
**Commerce Act 1986: Business Acquisition
Section 66: Notice Seeking Clearance**

Contents

1.	Person Giving Notice.....	8
2.	Other Participant(s).....	8
3.	Organisational Structure/Interconnected and Associated Parties/Links.....	9
4.	Details of Transaction.....	16
5.	Commercial Rationale for Proposal	17
6.	Transaction Documents	19
7.	Other Competition Agencies	19
8.	Goods or Services Supplied	19
9.	Industries Affected.....	36
10.	Current Industry Trends	36
11.	Previous Acquisitions and Commission Notifications	38
12.	Market Dimensions	39
13.	Product Differentiation	40
14.	Creation/Strengthening of Vertical Integration.....	41
15.	Counterfactual.....	41
16.	Current Competitors	42
17.	Market Shares.....	44
18.	Extent of Constraint by Possible Competitive Response.....	46
19.	Requirements for New Entry and/or Importers.....	51
20.	Conditions Influencing Entry	52
21.	Likely New Entrants	53
22.	Extent Entry Would be Sufficient	54
23.	Timeliness of Entry	54
24.	Constraints on Market Power by the Conduct of Buyers	54
25.	Identity of Top Five Buyers	56
26.	Characteristics Post-Acquisition Facilitating or Impeding Coordinated Behaviour	57

27.	Efficiencies Resulting from Acquisition	58
28.	Details of Competitors/Buyers, etc	59
29.	Annual Reports	64
30.	Confidentiality	64
Attachment 1	Visy Organisation Chart and Governance Arrangements (Confidential).....	
Attachment 2.....	Suppliers of PET Beverage Bottles and Rigid Plastic Containers.....	
Attachment 3.....	Visy Annual Accounts (Confidential).....	
Attachment 4.....	HP Annual Accounts (Confidential)	

Dated

1 February 2012

The Registrar
Market Structure Group
Commerce Commission
PO Box 2351
WELLINGTON

registrar@comcom.govt.nz

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

Overview

Proposed Acquisition

VPRS Limited, which is ultimately a wholly owned subsidiary of Visy Industries Australia Pty Limited (together **Visy**) is proposing to acquire certain businesses and assets (**Assets**) of HP Industries Holding Limited (in receivership) and HP Industries (New Zealand) Limited (in receivership), (together **HP**) (**the Proposed Acquisition**).

HP has been placed in receivership. []

The Assets broadly comprise the assets of HP required to operate the businesses in New Zealand of:

- the supply of PET bottles;
- the supply of small rigid plastic containers; and
- the supply of plastic closures,

as well as activities ancillary to the above such as the procurement of resin.

Visy is also separately seeking to acquire certain businesses and assets from separate HP entities required to operate PET and plastic businesses in Australia (**the Proposed Australian Acquisition**). The Australian HP entities are also in receivership. Visy has applied to the Australian Competition and Consumer Commission for informal clearance of the Proposed Australian Acquisition.

Rationale for the Proposed Acquisition

The commercial rationale for the Proposed Acquisition and the Proposed Australian Acquisition are the same, namely:

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Purpose of the Notice

Clearance is sought in respect of the Proposed Acquisition on the basis that it will not have the effect, or likely effect, of substantially lessening competition in any market in New Zealand.

Overlap between the parties

Overlaps

The only area of overlap between the two companies is in the manufacture and supply of PET beverage bottles in the North Island (and associated activities, such as the acquisition of resin and the manufacture of PET preforms)

However, even in the manufacture and supply of PET bottles in the North Island, HP and Visy, to an extent, focus on different segments of the market as follows:

- Visy's PET business is presently very predominantly focused on supplying high volumes of bottles to large customers produced using large two stage machines that are suited to long production runs. []
- In contrast:
 - HP's business focuses on producing bottles using single-stage equipment to service smaller customers and the special requirements of larger customers; and
 - while HP does have 2 two-stage machines (as compared to Visy's 5 in the North Island), its machines are smaller than most of Visy's two stage machines. HP's two-stage machines are []. The remainder of HP's customers are all serviced using HP's single stage machines [].

Otherwise:

- [] this Notice does address the small rigid plastic containers market for the sake of completeness.
- Both Visy and HP acquire PET resin and manufacture PET preforms, but Visy submits that the Proposed Acquisition will clearly not give rise to competition issues in respect of these activities as:
 - all PET resin supplied in New Zealand is imported and linked to world prices; and
 - to the best of Visy's knowledge, HP does not supply any PET preforms to third parties (it uses all of its PET preforms for its own requirements).

Finally, HP produces a small volume of injection moulded plastic closures. If specifically requested to do so by a customer, Visy will arrange for the customer to be supplied with closures. However, Visy does not produce any plastic closures in this market [].

"Association" between Pact and Visy

- In its assessment of VIP Industrial Plastics (NZ) Limited's acquisitions of ACI Operations NZ Limited in 2004,¹ the NZCC took the view that Pact and Visy were "associated" entities. This

¹ Decision 524

assessment was not required to be revisited in 2006 when Alto Holdings Limited was also acquired², with Pact reserving its position.

- The original assessment in 2004 was based on the NZCC's assessment of the commercial and family relationships between Visy and Pact at the time of those transactions, and a perception that Visy and Pact may not have been intense rivals.
- Visy submits that whatever may have been the NZCC's view in 2004, the NZCC should consider that Visy and Pact are not currently "associated" entities such that the impact of commercial and family relationships would make competition between the entities anything but vigorous and effective. Section 3 below sets out the changes in the Visy/Pact corporate relationship since 2002.
- In any case, even if the NZCC considers that Visy and Pact are currently associated entities, Visy submits that the Proposed Acquisition will not result in a substantial lessening of competition in any market in New Zealand.

Market definition

For the purposes of this Notice only, Visy accepts the market definitions that the NZCC has adopted in previous decisions³ and that are relevant to the Proposed Acquisition; namely:

- the North Island market for the manufacture and supply of PET beverage bottles (**North Island PET beverage bottle market**);
- the New Zealand market for the manufacture and supply of small rigid containers - of a size up to 20 litres (**the small rigid plastic container market**); and
- the New Zealand market for the manufacture or import and wholesale supply of plastic closures (**the plastic closures market**).

The proposed acquisition does not substantially lessen competition in any market in New Zealand

Visy submits that the Proposed Acquisition is not likely to have the effect of substantially lessening competition in any market in New Zealand for the following reasons:

Market for the manufacture of PET beverage bottles in the North Island

- It is the case that both Visy and HP supply Frucor (with CCA's move to self-manufacture, Frucor is now the only current large contestable customer for PET beverage bottle suppliers). However, as described above, apart from supply to Frucor the differing focuses of Visy and HP's operations, to an extent, limits the degree of competition between them. Specifically:

- []

² Decision 583

³ In particular, the market definitions adopted by the NZCC in Decision 583.

- Finally, while there is currently excess production capacity in large two-stage PET equipment, this excess capacity does not act as a strategic constraint on new entry or expansion (eg, there is not a disincentive to new entry or expansion on the basis that existing suppliers (such as Visy) will deploy their excess capacity to "undercut" new entrants). In particular, given the practical limitations of utilising two-stage machines to supply small customers and the specialty requirements of large customers, there are significant limitations to deploying excess two-stage capacity in this segment of the market such that Visy is in no better position to win the business of smaller customers than any other market participant.
- []

Market for the manufacture and supply of small rigid plastic containers

- The merged entity will have a marginal presence in the market for small rigid plastic containers as:
 - [], Visy does not currently produce any small rigid plastic containers in New Zealand (apart from PET bottles); and
 - HP has only a limited presence, and no prospect of expanding its presence given it is in receivership.
- The two major suppliers in this market are Pact and Premier Plastics, and this will continue to be the case in the event that the Proposed Acquisition were to proceed (and, even if the NZCC were to take the view that Visy and Pact are associated entities, Pact's increase in market share would be minimal given HP's limited presence in the market).
- A merged Visy/HP will in fact result in the creation of a potentially stronger and more vigorous competitor to Pact and Premier Plastics.
- Barriers to entry and expansion are low, with low equipment costs and relatively short timeframes for establishing operations.
- While Visy is unaware of the details of commercial arrangements in this market (given its lack of involvement), it notes that the major customers in this market are large, sophisticated, companies who are able to ensure highly competitive procurement processes. Further, given the low equipment costs, Visy considers it likely that a number of customers in this market could viably self-manufacture.
- Imports (both filled and unfilled) provide a further constraint in this market.

Market for the supply of plastic closures

- As set out above, HP produces a very small volume of plastic closures, and has no prospect of expanding in this market given it is in receivership. While, from time to time, Visy arranges for customers to be supplied with closures on their request, Visy does not produce any closures in New Zealand [].
- Therefore, the Proposed Acquisition will simply result in the bare transfer of HP's current small market share to the merged entity, and there is no risk that the Proposed Acquisition could give rise to competition concerns in the closures market.

- Visy also notes that the NZCC considered the plastic closures market in the Alto decision, and concluded that the ease with which closures can be imported and the broad range of suppliers imposed significant competitive constraints on suppliers in this market. Visy submits that these factors continue to apply.

Part 1: Transaction Details

1. Person Giving Notice

1.1 This notice is given by:

Visy Industries Australia Pty Ltd and VPRS Limited

Level 6, 57 Symonds Street, Grafton, Auckland 1010

Contact: Robert Kaye, General Counsel

Email: robert.kaye@visy.com.au

Phone: + 613 9247 4726

Fax: + 613 9247 4726

1.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Matthew Dunning
Barrister
Park Chambers
PO Box 5844
Wellesley Street
Auckland

Ayman Guirguis
Partner
Blake Dawson
225 George Street
Sydney NSW 2000
AUSTRALIA

Email: mdunning@parkchambers.co.nz

Ph: (09) 379 9780

Fax: (09) 377 0361

Email: ayman.guirguis@blakedawson.com

Ph: +61 2 9258 6262

Fax: +61 2 9258 6999

2. Other Participant(s)

2.1 The vendor is:

HP Industries Holding Limited (in receivership)
HP Industries (New Zealand) Limited (in receivership)
(together **HP**)

David Bridgman and Colin McCloy of PricewaterhouseCoopers have been appointed as receivers and managers of HP

Email: colin.mccloy@nz.pwc.com

Ph: 64 9 355 8672

Fax: 64 9 355 8013

2.2 All correspondence with and notices to the vendor in respect of this application should be directed in the first instance to:

James Craig,
Partner
Simpson Grierson

Email: james.craig@simpsongrierson.com
Ph: 64 9 9775125
Fax: 64 9 9775046
Mob: 64 21 497713

3. Organisational Structure/Interconnected and Associated Parties/Links

Visy/VPRS Limited

- 3.1 The acquirer (VPRS Limited) is a wholly owned subsidiary of Visy Rigid Packaging (NZ) Limited. In turn:
- 3.1.1 Visy Rigid Packaging (NZ) Limited is a wholly owned subsidiary of Visy Rigid Holdings (NZ) Limited;
 - 3.1.2 Visy Rigid Holdings (NZ) Limited is a wholly owned subsidiary of an Australian company, Visypak Operations Pty Ltd; and
 - 3.1.3 Visypak Operations Pty Ltd is a wholly owned subsidiary of Visy Industries Australia Pty Ltd.
- 3.2 For ease of reference, Visy Industries Australia Pty Ltd and all of its subsidiaries are referred to as Visy for the purposes of this Notice.
- 3.3 Visy is privately owned by the Pratt family through the Pratt Family Holdings Trust. A copy of a simplified operating structure for Visy identifying the relationship between relevant Visy entities is included in Attachment 1 to this Notice. Further detail about the operations of Visy is set out in Section 8 of this Notice.

Visy and Pact

- 3.4 Pact Group Pty Ltd (**Pact**) is privately owned by the Geminder family through a family trust. In 2002, a Pact Group related entity, Salvage Pty Ltd, acquired the industrial packaging operations of Visy.
- 3.5 Pact has a plastic packaging business in New Zealand that is managed through Pact Group (NZ) Ltd and the following wholly-owned subsidiaries: VIP Plastic Packaging (NZ) Ltd; Alto Packaging Ltd (**Alto**) and Tecpak Industries Limited. Pact is also currently seeking to acquire BBA Pacific and Viscount Plastics (together Viscount).
- 3.6 In its assessment of VIP Industrial Plastics (NZ) Limited's acquisition of ACI Operations NZ Limited in 2004⁴ the NZCC took the view that Pact and Visy were "associated" entities. This

⁴ Decision 524

assessment was not required to be revisited in 2006 when Alto Holdings Limited was also acquired⁵ (and the issue was reserved by Pact).

3.7 The original assessment in 2004 was based on the NZCC's assessment of the commercial and family relationships between Visy and Pact at the time of those transactions, and a perception that Visy and Pact may not have been intense rivals.

3.8 However, for the reasons set out below, regardless of what NZCC's view may have been in 2004, Visy submits that the NZCC should consider it and Pact are not currently "associated" entities such that the impact of commercial and family relationships would make competition between the entities anything but vigorous and effective. In any case, irrespective of whether the NZCC determines to treat Visy and Pact as associated entities, Visy submits that the Proposed Acquisition will not result in a substantial lessening of competition in any market in New Zealand for the reasons set out in this Notice.

Visy and Pact are not associated entities

Visy and Pact are intense competitors

3.9 Visy and Pact are vigorous competitors with each other in New Zealand. This is reflected below in Section 18 of the Notice which provides a number of recent examples of direct competition between Visy and Pact (and other suppliers of PET bottles) to win or retain business.

3.10 In addition, the recent decision by Coca Cola Amatil to move to in-house blowfilling of PET bottles (and the likelihood of other customers, large and small, to move to in-house blowfilling – described in more detail below in Section 8 of this Notice), [

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3.11 As part of the purchase by Pact of the Visy industrial packaging business in 2002, Visy entered into an agreement with Pact for the provision of corporate and shared services to Pact.

3.12 The corporate, family, service and financial relationship between Visy and Pact has changed significantly since 2002, and since the NZCC's consideration of the issue in detail in 2004 (and 2006). The relationship, and its change over time, is described further below.

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3.13 A copy of the current governance and executive management structure for Visy is included in Attachment 1 to this Notice. Visy notes the following in relation to its standalone governance and executive management structure:

3.13.1 [

⁵ Decision 583

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3.14 The corporate independence of Visy and Pact is demonstrated by the fact that:[

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Service arrangements

3.23 As part of Salvage Pty Ltd's acquisition of the industrial packaging operations of Visy in 2002, Visy entered into a Management and Support Agreement with Pact [

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3.28 Visy considers that none of the service and supply arrangements above make Visy or Pact any less likely to compete vigorously and effectively with each other than would otherwise be the case.

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3.30 In brief, Visy submits that the bases on which the NZCC determined in Decision 524 (and followed in Decision 583) that Pact and Visy were associated are largely no longer applicable. This is summarised in the below table.

NZCC Bases for Determining Visy and Pact Associated Entities in Previous Decisions	Current Situation
Ownership links and financial arrangements	[
Overlapping directorships	
Family and personal relationships	

NZCC Bases for Determining Visy and Pact Associated Entities in Previous Decisions	Current Situation
	1.
Industry perception	<p>To Visy's knowledge, PET and rigid plastics customers in Australia and New Zealand are aware that Visy and Pact are separate businesses and are competitors for their customers business – as evidenced by the occasions when customers either seek both Visy and Pact to respond to formal tender or more informal requests to "quote". Further, in terms of the matters noted in Decision 524 as being relevant to association:</p> <ul style="list-style-type: none"> • Pact has had its own websites for its various companies for a number of years. • The manner in which Pact and Visy present themselves to the industry does not create any perception of association or lack of separation. • As described elsewhere, in practice the companies compete aggressively with each other. Customers in the markets in which both Visy and Pact operate are well aware of, and benefit from, this competition.
Coordination and mutual cooperation	<p>Neither Visy nor Pact market products on behalf of each other.</p> <p>1.</p> <p>Visy and Pact clearly do not act in a coordinated manner in the market, and compete vigorously.</p>

HP

- 3.31 HP Industries Holding Limited is the holding company of HP Industries (New Zealand) Limited, which is HP's business in the North Island. HP's operations in New Zealand are described in more detail in Section 8 of this Notice.

4. Details of Transaction

- 4.1 VRPS Limited, which is ultimately a wholly owned subsidiary of Visy Industries Australia Pty Ltd, proposes to acquire certain businesses and assets (**Assets**) of HP Industries Holding Limited (in receivership) and HP Industries (New Zealand) Limited (in receivership), (together **HP**).

- 4.2 HP has been placed in receivership. David Bridgman and Colin McCloy of PricewaterhouseCoopers have been appointed as receivers and managers of HP (**Receivers**).
- 4.3 []. Visy understands that the Receivers will be providing the NZCC with further details about the condition of the HP business.
- 4.4 Visy and the Receivers undertook negotiations and on 10 January 2012 executed an agreement for the purchase of the Assets (**Business Asset Sale Agreement**), which has already been provided to the NZCC on a confidential basis. Completion of the Business Asset Sale Agreement is conditional on NZCC approval of the Proposed Acquisition.
- 4.5 HP in Australia and New Zealand has three business divisions:
- 4.5.1 **HP PET** – focuses on the manufacture of bottles and containers for the beverage, food, industrial and automotive, personal and pharmaceutical industries using single-stage and two-stage injection and stretch blow moulding machines;
 - 4.5.2 **HP Plastics** – focuses on the manufacture of bottles, jars and containers, injection moulded closures and seals, servicing customers in the food and beverage, industrial, pharmaceutical, personal care, household products and automotive industries; and
 - 4.5.3 **HP Steel** – focuses on the manufacture of new steel drums with open and closed heads, lids, tops and locking mechanisms for the industrial, chemical, oil and food industries.
- 4.6 However, HP only produces PET products and a small volume of injection moulded closures in New Zealand. The Assets that Visy is seeking to acquire under the Proposed Acquisition (and the Proposed Australian Acquisition described below) only relate to the HP PET and HP Plastics businesses. The assets of the HP Steel business do not form part of either of the proposed acquisitions.

5. Commercial Rationale for Proposal

- 5.1 In addition to the Proposed Acquisition, Visy Industries Australia Pty Ltd, through its wholly owned subsidiary Lightdock Pty Ltd (Visy) proposes to separately acquire certain businesses and assets of HP PET Pty Ltd, HP PET (Australia) Pty Ltd, HP Industries Pty Ltd, HP Industries Services Pty Ltd, HP Plastics (NSW) Pty Ltd and HP Plastics (Vic) Pty Ltd, all of which have had receivers and managers appointed (**Proposed Australian Acquisition**). The assets that are the subject of the Proposed Australian Acquisition are also related to the HP PET and HP Plastics businesses, and the assets of the HP Steel business do not form part of the Proposed Australian Acquisition.
- 5.2 The commercial rationale for the Proposed Acquisition and the Proposed Australian Acquisition are the same (and references to the Proposed Acquisition below should also be taken to refer to the Proposed Australian Acquisition).

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¹⁰ The different type of equipment used to produce plastic packaging products are described in sections 8 of this Notice.

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6. Transaction Documents

6.1 Visy has already provided the NZCC with a copy of the Business Asset Sale Agreement.

7. Other Competition Agencies

7.1 As set out above, pursuant to the Proposed Australian Acquisition, Visy proposes to acquire certain businesses and assets of HP PET Pty Ltd, HP PET (Australia) Pty Ltd, HP Industries Pty Ltd, HP Industries Services Pty Ltd, HP Plastics (NSW) Pty Ltd and HP Plastics (Vic) Pty Ltd, all of which have had receivers and managers appointed. Visy has applied to the Australian Competition and Consumer Commission for informal clearance of the Proposed Australian Acquisition.

Part II: The Industry

8. Goods or Services Supplied

Overview of relevant plastics products and manufacturing processes

8.1 As described elsewhere in this Notice, the Proposed Acquisition affects the rigid plastic packaging industry. Visy notes that the NZCC has considered proposed acquisitions in the packaging industry previously. Therefore, Visy will not seek to describe the industry in detail for the purposes of this Notice. However, some relevant background is set out below to assist in explaining the overlapping activities of Visy and HP.

Plastic resins

8.2 Plastic packaging products can be produced from a variety of resins (which are generally imported into New Zealand) that are used to make a variety of plastic products. Some of the more common resins include:

- 8.2.1 Polyethylene Terephthalate (**PET**) – PET is commonly used for CSDs, water bottles and other beverages.
- 8.2.2 High Density Polyethylene (**HDPE**) – HDPE is a polymer known for its flexible, translucent/waxy and weather-proof characteristics, as well as its good low temperature resistance (to -60C). It is easy to process, relatively low cost and has good chemical resistance. HDPE is used to manufacture products such as chemical drums, jerry cans, household and kitchenware, shampoo, chemical and detergent bottles (as well as milk bottles and juice bottles).
- 8.2.3 Low Density Polyethylene (**LDPE, LLDPE**) – is a semi-rigid, translucent, very tough, weather-proof polymer with good chemical resistance and low water absorption. It is easily processed at low cost. It is used to manufacture squeeze bottles and other general packaging.
- 8.2.4 Barrier Polypropylene (**PP**) – PP is a very versatile polymer with respect to applications, both as a plastic and as a fibre, used in all plastics end-use segments. Applications for PP include caps and closures, blow moulded bottles for the packaging of a range of products including condiments, detergent and toiletries and other thin walled containers used in food packaging.
- 8.2.5 Polyvinyl Chloride (**PVC**) – is a major thermoplastic material used in a very wide variety of applications and products. PVC is suitable for most plastic processing methods including extrusion blow moulding, injection moulding and thermoforming. PVC's major benefit is its strength and flexibility, and its compatibility with many different kinds of additives. PVC is used extensively in a range of industries (including building and construction, medical, electrical etc) and for a variety of uses. Examples of PVC products include cosmetics containers and bottles.
- 8.2.6 Polystyrene (**PS**) – PS offers clarity and stiffness at a low cost. It is commonly used with dry products including vitamins, petroleum jellies, and spices.

Processing methods

8.3 Plastics can be processed using a range of manufacturing method. The most commonly used processes are:

- 8.3.1 Blow moulding;
- 8.3.2 Injection moulding;
- 8.3.3 Extrusion; and
- 8.3.4 Thermoforming.

8.4 These are described below.

Extrusion

- 8.5 Extrusion moulding is used to form plastic into long continuous shapes, such as pipes, hoses, tubes and rods. The process is similar to injection moulding, but with the molten plastic forced into long tubular moulds.

Thermoforming

- 8.6 Thermoforming involves heating a plastic sheet to a pliable form, and it is then shaped over a mould (eg, using a vacuum or some other form of mechanical pressure).

Injection moulding

- 8.7 The key steps in the injection moulding process are as follows:

- 8.7.1 plastic material is placed into a hopper and is slowly fed through a heating chamber by a plunger, which melts the plastic;
- 8.7.2 as the plastic reaches the end of the heating chamber it is forced through a nozzle that rests against a mould;
- 8.7.3 once the mould cavity is filled, the mould is held closed until the plastics cools into solid form; and;
- 8.7.4 the mould is then opened and the plastic object is ejected.

- 8.8 Amongst other items, injection moulding is used to produce PET preforms for PET bottles (described further below).

Blow moulding

- 8.9 Blow moulding is a process by which hollow objects are formed out of plastic. The process involves the formation of a plastic tube (referred to as a preform or parison). The plastic tube is placed into a mould, with compressed air then being blown through to push it out to match the interior of the mould.

- 8.10 There are three main types of blow moulding.

Extrusion blow moulding (EBM)

- 8.11 Extrusion blow moulding involves melting plastic and extruding it into a hollow tube (or parison). The parison is then placed in a cool metal mould and air is blown through the parison to shape into plastic object (eg, a bottle or container).

Injection blow moulding

- 8.12 In the injection blow moulding process:

- 8.12.1 the plastic is injected moulded onto a core rod to create a preform;
- 8.12.2 the preform is then moved to a blow station where it is clamped into a mould, with the core rod being opened and air being blown through preform to shape it into the plastic object; and
- 8.12.3 after cooling, the object is ejected and stripped of the core rod.

Stretch blow moulding

8.13 With the stretch blow moulding process, preforms are produced using the injection moulding process described above. These preforms are produced with the neck of the bottle on one end. The preforms are then reheated, stretched lengthways and then blown into the shape of the mould.

8.14 Relevantly, given the overlapping activities of HP and Pact, stretch blow moulding is used in the production of PET bottles.

PET bottles

8.15 PET is the most commonly applied polymer in the manufacture of CSDs, water, juice and 'sports water' beverage bottles. It is popular due to its high speed manufacturing platform for bottles without handles, high clarity and the presence of an effective recycling infrastructure.

PET bottle production

8.16 PET packaging is produced in two phases, injection moulding of preforms and blow moulding of preforms into bottles.

Phase 1 – Injection moulding of preforms

8.17 The first phase of PET bottle production involves the production of plastic "preforms" (test tube shapes that can be moulded into a bottle) from the PET resin.

8.18 Preforms are made using injection moulding machines. The PET resin is injected into a water-cooled mould, which consists of a neck, section, core and cavity. The hot PET solidifies in the mould and forms the preform shape.

8.19 The figure below shows two types of preforms manufactured by Visy.¹¹

18.5g, used for CSD and Water 250ml
– 600ml



54.5g, used for CSD and Water 2000ml
– 2250ml



8.20 Preforms come in many different shapes and sizes, depending on their end application. Buying preforms (rather than self-manufacturing) offers the flexibility of changing types, weights etc. without having to spend time (and money) changing over injection moulds. The

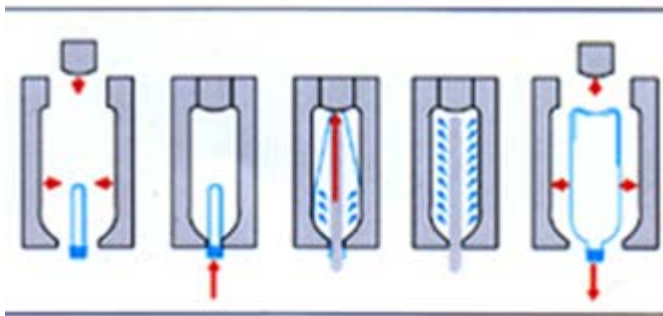
¹¹ For a full range of preforms manufactured by Visy, see <http://www.visy.com.au/packaging/?id=405>

customer is able to select the most suitable preform to produce the desired bottle. The specification of the preform to be used will be dictated by a number of different factors in the overall production process and markets being served, including bottle size and contents, how the bottle is to be filled, the type of closure to be used and the shelf life required.

Phase 2: Blow moulding of bottles

- 8.21 The second phase involves the production of bottles from the preforms, using blow moulding machines.
- 8.22 The blow moulding machine heats the preform and blows air into it, which expands into the container's desired shape.

Two-stage blow moulding process



- 8.23 The most commonly used process for producing PET bottles for CSDs, water and juice is stretch blow moulding. Stretch blow moulding technology became popular in the 1970s and is readily available.

PET blow moulding machines

- 8.24 PET bottles have to date been produced using two types of machines, single-stage machines and two-stage machines.

Single-stage machines

- 8.25 In the single-stage process (also known as "injection stretch blow moulding"), the production of the preform and the blowing of the preform into a container take place consecutively in the same machine. Two distinct production stages are incorporated in one machine, with the preform being transferred from one stage to the other while still warm.
- 8.26 The single-stage process is a slower process than the two-stage process referred to below. It is best suited to lower volume and shorter production runs. As a result, the single-stage process is typically used for the supply of small scale customers or customers who require several different containers (which require moulds to be changed on a regular basis), where high production rates are not a requirement.
- 8.27 Single-stage blow moulding machines have been used since the 1970s and are readily available. The major manufacturers of single-stage machines are Nissei ASB and Aoki, and can be single cavity machines ranging up to a machine having 8 cavities. Visy estimates that a typical new single-stage blow moulding machine, with 4 cavities, could be acquired

and installed for approximately [], with very little lead time (approximately []). However, it is possible that a small second hand single stage machine (ie, 2 to 4 cavities) could be acquired for as little as [].

Two-stage machines

- 8.28 In the two-stage process (also known as "reheat stretch blow moulding"), preforms are moulded in a dedicated injection moulding machine which produces fully cooled preforms. A separate machine is then used to blow mould the preforms into bottles.
- 8.29 Because the stretch blow moulding part of the two stage process is much faster than the injection moulding of the preforms, it is possible to achieve very high outputs from two stage systems (provided that sufficient preforms are available) compared to single stage systems.
- 8.30 The two-stage process is better suited for larger volume production and is generally configured to achieve maximum yield per unit of time. Therefore, two stage machines produce at faster rates, and with lower associated production costs, than single stage machines. Consequently, the two-stage process is typically used for the mass manufacture of beverage bottles.
- 8.31 Two-stage blow moulding machines are readily available from 1 to 36 cavities. The major manufacturers of two-stage machines are Sidel, Kronen, SIG, Sipa, Anker and Kosme. Visy estimates that a typical two-stage blow moulding machine, having 10 cavities, could be acquired and installed for approximately [], with a lead time of about []. Although, a smaller 4 cavity machine could be sourced from China, and installed within [].

Warm fill and hot fill technology for PET bottles

- 8.32 Warm-fill products are filled into bottles at around 74 degrees Celsius.
- 8.33 Warm-filling is a non-aseptic method of packaging into PET and is used to package high acid drinks such as juices and isotonic sports drinks, in order to enhance their shelf life. Warm-fill bottles are typically thicker than standard PET bottles so that they can withstand the heat of the warmed liquid.
- 8.34 Hot-filling is a method of packaging into PET bottles, in which sterilisation is achieved by heating the drink to around 85 degrees Celsius and filling into the PET bottle at that temperature. Hot-fill bottles must also be thicker than standard PET bottles so that they can withstand the heat. In addition, some hot-fill bottles have multiple contours, to prevent the wall of the bottle from collapsing when the hot liquid is introduced. Sports waters are typically packaged this way.

Rigid plastic containers

- 8.35 Non-beverage rigid plastic containers are a form of primary packaging used for a variety of applications, including:
- 8.35.1 packaging food, including food products that are liquid or semi-liquid (eg, milk, sauces, mayonnaise, oil) and solids or dry food (eg, fruit, Vegemite, jam and other spreads);
 - 8.35.2 packaging personal care products, including hair care products (eg, bottles for shampoo and conditioner), sunscreen, moisturizers and the like;

- 8.35.3 packaging household products, including dishwasher products, laundry detergents and fabric softeners, and household cleaners;
 - 8.35.4 packaging pharmaceutical products (eg, bottles/containers for tablets, vitamins etc); and
 - 8.35.5 packaging industrial and chemical products, including oil and oil additives, fertilizers and garn chemicals.
- 8.36 There are several types of resins used to manufacture non-beverage rigid plastic containers, including PET, PP, PVC and HDPE. These types of plastics can be processed using a range of manufacturing processes including injection and blow moulding.
- 8.37 Visy does not currently produce any of these types of products in New Zealand, []
- 8.38 HP currently produces a relatively small volume of these products using its single-stage PET equipment.

Visy

- 8.39 Visy is an Australian packaging and recycling company. It was established in Melbourne, Australia in 1948 and is privately owned by the Pratt family through a family trust.
- 8.40 Visy's New Zealand operations include:
- 8.40.1 the manufacture and supply of PET beverage bottles and PET preforms; and
 - 8.40.2 the collection and processing of recyclable materials.
- 8.41 Visy's PET business was developed from the acquisitions of Southcorp's New Zealand and Australian packaging assets in 2001 and, relevantly, CCA's PET bottle assets in 2002.

Visy's PET business

- 8.42 Visy has two PET facilities in New Zealand, one in Auckland and one in Christchurch, producing approximately [] PET bottles per year (excluding current production from CCA that will be transferred as part of CCA's move to self-manufacture, as set out further below), as well as five manufacturing facilities in Australia.
- 8.43 Visy's PET operations and facilities are referred to further below. However, in brief, Visy has traditionally focussed on supplying customers requiring large volume products (namely, large suppliers of carbonated soft drinks (**CSDs**) using two-stage equipment).
- 8.44 As set out above, the two-stage process is much faster than the single-stage process and better suited for larger production volumes. By way of example, Visy runs large blow moulders with up to []. More specifically, of Visy's [] two stage machines in New Zealand:
- 8.44.1 []
 - 8.44.2
 - 8.44.3

8.44.4

8.44.5]

8.45 In contrast, single stage machines can operate with a single cavity, and range up to 8 cavities. [].

8.46 Consequently, large two stage machines produce at faster rates, and with lower associated production costs, than single stage machines. [

:

8.46.1

8.46.2 ¹²]

Impact of CCA's decision to self-manufacture

8.47 Visy's current supply arrangements with CCA were entered into as part of Visy's acquisition of CCA's bottling assets in 2002. [

].

8.48 Since then, until CCA's decision to self-manufacture, typically more than [] of all PET bottles manufactured and supplied by Visy in New Zealand had been supplied to CCA.

8.49 In 2009, CCA announced that it would be self-manufacturing its PET volumes. This decision will significantly reduce Visy's production volumes. In fact, it is already affecting Visy's supply volumes as:

8.49.1 [

8.49.2]

8.50 CCA's move to self-manufacture will also mean that, by 2015, CCA will be the largest producer of PET bottles in each of New Zealand and Australia.

8.51 CCA is part way through the implementation of its self-manufacture project which will involve the commissioning of blow-fill technology at CCA's seven New Zealand and Australian bottle filling sites, and also the production of preforms and closures at CCA's Eastern Creek (NSW) facility.

8.52 In terms of specific steps in the implementation of CCA's self-manufacture project in New Zealand:

8.52.1 as set out above, CCA transferred production of CSD bottles to self-manufacture over the course of 2011; and

8.52.2 [

¹² []

]

8.53 CCA's move to in-house manufacture, together with a broader trend to self-manufacture (described in Section 10 of this Notice), will require Visy to seek opportunities to redeploy the resulting surplus blow moulding and injection moulding capacity. In this regard, Visy is considering a number of potential options, including:

8.53.1 [

8.53.2

]

8.54 By way of example:

8.54.1 [

8.54.2

8.54.3

]

8.55 However, the above examples also reflect that there are significant limitations on the extent to which two-stage capacity can be deployed to produce bottles that are currently being produced using single-stage equipment.

8.56 Specifically, if a customer can be supplied with a bottle that is produced from a preform with a standard neck (ie, 28 or 38 mm), and with bottle designs that are not overly complex, then it may be feasible to supply the customer in relatively small volumes. [

]

8.57 Also, Visy does supply some customers with stock PET bottles in volumes of less than [] using two-stage equipment. That is, Visy will typically produce a certain volume of 'standard stock bottles' each month (based on volume forecasts), and then hold these stock bottles in storage for customers that wish to acquire them in relatively small volumes. However, this type of arrangement (ie, providing stock bottles) is not appropriate for customers that require specific designs.

8.58 While these types of arrangements enable Visy to target some smaller customers with two-stage equipment, this two-stage equipment is not well suited to specialised bottles at small production runs. In particular, where the customer requires a bottle with a non-standard size closure (ie, which cannot be produced using the standard preform neck size of 28 or 38 mm), it is not feasible for this to be supplied using two stage equipment as the costs of producing non-standard preforms for two-stage machines are prohibitive except where significant volumes are secured. Also, many smaller customers require irregular bottle designs which cannot be produced on two-stage machinery. [

8.58.1

8.58.2

8.59

8.59.1

8.59.2

8.60

8.60.1

8.60.2

]

8.61 The practical and commercial difficulties involved in utilising two-stage capacity to seek to supply smaller customers (identified above), as well as the fact that to date Visy has not utilised its single stage machine in New Zealand, reflect that despite its excess (two-stage) capacity, Visy is in no better position to win the business of smaller customers than any other market participant.

8.62 [

]

Visy's blow moulding facilities

8.63 As described above, Visy has blow moulding facilities in Auckland and Christchurch that produce PET bottles, and injection moulding facilities in Auckland to produce preforms. Set out below is a table describing:

8.63.1 the number and types of machines at each facility;

8.63.2 the production and capacity of these types of machines; and

8.63.3 the types of PET bottles produced at Visy's facilities.

Table - Visy's PET facilities

			13	14	15	

Visy's PET Customers

8.64 Visy's PET customer base consists almost wholly of beverage companies, which use the PET bottles for CSDs, juice, water, sports drinks and wine and beer.

8.65 Visy's major PET customers include:

¹³ Production details are based on current operations. Also, these figures include bottles that are still being produced for CCA, but that CCA will be moving to self-manufacture in the next []. Excluding the bottles that are moving to CCA for self-manufacture, current production of PET bottles [].

¹⁴ [].

¹⁵ Seasonal issues must be taken into account when looking at absolute numbers concerning unutilised capacity.

8.65.1 CCA – As set out above, CCA has traditionally been supplied with the majority of Visy's PET bottles production in New Zealand ([] until CCA commenced transferring to self-manufacture);

8.65.2 Frucor Beverages Ltd (**Frucor**) – [];

8.65.3 Murdoch Manufacturing Limited (**Murdoch**) – []

8.65.4 Makan Distillers (**Makan**) []

8.65.5 Aquasplash []

8.65.6 Foodstuffs []

8.66 []

PET Preforms

8.67 As set out above, in addition to PET bottles, Visy also produces PET preforms at its Auckland facility. Visy currently produces [] preforms per annum in New Zealand.

8.68 Visy uses the majority of these preforms for its own requirements, but supplies:

8.68.1 []
]; and

8.68.2 []
]

8.69 While Visy is currently supplying CCA with preforms (both in New Zealand and Australia), CCA is moving to self-manufacture in Australia []

]

HP

8.70 HP is a plastic packaging and steel drum manufacturer in New Zealand and Australia, supplying a range of packaging for products both domestically and abroad. As stated above, HP has had Receivers appointed.

8.71 HP was formed through the acquisition and mergers of Hollywood Plastics, Amcor's PET business and Greif's steel packaging business.

8.72 HP manufactures products using a range of plastics including HDPE, LDPE, PVC, PP and PET, as well as steel drums. HP supplies a range of standard sizes and shapes of packaging, as well as custom moulded shapes, ranging from as small as 20ml to as large as

200L for plastics and steel. HP also supplies a range of lids, closures, linings for the inside of steel drums and print labelling or printing directly onto packaging.

8.73 HP's combined Australian and New Zealand business has three business divisions:

8.73.1 **HP PET** – focuses on the manufacture of bottles, containers and injection moulded closures for the beverage, food, industrial and automotive, personal and pharmaceutical industries using single-stage and two-stage injection and stretch blow moulding machines;

8.73.2 **HP Plastics** – focuses on the manufacture of bottles, jars and containers, and injection moulded closures and seals, servicing customers in the food and beverage, industrial, pharmaceutical, personal care, household products and automotive industries; and

8.73.3 **HP Steel** – focuses on the manufacture of new steel drums with open and closed heads, lids, tops and locking mechanisms for the industrial, chemical, oil and food industries.

8.74 However, in New Zealand, apart from a small volume of injection moulded closures, HP only produces PET products.

8.75 As noted above, HP's does produce a small volume of injection moulded closures in New Zealand [].

8.76 If specifically requested to do so by a customer, Visy will arrange for the customer to be supplied with closures. However, Visy does not produce any plastic closures in this market [].

8.77 In light of the minimal presence of the parties in the closures market, and the NZCC's conclusions about this market in the Alto Decision (ie, that the ease of importing and broad range of suppliers imposed strong competitive constraints on suppliers), Visy submits that the Proposed Acquisition could not give rise to a substantial lessening of competition in the New Zealand closure market. Therefore, this Notice will not address this market in any detail.

8.78 As set out above, if the Proposed Acquisition and Proposed Australian Acquisition were to proceed, Visy would acquire the assets of the HP PET and HP Plastics businesses. However, the assets of the HP Steel business are not included.

HP's PET business

HP's manufacturing facilities

8.79 HP has one PET bottle manufacturing facility in Auckland, as well as two in Australia. The table sets out:

8.79.1 the type and number of machines at HP's Auckland facilities;

8.79.2 the production and capacity of these machines; and

8.79.3 the types of products produced from these machines.

Table HP's PET facility

Type of machine	Number of machines	Cavities	Capacity (million) ¹⁶	Production (million)	Types of products
Single-stage blow moulders	□	□	□	□	Jars/ unique neck bottles/ oblong bottles (used mainly for food and household products)
	□	□	□		
Two-stage blow moulders	□	□	□	□	Hotfill/Warmfill/ Water bottles
	□	□	□		
Injection moulders (preforms)	□	□	□	□	Preforms (for HP's own requirements)
Injection moulders (closures)	□	□	□	□	

8.80 The above table reflects that the composition of HP's machinery is weighted much more heavily toward single-stage machines than Visy, which has focussed on production of large volumes of PET beverage bottles using two-stage machines. Further, HP's two-stage machines are also smaller than most of Visy's two stage equipment, []

HP's customers

8.81 HP's largest customer in New Zealand is Frucor, []

8.82 Apart from Frucor, HP's focus is on supplying relatively small customers with specialised bottles using its single-stage equipment. These customers include:

8.82.1 South Pacific Brands, []

8.82.2 Otakiri Springs, []

8.82.3 New Zealand Quality Water, []

¹⁶ []

8.83 As set out above, while HP manufactures PET preforms for its own requirements, Visy is not aware of HP supplying preforms to third parties.

HP – Small Rigid Plastic Containers

8.84 Apart from its production of PET beverage bottles, HP also produces a relatively small volume (approximately [] units per annum) of small rigid plastic containers, being PET containers produced using HP's single-stage equipment. These containers are used for a range of applications, including:

8.84.1 honey jars;

8.84.2 pill bottles;

8.84.3 oil bottles; and

8.84.4 jars for Nestle.

8.85 HP's major small rigid plastic customers include:

8.85.1 Croftpack, a distributor operating in the South Island[]

8.85.2 Nestle,[]

8.85.3 Honey New Zealand,[]

Overlapping activities of the parties

8.86 The following areas of overlap exist between the parties:

Table - Overlap Between Parties

Area of overlap	HP	Visy
Manufacture and supply of PET beverage bottles	✓ North Island Using both single stage and two stage machines	✓ North Island and South Island Predominant focus on larger customers using two stage machines []
Manufacture of PET preforms	✓ Only manufactures preforms for its own bottle production	✓ Manufactures preforms for its own purposes and for supply to third parties [].
Manufacture and supply rigid plastics containers	✓ Manufactures a range of rigid plastic containers of up to 5L, including bottles and jars for a range of applications.	No current production, []
Acquisition of PET resin	✓	✓

8.87 Therefore, at present the only area of overlap between HP and Visy is the supply of PET beverage bottles in the North Island (and associated activities, such as the acquisition of resin and the manufacture of PET preforms). This area of overlap will be the major focus of this Notice.

8.88 However, even in the manufacture and supply of PET bottles in the North Island, HP and Visy, to an extent, focus on different segments of the market. Specifically:

8.88.1 to date Visy's PET business has predominantly focused on supplying high volumes of bottles to 2 large customers, namely CCA and Frucor, using larger two stage machines that are suited to long production runs; whereas

8.88.2 HP's business focuses on customised production with shorter production runs using single-stage equipment to service smaller customers and the special requirements of larger customers. While HP does have two-stage machinery, its 2 stage machines are smaller than most of Visy's machines, and are [].

8.89 Apart from the supply of PET beverage bottles in the North Island, the overlap between Visy and HP is very limited, as:

8.89.1 HP does not have production facilities on the South Island;

8.89.2 [] it currently only produces PET beverage bottles in New Zealand;

- 8.89.3 while both Visy and HP produce preforms, Visy is not aware of HP supplying any preforms to third parties;
- 8.89.4 Visy and HP both acquire resin, but it is imported;
- 8.89.5 Visy does not produce plastic closures in New Zealand, while HP produces only a small volume of closures; and
- 8.89.6 neither Visy nor HP manufacture or supply large rigid plastic containers (ie, 20 litres or more) in New Zealand. Indeed, apart from PET beverage bottles, Visy does not supply any plastic containers in New Zealand.

9. Industries Affected

- 9.1 The Proposed Acquisition affects the rigid plastic packaging industry. Relevant background to the rigid plastics packaging industry is set out in section 8 of this Notice.

10. Current Industry Trends

Trend to self-manufacture

- 10.1 As described above, the most significant recent industry development has been CCA's decision to move to self-manufacture of PET bottles, installing blow-fill equipment at its New Zealand and Australian facilities.
- 10.2 CCA has stated that it expects the project to deliver cost savings to it by eliminating empty bottle storage, handling and transport costs as well as achieving a reduction in the amount of PET resin used to manufacture the bottles.
- 10.3 CCA's decision to self-manufacture reflects a broader industry trend. Namely, while in the last few decades customers sought to outsource their PET bottle manufacturing activities, in recent times, there has been a move back to in-house manufacturing of PET bottles. Consequently customers (particularly larger customers) are now the largest competitive threat to PET bottle suppliers like Visy.
- 10.4 This trend has been driven by a desire to reduce the cost of packaging (by reducing transport costs and "lightweighting" bottles) and has been facilitated by recent applications of technology. Customers who wish to manufacture PET bottles in-house are now able to viably source equipment to allow them to do so.
- 10.5 Customers who wish to self-manufacture PET bottles have, in addition to the traditional methods of manufacturing referred to above, two newer technologies available to them allowing them to blow and fill the bottles on site:
 - 10.5.1 "Blow in line" manufacturing (and less sophisticated alternatives that result in blowing and filling, but not on the same line); and
 - 10.5.2 "Blowfill" manufacturing.
- 10.6 Both processes involve the manufacture and filling of the PET bottle at the customer's beverage facilities, and can generate savings on:

- 10.6.1 transportation costs (by reducing freight and handling, and removing the need for palletising and de-palletising etc); and
- 10.6.2 if "lightweighting" is undertaken, input costs.

"Lightweighting" means manufacturing thinner bottles, using less PET material. Lightweighting is generally not viable where the PET bottle manufacturing process is undertaken off-site by an external manufacturer, due to the risk that lightweighted bottles will be damaged during transportation. (Blowfill may also allow for additional lightweighting than blow in line, since it involves less handling of the bottle prior to filling.)

- 10.7 The equipment used for the two processes differs, as described below.

Blow in line

- 10.8 Blow in line manufacturing involves the attachment of a blow moulding machine to the customer's existing filler equipment. The customer purchases PET preforms, they are blown into bottles in the blow moulding machine and air channelled to the customer's existing filler machine for direct filling.
- 10.9 Visy understands that blow in line equipment is readily available, and can be installed with a lead time of around []. The costs of equipment will vary (and depend on the requirements and preferences of the customer). Visy estimates that the cost could be as low as [], using second hand blow moulders and conveyors, ranging up to approximately [] to acquire and install equipment.
- 10.10 Again, the volume of PET bottles at which a customer may choose to move to self-manufacturing will depend on the circumstances and preferences of the customer, but Visy's view is that blow in line is a feasible option for customers requiring approximately []
- 10.11 By way of example, Kauri Springs, a contract water filling company based in Northland, established bottle manufacturing facilities when Visy estimates that its bottle requirements were approximately [] units per annum.

Blowfill

- 10.12 Blowfill manufacturing is undertaken by a "combi" unit, which integrates the blow moulding and filling functions in one machine, allowing for faster production and longer runs.
- 10.13 To Visy's knowledge, there are [] blowfill machines in New Zealand [].
- 10.14 Apart from CCA, Simply Squeezed (a wholly owned subsidiary of Frucor), which supplies fruit juice from its base in Hawkes Bay, produces its own PET bottles using a []
- 10.15 []
- 10.16 In addition to CCA and Frucor:
- 10.16.1 []

]

10.16.2 TSL produces for bottles for its Bevpac subsidiary. []

10.16.3 as described above, Kauri Springs, a contact water filler, produces its own bottles and Visy estimates that its bottles requirements were only [] units per annum when it commenced self-manufacture;

10.16.4 [

]

10.16.5 more generally, given the low cost of equipment and the advances in technology, Visy considers that there are a number of PET bottle customers that could viably self-manufacture.

10.17 As set out further below, there has recently been entry into the PET market by Waipak, and expansion by Linkplas through the acquisition of an additional single-stage machine. Visy considers that, to an extent, this recent entry and expansion reflects the lower cost and ready availability of reliable machinery from Asia.

Growth in bottled water

10.18 From a demand perspective, a significant industry trend in coming years is likely to be the growth in the bottled water market.

11. Previous Acquisitions and Commission Notifications

11.1 Relevant mergers that have recently occurred in the industry include the:

11.1.1 acquisition by Visy Industrial Plastics (NZ) Limited of ACI Operations NZ Limited (Decision No 524, 26 May 2004), and follow-up sale of two stage assets to VisyPET (Decision No 527, 30 June 2004);

11.1.2 acquisition of Alto Holdings Limited by Visy Industrial Plastics (NZ) Limited (Decision No. 583, 28 June 2006) (**Alto Decision**); and

11.1.3 acquisition of Tecpak Industries Limited by TEC Projects Limited (Decision No. 702, 18 November 2010);

11.1.4 proposed acquisition of Viscount Plastics by Pact Group (currently being considered by the NZCC).

Part III: Market Definition

Horizontal Aggregation

12. Market Dimensions

- 12.1 As noted above, the NZCC has previously considered acquisitions involving PET bottle producers (and, more generally, rigid plastic container producers). In particular, the Alto Decision.
- 12.2 The NZCC identified the following markets:
- 12.2.1 the North Island market for manufacture and supply of PET beverage bottles (**North Island PET beverage bottle market**);
 - 12.2.2 the South Island market for the manufacture and supply of PET beverage bottles (**South Island PET beverage bottle market**);
 - 12.2.3 the New Zealand market for the manufacture and supply of small rigid containers - of a size up to 20 litres (**the small rigid plastic container market**);
 - 12.2.4 the New Zealand market for the manufacture and wholesale supply of large rigid plastic containers – of a size of more than 20 litres (**the large rigid plastic container market**); and
 - 12.2.5 the New Zealand for the manufacture or import and wholesale supply of plastic closures (**the plastic closures market**).
- 12.3 Visy considers that some of these markets definition may be unnecessarily narrow. For example:
- 12.3.1 there remains substantial substitutability between PET bottles, glass bottles and aluminium cans, and defining a product market as PET beverage bottles may be too narrow an approach; and
 - 12.3.2 having separate PET bottle markets for the North Island and South may be an overly narrow geographic market having regard to changes in technology.
- 12.4 However, for the purposes of this Notice only, Visy accepts the above market definitions.
- 12.5 The only current overlap between the parties in the above markets is in the North Island PET market. This market will be the focus of the remainder of this submission.
- 12.6 Visy does not currently manufacture or supply small rigid plastic containers in New Zealand, [] for the sake of completeness, Visy will also address the small rigid plastic container market in this submission.
- 12.7 HP does produce a small volume of plastic closures. If specifically requested to do so by a customer, Visy will arrange for the customer to be supplied with closures. However, Visy does not produce any plastic closures in this market [].

- 12.8 Therefore, the Proposed Acquisition will simply result in the bare transfer of HP's current small market share to the merged entity. Further, Visy notes the NZCC's conclusions in the Alto Decision that the ease of importing and the broad range of suppliers imposed strong competitive constraints in this market. Consequently, Visy submits there is no possibility that the Proposed Acquisition could give rise to competition concerns in the plastics closures market, and this Notice does not address this market any further.
- 12.9 Finally, while both Visy and HP acquire PET resin, Visy notes that all PET resin supplied in New Zealand is imported and linked to world prices. Therefore, Visy will not address this further in this submission.

13. Product Differentiation

PET bottles

Single-stage and two-stage processing

- 13.1 As explained elsewhere in this submission, PET bottles can be produced using either single-stage or two-stage machines.
- 13.2 Large two-stage machines, such as those owned by Visy, are better suited for larger volume production and are generally configured to achieve maximum yield per unit of time. Large two-stage process are typically used for the mass manufacture of beverage bottles. As described elsewhere in this Notice, the size of two-stage machines do vary, and smaller two-stage machines (such as those owned by HP) have lower outputs per unit of time.
- 13.3 Single-stage machines are slower process than two-stage machines, and best suited to lower volume and shorter production runs. As a result, the single-stage process is typically used for the supply of small scale customers or customers who require several different containers (which require moulds to be changed on a regular basis), where high production rates are not a requirement.
- 13.4 Visy submits that this is the main point of differentiation in the PET market.
- 13.5 Although it does supply Frucor, HP operations are, to a large extent, focussed on supplying smaller customers, and the special requirements of larger customers, using single stage machines. In contrast, Visy has traditionally only operated two-stage machines, producing high volumes of bottles for large customers. That is, Visy and HP have tended to focus on different segments of the market.

- 13.6 [
-]

Warmfill and Hotfill

- 13.7 As described above, some beverages are filled into PET bottles at higher temperatures using warmfill or hotfill technology. However, as noted in the Alto Decision, the cost of adapting cold fill machines to have warm fill/hot fill capability is relatively small. Therefore, for the purposes of competition analysis, Visy submits that this is not a significant issue.

Rigid plastic containers

- 13.8 Visy has less direct experience of rigid plastic containers. However, as reflected in the description in Section 8, there is differentiation in:
- 13.8.1 the types of containers produced and their application;
 - 13.8.2 the type of resin processed to produce the containers;
 - 13.8.3 the method of production; and
 - 13.8.4 the level of customisation (ie, equipment better suited to long production runs will tend to be used for larger customers, whereas smaller customers tend to require greater levels of customisation and customer support).
- 13.9 However, while rigid plastic containers have different applications and are produced using different resins, Visy submits that this should not result in a narrow market definition being adopted given the supply and demand side substitutability. By way of example, EBM machines can be used to produce a range of containers using PP, HDPE, PVC and LDPE.

Vertical Integration

14. Creation/Strengthening of Vertical Integration

- 14.1 Visy and HP both operate at the same levels of the supply chain, being the manufacture and wholesale supply of PET bottles (and some small rigid plastic containers in the case of HP). Therefore, the transaction will not create or strengthen any "vertical integration" within the merged entity.

Part IV: Counterfactual

15. Counterfactual

- 15.1 As noted above, HP has been placed into receivership. [
- 15.2
- 15.2.1
 - 15.2.2
- 15.3]

Part V: Competition Analysis

Existing Competitors

16. Current Competitors

PET bottles

16.1 The table below sets out the PET bottle manufacturers and suppliers on the North Island of whom Visy is aware, and an overview of the types of equipment they use at their facilities (their operations are described in more detail Attachment 2 to this Notice). Visy does not have production or capacity estimates for a number of these producers.

Table – PET Beverage Bottle Suppliers on North Island

Supplier	Equipment ¹⁷	Production (million)	Capacity (million)	Overview
Visy	Single stage and two stage equipment	[¹⁸]	[]	See description in Section 8 of this Notice
HP	Single stage and two stage equipment	[]	[]	See description in Section 8 of this Notice.
Linkplas	Single stage equipment	[]		Linkplas manufacture and supplies PET bottles from its facility in Auckland. Linkplas's main customer include Waiwera Water.
Waipak	Single stage and two stage equipment	[]		Waipak entered the market approximately two years ago and has grown rapidly. It focuses on supplying customers in the Hawkes Bay region from its facility in Napier. Its main customers are Living Water Enterprises, VNC Manufacturing and Plumpton Park Estate.

¹⁷ The size of two stage equipment used by the different producers varies significantly.

¹⁸ []

Supplier	Equipment ¹⁷	Production (million)	Capacity (million)	Overview
TSL	Two stage equipment	□		<p>TSL manufactures and supplies PET bottles to Bevpak from its facility in Auckland.</p> <p>TSL supplies most of its bottles to its wholly owned subsidiary Bevpak NZ (1996) Ltd (a contract filling company), but also supplies other beverage customers, such as Redwood Cellars, Bulmer Harvest and Yeomans.</p>
Pact	Single stage and two stage equipment	□		Pact supplies PET bottles to customers including Heinz, Fonterra, Goodman Fielder and Murdochs.
Premier Plastics	Single stage equipment			Premier Plastics manufactures and supplies PET bottles at its facility in Auckland.
Bottles Limited	Single stage equipment			Bottles Limited manufactures and supplies bottles from its facility at Mt Wellington, Auckland. Its main customer is Pure Dew.
Kauri Springs	Two stage equipment			Manufacture and supplies PET bottles at its facility in Northland as part of its contract filling operations. Its main customers are Premium New Water, For Everyone Water and Azure Blue Water.
Blow Moulders Limited	EBM equipment			Produces a small range of stock bottles from its facility in Auckland.
Forward Plastics	Single stage and EBM equipment.			Produces a small range of stock bottles from its facility near Auckland.
Pharmapac	Single stage equipment			Produces small range of stock bottles.

- 16.2 Apart from the suppliers of PET bottles described above, as described elsewhere in this Notice, there are also PET bottle end users that manufacture their own PET bottles, being CCA and Frucor (through its wholly owned subsidiary Simply Squeezed). Visy anticipates that the number of self-manufacturers of PET bottles will continue to expand.

Small rigid plastic containers

- 16.3 Visy does not currently compete in the small rigid plastics container market. However, it understands that the following companies supply rigid plastic containers in New Zealand:

16.3.1 Pact;

16.3.2 Premier Plastics/Cospak;

16.3.3 HP; and

16.3.4 Linkplas.

- 16.4 Visy notes that there were a number of other suppliers of rigid plastic containers identified in the Alto Decision that may still be operating. For example:

16.4.1 Pharmapac;

16.4.2 Blow Moulders Limited; and

16.4.3 Q Pac (now Aotea Plastics).

- 16.5 Publicly available information on the operations of these entities is included in Attachment 2 to this Notice.

17. Market Shares

PET beverage containers

- 17.1 The table below sets out market shares for PET bottles in the North Island on the following measures on a per annum basis:

17.1.1 volumes of PET bottles sold;

17.1.2 sales revenue for PET bottles sales;

17.1.3 resin used in PET bottle production.

- 17.2 Visy does not have estimates for all PET producers in the North Island, and these producers are not included in the below table. However, as reflected in the table in Section 16, there are a number of other additional suppliers of PET bottles to those set out in the market share table, including Kauri Springs, Premier Plastics, Bottles Limited, Pharmapac, Forward Plastics and Blow Moulders Limited.

17.3 As noted, the table excludes PET bottle production that CCA has transferred, or is transferring, to self-manufacture.

Table - North Island – excluding CCA

SUPPLIER	Resin Used		PET Bottles Sold		Pet Bottle Revenue	
	Tonnes	Market %	Number	Market %	\$m	Market %
VISY*	[
VIP (including Alto)						
HP						
Linkplas						
TSL						
Waipak]
TOTAL	0	100	0	100	0	100

*Excludes CCA moving to self-manufacture
 Source: Visy estimates and HP

Small rigid plastic containers

17.4 The below tables sets out Visy's estimates of markets share in the national market for small rigid plastic containers measured by sales volumes and sales revenues (on a per annum basis).

17.5 Visy notes that, in providing these estimates,[]

SUPPLIER	VOLUMES MANUFACTURED/ SOLD		REVENUE	
	Market%	Number	Market %	\$
Pact*				
HP				
Premier Plastics Limited/Cospak				
Link Plas Limited				
TOTAL	100	0	100	0

* []

Source: Visy estimates and HP

18. Extent of Constraint by Possible Competitive Response

North Island PET Bottles Market

18.1 In the event that the Proposed Acquisition were to proceed, the merged entity will continue to be subject to strong competitive constraint from the existing suppliers of PET in the North Island as set out above in Section 16 (and Attachment 2 to this Notice). Visy's reasons for this submission are as follows.

Vigorous competition in the supply of PET bottles

18.2 There is currently intense and vigorous competition between suppliers of PET in the North Island. This is reflected in the table below showing recent examples of competition between PET suppliers to win and retain business in the context of responding to tenders, or actively seeking opportunities to supply customers.

18.3 Visy does not have direct knowledge of the reasons for all of the above tender and RFP outcomes, but by way of example:

18.3.1 [

18.3.2

18.3.3

18.3.4

]

18.4 Apart from these examples on the North Island, there is also intensive competition on the South Island, as reflected in these recent examples:

18.4.1 [

18.4.2

18.4.3

18.4.4

]

18.5 The above table and examples reflect:

18.5.1 there is vigorous competition from a range of suppliers in the PET bottle market in the North Island (eg, with multiple parties responding to opportunities to supply bottles, and instances where incumbent suppliers have been displaced);

18.5.2 more specifically, Visy and Pact compete vigorously with each other, and are considered to be head-on competitors by customers. Although, even if the NZCC were to treat Visy and Pact as associated entities, Visy submits that the Proposed Acquisition would still not give rise to competition having regard to the factors set out in this Notice;

18.5.3 while Visy does have significant amount of two-stage capacity [

] it cannot necessarily deploy this capacity in all segments of the market. In particular, where customers require customised bottles [

], Visy cannot necessarily compete effectively using its two-stage machines.

18.6 That is, the practical and commercial difficulties involved in utilising two-stage capacity to seek to supply smaller customers (identified above), as well the fact that to date Visy has not utilised its single stage machine in New Zealand, reflect the fact that despite Visy's excess (two-stage) capacity, it is in no better position to win the business of smaller customers than any other market participant.

- 18.7 Visy submits that the merged entity will continue to face vigorous and intense competition of this nature if the Proposed Acquisition proceeds having regard to the features of the North Island PET market.

Merged entity will continue to compete against a broad range of vigorous competitors

- 18.8 The merged entity will continue to compete against a broad range of effective and vigorous competitors with single-stage and two-stage capability. Visy notes that the number of suppliers in the North Island PET bottle market has expanded since the NZCC considered the market in the Alto Decision. Namely:

18.8.1 Waipak entered the market approximately 2 years, and its operations are described further below; and

18.8.2 Visy also understands that Bottles Limited and Forward Plastics have entered the market within the last 5 years.

Contractual arrangements do not limit competition

- 18.9 Visy submits that contractual arrangements do not limit competition in the PET bottle market.

- 18.10 Larger customers being serviced using two stage equipment will typically have contracts of 2 to 3 years where the cost of the tooling is amortised over the length of the contract. However, these customers can switch to other suppliers that have two-stage capacity at the end of their contracts.

- 18.11 While some customers may have contracts, this does not necessarily mean that the business of the customers that is subject to the contract is not contestable (or subject to competition) during the term of the contract (particularly when the cost of tooling does not need to be included in the contract). [

]

- 18.12 Smaller volume customers will tend to have shorter term contracts (eg, often annual contracts). These customers are generally supplied with standard sized bottles, or using single stage machines where the costs of setting up a mould are not significant.

- 18.13 These customers can easily switch between suppliers, and there are a broad range of suppliers that can meet their requirements.

Capacity requirements and ease of expansion

- 18.14 Larger customers require suppliers that have sufficient capacity to meet their demand requirements. However, Visy submits that there will continue to be a number of suppliers that have the capacity to meet the requirements of larger customers. For example:

18.14.1 TSL; and

18.14.2 Pact.

- 18.15 It may be the case that, if some of these suppliers were to enter into a contract to supply significant volumes of PET bottles, that they would need to increase their capacity.

However, as set out above, the cost of PET equipment is relatively low and Visy submits that the barriers to expansion are low.

- 18.16 Visy notes that NZCC concluded in the Alto Decision that expansion in the North Island could occur easily with minimal deployment of additional investment, and that current manufacturers need only run their machines for additional hours to meet any increased demand.
- 18.17 Visy submits that manufacturers can now meet demand even more easily than was the case in 2006 as result of CCA's decision to move to self-manufacture, and the likelihood that more customers will move to self-manufacture.

Customers are also competitors

- 18.18 Further, as set out elsewhere in this Notice, quite apart from having the option of switching third party suppliers, PET bottle customers have the option of self-manufacture. That is, in many respects, the greater competitive constraint than switching suppliers is customers switching to self-manufacture. CCA's decision to move to self-manufacture is the clearest example of this, but Visy also notes that:

18.18.1 Frucor already manufactures PET Bottles through its wholly owned subsidiary, Simply Squeezed. [

];

18.18.2 Kauri Springs, a contact water filler, produces its own bottles

18.18.3 [

18.18.4

]

18.18.5 while TSL does also supply bottles to third parties, it supplies bottles to its Bevpak subsidiary using a production method that is similar to blow in line; and

18.18.6 more generally, given the relatively low cost of equipment, Visy considers any customer with volumes in excess [] per annum could feasibly self-manufacture PET bottles. In fact, Visy estimates that Kauri Springs's bottle requirements when it commenced self-manufacture were [] units per annum.

Small rigid plastic containers

- 18.19 Visy does not currently participate in the small rigid plastic containers market. [] However, in respect of the impact of the Proposed Acquisition on the small rigid plastic containers market, Visy notes:

18.19.1 Visy currently has no presence in the market, and HP has a relatively small presence in the market. Therefore, the merged entity will be a small player but one with increased potential to be a vigorous and effective competitor to the existing suppliers.

- 18.19.2 Premier Plastics and Pact are the two most significant suppliers into this market, and this will continue to be the case.
- 18.19.3 As described further below, barriers to entry and expansion are low, with equipment costs being low and the short lead times for installing equipment.
- 18.19.4 The major customers in this market are large, sophisticated, companies. While Visy has limited knowledge of the commercial arrangements in this market, these types of customers would be expected to conduct highly competitive procurement processes. Also, given the low equipment costs, Visy considers it likely that a number of customers in this market could viably self-manufacture.
- 18.19.5 Apart from the major suppliers, there appear to be arrange of other suppliers that will impose a competitive constraint based on the NZCC's consideration of the market in the Alto Decision, although Visy has limited knowledge of these smaller suppliers.
- 18.19.6 Visy understands that there are imports of filled and unfilled products in this market.
- 18.19.7 Visy submits that it and Pact should not be treated as associated entities. However, even if this were the case:
- (a) the increase in an aggregated market share would be marginal given the low volumes supplied by HP;
 - (b) all of the other factors noted above would still apply. Namely, there will still be a broad range of alternative suppliers, Premier Plastics will continue to be Pact's most significant competitor and barriers to entry are low.
- 18.20 Visy notes that, in concluding that VIP (NZ) Limited's acquisition of Alto would not result in a substantial lessening of competition in the small rigid plastic containers market, the NZCC had regard to the range of competitors and ease of entry and expansion. Visy submits that these factors continue to apply.

Potential Competition

19. Requirements for New Entry and/or Importers

PET Bottles

- 19.1 Visy submits that the barriers to new entrants in the production of PET bottles are low. Specifically:
- 19.1.1 The cost of acquiring PET equipment is low. For example, Visy estimates that a typical single-stage blow moulding machine with 4 cavities could be newly acquired and installed for approximately [] (although, given the low cost of second hand machines, it may be possible to do this for a lower amount (eg, acquire a second hand machine for as little as []).
- 19.1.2 Two-stage blow moulding machines are readily available from 1 to 36 cavities. The major manufacturers of two-stage machines are Sidel, Kronos, SIG, Sipa,

Anker and Kosme. Visy estimates that a typical two-stage blow moulding machine, having 10 cavities could be acquired and installed for approximately [], with a lead time of about []. Although, a smaller 4 cavity machine could be sourced from China, and installed within [].

19.1.3 New and second hand equipment is readily available to prospective purchasers. By way of example, single stage PET equipment is available online to prospective purchasers at the following websites:

(a) Plastmart-http://www.plastemart.com/used-plastics-machines.asp?cat_id=1326&prodname=Used-Blow-Moulding-Machine-Stretch-Blow;

(b) Alibaba-http://www.alibaba.com/product-free/120754122/Aoki_Injection_Strech_Blow_Molder.html;

(c) Equipnet (which sells a range of equipment) - <http://www.equipnet.com>

19.1.4 The ability to sell equipment second hand mitigates the sunk costs of acquiring PET equipment.

19.1.5 Blow moulding equipment can be converted to produce products other than PET beverage bottles.

19.1.6 The lead time for new entry is minimal, and Visy estimates that a new entrant could be operational within around 6 months.

19.1.7 Otherwise, the barriers to new entry are minimal, namely:

(a) locating a suitable space in which to undertake PET bottle production;
and

(b) meeting basic food standard compliance requirements.

19.2 The recent example of Waipak successfully entering the PET bottle market reflects the low barriers to entry.

Small rigid plastic containers

19.3 Visy submits that the barriers to entry in the rigid plastic containers market are also low, and that the same factors noted above in respect of the PET market also apply.

19.4 However, the cost of acquiring equipment can be even lower for new entrant in the rigid plastic container market. For example, an EBM machine with a capacity of []

20. Conditions Influencing Entry

20.1 As described above, the barriers to entry in both the PET bottle market and rigid plastic containers markets are low.

20.2 Ultimately, new entry (or expansion) will be prompted by opportunities that potential entrants (or existing entrants looking to expand) perceive in the market. For example, Waipak

entered the market approximately two years ago with a facility in the Hawkes Bay region and has developed its business by supplying customers that are relatively proximate to that facility.

- 20.3 Visy considers that a potential opportunity for new entry into the PET bottle market that may arise in the coming years is in the growth of the bottled water market.
- 20.4 Also, as set out elsewhere, Visy considers that an ongoing trend will be the move to self-manufacture. That is, customers themselves entering the market (or replacing third party supply) to supply their own requirements.
- 20.5 Finally, while there is currently excess production capacity in large two-stage PET equipment following the decision by CCA to self-manufacture, this will not act as a strategic constraint to new entry. That is, it is not the case that the presence of this excess capacity will act as a disincentive on entry and expansion (eg, due to concerns that existing suppliers (such as Visy) will be able to deploy their excess capacity to "undercut" competition from new entrants).
- 20.6 In particular, while there may currently be excess capacity for bottles produced using large two-stage machines, it will not restrain new entry in the supply of bottles to smaller customers (or the speciality requirements of larger customers). This is because the practical and commercial difficulties involved in utilising two-stage capacity to seek to supply smaller customers (set out above) means that there are significant limitations in deploying this equipment to supply this segment of the market.
- 20.7 []

Lets Test

21. Likely New Entrants

- 21.1 Visy does not have direct knowledge of any firms that are currently planning to enter either the PET bottle or small rigid plastic container markets. However, Visy considers that the companies most likely to commence production in New Zealand to be:
- 21.1.1 Toyo Seikan, a Japanese company that has extensive operations throughout SE Asia;
 - 21.1.2 TetraPak, a company with a global presence that specialises in aseptic PET production;
 - 21.1.3 Yamamura, a Japanese company that has a joint venture with San Miguel and produces PET bottles; and
 - 21.1.4 Amcor.
- 21.2 Visy considers it likely that, in addition to existing self-manufacturers of PET, other PET customers will move self-manufacture in the near future (or at least closely evaluate this option). For example, Visy considers it likely that:
- 21.2.1 []

21.2.2

]

21.2.3

21.2.4 there are a range of other companies that could potentially move to self-manufacture given the relatively cost of equipment and technological developments in recent years.

22. Extent Entry Would be Sufficient

22.1 The merged entity will clearly be subject to the credible threat of new entry, or expansion by existing competitors, and this will impose a strong competitive constraint on the merged entity.

22.2 While Visy is not aware of potential new third party suppliers likely to supply either the North Island PET market or small rigid plastic container market in large volumes, given the other factors described elsewhere in this Notice, Visy submits that the extent of new entry will not need to be significant to restrain the conduct of the merged entity post-acquisition in these markets.

22.3 Further, there is the potential for customers moving to self-manufacture and producing bottles in volumes that are sufficiently significant to materially influence the dynamics of the relevant markets. This has been reflected in the impact of CCA's decision to move to self-manufacture. Similarly, the potential for Frucor and other customers to move to self-manufacture will continue to place a strong constraint on suppliers of PET bottles, including the merged entity.

23. Timeliness of Entry

23.1 As described above, Visy estimates that a new entrant could establish PET or rigid plastic container operations in around []

23.2 In summary, Visy submits that there is a credible threat of new entry (or new self-manufacture), that the timeframes for such entry are short, and the potential extent of this new entry is sufficient to place a strong competitive constraint on the merged entity.

23.3 This is reflected by recent experience with the new entry by Waipak, expansion by Linkplas, and the trend to self-manufacture by customers.

Countervailing Power

24. Constraints on Market Power by the Conduct of Buyers

PET Bottles

24.1 Customers in the PET bottles market (large and smaller) have a large degree of countervailing power, which flows from factors described above:

24.1.1 the ability of customers to self-manufacture;

- 24.1.2 the broad range of suppliers that aggressively compete for business, and low costs of new entry and expansion; and
- 24.1.3 the size of large customers (such as Frucor).
- 24.2 Customers do have the ability to self-manufacture, and this ability to bypass suppliers in this manner provides them with a significant degree of market power. As described elsewhere:
- 24.2.1 CCA has already moved to self-manufacture;
- 24.2.2 Frucor undertakes some self-manufacture through its wholly owned subsidiary, Simply Squeezed. []
- 24.2.3 Kauri Spring produces bottles at its filling facility;
- 24.2.4 []
[]
]; and
- 24.2.5 more generally, given the low cost of self-manufacture and recent technological developments (set out above), Visy considers that a customer requiring in excess of [] units per annum could feasibly move to self-manufacture. In fact, Visy estimates that Kauri Springs's bottle requirements were only [] units per annum when it commenced self-manufacture.
- 24.3 In addition to the ability to bypass suppliers through self-manufacture, customers have a range of suppliers that they can use, and are aware that the cost of entry and expansion are low. This provides customers with a significant degree of bargaining power in any negotiation with suppliers. Visy submits that this is reflected in the above table setting out examples of competition in the PET bottle market.
- 24.4 Finally the relative size of larger customers, such as Frucor, which accounts for [] of contestable supply in the North Island, provides these larger customers with significant countervailing power in negotiations.
- 24.5 Visy notes that the NZCC concluded in the Alto Decision that customers did have countervailing power. Visy submits that this countervailing power has become even more pronounced with the trend towards self-manufacture.

Rigid plastic containers

- 24.6 Visy submits that customers also have a significant degree of countervailing power in the rigid plastic container market. Again, the low cost of equipment provides the opportunity for bypass, and gives customers a significant degree of bargaining power.
- 24.7 Visy has relatively limited knowledge of this market, but it understands that some large customers that may have the potential to self-manufacture could include Fonterra and Goodman Fielder.
- 24.8 Knowledge of these low equipment costs also means that the threat of new entry or expansion disciplines suppliers and can be used by customers in negotiations.

25. Identity of Top Five Buyers

25.1 The table below set out some North Island PET beverage bottle customers and rigid plastic container customers, and a description of their suppliers and requirements.

25.1.1 North Island PET beverage bottles

CUSTOMER	Comments	CURRENT SUPPLIER	EST. VOLUME UNITS
CCA	Moving to self-manufacture.	Visy and CCA	□
Frucor Beverages Ltd	Currently supplied by Visy and HP, []	HP and Visy	□
Bevpak NZ (1996) Ltd	TSL (Bevpak's parent company), supplies most of Bevpak's requirements	TSL	□
Yeoman Industries	Supplier of retailer home brand products	TSL	[]
New Zealand Quality Waters	Water company	Multiple	[]
Waiwera Water	Water Company	Linkplas	□

Source: Visy estimates

25.1.2 Small rigid plastic containers less than 20 litres – National

CUSTOMER	Comment	CURRENT SUPPLIER	EST. VOLUME UNITS
Fonterra	1 and 2 litre milk	PACT	□
Meadow Fresh (Goodman Fielder)	1 and 2 litre milk Oil bottles	PACT (milk) HP (oil)	□ □
Heinz Watties	Tomato sauce/condiments bottles	Pact	□
Sanitarium	Marmite and other containers	Pact	□

Source: HP estimates

Coordinated Market Power

26. Characteristics Post-Acquisition Facilitating or Impeding Coordinated Behaviour

- 26.1 Visy submits that co-ordinated market behaviour is not likely to arise by virtue of acquisition of the Assets, given that both the North Island PET bottle market and small rigid plastics container market are characterised by:
- 26.1.1 a broad and diverse range of suppliers that will continue to provide a high level of competitive constraint post-acquisition;
 - 26.1.2 low barriers to entry and expansion, with low equipment costs and short lead times for establishing operations;
 - 26.1.3 buyers having a high degree of countervailing power due to their bypass options (through self-manufacture or sourcing from substitute suppliers);
 - 26.1.4 the utilisation of production technology that is changing and developing (particularly for self-manufacture);
 - 26.1.5 customers that are prepared to switch suppliers, and who actively seek competitive offers; and
 - 26.1.6 differentiation within the relevant markets, with suppliers pursuing differing business models (with different cost structures) as follows:
 - (a) as set out above, there is differentiation in the nature of the PET products supplied (and the types of customers supplied) using single-stage equipment as compared to two-stage equipment; and
 - (b) suppliers in the small rigid plastic containers markets use a range of different resins to supply a broad range of products for different applications.
- 26.2 Further, there is no history of anti-competitive behaviour in the rigid plastics industry. Visy is not aware of any instances of coordination of activities with other competitors in the relevant markets, and there is no evidence of price coordination in these markets.
- 26.3 Having regard to all of the factors noted above, Visy submits that the relevant markets are not of a type likely to be exposed to the risk of co-ordinated conduct and that the merged entity would not have the ability to exercise coordinated market power.

Efficiencies

27. Efficiencies Resulting from Acquisition

27.1 [

27.2

27.3

27.4

27.4.1

27.4.2

27.4.3

27.5

27.6

27.7]

28. Details of Competitors/Buyers, etc

Industry Participants

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
Competitors (Including Self Manufacturers)	Pact/Alto		
	Linkplas		
	TSL		
	Waipak Ltd		
	Bottles Limited		
	Premier Plastics		
	Kauri Springs Ltd		

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	Simply Squeezed (subsidiary of Frucor)		
	Blow Moulders Limited		
	Forward Plastics Limited		
	Aotea Plastics Industries Ltd		
	Viscount Plastics limited		

NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
Coca-Cola Amatil (NZ) Ltd (moving to self manufacture)		
Frucor Beverages Ltd		
Bevpac NZ (1996) Ltd		
Makan		
Yeoman Industries		
Murdoch Manufacturing Limited		
Foodstuffs Wellington		

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	Redwood Cellars (2006) Ltd		
	CHI International Limited		
	Steam Breweries		
	Waimak Water		
	Aquasplash Limited		
	Mill Orchard		

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	New Zealand Pure Spring Water Limited		
	New Zealand Quality Water		
	C&R Packers (1996) Limited		
	Kiwi Fresh Group (NZ) Ltd		
	Springfresh		

Part VI: Further Information and Supporting Documentation

29. Annual Reports

- 29.1 Visy's Annual Accounts for 2010 and 2011 are included in Attachment 3 to this Notice. Please note that the 2011 Annual Accounts have not been released, and are provided on a confidential basis.
- 29.2 HP's Annual Accounts for 2010 are included in Attachment 4 to this Notice.
- 29.3 All of these accounts are provided on a confidential basis.

Part VII: Confidentiality

30. Confidentiality

- 30.1 Confidential information is indicated by shading and square brackets. Visy will separately provide the NZCC with a redacted version for the public register.

Attachment 1

Visy Organisation Chart and Governance Arrangements (Confidential)

Attachment 2

Suppliers of PET Beverage Bottles and Rigid Plastics Container

Attachment 3

Visy Annual Accounts (Confidential)

Attachment 4
HP Annual Accounts (Confidential)

This Notice is given by:

Visy Industries Australia Pty Limited

The company hereby confirms that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.¹⁹

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 1st day of February

Signed by Visy Industries Australia Pty Limited

Robert Kaye

General Counsel

I am duly authorised to make this Notice.

¹⁹ Sections of the Notice that are highlighted in red and yellow contain (or rely on) information that has been provided to lawyers for Visy on an external counsel basis only. Therefore, this information has been redacted from the version of the Notice provided to Visy. Consequently, Visy cannot confirm the accuracy of those sections of the Notice highlighted in red and yellow.

