



ISBN 978-1-869456-60-3
Project no. 11.08/0042487

Fulton Hogan Limited: investigation closure report

Date: 10 October 2018

Purpose

1. This report explains the reasons for the Commission's decision to close the section 47 investigation into Fulton Hogan Limited's (Fulton Hogan) proposed acquisition of Stevenson Construction Materials Limited and Stevenson Properties (2015) Limited (together, Stevenson's construction materials business).

Summary

2. On 21 May 2018, through our surveillance function, the Commission became aware of Fulton Hogan's proposed acquisition of Stevenson's construction materials business. At the time of our investigation, Stevenson's construction materials business included its Drury and Huntly quarries and an associated laboratory, its ready-mix concrete business, and transport assets. Following initial enquiries, on 13 June 2018 we opened an investigation under section 47 of the Commerce Act 1986 (the Act).
3. The focus of our investigation was on the likely competitive effect of Fulton Hogan acquiring Stevenson's quarries. Quarries produce a range of rock-based products called aggregates, which are important inputs into concrete, roading and construction projects. At that time, Fulton Hogan owned two quarries in each of the Auckland and North Waikato regions, while Stevenson owned one quarry in each of the Auckland and North Waikato regions.
4. We examined whether the loss of any competition between Fulton Hogan's and Stevenson's quarries would be likely to substantially lessen competition in the supply of aggregates in Auckland and North Waikato.
5. The Commission reached the view that there would unlikely be a substantial lessening of competition relating to Fulton Hogan's purchase of Stevenson's Drury quarry in Auckland. Existing competitors in Auckland have significant excess capacity and would have the ability and incentive to expand their production of aggregates in response to a price increase by the merged entity.
6. In respect of Fulton Hogan's proposed acquisition of Stevenson's Huntly quarry, the Commission considered that this would have been likely to result in a significant concentration in the supply of tertiary aggregates in North Waikato, which raised substantial competition concerns.
7. However, during the course of our investigation, Fulton Hogan advised the Commission that it no longer intended to acquire Stevenson's Huntly quarry. As a result, the Commission no longer had competition concerns and therefore decided to close its investigation.

Background

Parties

Fulton Hogan

8. Fulton Hogan is one of New Zealand's largest roadworks and infrastructure construction companies. Of relevance to this investigation were Fulton Hogan's Whitford and Clevedon quarries in Auckland, and its Waingaro and Tauhei quarries in North Waikato.

Stevenson

9. Stevenson is a family owned business headquartered in Auckland with interests in ready-mix concrete, quarries, agriculture and property. Of relevance to this investigation was Stevenson's Drury quarry in Auckland and its Huntly quarry in North Waikato.

Industry background¹

10. Aggregates are granular rocks, gravel, or sand. In New Zealand, aggregates are usually mined from quarries that contain deposits of greywacke or basalt. Aggregates can be quarried from inland rock-faces, or extracted from riverbeds or coastal locations (alluvial quarries). In Auckland and Waikato, almost all of the aggregates are produced from greywacke rock and there are very few alluvial quarries.
11. Aggregate processing usually involves crushing, screening and washing rock to produce a variety of products. Particular types of aggregates include sand, concrete, asphalt, road sealing chip, and basecourse aggregates. Aggregates are typically used in applications such as roading and infrastructure construction.
12. There are two broad categories of aggregates that were relevant to our investigation:
 - 12.1 tertiary aggregates, which include concrete, asphalt, and sealing chip aggregates. These tend to be higher value aggregates, requiring more processing; and
 - 12.2 primary aggregates, which are lower value, less processed aggregates (not including sand or overburden products).

Our concerns

13. The parties would have overlapped in the supply of aggregates in each of the Auckland and North Waikato regions. As noted above, Fulton Hogan owns two quarries in Auckland and two in North Waikato. Stevenson owns one quarry in Auckland (Drury) and one in North Waikato (Huntly).

¹ For more information please refer to the Commission's decision in relation to Fletcher Building's clearance application to acquire Higgins (Fletcher Building Holdings New Zealand Limited and Higgins Group Holdings Limited [2016] NZCC 14).

14. The Commission opened its investigation because it was concerned that the acquisition would result in the loss of important competition between Fulton Hogan's and Stevenson's quarries in Auckland and North Waikato which would likely result in higher prices for aggregates in those regions.
15. We were also concerned that the acquisition might enable Fulton Hogan to foreclose its competitors in roading and infrastructure construction markets if Fulton Hogan withheld, or raised the price of, the supply of aggregates in the Auckland and North Waikato regions to its downstream competitors.
16. However, given our views that there would remain sufficient alternative aggregate suppliers in Auckland, and Fulton Hogan and Stevenson's agreement to remove the Huntly quarry from the acquisition, we did not need to further consider the foreclosure concerns in our investigation.

What we found

17. We found that Fulton Hogan's purchase of Stevenson's Drury quarry would be unlikely to result in a substantial lessening of competition in the supply of either primary aggregates or tertiary aggregates in Auckland.
18. However, the information we received during the investigation showed that Fulton Hogan's acquisition of Stevenson's Huntly quarry was likely to result in a high degree of concentration in the supply of tertiary aggregates in North Waikato. This raised significant competition concerns.
19. Our reasoning for our concerns is set out below, outlining first the markets that would be affected by the proposed acquisition, our view on what would happen absent the acquisition, and the likely competition effects of the acquisition.

Market definition

Product dimension

20. We assessed the likely impact of the proposed acquisition in separate product markets for each of primary and tertiary aggregates.
21. Primary aggregates are unlikely to be close substitutes for tertiary aggregates. Roading and infrastructure construction firms require aggregates that meet specific requirements, such as cleanliness and particle size distribution, and therefore purchase aggregate products with particular specifications. Market participants indicated that primary aggregates are generally not good substitutes for tertiary aggregates in various roading and infrastructure construction applications.
22. The evidence on supply-side substitution also did not support the inclusion of primary and tertiary aggregates in the same market. Tertiary aggregates require higher quality blue greywacke rock deposits compared to primary aggregates. In addition, tertiary aggregates require additional processing (including extra crushing, screening and washing), which requires additional machinery, compared to the production of primary aggregates.

23. While the evidence suggested that there is limited demand-side substitutability between the three types of tertiary aggregates (concrete, asphalt and sealing chip), we found that there is a high degree of supply-side substitutability between the production of the three tertiary aggregates. This is because the same high quality rock, equipment, and machinery can be used to produce all types of tertiary aggregates. We therefore treated the three types of tertiary aggregates as one market.
24. We note that the product markets used to assess the acquisition differed from those that we used in our decision in *Fletcher/Higgins*.² The specific facts in this case – including the type of quarries and the rock deposits in the region – were the basis for the different view.

Geographic dimension

25. The evidence gathered in this investigation, consistent with our finding in *Fletcher/Higgins*, indicated that it is typically economically viable to transport aggregates approximately 35-45km from a quarry.
26. Taking a conservative approach, and as a starting point for our competition analysis, we used catchment areas of 45km by road from each of Fulton Hogan and Stevenson's quarries in Auckland and North Waikato.
27. That said, we were also mindful of the fact that demand for aggregates is primarily driven by the location of customers and projects for which the aggregates are required. Where possible, we factored this into our assessment of the proposed acquisition.

With and without the acquisition

28. With the acquisition, Fulton Hogan would acquire Stevenson's quarrying businesses in Auckland and North Waikato. As outlined below, it was not necessary for us to reach a view on Fulton Hogan's incentive to develop its Clevedon quarry with the acquisition because of the spare capacity of rivals in Auckland.
29. Without the acquisition, the status quo would likely continue. Stevenson would likely continue to operate the business or sell it to an independent third party and Fulton Hogan would likely continue to develop its Clevedon quarry.

Competition effects

Auckland

30. The proposed acquisition is unlikely to have the effect of substantially lessening competition in the supply of either primary or tertiary aggregates in Auckland.
31. Fulton Hogan does not produce tertiary aggregates from its quarries in Auckland and produces relatively small amounts of primary aggregates. Information we obtained indicated that, given current resource consents and available capacity, it is likely that

² Fletcher Building Holdings New Zealand Limited and Higgins Group Holdings Limited [2016] NZCC 14.

competition between the merged entity's quarries and those of other significant competitors, including Kaipara Brookby and Winstone Hunua, would ensure that the acquisition did not substantially lessen competition in the Auckland region in the short term.

32. We also considered whether the acquisition would give rise to a substantial lessening of competition in the medium to long term either if Fulton Hogan fully developed or delayed the development of its Clevedon.
33. The Clevedon quarry will not likely reach full capacity for eight to ten years, by which time Fulton Hogan's Whitford quarry will likely be exhausted. The evidence suggested that while total demand for aggregates in the Auckland region is likely to grow significantly, existing competitors are likely to be able to readily expand their combined production to more than meet the expected increase in total demand for aggregates. We considered existing competitors would be able to constrain Fulton Hogan if it fully developed the Clevedon quarry. Further, it was also unlikely to make any difference to our analysis if Fulton Hogan delayed the development of the Clevedon quarry.
34. As such, we consider that there would remain sufficient competition in the supply of primary and tertiary aggregates, both in the short and long term, which would be capable of replacing any lost competition between Fulton Hogan and Stevenson in Auckland.

North Waikato

35. The evidence indicates that the proposed acquisition would have resulted in a significant increase in concentration in the supply of tertiary aggregates in North Waikato which raised significant competition concerns.
36. We reached the view that the acquisition would likely have resulted in Fulton Hogan having a large share of supply of tertiary aggregate in the relevant catchment area. Further, many customers in this area view Fulton Hogan's Waingaro and Tauhei quarries and Stevenson's Huntly quarry as close competitors. We therefore were concerned that the acquisition would likely result in the loss of important competition in North Waikato between Fulton Hogan's and Stevenson's quarries.
37. However, during the course of our investigation, Fulton Hogan advised the Commission that it no longer intended to acquire Stevenson's Huntly quarry. As such, we did not need to progress our investigation.

Outcome

38. Given our view that Fulton Hogan's proposed acquisition of Stevenson's Drury quarry would be unlikely to substantially lessen competition, and Fulton Hogan's advice it would no longer acquire the Huntly quarry, the Commission reached the view that no breach of the Act was likely to occur with Fulton Hogan's acquisition of the remainder of Stevenson's construction materials business.
39. Accordingly, the Commission closed its investigation.

40. The Commission emphasises that the views it has formed, as contained in this report, have not been tested in court. Where we have made assessments, we have proceeded by asking whether a substantial lessening of competition could ultimately be proven in court. However, only a court can make findings of fact or law, and this report does not purport to do either. Rather, it records the Commission's view on the proposed acquisition and the reasons for its decision to close the investigation.

Sue Begg

Deputy Chair