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The Registrar
Competition and Consumer Branch
Commerce Commission
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POTENTIAL ACQUISITION OF THE OJI TASMAN PLANT IN NEW ZEALAND BY IXOM

This submission by Coogee to the New Zealand Commerce Commission provides information related to changes in competition in the sodium hypochlorite (“hypo”) and hydrochloric acid (“HCl”) markets in New Zealand, should the purchase of the Oji Tasman plant by Ixom proceed.

We believe that our submission should lead CCNZ to conclude that:

- The proposed acquisition will not provide effective competition between the Parties in the New Zealand chlor alkali products market, and this would remain so without true competition which could be introduced with another independent manufacturer.
- Ixom have presented inadequate counterfactual arguments due to their omission of Coogee as a potential purchaser / owner of the Oji Tasman plant.
- Import of bulk products into the New Zealand market are not commercially viable to be considered as competitors against local manufacture.
- Alternative chlorination technologies do not provide competition to locally manufactured hypo.
- The net outcome of the points listed above will be significantly reduced competition in the New Zealand bulk hypo and bulk HCl markets.

Our comments are made against specific clauses in the CCNZ Statement of Preliminary Issues document, dated 23 January 2019.

Clause 8: *We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual). This allows us to assess the degree by which the proposed acquisition might lessen competition.*

Coogee submission to CCNZ assessment of effect on market competition:

In presenting its counterfactual scenarios, Ixom have described what they claim are the competitive factors in play should their purchase of the Oji Tasman plant not proceed. In Ixom clauses 5.4, 18.3 and 18.4, Ixom have noted but dismissed Coogee as a competitor in both the New Zealand market, and also as a potential purchaser of the Tasman plant.

This omission by Ixom not including Coogee as a competitor to consider, in our opinion, is a major fault in many of the counterfactual scenario's presented. It introduces a major bias in the weight of arguments which are presented by Ixom to justify what they state to be the competitive situation existing in many of the counterfactual scenarios.

Coogee's credentials to make the statement above are:

- Coogee has operated chlor alkali manufacturing plants in Australia for over thirty years, and with that has extensive capability in chlor alkali product sales and distribution. We believe that we have chlor alkali production capacity in Australia which is at least equivalent to that operated by Ixom in Australia.
- Coogee can demonstrate both technical capability and safety of operation, with two of our three chlor alkali plants operating as licensed Major Hazard Facilities.
- Coogee has a long history of supply in Australia to many of the distributors named by Ixom in their application. We also have strong working relationships with many water treatment utilities in Australia. We also operate extensive supply networks using our own transport fleet. With this experience as background, we are confident that we could quickly establish effective supply chains for New Zealand customers, should we have the opportunity to manufacture in New Zealand.
- Coogee today stands capable and very willing to be able to enter the New Zealand chlor alkali market by acquiring the Oji Tasman plant, should we be given the opportunity to evaluate this. In 18.4.2 (b), Ixom state that Coogee could not justify the risk of considering this – we totally disagree with that statement. We have the ability to carry out a due diligence on the potential acquisition of the Oji Tasman plant in a matter of weeks, should we be given the opportunity.

Clause 9: *If the lessening of competition as a result of the proposed acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:*

9.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

9.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

9.3 the countervailing market powers of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Coogee submission to CCNZ assessment of effect on market competition:

In their application Ixom have stated many times that, as well as competition from other manufacturers in New Zealand (i.e. Oji Kinleith), the import of hypo and hydrochloric acid would be used as viable competitive market responses should their pricing be uncompetitive.

In Ixom clauses 12.6 and 18.5, they describe why the degradation of hypo over time makes it unsuitable for import for use in water treatment. Hence using Ixom's own statements, imports cannot be considered as a competitive constraint against Ixom raising prices for the substantial market segment of hypo for water treatment.

Although hydrochloric acid can be imported without quality degradation as per hypo, it is nevertheless a 'mostly water' product which incurs a high shipping cost relative to its manufactured cost, making imports not viable as a competitive constraint against Ixom raising prices. We also note in CCNZ clause 26 "that Ixom neither produces [*inferring in NZ*] nor imports HCl." As a major producer of HCl in

Australia, we believe that there would be little doubt that Ixom would already be importing HCl into NZ if it was economically viable to do so. Hence, with the acquisition of the Tasman plant, Ixom will gain a significant advantage in the HCl market in NZ knowing that imports are uncompetitive.

In 21.9.3 Ixom state that they expect that the retail cost of HCl produced at Tasman will remain slightly higher than the retail cost of HCl imports, due to the need to transfer HCl to smaller packages and re-package it. Wherever the product is produced, there will be costs incurred to re-package into the final sold pack, and the imported product is certainly higher cost due to the reason provided above. We expect that the 'cost' (not to be mistaken with price) at Tasman would be lower than the imported cost of HCl, with pricing strategy and not product cost driving the logic in this Ixom statement.

Coogee's experience is of low success rate when tendering for supply of bulk hypo and HCl into New Zealand, while use of similarly competitive pricing in Australia results in a much higher success rate. We believe that this supports the statement that import of bulk hypo and HCl is not competitive against local manufacturers in the current pre-acquisition state, and will be made worse post acquisition due to the closer contractual ties between Oji and Ixom (discussed below in this section).

Ixom discusses that sulphuric acid is the main acid used in New Zealand, mostly in preference to HCl. We observe that Ixom is a major supplier of sulphuric acid in NZ, so this should be considered by CCNZ as an alternative sale opportunity and not a competitive product for Ixom.

Relating to CCNZ Clause 9.3, we note Ixom Clauses 9.1.4 and 18.3.4, stating that the Parties either have, or will have, contracts in place for the supply of products to each other. It is unclear due to the confidentiality of these agreements, however should Ixom have contractual agreement to the rights of exclusive access to chlor alkali products in excess to Oji requirements at Kinleith, then stating that Oji at Kinleith is a competitor in this market would be false, and this would be a clear example of significant loss of competition occurring.

Apart from this potential for directly contracted impediment to competition, we ask CCNZ to critically assess whether these mutual supply contracts create an environment in which either party is able to 'substantially influence' the other in matters of market competition.

Ixom's Clause 18 describes the counterfactual. We observe that Ixom go into much detail about the product supply dynamics which they believe may apply in the counterfactual scenario, but they provide no commentary regarding the effects on competitive pricing.

Clause 19: *In its Application, Ixom submitted that in the absence of the Proposed Acquisition:*

19.1 *Oji will close the Tasman plant from 31 March 2019; and*

19.2 *Ixom will build a hypo plant in the North Island with Ixom relocating its South Island plant to the North Island to meet demand while the new plant is being built.*

Coogee submission to CCNZ assessment of effect on market competition:

Based on the reasoning that we have used against Clause 8 above, Coogee believes that it a major weakness in this application which considers the competitive aspects of acquisition, for there not to be an additional "Clause 19.3: Competitive offer for the purchase of the Tasman plant". Coogee stands prepared to carry out a prompt due diligence process for the purchase of the Oji Tasman plant.

Clause 22: *Where two suppliers compete in the same market, a merger of the two may remove a competitive constraint, potentially allowing the merged entity to raise prices or lessen quality.*

Coogee submission to CCNZ assessment of effect on market competition:

In Clause 19.7, Ixom state “As far as Ixom is aware, Oji does not arrange tanker transport, schedule deliveries or arrange down packing so customers wishing to purchase directly from Oji would need to arrange these things themselves (or purchase from distributors who can transport and, if required, down pack and deliver directly to the customer site). Furthermore, Oji is a manufacturer of pulp and paper (not chemicals distributor), and most customers would not purchase products in sufficient quantities for Oji to supply.”

Combining this Clause 19.7 with Clause 9.1.4 (contractual supply agreements being in place between Oji and Ixom), we infer that Oji may propose to supply bulk products from its Kinleith plant (in excess of its internal consumption) for Ixom to supply its chlor alkali distribution, in addition to Ixom selling its own production from the Tasman plant. If this is the case, this market control of all New Zealand manufactured chlor alkali products by Ixom (in excess of Oji internal consumption) should be considered as monopolistic behaviour, and the Approval Application for this proposed purchase of the Tasman plant should be rejected by CCNZ.

Clause 23: *Ixom and Oji both produce hypo in New Zealand. Ixom submitted that the Proposed Acquisition would not be likely to substantially lessen competition in the hypo market because of:*

- 23.1 the availability of imports at reasonable cost for hypo suitable for use in agricultural cleaning;*
- 23.2 the continued availability of hypo from Oji’s Kinleith plant;*
- 23.3 the ability for a new operator to build a hypo manufacturing plant; and*
- 23.4 the ability of hypo customers to use chlorine, or on-site hypo generation or UV treatment technology as substitutes for hypo for water treatment*

Coogee submission to CCNZ assessment of effect on market competition:

Re 23.1: The major NZ market for hypo is into water treatment, where Ixom acknowledge that imports are not competitive due to degradation of quality in the extended shipping / import supply chain. For all distributors who supply into both the water treatment and agricultural cleaning markets, it is almost certain that these distributors would need to purchase from the local New Zealand producers (i.e. Ixom or Oji) for the water treatment market due to this quality degradation. In our experience of supplying hypo, it is our observation that customers would be highly likely to purchase all qualities from the one supplier due to the nature of typical price versus volume negotiations. The distributor may have reservations about the cost effectiveness of importing the agricultural cleaning hypo, with potential resultant increase in water treatment hypo from the local producer. In our response to Clause 22 above, we question whether Ixom will effectively become the sole wholesale distributor of hypo, and if this was the case, both water treatment and agricultural cleaning hypo would be channelled through Ixom. Imports are not applicable as competition as stated by Ixom.

Re 23.2: Refer to our comments against Clause 22 above, and whether considering supply of hypo from Kinleith is an actual competitor to Ixom in the hypo market.

Re 23.3: It is true that a competitor can build a hypo manufacturing plant in New Zealand. However, having a plant will not be competitive unless the cost of raw materials is also competitive in the market. We agree that, as noted by Ixom, the caustic market is globally quite competitive, and caustic

should therefore be able to be sourced competitively by the owner of this new hypo production facility. The main cost component of hypo is chlorine. The only liquified chlorine produced in New Zealand is that produced and consumed internally by Oji, with none able to be supplied to the New Zealand market due to plant configuration. If chlorine is purchased in Australia for export to New Zealand for hypo manufacture, Ixom is the monopoly supplier. A New Zealand hypo producer would buy chlorine from Ixom at full market price, where Ixom's use of its own chlorine in NZ for manufacture of hypo will be at 'marginal cost' in terms of internal accounting and profitability. So unless the owner of the new hypo plant can import competitively priced chlorine from other than Australia, the cost of product from the new plant will still be significantly influenced by Ixom. Is this, then, true competition?

Re 23.4: There are, as Ixom advises, alternative technologies that hypo consumers can potentially adopt should hypo pricing be uncompetitive. However, these changes are likely to involve significant capital expenditure and take significant time to plan and implement, and due to this fact, are therefore unlikely to be adopted by companies unless there is an extended period (years) where hypo pricing remains uncompetitively high. For small consumers of hypo, there is unlikely to ever be sufficient economic justification to adopt an alternative technology. We note that chlorine dosing dominates water purification globally due to reasons of cost and residual capability. As a result, we believe that the adoption of alternative technologies is a weak argument to use to support the statement that competition will not be lessened.

Clause 29: *The Proposed Acquisition will increase the vertical integration between the manufacturing and wholesale supply functional levels of the affected markets. Oji currently supplies hypo and HCl to Ixom and other distributors and customers. Ixom competes with some of those distributors to supply to downstream customers. The Proposed Acquisition may therefore result in Ixom being both a supplier and competitor of buyers of those chemicals.*

Coogee submission to CCNZ assessment of effect on market competition:

Referring back to our comments regarding Clause 22, we believe that there is a high likelihood that Ixom will be both a supplier and competitor of buyers of these chlor alkali products. We believe that CCNZ should look closely at this point to ensure that there is not significant reduction in competition due to increased vertical integration.

Clause 30: *Ixom has submitted that the Proposed Acquisition would not give Ixom the ability and/or the incentive to foreclose its competitors from each of the affected markets.*

Coogee submission to CCNZ assessment of effect on market competition:

Re 30.1: Due to the confidential nature of the operating costs at the Tasman chemical manufacturing plant, there is no way for public readers to assess Ixom's claim that high operating and fixed costs act as a strong disincentive to Ixom foreclosing competitors. We encourage CCNZ to verify the voracity of this claim.

Re 30.2: Coogee has challenged in other clauses of this document whether the Kinleith can be claimed by Ixom to be considered a competitor for supply of hypo and HCl.

Re 30.3: Coogee has challenged in other clauses of this document whether imports of hypo and HCl are valid to be used by Ixom as valid constraints against potential anti-competitive behaviour by them in the market.

Re 30.4: Coogee has challenged in other clauses of this document whether the building of a competing hypo manufacturing plant in New Zealand could be truly competitive, given Ixom's monopoly on the supply of drums of liquified chlorine in Australia.

Re 30.5: Coogee has challenged in other clauses of this document whether water treatment customers of hypo can economically justify the substitution of hypo with other treatment technologies, other than following very long periods of very high pricing. In our opinion, long periods of very high pricing is a result of inadequate competition.

Other comment on Ixom submission:

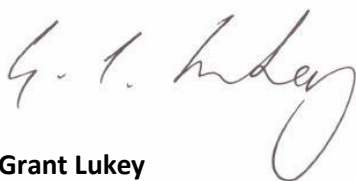
In Clause 17 of Ixom's application, Ixom refers CCNZ to successful acquisition approvals which may create precedent for approval of this proposed acquisition. Since these cases are in different countries with different laws and markets, we believe that this adds no weight to the argument for CCNZ to approve this acquisition.

In closing this submission, Coogee would like to emphasise the two major themes that we have documented in this submission:

1. Coogee is a real competitor to Ixom as a potential chlor alkali manufacturer in New Zealand, and we could create a much stronger competitive market for chlor alkali products in New Zealand if Coogee was to become a third independent local manufacturers by our purchase of the Oji Tasman plant. We have a strong desire to have this claim tested and are prepared to do this at short notice.
2. We have highlighted many points where we believe that claims made by Ixom are either incorrect, or by omission, draw conclusions about competition in the New Zealand chlor alkali products market based on an incomplete consideration of relevant factors.

Coogee hopes that this submission is of assistance to CCNZ in its assessment of the competitive impacts of the proposed acquisition of the Oji plant at Tasman by Oji, and we would be pleased to offer further input to your assessment should that be requested.

Yours sincerely,



Grant Lukey
Chief Executive Officer

Note: There is no content in this document which we consider to be confidential, and its use in full for public review is authorised by Coogee.