

## COMMERCE ACT 1986: BUSINESS ACQUISITION

### SECTION 66: NOTICE SEEKING CLEARANCE

#### PART 1: TRANSACTION DETAILS

- 1 Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice. Please include the:
- registered office address, postal address and physical address of the acquirer;
  - telephone and fax numbers and website of the acquirer; and
  - email address, telephone number and position of the contact person.

USG Corporation (**USGC**) through its wholly owned subsidiary USG Netherlands Global Holdings B.V. (**USGBV**) (collectively, **USG**) and Boral Limited (**Boral**) intend to enter into a joint venture. Further information regarding the structure of the joint venture is provided in response to Question 4. USG and Boral give the notice jointly.

#### USG

Executive Office Address            550 W. Adams Street  
CHICAGO, ILLINOIS  
60661-3676

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Postal Address                            As above

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Incorporation                            USG Corporation is incorporated in the state of Delaware in the United States of America

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Telephone, Fax, Website            Telephone (312) 436-4000 www.usg.com

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All correspondence and notices in respect of this application should be directed in the first instance to:	Nicolas J. Taylor	Jason Beer
	Partner	Associate
	Jones Day	Jones Day
	njtaylor@jonesday.com	jbeer@jonesday.com
	+61 (2) 8272 0715	+61 (2) 8272 0578

#### Boral

Registered Office / Physical Address    Level 39, AMP Centre  
50 Bridge Street  
Sydney NSW 2000

**From Monday 16 December 2013 Boral Limited is relocating to the following address (this will be Boral's new registered address):**  
Level 3, 40 Mount Street  
North Sydney NSW 2060  
(Note that all telephone numbers will remain the same)

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Postal Address	GPO Box 910 Sydney NSW 2001
Incorporation	Boral Limited is incorporated in Australia.
Telephone, Fax, Website	Telephone: (02) 9220 6300 Fax: (02) 9233 6605 www.boral.com
All correspondence and notices in respect of this application should be copied to:	Neil Anderson Partner Chapman Tripp Neil.Anderson@chapmantripp.com +64 4 498 6313

- 2 Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties. For each merger party, please include the:
- registered office address, postal address and physical address;
  - telephone and fax number and website; and
  - email address, telephone number and position of the contact person.

See the response to item 1, above.

- 3 With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.

Please refer to:

- [redacted] for USG's current organisational chart inclusive of entities relevant to the proposed joint venture and the New Zealand market.
- [redacted] for Boral's current organisational chart inclusive of entities relevant to the proposed joint venture and the New Zealand market.
- [redacted] for an organisational chart detailing the proposed structure of the joint venture and its relationship to the joint venture parties.

- 4 Provide details on what is to be acquired.

USG and Boral propose to form an incorporated joint venture for the supply of plasterboard, ceiling tiles and ancillary building products (the "**joint venture**") spanning Asia, India, the Middle East and Australasia, including New Zealand (the "**territory**"). Both entities will continue to each separately supply building products outside of the territory in addition to being free to supply product lines not covered by the joint venture in the territory independently of each other.

To give effect to the joint venture USG and USG Foreign Investments, Ltd (**USGF**) have entered into a Share Sale and Subscription Agreement – Australasia (**SSSA**) with Boral Limited

ACN 008 421 761 (**Boral**), Boral Building Materials Pty Limited ACN 090 736 888 (**Boral Seller**) and Boral Australian Gypsum Limited ACN 004 231 976 (**BAGL**). The SSAA will result, in USGBV acquiring fifty percent (50%) of the shares in BAGL (by way of both transfer from Boral Seller and subscription), with Boral Seller retaining the other fifty percent (50%).

USGBV and USGC have also entered into a Share Sale and Subscription Agreement – Asia (**Asian SSSA**) with Boral, Boral International Pty Limited ACN 000 341 239 (**Boral Seller Two**) which will result in USGBV and Boral Seller Two each holding fifty percent (50%) of a yet to be incorporated overseas company. That company will hold the joint venture's interests in Asia and the Middle East. Completion of the Asian SSSA is inter-conditional on completion of the SSSA.

Relevant to this notification the arrangements contemplate the contribution by USG to BAGL of the entirety of the shares in USGC's wholly-owned subsidiary in New Zealand, USG Interiors Pacific Limited 77828.

The parties note that BAGL holds a 50% interest in Rondo Building Services Pty Limited (**Rondo**). CSR, an Australian-based plasterboard producer, owns the other 50% interest in Rondo. Rondo provides 'metals' products in New Zealand. Consequently, by virtue of their interest in the joint venture, USG will have an indirect interest in Rondo.

5 Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.

The proposed joint venture will result in a number of benefits:

- For Boral, it provides immediate access to USG's intellectual property including its plasterboard, joint compound and ceilings technologies.
- For USG, the joint venture will provide it with access to Boral's extensive plasterboard manufacturing and distribution footprint in Asia and Australasia.
- The joint venture benefits customers by introducing a superior performing high-strength, low weight plasterboard product and an expanded product portfolio.
- The joint venture creates significant synergies – the parties anticipate synergies exceeding US\$50 million per annum within 3 years of completing an expected 2-year technology roll out.

We note that within New Zealand, the joint venture will not provide the parties with the same degree of benefits as throughout Asia more broadly, given that Boral does not operate its own distribution network in New Zealand.

6 Provide copies of the final or the most recent versions of any documents bringing about the proposed merger (e.g. contracts, sales and purchase agreements, or offer documents if it is a public bid).

Please find attached a copy of the SSSA at [redacted]. Note: we are providing the agreement itself without the voluminous attachments. However, any or all the attachments are available to the Commission on request.

7 If any other jurisdiction's competition agency has been (or will be) notified of the

proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

7.1 Please indicate whether you would be willing to provide the Commission with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the proposed merger

[redacted].

## **PART 2: THE INDUSTRY**

8 Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

The joint venture relates to plasterboard, ceiling tiles and ancillary products, including 'metals'. There is no material overlap between the activities of USG and Boral in New Zealand. Any theoretical aggregation relates to the supply of metals by USG and Rondo. As such, while descriptions of other products are provided below and market share information is provided in respect of a broader range of products in response to question 17 this notification focuses on the supply of 'metals'.

### **Metals**

'Metals' refers to metal building products used in new and existing residential and commercial buildings. This comprises lighter gauge roll formed steel products and systems that are used to support plasterboard partition and ceiling tile systems.

There are three main categories of metals products supplied in New Zealand:

- Metal studs and tracks: these are used for interior wall partitions, designed to carry the load of many wall finishes. In New Zealand, timber products (e.g. timber studs) are commonly as an alternative to metal products and vice versa.
- Exposed ceiling grids / systems which are used to support ceilings tiles / panels.
- Metal ceiling battens / systems: these are an alternative to traditional wooden ceiling battens which are fixed below rafters, ceiling joists or truss bottom chords to which ceiling lining / ceiling panels are fixed. This category includes concealed ceiling systems.

Metals are produced by a method called roll forming and are manufactured from hot dipped galvanised steel. The steel is transported from the mill in large 'mother coils' (rolled sheets of metal weighing several tonnes each). These are then 'slit' (cut into appropriate widths for each particular product) and the resulting coils are fed into the roll forming machine. As the coils are fed into the roll forming machine they move through a series of rollers and are gradually folded and molded into the appropriate metal profile, punched with any necessary holes, cut to length and tabs either attached or punched and pressed from the body of the grid. As noted above, in New Zealand timber products (eg timber studs and battens) are substitutable for metal products across a range of uses.

The profile, location of holes, length and tabs vary between ceiling grids, metal stud and track and metal battens. There are variations between different models of these sub-product groups. Higher quality ceiling grids often have a 'grid cap' (the face seen when looking up at a finished ceiling) rolled on to the main coil from pre-painted galvanised steel for aesthetic purposes.

Although all metal products are roll-formed in a similar way, ceiling grid requires additional processing. USG and Armstrong are significant suppliers of ceiling grid in New Zealand. In comparison, USG understands that Rondo is not a significant supplier of ceiling grid and that its metal supply business is predominantly comprised of the supply of stud & track and battens/concealed ceiling systems. While barriers to entry/expansion are low in respect of all metals products, the lack of additional processing in respect of stud & track and battens, facilitates its production.

## **Ceiling Tiles**

Ceiling tiles, which may also be referred to as ceiling panels, are used in new and existing residential and commercial buildings to cover a ceiling area. There are three broad categories of ceiling tiles supplied in New Zealand:

- Plasterboard ceiling tiles, used to line ceilings in residential, retail and light industrial buildings. The acoustic properties of plasterboard ceiling tiles are more limited than those of mineral fibre ceiling tiles. Accordingly, where acoustic properties are important, mineral fibre or metal ceiling tiles will be used.
- Mineral fibre ceiling tiles, used to line acoustic ceilings in commercial or office buildings, medical buildings and educational facilities. Mineral fibre is produced from slag, a by-product of steel production. Mineral fibre ceiling tiles are used when additional acoustic performance, fire protection or sag resistance may be required. They also have design and finish capabilities which are superior to plasterboard ceiling tiles. As a result, they are also used when 'architectural' elements are important. Mineral fibre ceiling tiles are more expensive than plasterboard ceiling tiles due to the way in which they are perforated and other technical requirements associated with the manufacturing process.
- Metal ceiling tiles, used to line ceilings in commercial and office spaces, airports and public use buildings where acoustic performance is required.

In New Zealand, most building projects require ceiling tiles with enhanced acoustic or architectural properties – accordingly, sales of mineral fibre ceiling tiles are substantially larger than sales of plasterboard ceiling tiles.

While USG is a significant supplier of ceiling tiles (supplying approximately [redacted] worth of ceiling tiles) Boral has negligible supplies of ceiling tiles into New Zealand ([redacted]).

There can be no potential competition law issues in respect of the supply of ceiling tiles.

## **Plasterboard**

Plasterboard is a building product used in new and existing residential and commercial buildings. It is used primarily for internal cladding, that is, for the lining of interior walls, ceilings (in conjunction with batten systems) and cornices. The main input used in producing plasterboard is gypsum.

Boral is a limited supplier of plasterboard to New Zealand. In 2012, Boral sold approximately [redacted] of plasterboard into New Zealand. [redacted].<sup>1</sup> USG's sales of plasterboard in New Zealand are negligible – sales are [redacted] of Fiberock, which is a highly differentiated variant of plasterboard.

Typical plasterboard is made primarily of gypsum. Gypsum is a mineral usually found in massive beds that look like white sand. Once gypsum has been mined, it's transported to

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<sup>1</sup> [redacted]

factories. There, raw gypsum is mixed with several additives, including starch, paper pulp and an emulsifier (or thickening agent), then blended with water to form a thick paste. The gypsum paste is spread onto Manila paper in 3/8-inch to 3/4-inch-thick layers. Another sheet of Manila paper is then laid on top. The entire formation passes through ovens that heat the sheet at temperatures up to 500 degrees Fahrenheit. This dries the material out and prepares it for cutting.

There can be no potential competition law issue in respect of the supply of plasterboard.

### **Other products**

Other products include compounds and joint treatments, cornices and industrial gypsum.

Compounds and joint treatments are used to seal joints between sheets of plasterboard primarily in residential and commercial buildings. Each major plasterboard supplier also supplies compounds. In 2012, USG total sales of joint treatments came to [redacted]. Boral does not supply joint treatments/compounds in New Zealand.

Boral supplies cornices into New Zealand (approx. [redacted]). USG does not supply cornice products.

USG has incidental sales of industrial gypsum into New Zealand. In 2012, USG total sales of industrial gypsum in New Zealand came to [redacted]. Boral does not supply industrial gypsum into New Zealand.

There can be no potential competition law issues in respect of these other products.

9 Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.

USG manufactures its metal products in New Zealand in the manner described in answer to Question 8 and sells them [redacted] who in turn sell the products to contractors who fit the products at construction sites for builders.<sup>2</sup> USG has no distribution capability in New Zealand.

In answer to question 16, we have identified a range of competitors also supplying metal products to the New Zealand building industry. These businesses compete with USG, and will compete with the joint venture, either locally manufacturing, importing or both. Each of these competitors supplies distributors (as USG does) or by-passes distributors and supplies contractors directly.

10 Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

The construction industry in New Zealand is going through an era of change with significant increases in demand expected as a result of the Christchurch reconstruction activities. In addition, there was already a trend for increased importation of all construction products from suppliers previously focused on North America, Europe and China. The suppliers include Knauf, Ecophon and Daiken.

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<sup>2</sup> Further details of USG's customers for each product type are provided in answer to Question 25.

Further, on 6 November 2013, the New Zealand Government revealed plans to 'shake up' the construction sector in a bid to reduce the cost of building materials.<sup>3</sup> Amongst other things, the government is considering limiting the effect of anti-dumping duties on building materials and granting tariff concessions that would make imports of building materials comparatively cheaper, increasing their penetration further.

According to the New Zealand Ministry of Business, Innovation & Employment (**MBIE**), approximately 19% of the output of the residential construction industry consists of imported content.<sup>4</sup> This level of imports is expected to rise further as MBIE notes that while tariffs still apply to most items used in housing construction, tariff rates are effectively declining as Free Trade Agreements (**FTAs**) phase in and additional FTAs are negotiated.<sup>5</sup> Combined with the downturn in demand in Europe and North America, international suppliers are increasingly targeting the New Zealand market.

Fletcher Building's Chief Executive has been quoted as stating 'they're attacking our market'<sup>6</sup> in relation to the significant increases in the volume of imports in the New Zealand construction markets.

- |      |  |
|------|--|
| 11   | Please highlight any relevant mergers that have occurred in this industry over the past three years. Include:  |
| 11.1 | any acquisition of assets of a business or shares which the merger parties (or any interconnected or associated businesses) have undertaken in the last three years. |

USG has not undertaken any acquisitions in New Zealand in the previous three years and there have not been any mergers in relation to wall and ceiling systems in New Zealand in the previous three years. The joint venture provides [redacted]

### **PART 3: MARKET DEFINITION**

#### **HORIZONTAL AGGREGATION**

- |      |   |
|------|---|
| 12   | For each area of aggregation of market shares, please define the relevant market(s) for the |
| 12.1 | product(s) or service(s);   |
| 12.2 | functional level;   |
| 12.3 | geographic area; and  |
| 12.4 | customer dimension and timeframe (if relevant).   |

<sup>3</sup> <http://www.beehive.govt.nz/release/options-released-bring-down-cost-home-building-materials;>  
<http://www.mbie.govt.nz/what-we-do/housing/residential-construction-sector-market-study>

<sup>4</sup> <http://www.mbie.govt.nz/pdf-library/about-us/consultations/residential-construction-sector-options.pdf>

<sup>5</sup> <http://www.mbie.govt.nz/pdf-library/about-us/consultations/residential-construction-sector-options.pdf>

<sup>6</sup> [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10800694](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10800694)

## Market for the wholesale supply of metals

USG and Rondo are both importers, manufacturers and suppliers of metals in New Zealand. Neither USG or Rondo operates a distribution network in New Zealand. They both primarily supply products to large distributors such as Potter Interior Systems, T&R Interior Systems and Fletchers/Winstone. As noted, other manufacturers and importers supply both through distributors and directly to contractors.

As identified earlier, the term 'metals' refers to lighter gauge roll formed steel products and systems used in the building industry to support plasterboard partitions and ceiling tile systems. There are variants of lighter gauge roll formed steel products such as ceiling grids, metal ceiling battens and metal stud and tracks, which are all made using metal roll forming machinery which is readily available. Suppliers of roll formed steel products can readily switch between production of the various types of such products in response to increases in demand or if other suppliers attempt to charge uncompetitive prices.

On the demand side, as noted above, timber can be substitutable for metal studs and battens. However, it should not be necessary for the Commission to consider broader forms of constraint. As a result the analysis in this notice proceeds on the conservative basis of a market for the wholesale supply of metals.

## Geographic Dimension

It is likely that the geographic dimension of the metals market would be broader than New Zealand (i.e. in response to an attempt to 'charge more or give less', customers would readily have viable alternative supply options outside of New Zealand). However, for the purpose of this analysis the parties have proceeded on the basis of a narrower New Zealand geographic dimension. Irrespective of how the geographic dimension of the market is defined, the proposed joint venture does not cause competition concerns.

13 Where relevant, please explain how products or services are differentiated within the market(s).

Metals, while sharing similar production processes, are differentiated by purpose (e.g. to support ceiling tiles or to support plasterboard partitions).

Within the particular product categories, products are principally differentiated by size. For example, steel studs can be produced in different lengths, different steel gauge, and in different profile widths depending upon their application. Differences between metals products produced by various manufacturers are not significant. All manufacturers will produce to the relevant shared quality standard in New Zealand and Australia (specifically AS/NZS 4600 related to cold-formed steel sections). The relative lack of distinction between products produced by different manufacturers increases competition between manufacturers and facilitates entry.

## VERTICAL INTEGRATION

14 Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

The joint venture will not result in the creation or strengthening of vertical integration in a market in New Zealand as the parties operate at the same functional level.



## PART 4: COUNTERFACTUAL

- 15 In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.

In the event that the proposed joint venture did not take place, the relevant counterfactual is likely to be the status quo. That is, it is likely that:

- Boral would continue to have no local manufacturing capacity in New Zealand and would continue to have only limited sales of plasterboard and ceiling tiles into New Zealand; and
- USG would continue to compete in the metals market [redacted].

[redacted]

## PART 5: COMPETITION ANALYSIS

### EXISTING COMPETITORS

- 16 Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).

There are currently a large number of competitors in the supply of metals in New Zealand and after the transaction this situation will not change.

#### Rondo Building Services

- Rondo is a 50/50 joint venture between Boral and CSR. It manufactures and supplies suspended ceiling and steel drywall systems, including a range of steel-framed and ceiling grid systems, drywall finishing sections and access panels to the New Zealand industry. While Rondo has a small manufacturing facility in New Zealand the parties understand that Rondo imports a substantial portion of its metals from Australia. The proposed joint venture has no impact on Rondo management. At completion of the joint venture arrangements, Rondo will be a competitor in New Zealand and will remain 50% owned by CSR. It will continue to have every incentive to compete against the joint venture and other competitors listed below.

#### Rollformers 2000

- Rollformers is a New Zealand based competitor manufacturing a range of metals products including steel framing and ceiling grids. Rollformers 2000 has operated in New Zealand since 1983, when it was established by two former employees of USG. Since that time, the business has expanded rapidly and now operates out of a 2000m<sup>2</sup> factory in Auckland and exports to markets including Australia, the United Kingdom and the Pacific Islands.<sup>7</sup>

#### Steel Rollformed Products Ltd

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<sup>7</sup> <http://www.rollformers.co.nz/about.html>

- Founded in 2007, Steel Rollformed Products supplies metal studs and track and ceiling grids throughout New Zealand. Evidenced by its recent expansion into a new large scale manufacturing facility with approximately 1500m2 floorspace, Steel Rollformed Products is quickly growing. Owned by one of the former USG employees who was involved in establishing Rollformers 2000, Steel Rollformed Products produces roll formed steel to the same shape and model as USG (effectively replicating them). As a result it is capturing business from customers who would have otherwise been inclined to purchase product from USG.

#### Armstrong

- Headquartered in the US, Armstrong is a global leader in the design and manufacture of floors and ceilings (including ceiling grids). Armstrong does not manufacture goods in New Zealand. It has plants in the US, Canada, Europe and China. In New Zealand, Armstrong is one of the leading suppliers of ceiling tiles and metal ceiling grids. It distributes through national retailers such as Forman Building Systems.

#### CBI

- CBI is an Italian based manufacturer of a range of building materials including metal ceiling grids. CBI exports to countries around the globe including in the Middle East, Africa, Europe and Asia. In New Zealand, CBI distributes its products through T&R Interior Systems, a large building supplies company.

#### StratCo

- Stratco is a large Australasian supplier and manufacturer of building and home improvement products (including steel framing). It exports to the Middle East, Africa and throughout the Pacific Rim. Stratco has had a presence in New Zealand since 1992 and now has six manufacturing and distribution sites across New Zealand.<sup>8</sup>

#### Steelformers

- Steelformers is a New Zealand based manufacturer of various roll formed metals products. It was founded in 1983 and now has four sites across New Zealand.<sup>9</sup>

In addition there are a number of Chinese producers who actively market in New Zealand. They could therefore already be regarded as existing competitors but we have instead included them in the 'potential competitors' section because to our knowledge their sales so far have been limited, if any.

17 Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include:

17.1 the estimated total value of the domestic market; and

17.2 the source of the data provided.

Please refer to:

<sup>8</sup> [http://www.stratco.co.nz/About\\_stratco/History/history.asp](http://www.stratco.co.nz/About_stratco/History/history.asp)

<sup>9</sup> <http://www.steelformers.co.nz/about>

- Attachment 1A for estimated market shares for metals.
- Attachment 1B for estimated market shares for plasterboard.
- Attachment 1C for estimated market shares for ceiling tiles.

- 18 To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected? Where relevant please include a full discussion and examples of:
- 18.1 the ease with which customers may switch between suppliers, and, if so, how readily;
- 18.2 any local or overseas firms that are not currently producing the product, or providing the service in the market, but could enter the market quickly (using essentially their existing productive capacity) in a response to an attempt by suppliers to raise prices or reduce output or quality (near competitors and importers); and
- 18.3 the extent to which existing competitors, near competitors and importers could expand in the market, and any difficulties that they might face in doing so.

As noted above, metals products produced by various manufacturers are substantially interchangeable. There are no switching costs for contractors to choose alternative products for different projects. Due to their uniform nature, there are no significant learning barriers to using products from different suppliers and it is often the case that products from different suppliers will be completely interchangeable with identical installation requirements and specifications.

Long term contracts between manufacturers and contractors are not a feature of the industry and instead purchases are made on a spot basis from either distributors or manufacturers. USG's experience is that contractors purchase products from a range of manufacturers concurrently and they can and do readily switch between suppliers in response to price, service or other changes.

There are a number of large Australian manufacturers who could easily build or expand their presence in New Zealand. These include Peer Industries and Studco Building Systems which, in addition to Rondo, are the principal suppliers of metals products in Australia. The parties understand that both Peer and Studco may be currently seeking opportunities in New Zealand. Also it is understood that the large multinational Knauf, which is active in New Zealand, is in the process of importing steel roll forming machinery into Australia and intends to commence manufacturing a broad range of products in Australia in the near future. There has also been some suggestion of Knauf commencing metals manufacturing in New Zealand. However, even if this does not materialize it will be in a position to import product into New Zealand. Information about other potential entrants is discussed in 19 below.

The Commission has previously considered the degree to which Australian suppliers of building materials provide an effective competition constraint in the New Zealand market in its analysis of the merger of the brick businesses of CSR Building Products (NZ) Limited and Brickworks Building Products (NZ) Limited.<sup>10</sup>

The Commission found that Australian clay brick manufacturers were near competitors who could easily and readily supply to New Zealand. In that matter, the Commission also considered

<sup>10</sup> New Zealand Commerce Commission Determination, CSR Building Products (NZ) Limited and Brickworks Building Products (NZ) Pty Limited [2012] NZCC 30, 10 October 2012, Pg 10.

that imported clay bricks (or the potential import of clay bricks by near competitors) represented a significant competitive constraint in the market.

To an even greater extent than the supply of clay bricks, the supply of metals is characterised by potential or actual imports.

As explained in 19 below, the conditions of entry are not substantial. This means that a number of companies could expand into metal production. These could include roll formers which currently focus on other steel products or suppliers of plasterboard such as Winstone Wallboards who could choose to produce ancillary products such as metals.

## POTENTIAL COMPETITION

### CONDITIONS OF ENTRY

- 19 Please explain the requirements for new entry and/or importers in the relevant market(s), including:
- a breakdown of the estimated costs;
  - anticipated timeframes;
  - regulatory requirements;
  - frontier requirements (e.g. tariffs, import licensing, quarantine requirements); and
  - business requirements involved.

Please provide the source for any data used.

- 20 Include a full discussion on:
- 20.1 any factors that could impede entry; and
- 20.2 what might prompt new entry post-merger.

The following analysis is in relation to the market for the supply of metals, being the only market where any theoretically material aggregation might be said to occur as a result of the proposed joint venture.

#### **Estimated costs & timeframes**

It is possible to develop a metals manufacturing operation with a modest capital investment, inputs are readily available (75-80% of the variable cost is readily available rolled steel) and without any significant intellectual property. There are no other significant barriers to entry. The experience in New Zealand of Rollformers 2000 and, more recently, of Steel Rollformed Products demonstrates this.

The factory itself is nothing more than a large generic empty industrial space of at least 1500-3000 square meters with sufficient electrical service capacity and conveniently located for transportation. Roll forming machines are not all identical because they vary in size and purpose. However, they are readily available for procurement and import into New Zealand and

they do not constitute major capital investments compared with many other building products manufacturing facilities. A basic rollformer line varies in cost between US\$50,000 and approximately US\$250,000.

It would be possible to procure a second hand roll forming machine to further reduce the capital outlay. Equally, if a new entrant over-invested, it would be readily possible to liquidate an investment in a roll-forming machine by selling it second hand. As such, machine investments are not sunk investments and they therefore do not constitute barriers to entry.

In terms of timeframes, it would be possible to establish an operation capable of supporting an importing operation with sufficient volumes to provide a competitive constraint on existing competitors within a matter of weeks. Establishing a local manufacturing operation would likely take longer, three to six months.

The most significant challenge for new entrants, similar to many manufacturing industries with high cost inputs, is simply raising the working capital necessary to manage the relatively high cost of steel inventory required in this type of industry.

### **Regulatory and frontier requirements**

There are few regulatory requirements beyond meeting the relevant shared quality standards for Australia and New Zealand (specifically ASNZ 4600 related to cold-formed steel sections). This means that Australian importers have no regulatory barrier given their familiarity with the standards. Further, the existence of significant imports from Europe (for example, CBI) and China (for example, Armstrong and Ecoplus) demonstrate that importers from other countries face minimal barriers in meeting the relevant quality standards.

There are no trade barriers for Australian importers who enjoy completely free entry under the Australia-New Zealand Closer Economic Relations Trade Agreement. There are very few barriers for importers outside of Australia and New Zealand with a small 5% duty on most products. In addition, there are a number of FTAs and trade concessions provided to other countries allowing importers from those countries to avoid duties and tariffs.

Further, as identified earlier the Government is reviewing the construction sector in a bid to reduce the cost of building materials.<sup>11</sup> Amongst other things, the Government is considering limiting the effect of anti-dumping duties on building materials and granting tariff concessions that would make imports of building materials comparatively cheaper, increasing their penetration further.

### **Entry and expansion by international firms**

Rondo has succeeded in New Zealand principally as an importer. This demonstrates that import competition should be considered a significant, and easily 'scalable' competitive constraint. The products are inherently suitable for import because there is not a strong preference for local production, they are scalable and the products are not perishable.

There are additional competitors in Australia and elsewhere who are well placed to replicate Rondo's metals importation business if a business opportunity presented itself. Examples of these competitors include at least:

- Knauf;
- Studco Building Systems;
- Daiken Ceilings; and

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<sup>11</sup> See above n3.

- Peer Industries.

As noted above, Knauf has made several suggestions that it is preparing to rapidly expand its presence in the metals market in New Zealand with a manufacturing presence.

In addition, there are other producers throughout the broader Asia-Pacific Region who have the additional competitive benefit of lower wage rates compared with the Australian and New Zealand suppliers.

### **Entry and expansion by substantial Chinese producers already actively marketing in NZ**

Attachment 5 contains emails received by USG from Chinese producers of metals products, together with photos of the products, diagrams and pictures of their production facilities. USG is aware that New Zealand distributors / contractors have purchased products from these or similar sources previously.

### **Entry by suppliers of related products**

Suppliers of related products in New Zealand such as Winstone Wallboards would have particularly low barriers to entry given the strong synergies they would achieve as a result of factors such as their existing knowledge of the construction industry, their existing distribution arrangements and their existing familiarity and experience marketing these types of products to contractors and end-users.

Suppliers of particular metal products may expand their range. For example, NZ based manufacturers such as 'Battenman', 'Barracuda Battens' and 'Steelformers' which are currently focused on the supply of ceiling battens/ceiling systems could readily expand into the manufacture of studs and tracks.

### **Conclusion**

The potential for significant new entry and/or expansion by a wide range of firms will ensure that existing competitors cannot afford to reduce the competitiveness of their market offerings. If existing competitors were tempted to reduce the competitiveness of their market offerings, entry would clearly be likely, entry on a small or large volume basis could easily become economic and, particularly exporters from Australia, Indonesia and Malaysia could enter in a very brief time frame.

### **LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)**

21	Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.
22	To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

There are a wide range of likely entrants who might either manufacture in New Zealand and/or import.

For example, Daiken is Japan's largest building materials manufacturer. Known for its continuous development, Daiken is at the forefront in technology and manufacturing processes,

ensuring a strong focus on environmental and sustainability standards.<sup>12</sup> Daiken has already entered the New Zealand market with its highly regarded ceiling tile range. As far as the parties are aware, Daiken has not yet supplied metals into the market, but it does so in Japan and the parties consider that there is very little impediment to them doing so, particularly in relation to ceiling grids, if the suppliers were to raise their prices.

Peer Industries is a large Australian supplier of metals (including ceiling grids, metal ceiling battens and metal stud and track).<sup>13</sup> The parties understand that some contractors have already sourced and imported metals products from Peer Industries but that Peer Industries itself has not entered the New Zealand market.

Given that Peer Industries has already had product delivered to New Zealand, the parties consider that there is a very high likelihood that they would enter the market if the suppliers were to increase prices.

Studco is another large Australian supplier of metals (including ceiling grids, metal ceiling battens and metal stud and track) which USG understands has also been the source of some instances of imports sourced by New Zealand contractors. The parties consider that Studco would be a very likely entrant in its own right if there was, for any reason, a reduction in the level of competition.

In addition, as noted above, Knauf is understood to be developing a manufacturing facility in Australia and is likely to seek to distribute metal products from its existing warehouse facility in New Zealand.

Potential entry by new manufacturers or through new import operations would be sufficient to constrain the merged entity in relation to the supply of metals.

23 How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above? Provide reasons for your estimates.

It would take three to 6 months to establish a new metals manufacturing operation in New Zealand.

It would take only two to three weeks for a business to start importing metal products from Australia (and not significantly longer for products manufactured further afield).

## COUNTERVAILING POWER OF BUYERS

24 To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected? Where relevant, please include:

24.1 a full discussion on the ability of buyers to self-supply or import, and the alternative sources of supply available to buyers; and

24.2 evidence of buyers seeking alternative supply and/or switching suppliers.

<sup>12</sup> <http://www.ceilector.com.au/Pages/Suppliers/Daiken.aspx>

<sup>13</sup> <http://01peer.com/>

There are a number of large 'downstream' distribution businesses in New Zealand such as the Forman Group, Gib, Potter Interior Systems (owned by CSR), T&R Interior Systems and other companies of significant substance.

To the extent that they had concerns with the offerings of either Rondo or the new joint venture, they could foster the expansion of local manufacturers such as Rollformers 2000 or Steel & Tube. Alternatively, they could sponsor the entry of an international firm who has not yet imported, or has only imported to a limited extent, to New Zealand. There have also been many examples in the building supplies industry, of a distributor contributing equity itself to foster such an expansion. Alternatively, the distributor could easily establish its own in-house manufacturing capability.

Further, the size of distributors in New Zealand facilitate their ability to easily bypass importers and manufacturers of these types of products, particularly given the large number of international suppliers who could enter with minimal support from a distributor.

25 If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of the buyers please provide details for five medium and five small buyers.

As described above, buyers constitute a significant constraint.

USG's buyers are as follows:

	CSR Potters	T&R	Other
Ceiling grid	[redacted]	[redacted]	[redacted]
Stud & track	[redacted]	[redacted]	[redacted]
Batten	[redacted]	[redacted]	[redacted]

[redacted]

## COORDINATED MARKET POWER

26 Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

The proposed joint venture does not result in an increase in the likelihood of coordination. The market for the wholesale supply of metals is not vulnerable to coordination and in any event the proposed joint venture would not change competitive conditions such that coordination would become more likely.

Specifically, although metals are relatively homogeneous products (see the response to item 13), the following factors suggest that the risk of coordinated market power is low:

- USG and Rondo would continue to operate independently (see the response to item 16), and would continue to face a large number of other competitors;
- Competitors have asymmetrical market shares and, due to a wide variety of supply arrangements, varying cost structures;



- Barriers to entry are low and entry can occur relatively quickly (see the response to items 19 to 23);
- Customers have strong countervailing purchasing power (see the response to items 24 and 25);
- Demand is unstable, and is currently increasing (see the response to item 9); and
- There is no history of collusive behaviour in the market.

In these conditions, the proposed joint venture will not enhance or facilitate a greater likelihood of coordinated conduct in the relevant markets.

## EFFICIENCIES

- 27 If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition? Please include a full discussion on:
- 27.1 how the merger would facilitate the realisation of efficiency improvements. Specify the steps the combined entity anticipates it would take, and the timeframe needed, to achieve the efficiencies. Where relevant, include a discussion of the risks and costs involved;
- 27.2 the magnitude of the efficiencies, whether the impact would be on fixed, variable or other costs, and generally how the cost structure of the merged entity would change;
- 27.3 whether such efficiencies could be realised without the merger, or over a longer timeframe; and
- 27.4 whether, and the extent to which, such efficiencies would be passed on to the customers of the merged entity.

The parties consider that there will be significant efficiencies resulting from the use of Boral's distribution network in Australasia and the use of USG technology at Boral manufacturing facilities. To the extent that Boral does not have an existing distribution network or plants in New Zealand, efficiencies in respect of New Zealand may be more limited. As a result the parties are not relying on efficiencies in their submissions.

[redacted]

## OTHER FACTORS

- 28 Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

Nil.

## PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

- 29 Provide the contact details of relevant competitors, buyers and suppliers and any other

relevant market participants in the form of the example table shown below.

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	BOTH LEGAL AND TRADING NAMES	POSTAL AND PHYSICAL ADDRESS, TELEPHONE AND FAX, WEBSITE	NAME, POSITION AND CONTACT DETAILS INCLUDING TELEPHONE PHONE, FAX, EMAIL
COMPETITORS	Forman Building Systems, (Forman Sales & Forman commercial)	PO Box 12-349 Penrose Auckland 1642 20 Vestey Drive Mt Wellington T 0800 45 4000 F 276-4141 www.forman.co.nz	[redacted]
	Rondo Building Services Pty Ltd	117a Captain Springs Road, Onehunga Auckland 1642 T 636-5110 F 636-5111 www.rondo.co.nz/new-zealand	[redacted]
	T & R Interior Systems Ltd	PO Box 38-533 Wellington Main Centre 5045 12 Glover Street Ngauranga (Head Office) Wellington 6035 T 0800 666 556 www.tr-interiorsystems.co.nz	[redacted]
	Rollformers 2000 Ltd	PO Box 204-352 Highbrook Manukau 2161 55 Allens Road East Tamaki T 274-4898 F 274-0451 www.rollformers.co.nz	



SUPPLIERS (to USG)	NZS New Zealand Steel Ltd	Private Bag 92121 1 Auckland 1142 131 Mission Bush Rd 1 Glenbrook, Auckland F +64 9 375 8041 0800 800 377 www.bluescope.com	[redacted]
	Steelco Ltd	2/117 Glenmore Rd Pakuranga, Auckland 1706 Ph (+64)(9) 576 2696 Fax (+64)(9) 576 2698	[redacted]
	Kiwi Steel	PO Box 98-851, SAMC, Wiri, Auckland, 12 Hautu Drive, Wiri, Auckland Phone +64 09 2772700 Fax +64 09 2772701 Web www.kiwisteel.co.nz	[redacted]
	Carter Holt Harvey - Case Northern & Specialty Boards and Boxes	Auckland and Hamilton plants Ph: 0800 220 500 Fax: 0800 220 501 www.chhpackaging.com	[redacted]
	Mainfreight Air & Ocean	107 Westney Road, Airport Oaks PO Box 73052, Auckland, + 64 9 275 8136 www.mainfreight.com	[redacted]
	Amcor Kiwi Packaging	239 Cavendish Drive, 2025 P O Box 97 246, Manukau 2241 New Zealand T +64 9 980 5500 F +64 9 980 5600	[redacted]
	The Pallet Company	8 Culperry Road, Glendene, Auckland 0602 +649 818 4700 +649 818 4717 www.thepalletcompany.co.nz	[redacted]
End Customers	[redacted]	[redacted]	[redacted]

	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
TRADE ASSOCIATIONS	AWCINZ (Association of Wall & Ceiling Industries)	PO Box 11-425 Palm Beach, Papamoa, Tauranga 3142 T 0800 AWCINZ www.awcinz.org.nz	[redacted]
	EMA - Northern (Employers & Manufacturers Association)	Private Bag 92066 Victoria St West Auckland 1142 159 Kyber Pass Road Grafton, AK 1023 T 0800 300 362	
ANY OTHER RELEVANT MARKET PARTICIPANTS OR INTERESTED PARTIES	Hawkins Construction	Private Bag 93214 Parnell Auckland	[redacted]
	Goodman Property Trust	L28 151 Queen St Auckland	[redacted]
	AMP Properties	PO Box 3764 Wellington 6140	[redacted]
	Canam Construction	Private Bag 93116 Henderson Auckland 0650	[redacted]

	Manson TCLM	PO Box 37697 Parnell Auckland	[redacted]
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30 Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

Please refer to:

- Attachment 4A for USG Corporation's Annual Report for the year ended 31 December 2012;
- [redacted] for USG Interiors Pacific Limited's Annual Report for the year ended 31 December 2012 (the relevant subsidiary);
- Attachment 4C for Boral Limited's Annual Report for the year ended 30 June 2013; and
- [redacted] for Boral Australian Gypsum Limited's Financial Report for the year ended 30 June 2013.

## PART 7: CONFIDENTIALITY

31 If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

The parties request confidentiality in relation to the information in this application highlighted in red on the basis of section 9(2)(b) of the *Official Information Act*. Disclosure of the information would:

- Disclose trade secrets; and/or
- Be likely unreasonably to prejudice the commercial position of the party or parties to the application that have supplying it.

In addition the parties request confidentiality in relation to the information contained in the final column of the table highlighted in red and provided in response to Question 29 on the basis of section 9(2)(a) of the *Official Information Act*. Disclosure of the information would disclose private details of natural persons to the public.

The parties request that they be notified if a request is made to the Commission for release of the information under the *Official Information Act*.

32 Provide a separate schedule of all confidential information claimed in the application.

The complete filing has confidential information highlighted in red and a redacted version for publication is being supplied with it.

The commission requires applicants to provide a separate schedule listing all the confidential information so the Commission can process confidentiality requests quickly.

33 Provide two copies of the application. One copy must be a confidential version and the other a public version.

33.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].

33.2 In the public version the confidential information should be removed from within the square brackets, with the brackets remaining, thus [ ].

A hard copy, and an electronic copy of the confidential version and the public version both in Microsoft Word format and in PDF format, should be sent to the email address: registrar@comcom.govt.nz.

For further information on the Commission's confidentiality policy and procedures, please refer to the Mergers and Acquisitions Clearance Process Guidelines.



THIS NOTICE is given by

\* USG Corporation.

\* We hereby confirm 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.

\* We undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 3<sup>rd</sup>                      day of December      2013.

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\* Signed on behalf of USG Corporation by Stanley Ferguson, Executive Vice President, USG Corporation

\*I am an officer of the company and am duly authorised to make this application/notice.

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Director/Authorised signatory

THIS NOTICE is given by

\* Boral Limited.

\* We hereby confirm 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.

\* We undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 3<sup>rd</sup>                      day of December      2013.

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\* Signed on behalf of Boral Limited by: Damien Sullivan, Group General Counsel.

\* I am an officer of the company and am duly authorised to make this application/notice.

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Authorised signatory

## CHECKLIST

MAKE SURE YOU HAVE ENCLOSED THE FOLLOWING:

- A CONFIDENTIAL VERSION OF THE NOTICE IN HARD COPY, PDF AND MICROSOFT WORD;
- A PUBLIC VERSION OF THE NOTICE IN HARD COPY, PDF AND MICROSOFT WORD;
- A SEPARATE SCHEDULE OF ALL CONFIDENTIAL INFORMATION CLAIMED IN THE APPLICATION;
- ALL SUPPORTING DOCUMENTATION REQUESTED UNDER PART 6 OF THE FORM;
- ANY DOCUMENTS REFERRED TO IN THE NOTICE AS SUPPORTING EVIDENCE;
- A SIGNED DECLARATION ON THE CONFIDENTIAL VERSION; AND
- PAYMENT OF \$2,300