Ors* (1991) 3 NZBL 102,340 (reversed on other grounds).

Product Market

55. Initially, markets are defined for each product supplied by two or more of the parties to an acquisition. For each initial market so defined, the Commission considers whether the imposition of a SSNIP would be likely to be profitable for the hypothetical monopolist. If it were, then all of the relevant substitutes must be incorporated in the market.
56. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market. The degree of demand-side substitutability is influenced by the extent of product differentiation.
57. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
58. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
59. The Applicant submits there are six relevant product markets in this proposed acquisition:
 - LTSA administration services;
 - driver licensing;
 - pre-purchase inspection;⁶
 - WOFs;
 - COFAs; and
 - COFBs.

Entry certification, LTSA administration services, Driver licensing and Pre-purchase vehicle inspections

60. The Applicant submitted that entry certification, LTSA administration services, driver licensing and pre-purchase vehicle inspections are sufficiently distinct services as to be individual markets.
61. The Commission is satisfied that entry certification, LTSA administration services, driver licensing and pre-purchase inspections are appropriately defined product markets.

WOFs, COFAs and COFBs

62. There is no substitutability between WOFs, COFAs and COFBs on the demand side. The LTSA's Vehicle Inspection Requirements Manual ("VIRM")⁷ dictates which vehicles require WOFs, COFAs and COFBs. The VIRM is regularly updated and sets out in detail the standards that each class of vehicle must meet to be certified.

⁶ This was asserted verbally to staff.

⁷ The VIRM can be viewed on the LTSA website at: www.ltsa.govt.nz/publications/virm-manual/index.html.

63. With minor exceptions,⁸ all heavy vehicles (over 3.5 tonnes) are required to undergo a more exacting examination than a WOF. These heavy vehicles require a COFB. Taxi cabs and rental vehicles (and a small number of other vehicles that are not private motor vehicles but weigh less than 3.5 tonnes) also require a more exacting examination. These vehicles require a COFA.
64. Within the COFA and COFB segments or markets there are various categories of COFAs and COFBs depending on the precise type of vehicle that is requiring certification. WOFs are required for private motor vehicles under 3.5 tonnes.
65. Similarly with entry certification, driver licensing, vehicle registration and other administration services, there are no substitutes as all are required under law in order to undertake the desired activity (for example, importing a used vehicle or driving a car)
66. On the supply side, VTNZ submitted that a COFA can be performed from existing WOF premises where those premises meet certain criteria set out in the VIRM. Based on the information supplied by VTNZ in its application, the additional equipment required to carry out COFA inspections, over the minimum equipment required to carry out a WOF inspection is:
- (a) a minimum height of access to and exit from the inspection area of 3 metres (compared with the required height of 2.6 metres for WOFs);
 - (b) a minimum inspection area width of 4 metres (compared with the minimum 3.5 metres for WOF inspection areas);
 - (c) an LTSA approved roller brake machine (compared with an approved decelerometer);
 - (d) some form of vehicle pit or vehicle hoist (compared with the option of an industrial jack and four axle stands);
 - (e) a stopwatch, 1 km test strip (i.e. any stretch of road accurately measured to 1km) or calibrated rolling road, and a meter seal kit (taxi meter verification equipment).
67. According to VTNZ, a requirement of being a TSDA is that all WOF lanes are equipped with (a) and (b). VTNZ, On Road, VINZ and AA are also equipped with (c) and (d) above for their WOF inspection services.
68. VTNZ considers that most, if not all, independent vehicle testing centres would have the equipment set out in (a) to (d) above for their WOF inspection services. Taxi meter verification equipment can be obtained at no or minimal cost, although a testing station may wish to invest in the installation of a calibrated rolling road in place of using a measured 1 km strip of road.
69. It was further submitted by VTNZ that smaller WOF providers (such as local garages) may require greater investment in order to provide COFA inspection services, but that many would have a suitable vehicle hoist or pit as part of their standard operations and would be able to obtain taxi meter verification equipment cheaply. However, these smaller providers may need to carry out

⁸ Exceptions include certain New Zealand Defence Force vehicles, traction engines, mechanically propelled rollers, cranes or excavators fitted with self-laying tracks and certain tractors operated at less than 30kph (see VIRM 3.3.3).

- alterations to their business premises to meet (a) and (b) above and may need to invest in a roller brake machine (if they are currently using a decelerometer).
70. Therefore, VTNZ concluded that the premises for WOFs and COFA services, are highly substitutable on the supply side for TSDAs and testing stations, but less so for local garages.
 71. While that may physically be the case, the process of providing COFA services as well as WOF services encounters an obstacle according to the LTSA and other industry participants. While most mechanics are likely to be suitably qualified and have the equipment needed to undertake COFA inspections, the current legislation that governs the provision of COFs prohibits a COF provider from also undertaking vehicle repair work. Accordingly, mechanics who obtain a significant proportion of their income from motor vehicle repairs or servicing would not be likely to forego that in order to undertake COFA inspection services.
 72. Irrespective of any legislative restrictions, COFBs require different equipment and site specifications. The most significant differences are the requirements for larger access ways and inspection areas and for inspection pits (which have greater size requirements than those that may be used for WOFs and COFAs). VTNZ considers that WOF/COFA lanes are not highly substitutable for COFB lanes, although it is possible for COFB lanes to be used for WOFs and COFAs.
 73. The VIRM also sets out the requirements for WOF, COFA and COFB inspectors. The qualifications required for WOFs and COFAs are identical although the LTSA requires that a COFA applicant be sponsored by a TSDA. For appointment as a WOF or COFA inspector a candidate must be qualified as:
 - a) an automotive technician with either NZ Trade Certificate, National A Grade registration, NZ Advanced Trade Certificate or equivalent;
 - b) an automotive technician with either National Certificate in Automotive Engineering, National Registration or equivalent and three years recent relevant work experience; or
 - c) a person who has carried out the general repair and maintenance of motor vehicles for at least five continuous years.
 74. A candidate must also demonstrate comprehensive knowledge of the requirements in the VIRM and of vehicles generally, be a fit and proper person and have a current driver's licence for the classes of vehicles to be inspected. VTNZ puts WOF inspectors through a one week training course in order to up-skill them to carry out COFA inspections.
 75. An applicant seeking to be appointed as a COFB inspector must have one of the qualifications set out in (a) or (b) above and be sponsored by a TSDA. In addition, an applicant must have three years relevant workshop experience or have carried out general repair and maintenance of heavy motor vehicles for at least five continuous years within the last six years. Where an inspector meets any of the above three requirements, VTNZ provides a twelve week course to up-skill them to carry out COFB inspections.

Conclusion on WOF, COFA and COFB

76. Given the lack of demand-side substitution between WOFs, COFAs and COFBs, and the limited supply-side substitution between WOFs, COFAs and COFBs, the Commission considers that WOFs, COFAs and COFBs form discrete product markets.

Conclusion on Product Markets

77. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the appropriate product markets are:
- entry certification;
 - LTSA administration services;
 - driver licensing;
 - pre-purchase inspection;
 - WOFs;
 - COFAs; and
 - COFBs.

Functional Markets

78. The production, distribution and sale of a product typically occur through a series of functional levels, conventionally arranged vertically in descending order. Generally, the Commission identifies separate relevant markets at each functional level affected by an acquisition, and assesses the impact of the acquisition on each.
79. In the case of the services under consideration there is no separate functional level and therefore this is not examined further.

Geographic Markets

80. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

Entry Certification market

81. Imported cars enter through various ports throughout New Zealand. The entry certification and registration process is completed at an inspector's facilities or off-site. Therefore, there may be some scope for analysing entry certification on a narrow basis.
82. However, all competitors – AA, VINZ, VTNZ and On Road – regard the entry certification market as national, and LTSA accreditation gives those competitors the right to establish entry certification nationally.
83. The Commission considers that the competition implications in the present application would be the same under both a narrow and broad market definition. Hence, in order to simplify the analysis for the purposes of this application, the Commission will adopt a national market for entry certification.

LTSA Administration services markets

84. VTNZ adopted the market definition applied by the Commission in Decision 370, being local markets for LTSA administration services. There is potentially some cross-over with the local geographic markets simply because individuals will choose to use the service provider in the location most convenient to them at the time. Determining the extent of this is highly problematic and is not likely to be conclusive.
85. On Road and VTNZ both offer these services in the following local markets:
- Ashburton;
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier City;
 - Nelson City;
 - New Plymouth;
 - North Shore City;
 - Palmerston North City;
 - Tauranga;
 - Waitakere City; and
 - Wanganui.
86. The Commission considers that the competition implications in the present application would be the same under both a narrow and broad market definition. Hence, in order to simplify the analysis for the purposes of this application, the Commission will adopt a national market for LTSA administrative services.

Driver Licensing market

87. VTNZ adopted the market definition applied by the Commission in Decision 370, being local markets for driver licensing services. Similar arguments may be utilised as with LTSA Administrative services.
88. VTNZ and On Road both provide driver licensing services in Manukau.

Pre-purchase vehicle inspection market

89. Pre-purchase inspections are likely to be carried out in an area most convenient for the consumer. On Road and VTNZ both offer pre-purchase inspections in the following regions:
- Napier;
 - Palmerston North; and
 - Nelson.
90. The Commission considers that the competition implications in the present application would be the same under both a narrow and broad market definition. Hence, in order to simplify the analysis for the purposes of this application, the Commission will adopt a national market for pre-purchase inspection services.

WOF markets

91. In Decisions 365 and 370 the Commission determined that WOF inspection services markets were local. The Commission reasoned that vehicle owners would have a preference for having the vehicle inspected in the locality where they reside. The Commission found that vehicle owners would be unlikely to switch to alternative providers outside the local market in the event of a SSNIP.
92. The only available market share data (obtained from the LTSA) is district/city wide data. The Commission previously used the data from these districts/cities in assessing the likely effect of acquisition in the local markets.
93. In relation to the present application, the Commission considers there does not seem to be any clear delineation on the appropriate local market as the area of convenience may not just be near where the consumer resides, but may include where they work or a central location such as a shopping centre. However, what is clear from the information from service providers is that customers will not travel out of their way or to locations where they would not normally be going in order to obtain a WOF, irrespective of the relative prices.
94. Consequently, the Commission considers that for the purposes of this investigation, the relevant geographic markets for WOFs are:
 - Ashburton;
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier City;
 - Nelson City;
 - New Plymouth;
 - North Shore City;
 - Palmerston North City;
 - Tauranga;
 - Waitakere City; and
 - Wanganui.

COFA markets

95. In Decisions 365 and 370 the Commission did not explicitly consider COFAs (as distinct from COFs generally). The Applicant submits that owners of vehicles requiring COFAs have a preference for obtaining them in convenient localities.
96. In the present case, industry participants advised the Commission that rental companies purchasing new cars in bulk may have them tested at premises convenient to either the car vendor or the rental car company to which the cars are to be transported. Some rental car companies undertake testing on site rather than at the premises of the vehicle tester. Renewals of COFAs will generally be obtained in the locality where the car is located when it is due for its COFA. As

a car moves from locality to locality, the station where it is inspected may vary from each inspection to the next.

97. Avis advised that []
98. Hertz noted that the closer the service provider is to their outlet the better as “time is money”. Hertz would []
99. Owners of taxi cabs regularly travel to different parts of a local market as part of their work, although this is more relevant to the larger population centres than to small regional towns. It was further submitted by VTNZ that taxi cab owners are sensitive to price increases and will shop around within their city or town to obtain the cheapest COFA. According to information from the New Zealand Taxi Federation, [].
100. The Commission has considered the application of a SSNIP to the price of a COFA inspection, in order to gauge the likely geographic boundaries of COFA markets.
101. This can be demonstrated using a simple example of a rental company travelling an extra ten minutes to obtain a COFA. Total extra travel time = 20 minutes (return).
- Ave time for COFA inspection = 30 minutes.
 - Ave wages for staff = \$15 / hour.
 - Cost of additional travel time = \$5 (20 minutes @ \$15/hour).
 - Ave cost of COFA = \$35 - \$40.
 - Extra time as % of COFA cost = 12.5% - 14%
 - If waiting time added = \$12 extra or about 30% - 34% of original cost.
102. In addition to the above time-related costs, a customer travelling further afield will also incur direct travel costs, such as costs associated with running a vehicle. For example, according to the Automobile Association, the average cost of running a car in New Zealand is estimated to range from \$0.51/km to \$0.93/km, depending on engine size. Taking a mid-point of \$0.72/km, and assuming an average speed of 45 km/h, the costs of a 20 minute return trip would amount to an additional \$10.80.
103. This suggests that a SSNIP of 5-10% applied to the price of a COFA inspection could be profitable, as customers would be unlikely to switch in light of additional costs associated with travelling to another supplier. The time-related costs of such a trip as a percentage of the price of a COFA inspection are 12.5%-14%; once vehicle expenses are added, these additional costs represent 40-45% of the cost of a COFA inspection. This suggests that a SSNIP could be sustained without significant switching, and in turn supports relatively narrowly defined geographic boundaries.

104. As with WOFs, it is accepted that the area of convenience is not clearly defined for each COFA consumer and therefore establishing distinct geographic market boundaries is not easy. However, for both rental and taxi operators the time taken to obtain certification is critical and therefore a location within close proximity is of paramount importance.
105. Consequently, the Commission considers that for the purposes of this investigation, the relevant geographic markets for COFAs are:
- Auckland City;
 - Christchurch City;
 - Manukau City;
 - Nelson City;
 - New Plymouth;
 - Palmerston North City;
 - Waitakere City; and
 - Wanganui.

COFB markets

106. In Decisions 365 and 370, in discussing the geographical scope of COF markets the Commission noted that “heavier goods vehicles have some flexibility as to where to obtain a COF, as they are regularly travelling between centres, and therefore have a choice of COF services between regions.”⁹ Although accepting this degree of flexibility, the Commission considered that vehicle owners would be more likely to make their decision on where to obtain a COF principally on the basis of convenience and proximity to work or home.
107. However, it was not necessary for the purposes of the application in either Decision 365 or 370 to consider in any detail whether the COFB market might be a wider market. In both applications the acquisitions would have resulted in a bare transfer of market power. The Commission was therefore able to proceed on the basis of the narrowest potential market. Consequently, the Commission did not need to consider whether “proximity to work” was in fact likely to include testing stations outside the driver’s home, but on the truck’s usual route.
108. The Applicant accepts that in many cases vehicle owners will obtain COFBs from a local service provider. It submitted, however, that there is a high degree of mobility of COFB vehicle owners and that in their experience there are a large number of vehicle owners who have the ability to obtain COFBs in destinations other than their home town. VTNZ submitted figures showing an average of [] of COFB acquirers did so in a location outside of their home region. VTNZ considers that it would be no more or less convenient for a vehicle operator to obtain a COFB from a non-local location on that vehicle’s route than from that vehicle owner’s locality. VTNZ accepts that the COFB market is local, but submits that COFB stations outside the local market do provide some constraint on providers in the local market.

⁹ Decision 370, para 43.

109. The Road Transport Forum (RTF) advised the Commission that many trucks are possibly more flexible in the location in which they obtain their COFB, but as they are most likely hauling while away from the home it is not often convenient to acquire certification while in the middle of a run.
110. Similarly, the Bus and Coach Association suggested that any coach involved in transporting passengers over long distances would not be likely to obtain a COFB while undertaking a job simply because they are required to be on the road during business hours. It is only when the vehicle is not required, such as off-peak times or when scheduled for servicing, that the COFB can conveniently be obtained and this would generally be done in close proximity to the company depot.
111. There is also a significant portion of the New Zealand truck and bus/coach fleet that operates within particular geographical areas, such as a regional town or suburban area, such that they do not have the flexibility discussed above. The Bus and Coach Association made a special point that at least two thirds of their members (the school and urban bus services) travel only within a very limited geographical area and competition in the form of non-local providers is unavailable.
112. In addition, travel time to and from a testing station and the time taken for the certification process (plus any time spent waiting) can be considered as lost income. Therefore, transport service providers will generally seek to limit the time involved and use the closest possible COFB provider.
113. Consequently, the Commission considers that for the purposes of this investigation, the relevant geographic markets for COFBs are:
- New Plymouth; and
 - Manukau City.

Conclusion on Market Definition

114. The Commission concludes that, for the purposes of analysis of this application, the relevant markets are:
- The market for entry certification in New Zealand (the entry certification market);
 - The market for LTSA administration services in New Zealand (the LTSA administration services market);
 - The market for driver licensing services in Manukau (the driver licensing services market);
 - The market for pre-purchase inspection services in New Zealand (the pre-purchase inspection market);
 - The market for WOFs in:
 - Ashburton;
 - Auckland City;
 - Christchurch;
 - Manukau;

- Napier;
 - Nelson;
 - New Plymouth;
 - North Shore City;
 - Palmerston North;
 - Tauranga;
 - Waitakere City; and
 - Wanganui (the relevant WOF markets).
- The market for COFAs in:
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier;
 - Nelson City;
 - New Plymouth;
 - Palmerston North City;
 - Waitakere City; and
 - Wanganui.
 - The market for COFBs in:
 - New Plymouth; and
 - Manukau City.

COUNTERFACTUAL AND FACTUAL

115. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a “with” and “without” comparison rather than a “before” and “after” comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).¹⁰ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

116. As a result of the acquisition VTNZ would acquire all of the assets and business of On Road.

117. The acquisition would have the following effect –

WOF Markets

118. In terms of a reduction of existing competitors –

¹⁰ Commerce Commission, *Decision 410: Ruapehu Alpine Lifts/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

- Ashburton reduces from three to two
- Auckland City reduces from five to four
- Christchurch reduces from five to four
- Manukau reduces from four to three
- Napier reduces from five to four
- Nelson reduces from four to three
- New Plymouth reduces from four to three
- North Shore City reduces from four to three
- Palmerston North reduces from four to three
- Tauranga reduces from five to four
- Waitakere City reduces from four to five
- Wanganui reduces from four to three

119. It is important to note that the category of “other”, mainly comprising mechanics and small organisations such as Pit Stop and Midas, hold between 43.50%-82.90% market share across the regions,¹¹ and so is a significant competitor.

COFA Market

- Auckland City reduces from four to three
- Christchurch City reduces from four to three
- Manukau City reduces from three to two
- Napier reduces from two to one
- Nelson City reduces from three to two
- New Plymouth District reduces from two to one
- Palmerston North City reduces from two to one
- Waitakere City reduces from two to one
- Wanganui District reduces from two to one

COFB Markets

- Manukau City reduces from three to two
- New Plymouth reduces from two to one

Factual

120. On Road advised the Commission that if the proposed acquisition by VTNZ did not progress [] Therefore, the Commission considers the appropriate counterfactual to be the status quo.

¹¹ Exact market share for ‘other’ is outline at paragraph 139.

COMPETITION ANALYSIS

Existing Competition

121. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors). Supply-side substitution by near competitors arises either from redeployment of existing capacity, or from expansion involving minimal investment, in both cases involving a delay of no more than one year.
122. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.
123. The Commission identifies market shares for all significant participants in the relevant market. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used.
124. An aggregation that would result in a low concentration level is unlikely to be associated with a substantial lessening of competition in a market. On this basis, indicative safe harbours may be specified.
125. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
 - a) where the three-entity concentration ratio (with each individual entity's 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 40% share; or
 - b) where the three-entity concentration ratio (with individual entity's 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%.
126. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market. Specifically, the Commission seeks to understand the dynamics of the competition that would exist between the remaining entities in the market, compared to what would exist in the absence of the merger.
127. The proposed transaction involves horizontal aggregation across a range of services in various localised markets involving vehicle inspection and related services. There are a number of entities that provide all the services considered (VTNZ, On Road, AA and VINZ), with others only supplying one or some of the services. The individual markets are considered below.

Entry Certification

128. The Commission has no certain market share figures in relation to entry certification as it is a somewhat omnibus term used to cover the inspection / VINing / certification / registration process. Therefore, the Commission has relied on estimates made by market participants. Table 1 provides an estimate of each competitor's market share in the entry certification market.

Table 1: Estimated Market Shares for the Entry Certification Market

Suppliers	Shares
VINZ	[]
AA	[]
On Road	[]
VTNZ	[]
Total	100%

129. Entry certification is undertaken by each of the TSDAs, with all performing similar roles. VINZ is currently the [] of the market; AA's share is []. VINZ advised the Commission that [] of VINZ's revenue.
130. The Commission is satisfied that VINZ and AA provide a significant competitive constraint on the combined entity.

Conclusion on Existing Competition in the Entry Certification Market

131. The Commission considers that existing competition would be likely to constrain the combined entity in the entry certification market. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the entry certification market due to the substantial market share of existing competitors.
132. Consequently, the Commission does not think it necessary to consider potential competition in this market.

LTSA Administration Services / Driver Licensing Services

133. While distinct markets, given the similarities in structure it is reasonable to consider the markets for the LTSA administration services and Driver Licensing services jointly.
134. New Zealand Post and AA lead the administration services and driver licensing markets. AA has approximately [] of the driver licensing market. The Commission has [] of the LTSA administration services market. The other service providers in these

markets (including VTNZ, On Road and VINZ) account for a [] of the market.

135. As the price charged for the services in these markets is set by the LTSA, there is no scope for the combined entity to raise prices.

Conclusion on Existing Competition in the Administration / Driver Licensing Services Markets

136. The Commission considers that existing competition would be likely to constrain the combined entity in the New Zealand market for LTSA administration and the Manukau market for driver licensing services. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in:

- the New Zealand market for LTSA administration services; and
- the Manukau market for driver licensing services.

137. Consequently, the Commission does not think it necessary to consider potential competition in these markets.

Vehicle Pre-Purchase Inspection Market

138. There are no reliable figures relating to the exact number of competitors in the vehicle pre-purchase inspection market. The service is performed by larger organisations like AA, VTNZ and On Road, and smaller organisations such as local garages and individual mechanics. Anecdotally, AA is regarded to be the market leader among the larger scale organisations. Additionally, most local garages and individuals mechanics are able to perform a pre-purchase inspection, and given they are high in number, these smaller organisations make the pre-purchase inspection market highly competitive. Therefore, AA and local garages/mechanics provide a considerable competitive constraint on the combined entity.

Conclusion on Existing Competition in the Pre-Purchase Inspection Market

139. The Commission considers that existing competition would be likely to constrain the combined entity in the pre-purchase inspection market. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the New Zealand market for pre-purchase inspections. Consequently, the Commission does not regard it as necessary to consider potential competition in this market.

WOFs

140. The LTSA estimates the total number of WOFs issued annually is approximately 4,860,000 equating to an estimated value of \$180 million. This figure is based on the average price for a WOF being \$37. The estimated market shares are based on the number of WOFs issued by each market participant. The month of September 2004 has been chosen as representative of a per annum return. Estimated market shares are shown in Table 2.

Table 2: Estimated Markets Shares of Relevant WOF markets

WOF Markets	Total	ONROAD	VTNZ	Combined Entity	AA	VINZ	OTHER
ASHBURTON DISTRICT	3829	[]	[]	[]			[]
AUCKLAND CITY	53789	[]	[]	[]	[]	[]	[]
CHRISTCHURCH CITY	42417	[]	[]	[]	[]	[]	[]
MANUKAU CITY	21934	[]	[]	[]		[]	[]
NAPIER CITY	6748	[]	[]	[]	[]	[] ¹²	[]
NELSON CITY	6279	[]	[]	[]	[]		[]
NEW PLYMOUTH DISTRICT	7469	[]	[]	[]	[]		[]
NORTH SHORE CITY	17728	[]	[]	[]	[]		[]
PALMERSTON NORTH CITY	9599	[]	[]	[]	[]		[]
TAURANGA DISTRICT	13293	[]	[]	[]	[]	[]	[]
WAITAKERE CITY	15893	[]	[]	[]	[]		[]
WANGANUI DISTRICT	4558	[]	[]	[]	[]		[]

141. VTNZ submitted that the WOF market is growing, that it is highly competitive and is characterised by low barriers to expansion and entry, a high number of competitors in each locality and an increase in the number of independent testing stations entering the market.

142. Market share figures based on information provided by the LTSA [

] The Commission notes that only modest aggregation occurs in Auckland, Christchurch, Napier, Nelson, North Shore, Tauranga and Waitakere.

143. A substantial number of small or sole service providers form the bulk of the existing competition. These providers include primarily individual motor mechanics and they undertake the vast majority of WOFs in most regions. AA and VINZ also compete in the WOF market, []

144. [

] the Commission considers that given the high number of WOF providers in most markets there is a high degree of competition from existing competitors. In addition, while this is not considered in any detail, there are also a large number of potential entrants given the limited requirements for LTSA approval, as discussed above.

¹² VTNZ assert that it does not issue WOFs in Napier for commercial purposes, therefore this percentage represents the issuing of WOFs for non-commercial purposes.

Conclusion on Existing Competition in the WOF Market

145. The Commission considers that existing competition would be likely to constrain the combined entity in the WOF market. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition due to the high number of existing competitors in the relevant WOF markets.
146. Consequently, the Commission does not think it necessary to consider potential competition in this market.

COFAs

147. The LTSA estimates that the total number of COFAs issued annually is approximately 86,000, equating to an estimated value of \$3.2 million. This figure is based on the average price for a COFA being \$37. The estimated market shares are based on the number of COFAs issued by each market participant. The month of September 2004 has been chosen as representative of a per annum return. Estimated market shares are shown in Table 3.

Table 3: Estimated Market Shares for COFA Markets

COFA Markets	Total	On Road	VTNZ	Combined Entity	AA	VINZ
Auckland City	1767	[]	[]	[]	[]	[]
Christchurch City	1396	[]	[]	[]	[]	[]
Manukau City	1552	[]	[]	[]		[]
Napier City	75	[]	[]			
Nelson City	112	[]	[]	[]	[]	
New Plymouth District	72	[]	[]			
Palmerston North City	83	[]	[]			
Waitakere City	180	[]	[]			
Wanganui District	29	[]	[]			

148. There is no existing competition in the COFA Napier, New Plymouth, Palmerston North, Waitakere and Wanganui markets. Consequently, post-acquisition those areas reduce from two COFA service providers to one.
149. The Applicant submits that:
- AA and VINZ have the capacity to meet additional demand for COFAs in Auckland and Christchurch;
 - VINZ has the capacity to meet additional demand for COFAs in Manukau at no or minimal additional cost; and
 - AA has the capacity to meet additional demand in Nelson.
150. In terms of the Auckland and Christchurch COFA markets, the Commission notes the level of aggregation is marginal due to [].
151. VINZ's market share in Auckland at [] and Christchurch at [] indicates it is already a significant competitive constraint against the combined entity.

152. VINZ's market share in Manukau is modest at [], and so in itself probably is not a sufficient constraint on the combined entity. However, VINZ has advised the Commission that its existing COFA Manukau operations has [] Currently, 1552 COFA's are issued in Manukau monthly.
153. AA's market share in Auckland at [] competitor in those areas.
154. AA has advised the Commission that of the approximately 1,770 COFAs issued monthly in Auckland, its current single premises in Auckland has capacity to issue [] However, AA is in the process of []
155. AA advised that its existing Nelson COFA operations []
156. AA advised that of the [] AA are in the process of []
157. The Commission therefore considers that existing competition [] is likely to provide some constraint on the combined entity.
158. The Commission also considers that the Auckland, Manukau and Waitakere markets provide some constraint on each other.

Conclusion on Existing Competition in the COFA Market

159. In terms of the COFA Auckland, Christchurch and Manukau markets, the Commission considers that competition provided by VINZ is enough to constrain the combined entity. That is further strengthened by [] should the combined entity raise prices and/or decrease service quality. AA also provides a constraint in the Nelson market []
160. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the COFA Auckland, Christchurch, Nelson and Manukau markets. Therefore, the Commission does not regard it as necessary to consider potential competition and countervailing power specifically in relation to Auckland, Christchurch, Nelson and Manukau.
161. Given there is no existing competition in the COFA Napier, New Plymouth, Palmerston North, Waitakere and Wanganui markets the Commission will consider potential competition and countervailing power in relation to those markets.

COFBs

162. The LTSA estimates the total number of COFBs issued annually is approximately 240,000 equating to an estimated value of \$17.2 million. This figure is based on the average price for a COFB being \$72. The estimated market shares are based on the number of COFBs issued by each market

participant. The month of September 2004 has been chosen as representative of a per annum return. Estimated market shares are shown in Table 4.

Table 4: Estimated Market Share for COFBs Manukau and New Plymouth

COFB Market	COFBs Issued	On Road	VTNZ	VINZ	Total
Manukau City	1472	[]	[]	[]	100%
New Plymouth	445	[]	[]		100%

163. The Applicant submits, and the Commission has confirmed, that VINZ as an existing competitor has []

164. VINZ has only recently entered the COFB Manukau market []

]

165. The VINZ COFB station located in Auckland City also provides a potential constraint on the combined entity, albeit limited.

166. There are no existing competitors in the COFB New Plymouth market.

Conclusion on Existing Competition in the COFB markets

167. In terms of the COFB Manukau market, the Commission considers that []

[] is enough to constrain the combined entity. The Commission therefore concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the COFB Manukau market.

168. Given there is no existing competition in the COFB New Plymouth market, the Commission will consider potential competition and countervailing power in relation to that market.

Potential Competition

169. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints from the threat of market entry.

170. The Commission's focus is on whether businesses would be able to enter the market and thereafter expand should they be given an inducement to do so, and the extent of any barriers they might encounter should they try. Where barriers to entry in a market are clearly low, it may be unnecessary for the Commission to identify specific businesses that might enter. In other markets, where barriers are higher, the Commission may seek to identify possible new entrants as a way of testing the assessed entry barriers.

171. The likely effectiveness of the threat of new entry in preventing a substantial lessening of competition in a market following an acquisition is determined by the nature and effect of the aggregate barriers to entry into that market. The Commission is of the view that a barrier to entry is best defined as anything that

amounts to a cost or disadvantage that a business has to face to enter a market that an established incumbent does not face.

COFA Market

172. The Applicant submits there are no material barriers for existing COFA providers in one region to expand into another where those COFA providers are also WOF providers. The Applicant submits that AA is able to expand into Manukau, New Plymouth, Palmerston North, Waitakere and Wanganui given it is a WOF provider in these areas except Manukau. The Applicant submitted that VINZ is currently a WOF provider in the relevant areas of Napier and Manukau but the Commission has discovered this is incorrect.
173. The Applicant also submitted there are no material barriers for other WOF service providers physically present in the same areas as the COFA markets of Manukau, Nelson, New Plymouth, Palmerston North, Waitakere and Wanganui.

AA

174. AA advised the Commission that to expand their existing WOF or pre-purchase vehicle inspection premises to include COFA operations in Napier, Manukau, New Plymouth, Palmerston North, Waitakere and Wanganui []
175. AA also said that []
176. AA said one potential barrier to it entering was LTSA approval to perform COFA services in those regions. AA said that traditionally the LTSA has tied COFAs and COFBs together, meaning that an entrant would need to perform both services. A requirement to perform COFB services would raise the barrier to entry significantly given the high cost of equipment and locating a building that meets LTSA criteria. (Entry requirements to the COFB market is discussed more fully below).
177. The Commission spoke with the LTSA regarding the potential tying of COFBs and COFAs. It advised that it had previously tended to require the two being tied together, but that the site approval process for COFAs and COFBs has recently been reworked and now decisions as to whether entry can be for COFAs only are determined on a case-by-case basis. The LTSA advised that it may be more lenient in its site approval process if agent numbers went from 4 to 3 because it was required to ensure there was adequate supply of COF services for the population. However, the LTSA said that it would not like to see the COFA market develop at the expense of COFBs, but stressed that the LTSA will make its assessment as to site approval on a case-by-case basis.
178. Given the LTSA has reworked the site approval basis and now makes its decisions on a case-by-case basis, the Commission is satisfied that LTSA approval for a COFA site only is not a particularly high barrier for AA.

The “LET” test in relation to AA

179. In order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other manifestation of market power must be Likely, sufficient in Extent and Timely (the LET test).
180. The mere possibility of entry is, in the Commission’s view, an insufficient constraint on the exercise of market power, and would not alleviate concerns about a substantial lessening of competition. In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational business would be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment, including allowance for any risks involved.
181. If it is to constrain market participants, the threat of entry must be at a level and spread of sales that is likely to cause market participants to react in a significant manner. If it is to alleviate concerns about a substantial lessening of competition, entry must be feasible within a reasonably short timeframe, considered to be two years, from the point at which market power is first exercised.

Likelihood of Entry

182. AA was [

]

183. On balance, the Commission considers AA’s entry into [

]

Extent of Entry

184. The Commission believes that [

]

185. On Road provides an example of a company which has managed to achieve significant market share within a short period. It entered most of the COFA markets in which it has a presence in 2000 and 2001.

Timeliness of Entry

186. The Commission believes that [].

187. The Commission is of the opinion that entry could be achieved within six-twelve weeks.

Conclusion on AA as a Potential Competitor in the COFA Markets

188. In terms of the COFA Napier, New Plymouth, Palmerston North, Waitakere and Wanganui markets, the Commission considers that [] AA as a potential entrant is enough to constrain the combined entity post-acquisition should it attempt to raise prices or reduce quality of service. The Commission therefore concludes

that the proposed acquisition is unlikely to result in a substantial lessening of competition in the COFA Napier, Palmerston North, and Waitakere markets.

189. However, the Commission is not satisfied the LET test has been met in the COFA New Plymouth and Wanganui markets. Therefore, AA is not a sufficient constraint on the combined firm in those markets.

VINZ

190. Next to VTNZ and On Road, VINZ is New Zealand's third largest COFAs provider. However, VINZ does not provide WOF services in Napier, New Plymouth, Palmerston North, Waitakere or Wanganui, and so is not regarded as nearly as close a potential competitor as AA, which does have existing premises.
191. VINZ advised the Commission that [

] VINZ also advised the Commission that it was unlikely to enter markets where VINZ and On Road continue to be run as separate entities as this further reduces the size of the available market. VINZ and On Road advised the Commission that they do intend to operate both sites post-acquisition in all areas.

192. Overall, the Commission does not consider VINZ to be a likely potential entrant in the Napier, New Plymouth, Palmerston North, Waitakere and Wanganui markets.

Existing WOF Providers

193. The Applicant submits that requirements of entry in COFA markets include regulatory requirements and approval, capital investment, locating an appropriate site, employing trained staff and the influence of branding and marketing factors.
194. The Commission considers the following requirements are necessary for an existing WOF supplier¹³ to become a COFA provider:
- LTSA approval;
 - appropriate facilities;
 - a) includes compliance with the following LTSA facility requirements:
 - i. a minimum height of access to and exit from the inspection area of 3 metres (compared with the required height of 2.6 metres for WOFs); and
 - ii. a minimum inspection area width of 4 metres (compared with the minimum 3.5 metres for WOF inspection areas);
 - equipment;
 - b) an LTSA approved roller brake machine (compared with WOF which has the option of a roller brake machine or an approved decelerometer);

¹³ This excludes WOF providers which are also repairers given that repairers are not permitted to issue COFA or COFB.

- c) some form of vehicle pit or vehicle hoist (compared with the WOF option of an industrial jack and four axle stands); and
 - d) a stopwatch, 1 km test strip (i.e. any stretch of road accurately measured to 1km) or calibrated rolling road, and a meter seal kit (taxi meter verification equipment);
- suitable location;
 - qualified staff; and
 - capital investment.

LTSA Approval

195. Although it is necessary to be an LTSA accredited service provider to provide both COFA and COFB services, there is no prescribed limit to the number of providers. VTNZ submit, therefore, that there is no absolute barrier for potential providers and, providing they satisfy the LTSA criteria, there would not be any reason why applicants would not be accredited.
196. LTSA approval has been discussed above in relation to AA. It is realistic to expect that LTSA approval for a non-TSDA will be more difficult than for an existing TSDA as those entities have a working history with the LTSA.
197. In addition, it was suggested by VINZ that [

].

198. The Commission concludes that LTSA approval is a moderate barrier for existing WOF providers.

Appropriate Facilities

199. VTNZ submits that independent vehicle testing centres would have WOF lanes that will meet the LTSA requirements.
200. The Commission considers that the extra .5 metre required for the height and width does not present a significant barrier for the majority of existing WOF suppliers.

Equipment

201. Roller break machines, vehicle hoists, and taxi meter verification equipment are relatively accessible, and so do not present a significant barrier.

Suitable Location

202. All industry participants stress the importance of a location situated near high volume users. This is because users want to obtain COFAs as quickly as possible as time off the road equates to loss of income. Although the Commission acknowledges that location is important, the Commission considers it does not present a significant barrier to entry.

Staff

203. The LTSA requires that the staff undertaking the certification be suitably trained, with a certain level of experience. All industry participants, as well as those considered to be potential entrants, identified this as a significant barrier. There is a severe shortage of suitably qualified COFA inspectors in New

Zealand, so much so that recruitment from overseas has been necessary in recent times.

204. However, it is possible to train employees who are existing WOF inspectors. Training takes between 6-12 weeks.
205. The average hourly rate of a COFA inspector is approximately \$20.
206. Overall, the Commission considers, given that only one or two extra staff would be required, the requirement is a low-moderate barrier.

Capital Investment

207. The Commission is unable to state the required capital investment precisely given the variations across regions. The Commission therefore relies on the figure submitted by AA in relation to the cost of its potential expansion into COFA markets. Capital investment for an existing WOF provider to expand into a particular COFA market is at least [].

Conclusion on Barriers to Entry for the COFA Markets

208. The Commission considers that most of the barriers to entry are low, however LTSA approval and staff requirements are moderate. Therefore, barriers to entry are low-moderate and entry is possible.

The “LET” test in relation to Existing WOF providers

Likely

209. There are only a small number of independent testing stations in a few of the COFA regions where there is aggregation, such as Palmerston North and Nelson. Of the independent stations the Commission spoke with, none had given any thought to entering the COFA market or was not remotely aware of the entry requirements.
210. The LTSA advised that in 2003 it sought tenders from parties interested in providing certification services and the only responses received were from the current TSDAs. This would appear to indicate that while entry may not be difficult there are currently very few, if any, organisations with any interest in entering the vehicle certification business.

Extent

211. The Commission considers that although an independent testing station may gain some market share, it doubts that any station has the existing infrastructure and sufficient scale to be competitive with VTNZ, and gain a significant market share.

Timeliness

212. The Commission is of the opinion that entry would take six-twelve weeks.

Conclusion on Existing WOF providers as Potential Competition in the COFA Markets

213. The Commission concludes that the barriers to entry are low-moderate, that entry is both unlikely to occur and unlikely to be sufficient in extent to provide any real constraint on the combined entity. Consequently, potential competition in the form of existing WOF suppliers provides only marginal constraint in the COFA markets where aggregation occurs.

Conclusion on Potential Competition in COFA markets

214. The Commission does not consider that VINZ or existing WOF providers are likely potential entrants and so both do not constrain the combined entity in any of the markets. However, the Commission concludes that likely and sufficient potential competition in the form of AA would constrain the combined firm in the COFA Napier, Palmerston North and Waitakere markets and therefore the proposed acquisition is unlikely to result in a substantial lessening of competition in those markets.
215. In the remaining COFA New Plymouth and Wanganui markets, the Commission is concerned there are no likely potential entrants. Combined with the fact there is no existing competition, this means that based on the original application, the Commission is not satisfied that the proposed acquisition is unlikely to result in a substantial lessening of competition in those markets. However, the Commission did not have to decide finally on the matter because VTNZ undertook to divest itself of its COFA New Plymouth and Wanganui operations. The Commission considers that with the proposed divestments the proposed acquisition does not raise competition issues in regard to the COFA New Plymouth and Wanganui markets.

COFB Markets

216. The Applicant submits that there are no material barriers to existing COFA providers, AA and VINZ, expanding into New Plymouth. The Applicant has also named a number of potential entrants - SGS SA, Pit Stop and Truck Stops.
217. The Commission has identified the following entry requirements into the COFB markets:
- simultaneous entry into WOF and COFA markets;
 - LTSA approval;
 - equipment;
 - suitable premises;
 - qualified staff; and
 - capital investment.

Simultaneous entry in WOF, COFA markets

218. The Commission was repeatedly advised by industry participants that it would not be profitable to enter only a COFB market, particularly in relation to New Plymouth where the market is small.

LTSA Approval

219. The same arguments apply for LTSA approval in the COFB market as for the COFA market. As with the COFA market, the Commission would expect that LTSA approval would be more onerous for a new entrant as opposed to AA and VINZ who both already have a working history with the LTSA. The Commission also notes that [

].

220. The Commission concludes that LTSA approval is a moderate barrier.

Equipment

221. The Commission understands that the equipment is relatively accessible, and therefore concludes that equipment is not a significant barrier.

Premises

222. The premises required for COFBs are markedly different from COFAs and WOFs in that they must be capable of being able to test large vehicles such as buses and trucks. It is therefore not simply a matter of converting existing COFA or WOF premises into COFB premises; a new lease would be required.

Staff

223. As referred to above, the LTSA requires that the staff undertaking the certification be suitably trained, with a certain level of experience. All industry participants, as well as those considered to be potential entrants, identified this as a significant barrier. There is a severe shortage of suitably qualified COFB inspectors in New Zealand, so much so that recruitment from overseas has been necessary in recent times.

224. The Commission accepts that COFA inspectors can be trained to carry out COFB inspections.

225. The Commission concludes the staff requirement is a moderate barrier.

Capital Investment

226. Industry participants informed the Commission that the capital needed to establish a single operation including WOF, COFA and COFB services would cost between \$1-1.2 million.

227. The Commission concludes this capital expenditure is high, particularly in relation to New Plymouth where the market is relatively small.

Conclusion on Barriers to Entry for the COFB markets

228. Overall, the Commission concludes that the barriers to entry into the COFB market are high, particularly in relation to New Plymouth.

*The "LET" test*Likely

229. The Commission has been unable to find any entity which has said it would definitely enter the COFB New Plymouth market. AA advised the Commission that [

]

230. The Applicant names several potential entrants. The Commission interviewed SGS SA, Pit Stop and Truck Stops and is satisfied that those entities are unlikely to enter. For instance, SGS informed the Commission that entry into the New Zealand market [] and both Truck Stops and Pit Stop are repairers so cannot issue COFBs under the current LTSA regulations.

231. It should be noted that while entry into the COFA market may be likely, this does not apply to the COFB markets as the entry requirements are more prohibitive.

Extent

232. Given entry is unlikely, the question of extent will not be considered.

Timeliness of Entry

233. Industry participants advised the Commission that entry into the COFB market would take in excess of 12 months.

Conclusion on Potential Competition in the COFB markets

234. The Commission considers that barriers to entry into the COFB New Plymouth market are high. The Commission has been unable to identify any likely entrants into that market, and considers a hypothetical entrant is unlikely to enter. The Commission therefore concludes that potential competition provides no constraint on the New Plymouth market for COFB.

235. However, the Commission did not have to decide finally on whether there is likely to be a substantial lessening of competition in the COFB New Plymouth market. VTNZ undertook to divest itself of its New Plymouth operations, and this has satisfied the Commission's concerns. Therefore the Commission considers that the proposed acquisition does not raise competition issues in regard to the COFB New Plymouth market.

Countervailing Power

236. The potential for a business to wield market power may be constrained by countervailing power in the hands of its customers, or when considering buyer market power (oligopsony or monopsony), its suppliers. In some circumstances, this constraint may be sufficient to eliminate concerns that an acquisition would be likely to lead to a substantial lessening of competition.

LTSA

237. The LTSA keeps check on its accredited agents in a variety of ways. The LTSA monitors two main factors relevant to this Application. The first factor is maintaining national coverage to ensure the general public can comply easily with vehicle testing requirements. The LTSA advised the Commission that it has the statutory authority to revoke accreditation. It gave the example to the Commission that it may revoke accreditation where a COFB provider attempts to close COFB operations in a less profitable site.

238. The second factor the LTSA monitors is ensuring the service provider is applying the LTSA testing criteria accurately. LTSA ensures the latter through an audit process.

239. Overall, the LTSA is less concerned with the opening hours of a service provider and the price it charges, than it is with ensuring testing services are available and are performed to a suitable standard.

240. [

]

241. The Commission considers that while the LTSA has some power to regulate the combined entity, the LTSA's focus is on ensuring both national coverage and

that service providers apply LTSA testing criteria accurately, and not on regulating the quality (in terms of customer service and opening hours) and price of WOF, COFA and COFB services.

Customers

242. Customers of COFAs and COFBs have little or no discretion as to whether they acquire the service or not. It is a legal requirement for them to have certification and therefore non-compliance runs the risk of fines and/or loss of business.
243. VTNZ submitted that the largest groups of purchasers of COFAs are rental car companies and taxi operators. Rental car companies generally acquire new vehicles prior to the winter and/or summer seasons, so any need for COFA certification is likely to be in bulk amounts. Therefore, VTNZ considers that rental car companies do have scope to negotiate and shop around for the best price due to the volume of vehicles involved. While taxi operators may acquire COFA services individually they do have some capacity to shop around and VTNZ submitted that the New Zealand Taxi Federation is able to negotiate discounts on behalf of its members.
244. Information obtained from customers of COFAs [

]

245. In relation to COFBs, VTNZ suggests that the existence of national lobby groups, such as the Road Transport Forum (“RTF”) and the Bus and Coach Association (“Bus and Coach”), acts as a constraint on service providers and assists operators to obtain better supply terms.
246. Customers of COFBs provided information that [

] Bus and

Coach recognise that Stagecoach has been able to establish a specific supply contract [

]

Conclusion on Countervailing Power

247. The Commission concludes that the LTSA and customers are not able to exert a significant degree of countervailing power against the ability of the combined entity to raise prices or decrease the quality of its service in any of the relevant markets.

OVERALL CONCLUSION

248. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the markets for:
- entry certification in New Zealand;

- LTSA administration services in New Zealand;
- driver licensing services in Manukau;
- pre-purchase inspection services in New Zealand;
- WOFs in:
 - Ashburton;
 - Auckland City;
 - Christchurch;
 - Manukau;
 - Napier;
 - Nelson;
 - New Plymouth;
 - North Shore City;
 - Palmerston North;
 - Tauranga;
 - Waitakere City; and
 - Wanganui
- COFAs in:
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier;
 - Nelson City;
 - New Plymouth;
 - Palmerston North City;
 - Waitakere City; and
 - Wanganui
- COFBs in:
 - Manukau City, and
 - New Plymouth

249. The Commission considers that the appropriate counterfactual is the status quo.

250. The Commission concludes that there is sufficient existing competition to constrain the combined entity from exercising market power in the following markets for:

- entry certification in New Zealand;
- LTSA administration services in New Zealand;
- driver licensing services in Manukau;

- pre-purchase inspection services in New Zealand;
 - the relevant WOF markets; and
 - COFAs in:
 - Auckland City;
 - Christchurch City;
 - Nelson City; and
 - Manukau City.
251. The Commission considers there is sufficient potential competition in the form of AA to constrain the combined entity from exercising market power in the following markets for:
- COFAs in
 - Napier;
 - Palmerston North; and
 - Waitakere; and
 - COFBs in Manukau.
252. The Commission is therefore satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
- entry certification in New Zealand;
 - LTSA administration services in New Zealand;
 - driver licensing services in Manukau;
 - pre-purchase inspection services in New Zealand;
 - the relevant WOF markets; and
 - COFAs in:
 - Auckland City;
 - Christchurch City;
 - Manukau City;
 - Napier;
 - Nelson City;
 - Palmerston North City; and
 - Waitakere City; and
 - COFBs in:
 - Manukau City.
253. The Commission is satisfied that the divestment proposals submitted as an amendment to the application address any competition concerns that the original transaction may have created. Accordingly, 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 following markets:

- COFAs in:
 - New Plymouth; and
 - Wanganui
- COFBs in:
 - New Plymouth

DETERMINATION ON NOTICE OF CLEARANCE

254. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Vehicle Testing New Zealand Limited of all of the assets and business of On Road New Zealand Limited, subject to the divestment undertakings outlined at Appendix 1 and 2.

Dated this day of November 2004

David Caygill
Division Chair
Commerce Commission

Appendix B

**Application by Vehicle Testing New Zealand Limited
for clearance of a proposed business acquisition**

**Deed of undertaking as to divestment of
business assets in New Plymouth pursuant to
section 69A of the Commerce Act 1986**

16 November 2004

This Deed is made on 4 November 2004

by **Vehicle Testing New Zealand Limited** a duly incorporated company having its registered office at Wellington, New Zealand (**VTNZ**)

in favour of **The Commerce Commission** a body corporate established by section 8 of the Commerce Act 1986 (the **Commission**)

Introduction

- A. On 22 September 2004 VTNZ entered into a conditional sale and purchase agreement for VTNZ, or a related company nominated by VTNZ, to acquire all the assets and business of On Road New Zealand Limited (**On Road**) (the **Agreement**).
- B. On 30 September 2004 VTNZ gave notice to the Commission pursuant to section 66(1) of the Commerce Act 1986 (the **Act**) seeking clearance for its proposed acquisition of On Road (the **Clearance Application**).
- C. Pursuant to section 69A of the Act, in giving a clearance under section 66, the Commission may accept a written undertaking given by or on behalf of the person seeking such clearance to dispose of assets or shares specified in the undertaking.
- D. On 4 November 2004 in response to concerns raised by Commission staff and in the interests of expediency in the clearance process, VTNZ gave notice to the Commission that it would offer the Commission a divestment undertaking in the form of this Deed.

Covenants

- 1. Subject to the condition described in paragraph 3 of this Deed, VTNZ will sell, or procure the sale of, the whole of the VTNZ vehicle testing station business located at 69 Hobson Street, New Plymouth as a going concern (the **business**).
- 2. The sale of the business will be made to a purchaser, which is not an interconnected body corporate (as defined by section 2(7) of the Act) or an associated person (as defined by section 47(3) of the Act) of VTNZ, within 12 months of the date that the Agreement becomes unconditional.
- 3. The covenants contained in this Deed are subject to the Agreement becoming unconditional.
- 4. VTNZ will advise the Commission of the sale on completion.
- 5. VTNZ confirms that in entering into the agreement recorded in this Deed it intends to create binding and enforceable legal obligations in relation to the Commission.
- 6. This Deed is governed by New Zealand law and the parties accept the exclusive jurisdiction of the New Zealand courts.
- 7. This Deed may be executed in any number of counterparts each of which is to be deemed an original, but all of which together are to constitute one instrument. VTNZ may enter into this Deed by executing any counterpart. It is acknowledged that this Deed may be executed by an exchange of facsimile copies and executing of this Deed by that means is valid and sufficient execution.

EXECUTED AS A DEED

THE COMMON SEAL OF VEHICLE TESTING NEW ZEALAND LIMITED was hereunto affixed in accordance with its constitution in the presence of:

Director
[Handwritten Signature]

Name of Director

[Handwritten Signature]

Director
[Handwritten Signature]

Name of Director

Appendix E

**Application by Vehicle Testing New Zealand Limited
for clearance of a proposed business acquisition**

**Deed of undertaking as to divestment of
business assets in Wanganui pursuant to
section 69A of the Commerce Act 1986**

16 November 2004

This Deed is made on 12 November 2004

by **Vehicle Testing New Zealand Limited** a duly incorporated company having its registered office at Wellington, New Zealand (**VTNZ**)

in favour of **The Commerce Commission** a body corporate established by section 8 of the Commerce Act 1986 (the **Commission**)

Introduction

- A. On 22 September 2004 VTNZ entered into a conditional sale and purchase agreement for VTNZ, or a related company nominated by VTNZ, to acquire all the assets and business of On Road New Zealand Limited (**On Road**) (the **Agreement**).
- B. On 30 September 2004 VTNZ gave notice to the Commission pursuant to section 66(1) of the Commerce Act 1986 (the **Act**) seeking clearance for its proposed acquisition of On Road (the **Clearance Application**).
- C. Pursuant to section 69A of the Act, in giving a clearance under section 66, the Commission may accept a written undertaking given by or on behalf of the person seeking such clearance to dispose of assets or shares specified in the undertaking.
- D. On 15 November 2004 in response to concerns raised by Commission staff and in the interests of expediency in the clearance process, VTNZ gave notice to the Commission that it would offer the Commission a divestment undertaking in the form of this Deed.

Covenants

- 1. Subject to the condition described in paragraph 3 of this Deed, VTNZ will sell, or procure the sale of, the whole of the Wanganui vehicle testing station business, currently operated by On Road, located at 168 Ridgway Street, Wanganui as a going concern (the **business**).
- 2. The sale of the business will be made to a purchaser, which is not an interconnected body corporate (as defined by section 2(7) of the Act) or an associated person (as defined by section 47(3) of the Act) of VTNZ, within 12 months of the date that the Agreement becomes unconditional.
- 3. The covenants contained in this Deed are subject to the Agreement becoming unconditional.
- 4. VTNZ will advise the Commission of the sale on completion.
- 5. VTNZ confirms that in entering into the agreement recorded in this Deed it intends to create binding and enforceable legal obligations in relation to the Commission.
- 6. This Deed is governed by New Zealand law and the parties accept the exclusive jurisdiction of the New Zealand courts.
- 7. This Deed may be executed in any number of counterparts each of which is to be deemed an original, but all of which together are to constitute one instrument. VTNZ may enter into this Deed by executing any counterpart. It is acknowledged that this Deed may be executed by an exchange of facsimile copies and executing of this Deed by that means is valid and sufficient execution.

EXECUTED AS A DEED

THE COMMON SEAL OF VEHICLE TESTING NEW ZEALAND LIMITED was hereunto
affixed in accordance with its constitution in the presence of:

Director

[Handwritten Signature]

Name of Director

[Handwritten Signature]

Director

[Handwritten Signature]

Name of Director