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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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Working Party No. 3 on Co-operation and Enforcement

PUBLIC INTEREST CONSIDERATIONS IN MERGER CONTROL

-- Note by New Zealand --

14-15 June 2016

This document reproduces a written contribution from New Zealand submitted for Item 3 of the 123rd meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 14-15 June 2016.

More documents related to this discussion can be found at www.oecd.org/daf/competition/public-interest-considerations-in-merger-control.htm

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English - Or. English

NEW ZEALAND

1. What is the standard for merger review by the competition agency under the competition law in your jurisdiction?

1. Under the Commerce Act 1986 (the Act), the Commerce Commission (the Commission) assesses mergers under a clearance regime and an authorisation regime.

2. Under the clearance regime, the Commission will give clearance to a merger if it is satisfied that the acquisition will not have, or will not be likely to have, the effect of substantially lessening competition in a market.[1]

3. Under the authorisation regime, the Commission will grant authorisation for an acquisition that would otherwise fail the clearance test if it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted.[2]

2. Are public interest factors – factors other than consumer welfare, economic efficiency, or effects on the competitive process – included explicitly in your competition law, or do they otherwise play a role in the competition agency's review? If so, please describe them, and their relationship to competition analysis.

4. Section 26 of the Act requires the Commission to have regard to the economic policies of the Government, as transmitted in writing by the Minister of Commerce to the Commission from time to time.

5. The Commission does not consider public interest factors when assessing merger clearance applications under section 66. The s.66 test is purely a substantial lessening of competition test.

6. Section 67 of the Act requires the Commission to consider 'public benefit' considerations when assessing applications for merger authorisation. Public benefit includes efficiency considerations under a total welfare standard but can also consider broader public benefit considerations.

7. When the Commission receives an authorisation application for a merger, it must first assess whether the merger would be likely to substantially lessen competition in a market.[3] If the Commission is satisfied that the merger would not be likely to have that effect, then it must clear the merger. If it is not satisfied and cannot grant clearance, then it must apply the public benefit test to determine whether to authorise the merger. If the Commission is satisfied that the merger will be likely to result in such a benefit to the public that it should be permitted, then it must authorise the

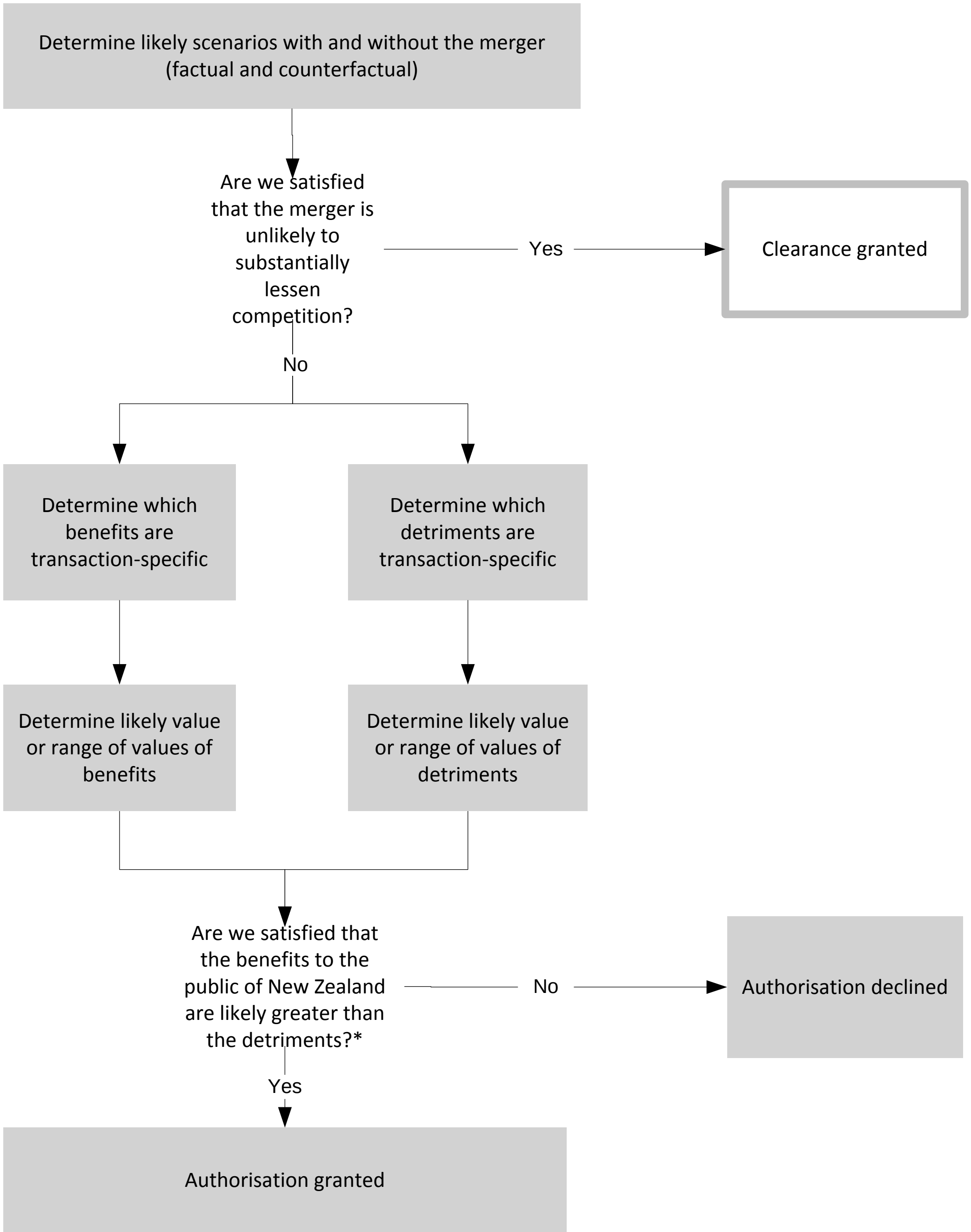
[1] Section 66, Commerce Act 1986.

[2] Section 67, Commerce Act 1986.

[3] Commerce Act 1986, s 67(3)(a).

merger.[4] When applying the public benefit test, the Commission is required to quantify benefits and detriments to the extent that is practicable, rather than rely solely on qualitative judgement.[5]

8. Figure 1 below outlines our merger authorisation process.



Note. *We take into account any undertakings at this point.

4 Commerce Act 1986, s 67(3)(b).

5 See *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1992] 3 NZLR 429 (CA) at 447 per Richardson J and *Air New Zealand and Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, at [319].

3. Relevant benefits and detriments

3.1 The definition of benefits and detriments

9. New Zealand's courts[6] have defined a public benefit as:

> *anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.*

10. In particular, section 3A of the Commerce Act requires the Commission to have regard to efficiencies that likely arise from the transaction in assessing whether a transaction gives rise to public benefits. However, New Zealand courts have made it clear that efficiencies are not the only public benefits which can be counted.[7]

11. A public benefit is regarded as any gain to the public of New Zealand that would result from the proposed transaction, regardless of the market in which that benefit occurs or whom in New Zealand it benefits. The Commission will take into account any costs incurred in achieving benefits.[8]

12. By contrast, in assessing detriments the Commission will only consider anti-competitive detriments that arise in the market(s) where there is a lessening of competition).[9]

3.1.2 Benefits and detriments must be transaction-specific

13. Benefits and detriments must result from the transaction. They must be 'transaction-specific' in the sense that they arise with the transaction, but not without the transaction.[10]

14. To determine whether benefits and detriments are transaction-specific, the Commission will assess:

- what is likely to occur in the future with the transaction; and
- what is likely to occur in the future without the transaction.

15. The Commission uses the same with and without scenarios for both the assessment of whether there is a lessening of competition and of benefits and detriments.[11]

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6 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [319], and *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473 (HC) at 527-530 and 554-555 quoting *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242 and *In Re Rural Traders Co-operative (WA) Ltd* (1979) ATPR 40-110 at 18,123.

7 *Godfrey Hirst NZ Ltd v Commerce Commission* (2011) 9 NZBLC 103,396 at [51], *Air New Zealand*, above n **Error! Bookmark not defined.**, at [319] and *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473 (HC) at 528

8 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [319].

9 *Godfrey Hirst*, above n 7, at [72]. Observation by Wilson J in *New Zealand Bus Ltd v Commerce Commission* [2008] 3 NZLR 433 (CA) at [271]. In *Godfrey Hirst* while the court endorsed this settled approach, it observed that 'disbenefits' or negative benefits that arise outside the affected markets may be relevant to the public benefit test.

10 See *Godfrey Hirst*, above n 7, at [119].

11 The Commission's Mergers and Acquisitions Guidelines contain further details on how the Commission assesses the with- and without-a-transaction scenarios. For a brief overview, see n **Error! Bookmark not defined.** above.

3.2 Assessing and balancing benefits and detriments

16. Once all transaction-specific benefits and detriments, have been identified by the Commission, it will assess, where practicable, the likely value or range of values of those benefits and detriments[12]. To do this, detailed and verifiable evidence regarding the nature and likely extent of benefits resulting from the transaction is required.

17. Less weight is placed on the benefits and detriments that are less likely to occur. This may include those that occur further into the future or that are more distantly related to the goods and services being purchased and consumed. This is because the more distant a benefit, the less direct the causal link is likely to be.[13] Applicants are required to explain precisely how the benefit arises from the transaction and provide robust evidence about each step in the causal chain. The reliability of the evidence and analysis will be considered when determining what weight to attach to each benefit and detriment.[14]

18. Having assessed the magnitude of benefits and detriments, the Commission must decide whether it is satisfied that the transaction is likely to result in net benefits to New Zealanders. If the Commission is satisfied that the benefits of the transaction likely outweigh the detriments, it will authorise the transaction. If it is not satisfied, it will not authorise the transaction.

19. All identified benefits and detriments are considered in the balancing process – whether quantified or not.[15] In doing so, the Commission will ensure that the analysis as a whole is complete, consistent and avoids double-counting gains and losses.[16]

20. The remainder of this section, explains:

- Quantitative and qualitative evidence of benefits and detriments;
- the role of wealth transfers in the analysis;
- how detriments are assessed in more detail; and
- how benefits are assessed in more detail.

3.2.1 Quantitative and qualitative evidence of benefits and detriments required for authorisation

21. Applicants are expected to provide robust qualitative and quantitative evidence of benefits and detriments when they make an authorisation application.[17]

22. As the Commission must quantify benefits and detriments where practicable, applicants are required to provide quantitative evidence in their authorisation application if possible.

23. Where an applicant considers its efficiency will improve, it should substantiate its claims, wherever possible. Evidence could include plant and firm-level accounting statements, internal

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12 See *Telecom*, above n 5

13 When quantifying, the Commission will also discount future benefits and detriments to obtain a present value as explained at paragraph **Error! Reference source not found.** below.

14 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [416].

15 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [415].

16 For example, the Commission would not deduct the cost of achieving a benefit when assessing the magnitude of the benefit and then also count this cost as a detriment.

17 The Commission regularly discusses it expectations before an application is lodged.

studies, strategic plans, integration plans, management consultant studies, consumer surveys or research and other available data.

24. More generally, the Commission places weight on business documents prepared in the ordinary course of business in considering the competitive effects of a transaction and the benefits and detriments arising from it.

25. As noted above, the Commission is required to quantify benefits and detriments to the extent that it is practicable, rather than relying solely on qualitative judgement.[18] However, how much benefits and detriments are quantified will vary depending on the application. It may not always be necessary (or possible) to do a detailed quantification to determine whether the benefits outweigh the detriments of a transaction.

26. All quantitative evidence should be as clear and understandable as possible. In particular, it must include:

- the data used;
- a description of the method used;
- a description of the assumptions adopted and the underlying rationale, and any evidence relevant to these assumptions;
- the results of the analysis;
- any sensitivity testing undertaken; and
- the conclusions derived from the analysis.

27. When quantifying benefits and detriments the Commission will test the robustness of the results by varying the underlying assumptions.[19] This sensitivity testing helps the Commission to assess the reliability of any quantification, particularly when the information the Commission has is limited or unreliable, or the methods of calculation are not necessarily robust.

28. As well as considering whether to place less weight on benefits and detriments that are less likely to occur, or for which the evidence is less strong,[20] the Commission will also discount future benefits and detriments. This reflects the fact that there is a preference to receive a benefit today, rather than a benefit of the same size in the future, all else being equal.[21]

29. Where benefit or detriment cannot be quantified, the Commission will make a qualitative judgement as to the importance of that benefit or detriment relative to the quantified benefits and detriments.

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18 *Telecom* (CA), above n 5, at 447 per Richardson J.

19 For example, when estimating the loss in allocative efficiency, the Commission will often need to make assumptions, such as the prospect for greater imports if prices increase. Sensitivity testing in this context would involve us assuming different levels of imports in response to a price increase and see how this affects the profitability of price increases. If small changes in an estimate of imports significantly affects the estimated price increase, a range of imports may be used and so consequently a range of price increases.

20 See paragraph 17 above.

21 The Commission considers which discount rate to use on a case-by-case basis, and within any one case a different discount rate may be appropriate depending on the benefit or detriment in question. For example, if the benefit in question is an increase in productive efficiency that is only to be realised at some point in the future, the firm's own cost of capital may be the appropriate discount rate.

3.3 Role of wealth transfers

30. Changes in the distribution of income, where one group gains at the expense of another, are generally not relevant to the analysis because they do not usually involve a change in overall public benefit.[22]

31. Wealth transfers may become relevant where the transfer is between New Zealanders and non-New Zealanders. This is because the public benefit test focuses on benefits to New Zealanders.[23] As a result, transfers of wealth from non-New Zealanders to New Zealanders may be a public benefit. Similarly, transfers of wealth in the opposite direction may be a public detriment.

32. However, in addition to considering the direct effects of wealth transfers, the Commission will also consider any effects on non-New Zealanders that may ultimately feed back to impact New Zealanders. For example, if a transaction would lead to a New Zealand firm charging higher prices to tourists, that would result in a transfer of wealth from those tourists to the New Zealand firm resulting in a public benefit. However, equally, those higher prices could lead to fewer tourists coming to New Zealand, which in the longer term could negatively affect New Zealand.

3.4 Detriments

33. The Commission's assessment of detriments arising from a lessening of competition is informed by the competition analysis. A lessening of competition is typically associated with a decrease in allocative efficiency. A lessening of competition may also lead to productive and dynamic inefficiencies. These concepts are discussed in more detail below.

34. The Commission must assess detriments on the basis of the facts of each case, rather than assuming inefficiency "on the grounds of economic doctrine" alone.[24]

3.4.1 Loss of allocative efficiency

35. A reduction in competition tends to result in higher prices and/or a reduction in service, quality, choice or some other element of value to the consumer.[25] This causes a proportion of consumers to switch some or all of their purchases to otherwise inferior or less satisfactory products/services. This type of switching is referred to as an allocative inefficiency (or a deadweight loss). More precisely, it "reflect(s) the 'cost' to society of an increase in price which leads either to unsatisfied demand or the purchase of a less preferred substitute".[26]

36. When considering whether to authorise a transaction, the Commission will consider the extent of any resulting allocative inefficiency. The Commission considers two aspects of allocative inefficiency: price effects and non-price effects.

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22 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [241] and *Telecom* (HC), above n 7, at 531.

23 See *Air New Zealand*, above n **Error! Bookmark not defined.**, at [242] and *Telecom* (HC), above n 7, at 531. The Commission treats the New Zealand public as those people domiciled in New Zealand.

24 *Telecom* (CA), above n 5, at 439.

25 It is not only the parties to the transaction that may increase prices (or otherwise make their offerings less valuable) to consumers. Other market participants may have the incentive to similarly increase prices (or otherwise make their offerings less valuable) unilaterally, reducing the amount of product purchased overall. Alternatively, the transaction may make it more likely that all or some firms in the market would coordinate their behaviour by accommodating one another's responses and thereby collectively exercise market power such that output reduces across the market.

26 *Air New Zealand*, above n **Error! Bookmark not defined.**, at [243].

37. In terms of price effects, a transaction which lessens competition will tend to create a greater allocative inefficiency:

- the more sensitive demand is to price;
- the greater the pre-existing market power;
- the greater the loss of competition between the parties to the transaction; and
- the greater the size of the market.

38. The Commission will also consider non-price effects, such as the effect of the transaction on service, quality and choice, as well as any other dimension of competition that customer's value. Non-price effects are typically difficult to measure and may be assessed qualitatively.

3.4.2 Loss in productive efficiency

39. Productive efficiency is the ability to use the minimum amount of resources to produce a certain volume of output given available technology.[27] A transaction will lead to a loss in productive efficiency if it results in a greater number of inputs being required to produce a certain volume of output.

40. A transaction is not assumed to lead to productive inefficiency. Instead, the Commission will assess on the facts of the case whether productive inefficiency would likely arise as a result of a transaction, and where possible, the likely size of that efficiency loss.

41. Shareholders generally want a firm to minimise its costs.[28] A transaction is less likely to lead to a loss in productive efficiency if shareholders can effectively monitor productive efficiency and pressure management to minimise costs.[29] A transaction may be more likely to lead to a loss in productive efficiency if it reduces management's ability and/or incentive to minimise costs.

42. Relevant factors and evidence can include:

- the impact of the transaction on competition;
- the extent to which management retains the ability to minimise costs, including being able to monitor costs against an external benchmark to assess efficiency (cost benchmarking);
- the extent to which management retains the incentive to minimise costs, for example:
  - whether shareholders can easily monitor productive efficiency and pressure management to minimise costs;
  - whether corporate takeover and management displacement is a significant possibility; or
  - whether the competition remaining in the market sufficiently disciplines management's behaviour.
- information on the parties' past acquisitions and what happened to production costs after the acquisition;
- information on productive efficiency within the industry or market over time; and
- whether the parties to the transaction have plans in place to address these issues above and how well-developed and robust those plans are.

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27 *Air New Zealand,* above n **Error! Bookmark not defined.**, at [272].

28 The Commission recognises that many transactions will be based, at least in part, on an intention to reduce cost.

29 In particular, the incentive for managers to minimise costs is likely to be more acute when they are (substantial) shareholders/owners of the business.

3.4.3 Loss in dynamic efficiency

43. Dynamic efficiency is an increase in economic efficiency over time through the introduction of demand-enhancing new products or cost-reducing production processes.

44. A transaction is not assumed to lead to a loss in dynamic efficiency. While competition can be a key driver of innovation, more profitable firms may have a greater ability to carry risk. Increased concentration may therefore increase or reduce dynamic efficiency, depending on the context.[30]

45. The effect of a transaction on dynamic efficiency can be difficult to measure and typically involves qualitative judgement. However, when assessing the possibility of losses in dynamic efficiency, the Commission will review the relevant evidence, taking into account:

46. the importance of innovation to the industry, for example:

- levels of research and development and related spending in the industry;
- the extent of innovation introduced in recent years in the industry, and the extent to which product or service innovation drives sales;
- any evidence about future innovation in the industry;
- the importance of each party to the transaction in driving innovation in the industry relative to other parties, for example:
  - whether the parties to the transaction compete closely in terms of innovation;
  - the importance of other parties in the industry in driving innovation;
- how the ability and incentives to innovate differ with and without the transaction, specifically whether, and the extent to which:
  - the parties to the transaction bring together complementary or substitutable intellectual property, trade secrets or skill sets;[31]
  - before the transaction, innovation by one of the parties would likely take sales from one of the other parties, so that the incentive to innovate may decrease as a result of the transaction;[32]
  - innovations may be imitated by rivals, reducing the payoff from innovation

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30 The Commission discusses how it will assess whether a transaction would increase dynamic efficiency at paragraph 51 below.

31 Bringing together complementary intellectual property, trade secrets or expertise may increase the ability to innovate.

32 This is an extension of the unilateral effects logic to innovation. To illustrate, pre-transaction, firm A may have the incentive to innovate in order to win share from firm B. After firm A and firm B merge, the incentive to innovate would be diminished because of the loss in dynamic competition between firms A and B.

3.5 Benefits

3.5.1 General principles of assessment

47. For each benefit anticipated by an applicant, the Commission considers:

- the nature of the benefit;
- whether there is a clear link between the transaction and the benefit (i.e., the benefit must be transaction-specific);[33]
- whether the benefit is one-time or recurring;
- how and when the benefit will arise; and
- the likelihood and magnitude of the benefit.

48. Applicants must provide sufficient qualitative evidence to support any claimed benefits, as well as quantification of the likely level of benefits where possible.

49. The remainder of this section explains how the Commission will assess potential improvements in productive and dynamic efficiency and other benefits.

3.5.2 Productive efficiency

50. A transaction may improve productive efficiency in a number of ways, including:[34]

- by increasing economies of scale (where unit costs fall as production increases);
- by creating or increasing economies of scope (where unit costs fall when more than one product is produced or transported etc.);
- by allowing better use of existing capacity; or
- by reducing cost by:
  - allowing greater specialisation of production, such as where parties to the transaction bring together complementary strengths in production;
  - allowing rationalisation of assets; or
  - reducing transaction costs.

51. Applicants should explain whether the claimed improvement to productive efficiency involves savings of fixed or variable costs.

33 See *Air New Zealand*, above at n 5.

34 Quantification of an increase in productive efficiency typically involves a comparison of the costs of producing a given level of output with and without the transaction.

3.5.3 Dynamic efficiency

52. A transaction may increase innovation in products or processes compared to the situation without the transaction. This may be the case if the transaction:

- increases the ability to innovate, e.g., if the transaction allows for a combination of intellectual property, trade secrets or expertise that are more likely to give rise to innovation, and this combination would otherwise be unlikely to occur;[35] or
- increases the incentive to innovate, e.g., without the transaction, one party would be likely to imitate the innovations of the other, so that the incentive to innovate may be greater as a result of the transaction.[36]

3.5.4 Other benefits

53. As discussed earlier, a benefit is anything of value to the community generally.[37] These types of benefits could include the following examples.

- A merger between firms at different levels of the supply chain (a vertical merger) results in a firm charging one mark-up rather than the two pre-merger mark-ups – one for each level of the supply chain.[38]
- A transaction allows the parties to more efficiently price their goods or services by, for example, jointly setting the price of complementary products[39] or for interoperable platforms that exhibit network effects.[40]

54. A transaction results in other benefits valued by the community generally which could include, for example, environmental improvements.

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35 The Commission may also consider whether the transaction will increase the ability to take on risk and, therefore, innovate. A transaction may increase the ability to innovate, for example, if the parties to the transaction were unprofitable pre-transaction, and returning the firms to profitability may increase their ability to take on risk. As with any such arguments, the Commission expects to receive evidence to support arguments that such a benefit is transaction-specific and the magnitude of the benefit.

36 For example, if without the transaction firm B was likely to quickly imitate any innovation firm A made and so reduce the benefits of that innovation to firm A, firm A would be less likely to invest in innovation in the first place. A merger between firms A and B would remove this effect, and the merged firm may consequently be more likely to invest in innovation.

37 See paragraphs 0-0 above.

38 Such a benefit may alternatively be taken into account as reducing any loss in allocative efficiency. For example, if a merger involved the merger of an integrated manufacturer and retailer with a retailer, this may lessen competition at the retail level. This would typically be associated with a loss in allocative efficiency as prices increase to retail customers. However, the merged firm may only now take one mark-up on the product it manufactures and sells through its newly acquired retail business, rather than the two margins that would have been taken previously. This removes the double mark-up. If the evidence establishes that this is passed onto retail customers to some degree, this reduces the extent of any loss in allocative efficiency.

39 Joint price-setting of complementary products may lead to a lower overall mark-up being charged on the products than would be charged by firms individually setting prices to increase demand for the products. This is analogous to the example in sub-paragraph ·, explained at n 38 above.

40 For example, a merger that allows applications to be used on two different operating systems

4. Is there a separate review by another government body (apart from judicial review), on public interest grounds, of the competition agency's merger decision? What public interest factors are considered, and when does this review take place? Who is responsible for this review, and what is the process?

55. There is no separate review of the Commission's decision.

56. The Overseas Investment Office (OIO) of Land Information New Zealand separately assesses applications from overseas investors seeking to invest in sensitive New Zealand assets – being 'sensitive' land, high value businesses (worth more than $100 million) and fishing quota. The OIO tests the application against four investor criteria known as the "Investor Test":

- business experience and acumen
- financial commitment
- good character, and
- the absence of ineligible individual(s) under the Immigration Act 2009.

5. Is there any judicial review of decisions relating to public interest factors?

57. Appeals on Commission authorisation determinations may only be made by three classes of party:

- the person who sought the authorisation;
- any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance or authorisation; and
- any person who participated in any conference held by the Commission under section 69B in relation to the authorisation.[41]

58. These appeals are considered by the High Court of New Zealand. The appeal is based on the findings of the Commission and the evidence presented to it. Leave of the court is required to present new evidence.

59. Other parties can seek judicial review of the Commission's decisions on the grounds of an error in law, a breach of natural justice obligations, or where the Commission's policies or procedures do not align sufficiently well to the statutory provisions to which they relate.

6. Has the relevance of public interest factors in merger review recently changed in your jurisdiction? Are there plans for future changes?

60. There are no plans for change at this stage and there have been no recent changes.

7. Please provide examples, if any, of any merger reviews by competition agencies where public interest considerations were a significant factor in the outcome.

61. Following are two examples of merger authorisation applications where public interest considerations were a significant factor.

41 Section 92 Commerce Act 1986

7.1 Qantas Airways and Air New Zealand

7.1.1 Background

62. This application was received in 2002 for authorisation for Qantas to acquire a 22.5% voting equity in Air New Zealand. The transaction was part of a wider proposed "strategic alliance arrangement". The strategic alliance arrangement would, among other things require the two airlines to:

- create a "Joint Airline Operation". Every Air NZ flight and those Qantas flights to, from, and within New Zealand would make up the Joint Airline Operation. Its commercial activities would be managed by Air NZ and overseen by a strategic alliance advisory group comprising three representatives of each airline;
- coordinate all aspects of the Joint Airline Operation including passenger fares and freight rates, flight schedules, the amount of passenger and freight capacity provided on each sector, code-sharing, marketing, frequent flyer programmes and profit sharing and;
- cooperate in relation to other airline operations outside the scope of the Joint Airline Operation.

63. The Commission determined not to grant authorisation as the benefits did not outweigh the detriments. The decision was upheld by the High Court of New Zealand.[42]

7.1.2 Commission analysis

64. The results of the Commission's qualitative and competition analysis of the proposed Alliance are summarised below.

65. The Commission considered that there was likely to be a substantial lessening of competition in ten markets. The Commission found that the strategic Alliance arrangement provided for the two competing airlines to agree the price of their air fares. Thus, the strategic Alliance arrangement was an agreement to fix prices. As such it was deemed to substantially lessen competition in each of the relevant markets under s30 of the Commerce Act.

66. In most of the markets the main competition effect stemmed from the reduction in the number of competitors either from three to two or from two to one, between the counterfactual and the factual. The existing active competition in the counterfactual between the two major participants, Air NZ and Qantas—which had a combined market share in various markets of up to 100%—would have been eliminated in the factual.

7.1.3 Balancing detriments vs benefits

67. After determining that the merger would lead to a SLC, the Commission moved to consider the benefits and detriments of the transaction.

68. The Commission concluded that the most likely scenario was that the transaction would result in a net detriment of $154.5 Million per annum in year three.

69. Net public benefits are summarised in the table below. Confidential information has been removed.

[42] AIR NEW ZEALAND And Anor V COMMERCE COMMISSION And Ors HC AK CIV 2003 404 6590 [17 September 2004]

Table One: Summary of Annual Net Public Benefits ($million) (Year Three)

Item	Range	Most likely
Detriments		
allocative inefficiency and transfers	(110) – (83)	(90)
productive inefficiency	(91) – (18)	(55)
dynamic inefficiency[43]	([ ]) – ([ ])	(50)
Sub-total	([ ]) – ([ ])	(195)
Benefits		
tourism	(18) – (4)	(11)
domestic spending by NZers deterred from overseas travel	5 – 20	13
cost savings	30	30
engineering & maintenance	5 – 10	8
scheduling	0.5	0.5
new freight services, direct flights, online benefits and miscellaneous	0	0
Sub-total	22.5 – 56.5	40.5
TOTAL NET BENEFITS/(DETRIMENTS)	([ ]) – ([ ])	(154.5)

7.2 Cavalier Wool Holdings Limited and New Zealand Wool Services International Limited

7.2.1 Background

70. This application was received in 2014 from Cavalier Wool Holdings Limited (Cavalier) seeking authorisation for Cavalier (or an interconnected body corporate) to acquire control over New Zealand Wool Services International Limited's (NZWSI) wool scouring and wool grease business and assets (whether by way of acquiring shares in the wool scouring subsidiaries, or assets, or both) (the Acquisition).

71. This decision has been appealed and is currently under consideration by the High Court of New Zealand

7.2.2 Commission analysis

72. The Commission was not satisfied that the Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market. This is on the basis that the Commission considered that:

- NZWSI's scouring business currently provides a degree of constraint on Cavalier in respect of commission wool scouring;
- post-merger, the merged entity would be able to increase prices by up to 20% before the threat of entry would be likely to provide a competitive constraint; and
- while the scope for greasy exports to increase so that more wool is scoured overseas would provide some price constraint post-merger, the maximum likely price increase could be between 5% and 15% for wool destined for export, between 5% and 25% for wool destined for Godfrey Hirst, and 10% for wool grease for small domestic customers.

7.2.3 Balancing detriment vs benefits

73. After determining whether the acquisition "would likely" cause a substantial lessening of competition, the Commission considered whether the net benefits would be likely to outweigh the

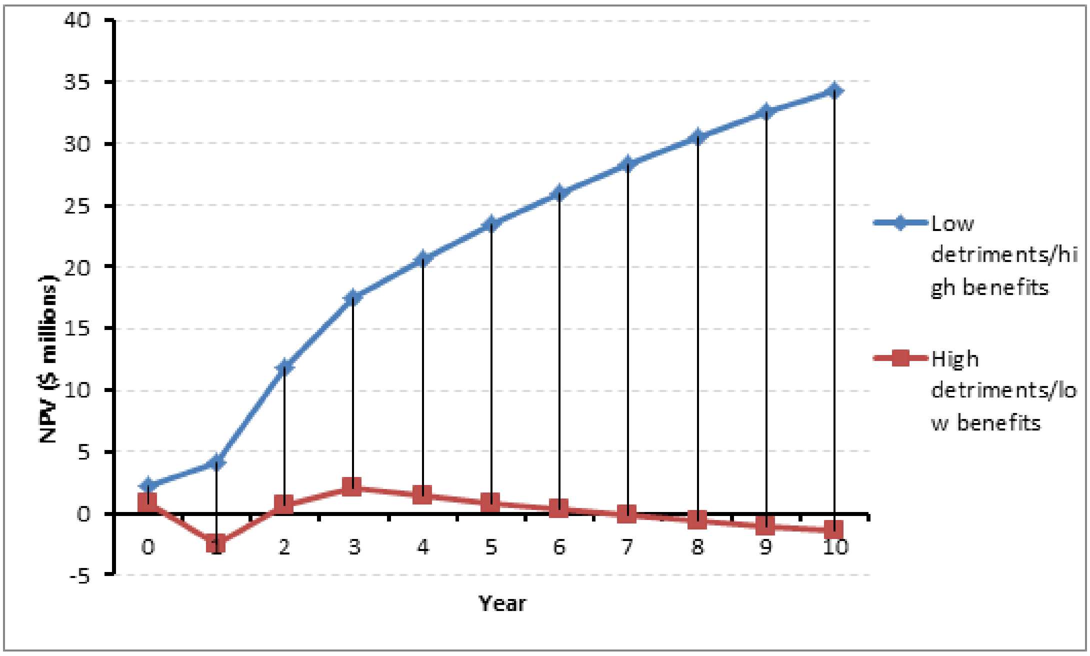
43 The Commission's estimate is an intermediate point in a range partly bound by an estimate derived from confidential information. Consequently, the range cannot be disclosed for the purposes of balancing public benefits and detriments.

detriments. The Commission concluded that the benefits would be likely to outweigh the detriments. Table two and Figure 2 provide a summary of the balance of detriments and benefits.

Table two: Estimated net impact (5-year Net Present Value)

	Overall net impact	
Time frame	High detriments / low benefits	Low detriments / high benefits
5 years	$1.15 million	$23.48 million
10 years	-$0.82 million	$34.33 million

Figure 2: Net public benefit, NPV $



74. In this case, as can be seen from Table two above, the Commission estimated that the benefits are likely to outweigh the detriments over a five year timeframe by between $1.15 million (using high detriment assumptions) and $23.48 million (using low detriment assumptions). This is in an industry with annual turnover in the vicinity of $60 million to $80 million.

75. In weighing the benefits and detriments, the Commission considered the evidence and tested the assumptions that underpinned the quantitative analysis.

76. The Commission allowed for uncertainties in the quantification exercise, such as considering different timeframes for quantifying the likely effects of the acquisition. The Commission also considered the upper bounds for potential price increases and demand elasticities when assessing the likely ranges for allocative inefficiencies and net wealth transfers. In so doing the Commission allowed for concerns over the quality of the evidence before it.[44] Finally, the Commission applied its specialist judgement to assessing the application in the round, in the industry context which is being considered.

77. Therefore, the Commission was satisfied on the evidence it had considered that the acquisition is likely to result in such a benefit to the public that it should be authorised.

[44] *Godfrey Hirst above n7* at [327].