



Notice seeking clearance - Mergers and Acquisitions - Commerce Act 1986

NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF THE COMMERCE ACT 1986

20 October 2023

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON 6140
New Zealand

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

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Executive summary

- 1 Kingspan Limited (**Kingspan**) seeks clearance to acquire certain business and assets of Conqueror New Zealand Limited (**Conqueror**) (**Proposed Transaction**).
- 2 Kingspan Group is a global leader in high-performance insulation and building envelope solutions. Head quartered in Ireland with 5 operating divisions, of which two are active in NZ (operating through two separate New Zealand companies). These are:
 - 2.1 an insulated panels division – among other things, importing PIR,¹ hybrid foam technology & mineral fibre core insulated panels into New Zealand; and
 - 2.2 an insulation division – among other things, importing rigid insulation (boards) (phenolic, PIR, XPS and other cores) into New Zealand.
- 3 Conqueror is a domestic manufacturer and supplier of PIR foam cored insulated products including insulated panels and insulation boards.
- 4 The relevant market for the purpose of this application is the national market for the supply of insulation solutions for industrial and commercial premises. No substantial lessening of competition is likely to arise in this market as a consequence of the Proposed Transaction because:
 - 4.1 The merged entity will remain constrained by the presence of built-up/alternative insulation solutions, as well as by well-resourced insulated panel competitors that have the potential to expand (including by way of imports). For example, in May 2023, Metalcraft announced plans for a new state of the art facility to produce thermally efficient cladding and roofing panels (a collaboration with global supplier Metecno Group and United Industries Group).
 - 4.2 Barriers to entry for new market participants and barriers to expansion for existing competitors are relatively low and the potential for entry and expansion satisfies the LET test.
- 5 Accordingly, Kingspan requests that the Commission grant clearance for the Proposed Transaction.

¹ PIR is a common term for polyisocyanurate.

Party details

Applicant

6 Details for Kingspan and persons responsible for the application are:

Kingspan Limited
97 Montreal Street
Sydenham
Christchurch 8023
New Zealand

P O Box 39136
Harewood
Christchurch 8545

+64 03 2605535

www.kingspanpanels.co.nz

Attention: Paul Metcalfe (General Manager New Zealand)

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

DLA Piper New Zealand
6 Lower Albert Street West
Level 15
Auckland 1010

Attention: Mark Williamson (Partner) / Iain Thain (Partner)
Telephone: +64 9 300 3857 / +64 9 300 3818
Mobile: +64 275 474782 / +64 21 388 012
Email: mark.williamson@dlapiper.com / iain.thain@dlapiper.com

8 Details of any relevant related entities (showing shareholdings) are:

8.1 A corporate structure chart for Kingspan and its related companies is provided at Schedule 1.

Other party/parties to the merger: Conqueror

9 The contact details for Conqueror are:

9.1 Conqueror New Zealand Limited
57 West Coast Road
Yaldhurst
Christchurch 7676
New Zealand

www.conquerornz.co.nz

Attention: Colin Richman

[]
[]

10 All correspondence and notices in respect of the application for Conqueror should be directed in the first instance to:

Attention: Jamie Nunns (Partner)
Telephone: +64 4 495 8912
Mobile: +64 21 993 996
Email: jamie.nunns@morrisonkent.com

11 Details of any relevant related entities (showing shareholdings) are:

11.1 Corporate structure information for Conqueror and its related companies is provided at Schedule 2.

Proposed Transaction details

Type of transaction

- 12 The Proposed Transaction is a merger involving the sale and purchase by Kingspan of the main business and certain assets of Conqueror.
- 13 In summary, Kingspan are acquiring the manufacturing and distribution of insulated panels and insulation boards and associated products business carried on by Conqueror (and associated assets). Conqueror will retain a smaller wholesale insulation supply business (remanufactured slab and profile cut insulation) using PIR foam core material supplied by Kingspan. More particularly:
- 13.1 Kingspan will acquire the following the business and assets from Conqueror and PIRM Limited (**Sellers**): []
- 14 []
- 14.1 []
- 14.2 []
- 15 []
- 16 []
- 17 []
- 18 As the Proposed Transaction is wholly domestic in nature, there are no other competition agencies being notified of the Proposed Transaction.

Rationale for the merger

- 19 The Conqueror business was founded in 2012 by Trevor Bills (who retains ownership of the land and buildings) and sold in 2018 to current ownership Wellington property developers Ian Cassels and Caitlin Taylor. []
- 20 If successful, []

What is the appropriate counter-factual?

Conqueror

- 21 If the Proposed Transaction does not proceed, then the two most likely scenarios are either that the status quo will continue, or that Conqueror will cease operating the relevant business and assets as a going concern (with assets being dealt with/disposed of on a case-by-case basis).
- 22 The simplest and most competitive market scenario for Commerce Act purposes is the status quo, so Kingspan adopts this counter-factual for the purpose of this application. []
- 23 []

Kingspan

- 24 []

Background on the supply and use of insulated panels

Introduction

- 25 In New Zealand, insulated panels are generally used in the construction of walls and roofs of industrial and commercial buildings.
- 26 As an alternative to other options, the use of insulated panels has a long history in New Zealand. Since approximately 2005, there has been a move from EPS panels² towards fire resistant panels (PIR/XFLAM³/mineral wool/QuadCore foam technology). However, EPS panels are still used in the market for a number of uses, for example site sheds, sleepouts, portable buildings, small chillers etc ([])⁴.

Overview of design and specification process

- 27 Building design is typically led by an architect or engineer (depending on the type of building, engineers tend to lead building design where aesthetics are of less importance). Many projects involve a wide variety of other consultants including acoustic engineers, fire engineers, façade engineers, QS, and project managers – all of which can and do influence a project at all stages.
- 28 Material suppliers all promote and advertise products to all of these parties. The promotion could be via web, adverts, presentations, or meetings. Promotion could be at any stage in the design and tender cycle of a building.
- 29 For any building, there will be a range of insulation solutions that the designer will consider having regard to factors such as the type of building, performance requirements, and Building Code standards. Clients also play a major part in the product decision process, based on their budgets, product experiences and preferences. As with all building materials, designers gravitate to quality products that are supported and provide good technical service, certification, delivery, and pricing. Depending on the project, the acceptable solutions for purposes of satisfying the New Zealand Building Code can be very prescriptive and there can be a range of queries at consent stage from local authorities.
- 30 Solutions may include panels or built-up solutions. For example, "built-up" insulated roofing solutions made of materials such as netting, foil, batt insulation, or metal have traditionally been used to meet insulation requirements for commercial and industrial buildings in New Zealand. Similarly for walls, solutions may include precast concrete, weatherboards, fibre cement, metal cladding, brick and plaster, and many other built-up solutions. In this context insulated panels are unique only to the extent that they replace a number of components in a wall with one item (that is insulation, building paper, cladding, including framing in some designs).

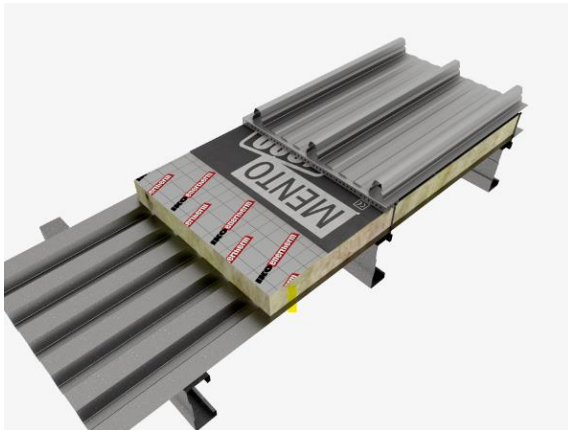
² As the Commission is aware from its 2019 investigation into the Bondor/Long Panel acquisition, EPS (expanded polystyrene) panels have a core of expanded polystyrene beads and have been used in the New Zealand construction industry for over 40 years.

³ XFLAM is a high-performance fire-resistant panel with a syntactic foam core.

⁴ []

31 Example built-up solutions:

31.1 Dimond Tricore system



31.2 Fibertherm MSR

FIBERTHERM MSR



31.3 Example of internal dry wall in a hygiene environment.

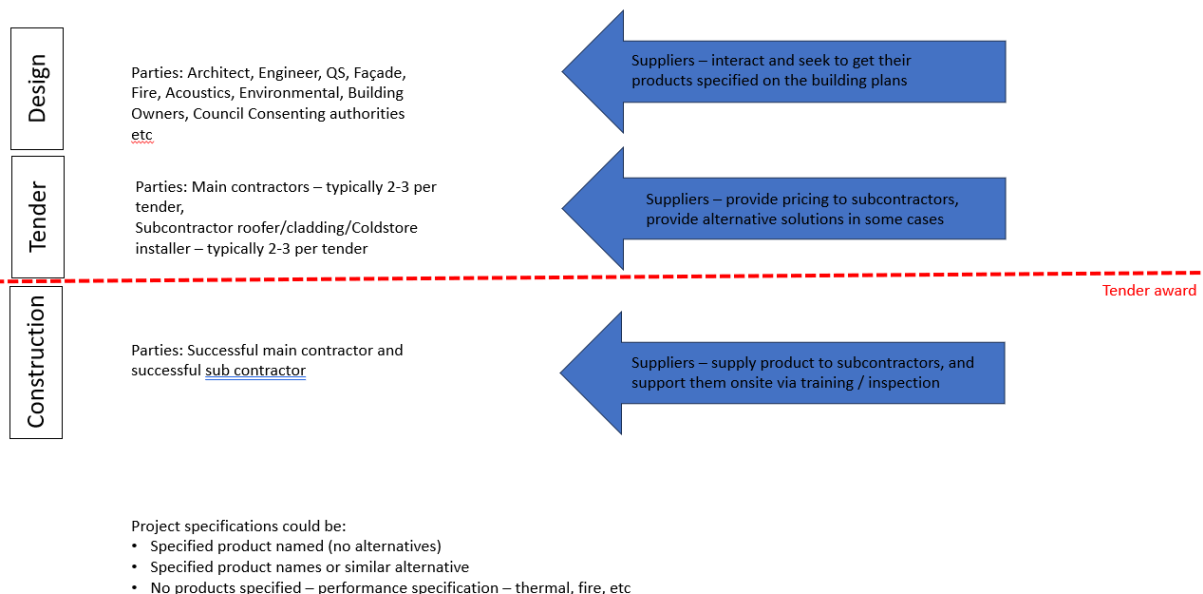


32 For some major projects, there are typically some key specification requirements, which in many cases can be a key factor in product choice. These include:

32.1 Technical support – some buildings are very complex by their nature and designers/specifiers gravitate to the companies that have a technical team that can support them through their design process;

- 32.2 FM Global approval – this is a large scale fire testing to satisfy insurance company requirements. Kingspan products have achieved this standard, whereas Conqueror products are currently not FM Global approved and therefore their products are unsuitable for some customers, and may give rise to higher insurance premiums; and
 - 32.3 Independent environmental certifications – for example, GreenTAG certification or EPDs are sometimes required to meet client briefs and GreenStar rating tools on their builds.
- 33 Regarding the relevance of the type of building to the above process:
- 33.1 typical commercial and industrial building types (industrial warehouses, offices, schools, retail, residential) tend to have an architect as the product specifier;
 - 33.2 controlled environment buildings (including processing buildings, cleanrooms, coldstores, freezers, laboratories, swimming pools) tend to have an engineer as the product specifier as the buildings are functional rather than aesthetic. Engineers have a high demand for information – spans, fixing methods, joint detailing – all of the key elements to make the building function as expected; and
 - 33.3 insulated panels as well as built-up solutions can be selected for all building types based on the factors discussed in paragraph 29 above. Industrial linings in a hygiene environment are one example of a built-up solution being used in a controlled environment building.
- 34 The following table demonstrates the parties involved in each stage of the sale and specification process:

SALE AND SPECIFICATION PROCESS



Route to market

- 35 Panel suppliers (including Kingspan) generally do not sell direct to clients or main contractors. Rather, they deal with a range of specialist contractors around New Zealand who supply and install the relevant panels. Many of these contractors have invested in specific training (provided by Kingspan or other suppliers) and equipment for installing insulated panels.

Additional regulatory background

36 Additional information and background regarding regulatory issues is set out in Schedule 3.

Key acquirer/target details and documents

Kingspan

37 Further information regarding the products and activities of Kingspan and the Kingspan Group is set out in Schedule 4.

38 Schedule 5 sets out each of the following for Kingspan:

38.1 total sales revenues and volumes for the past three financial years;

38.2 names and details of main competitors and applicable trade associations;

38.3 names and details of top five customers and revenue earned from each in the last financial year; and

38.4 names and details of key designers that specify insulation products.

39 Schedule 6 contains copies of, or links to:

39.1 relevant transaction documents;

39.2 Kingspan documents addressing the rationale and/or analysing competition in relevant markets/the Proposed Transaction from a competition perspective; and

39.3 Kingspan's annual reports/financial statements and management accounts.

Conqueror

40 Further information regarding the products and activities of Conqueror is set out in Schedule 4.

41 Schedule 7 sets out or contains each of the following:

41.1 total sales revenues and volumes for the past three financial years;

41.2 names and details of main competitors and applicable trade associations;

41.3 names and details of top five customers and revenue earned from each in the last financial year; and

41.4 copies of, or links to, Conqueror's annual reports/financial statements and management accounts.

Market definition

42 Consistent with the Commission's approach to market definition, in this application, Kingspan has defined the relevant market in a way that it considers to be the most helpful basis for analysing the competitive impact of the Proposed Transaction including applicable constraints on the merged entity in the factual.

-
- 43 More specifically, Kingspan submits that the appropriate market for assessing the Proposed Transaction is the national market for the supply of insulation solutions for industrial and commercial premises (**Insulation Solutions Market**). The rationale for this submission is discussed in more detail below.

Product dimension

- 44 With regard to the product dimension of this market, Kingspan has adopted a market definition which includes both fire resistant panels and EPS core panels. This is appropriate because across a range of building types, EPS core panels remain an option and will act as a competitive constraint on the merged entity. As discussed in paragraph 26, this is particularly the case for the likes of site sheds, sleepouts, transportable buildings where both EPS and PIR panels are used, with customers making decisions based on price, thermal performance, availability, span, and a range of other factors.
- 45 Importantly, Kingspan's view is that the market definition adopted must appropriately capture built-up solutions. This is because:
- 45.1 built-up solutions are regarded by specifiers/building owners as substitutable for Kingspan's products across a wide range of projects. It is also consistent with the fact that on any project, Kingspan commonly views displacing built-up solutions as a key challenge; and
- 45.2 from a pricing/economic perspective, in Kingspan's view, a hypothetical monopolist which sought to impose a SSNIP (small but significant and non-transitory increase in price) for insulation panels would lose a material number of customers to built-up solutions.
- 46 Key factors in this assessment include each of the following:
- 46.1 As insulation requirements have increased, a large number of different insulated systems have been introduced to the market. For example, in the roofing area, Dimond Tricore, Rooflogic systems, provide higher performing insulated roofing systems.
- 46.2 Designers, and also contractors have preferences, and in many examples personal preferences drive the specification. For example, some designers do not accept panel solutions and will always specify a built-up solution where they can. Even though the Kingspan solution is shown to be cheaper, the specifier will resist changing.
- 46.3 Also, at tender stage, it is commonplace that a contractor (who may have a preference for another system) may try to change the specification to another system, this could be cheaper/or more expensive or of lower standard. In that scenario the designer has to make a decision based on what is best for the project.
- 46.4 In all scenarios, the panel supplier's pricing is constrained by the need to be as competitive as possible to achieve sales.

Geographic dimension

- 47 From a geographic perspective, the market is a national one with suppliers' products (both local manufacture and import) being used in projects around New Zealand.

Supply chain dimension

- 48 As discussed in paragraph 35, in terms of the supply chain dimension, both Kingspan and Conqueror generally supply products to independent contractors (who in turn offer a supply and install service to main contractors). However, specifiers and ultimate owners play a key role in the competitive process.

-
- 49 Some panel suppliers offer a supply and install service. Kingspan's view is that nothing turns on this distinction from a competition perspective. For example, Kingspan is equally constrained by a supplier such as Bondor which offers a supply and installation service as is the case with a supplier such as Metalcraft/Metecno that largely (but not exclusively) operates a similar supply only business model to Kingspan.

Alternate market definition

- 50 Kingspan has considered the extent to which the applicable market for Commerce Act purposes should be limited to the supply of insulation panels. As discussed above, Kingspan does not believe this is appropriate as it would fail to recognise the substitutability of built-up solutions. Also, in any event, even if this market definition was adopted by the Commission:

50.1 The constraints imposed by built up solutions as discussed in this application would still apply (albeit technically as constraints 'outside' the market); and

50.2 The merged entity would remain constrained by the significant panel suppliers discussed in the competition analysis below.

- 51 For completeness, Schedule 8 sets out estimated shares for the merged entity in respect of:

51.1 the supply of insulated panels (ie excluding built up solutions); and

51.2 the supply of fire-resistant core insulated panels.

Competition analysis – Insulation Solutions Market

Identification of overlaps and closeness of competition

- 52 Kingspan and Conqueror both supply fire-resistant PIR core insulated panels as part of the Insulation Solutions Market.

- 53 While there is therefore competition between Kingspan and Conqueror, Kingspan submits that the degree of constraint currently imposed on Kingspan by Conqueror in the Insulation Solutions Market is limited to an extent by []

- 54 More specifically there are a number of differentiating factors between Conqueror and Kingspan that are recognized by specifiers. These include:

54.1 CodeMark – Kingspan has invested in CodeMark – highest level of NZBC compliance available;

54.2 environmental certification – Kingspan has invested in Environmental Product Declarations (EPDs) and GreenTAG certificates (GreenRate Level A) which provides independent verification of our panels;

54.3 large scale fire testing – Kingspan has been tested to large scale fire tests – such as FM global which is looked for by insurers and many key clients in New Zealand;⁵

54.4 technical support – Kingspan has an established and experienced technical team which means many designers trust and know its product and performance;

⁵ [] FM Global tests products to different standards and results are applicable to specific products only. FM4880 applies to walls and ceiling solutions, and can be categorised as limited to 9.1m, or unlimited height (Kingspan), FM4881 applies to external walls, FM4771 applies to external roofs, FM4882 applies to interior walls and ceilings in smoke sensitive environments. []

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- 54.5 innovation and forward thinking – many people in the market know of Kingspan and recognize the innovation, changes and forward thinking that Kingspan brings to the market. Kingspan has been seeking to lower its environmental footprint for over a decade and continues progress with its [Planet Passionate programme](#), and introducing new products in the future including Kingspan Quadcore and LEC panels to meet market demands; and
- 54.6 guarantee – Kingspan guarantee backed by global multinational.
- 55 Conqueror does compete with Kingspan in areas where the client/specifier is either ambivalent or unaware of some of the additional benefits of Kingspan. They could be focused on other factors such as faster lead times, perceived local supply benefits or pre-existing relationships. Shed companies, tiny home suppliers and clients undertaking small coldstores may fall into this category. However, Kingspan does not regard this as competition as equivalent to the challenges Kingspan faces from built-up solutions and international panel suppliers such as Bondor and Metalcraft/Metecno.
- 56 Schedule 9 sets out some examples that Kingspan is aware of where Conqueror has unsuccessfully tendered for projects.
- 57 The factors discussed in paragraph 20, amongst other things, also [].
- 58 For completeness, Kingspan notes that there is also overlap between the insulation board products supplied by Kingspan's insulation division and Conqueror's board products. Given the vast array of products (Pink Batts/Bradford Gold etc) which are substitutable for insulation boards, Kingspan's view is that no competition issues arise in respect of this overlap. Further information and discussion regarding this topic are set out in Schedule 10.

Process of competition

- 59 The following are key features that impact on the process of competition in the Insulation Solutions market:
- 59.1 Designers/specifiers who are engaged by property owners to design a building to the New Zealand Building Code and obtain building consent are the key driver in terms of the solution and products that are specified for a project.
- 59.2 Many designers have product preferences based on previous jobs/experiences/technical support. With both time and cost constraints during design, many designers revert to the solutions that they have used before and are familiar with (which may well be a built-up solution). A designer will generally review the information from different suppliers, make enquiries and ask questions, query quantity surveyors on cost effectiveness, review performance factors (thermal, fire, acoustics, span) then make a decision and proceed with completing the design.
- 59.3 Subject to any particular design characteristics, designer specification generally allows alternatives to be offered by the contractors at tender stage. Contractors will offer alternatives to either save money, improve the build programme, or simplify the design. Depending on the alternative offer, a substitution may take place. Substitutions can take place for any number of reasons, price is a major one, but not always as faster and simpler construction is also important.
- 59.4 In any given project there may be a client brief which may or may not include a requirement such as "FM Global approval needed", or "GreenTAG certification needed". Those client requirements can eliminate some products from being offered.
- 59.5 For certain projects, FM approval is becoming more important as insurance premiums increase.

Constraints from existing competition

60 The table below sets out the estimated market shares of the merged entity and competitors in the Insulation Solutions Market.⁶

Competitor	Estimate % market share in Insulation Solutions Market – pre-acquisition	Estimate % market share in Insulation Solutions Market – post acquisition
Built-up solutions – Dimond Tricore, Rooflogic, Steel&Tube, Roofing Industries, plus other suppliers	□	□
Kingspan	□	□
Bondor	□	□
Metalcraft/Metecno	□	□
Conqueror	□	
Other – smaller imported products eg InCold, Kiriin, SY, Brucha	□	□

61 Kingspan notes that the built-up market share includes:

- 61.1 any insulated roof system as designed by an architect (multiple independent components) including but not limited to Rooflogic systems, Dimond Tricore system, Metalcraft warm roof systems, plus others;
- 61.2 insulated walls, timber, metal cladding, concrete, aluminium; and
- 61.3 in the context of controlled environments, use of solutions such as lining only instead of a full panel solution, and in internal wall scenarios where a fully built-up solution can be used.

62 The above table illustrates that in the New Zealand market:

- 62.1 Built-up solutions remain the predominant option for commercial and industrial premises;
- 62.2 Conqueror occupies a very small share of the relevant market; and
- 62.3 Post-acquisition the merged entity will still hold a relatively small market share and any attempt to exercise unilateral market power will be defeated by customers switching to either built-up solutions or the other suppliers of insulation panels.

63 Competitor details are set out in Schedule 5. Key competitors are discussed below.

Built-up solutions competitors

64 With regard to roofs, there are many established metal roll formers in New Zealand who provide the metal roofing top sheet of built-up systems, Dimond, Metalcraft Roofing, Steel & Tube, Roofing Industries, plus many other smaller roll formers. Built-up systems on the

⁶ As there is no publicly available data, the table contains Kingspan's estimates of approximate market shares.

market include Dimond's Tricore system and Rooflogic's various solutions. There are also many other designs from architects involving products from a variety of companies.

- 65 In terms of insulation solutions for walls, the sector is fragmented and there is no dominant supplier. Designers choose wall panels based on their design, ie four story corner office building is likely to have concrete back/side wall (firewall/shear wall), then either glass on front/side façade or combination of glass/cladding.

Insulated panel competitors

- 66 The Commission will be familiar with Bondor from its 2019 investigation into the acquisition of the business and assets of Long Group. [Bondor](#) is an internationally established manufacturer and installer of insulated panels and fire rated panel systems. Bondor is part of the [ASKIN Group](#). ASKIN Performance Panels are the largest manufacturer and installer of insulated, fire rated and architectural façade systems, roofing systems and temperature-controlled facilities in Australasia. Bondor manufactures their products in New Zealand and offers an installation service. Bondor specialises in the construction of commercial chillers, cool stores, freezers, and all buildings that require a temperature-controlled environment. Bondor's XFLAM panel core has been extensively tested to meet the requirements of global insurers and the standards required in the New Zealand and Australian building codes.
- 67 [Metalcraft Roofing Limited \(Metalcraft Roofing\)](#) has been operating in New Zealand since the 1950s. Metalcraft Insulated Panel Limited (**Metalcraft**) was incorporated in 2002 and is a member of the United Industries Group, meaning it is part of one of the largest groups supplying, manufacturing, and installing products for the New Zealand residential and commercial construction markets.
- 67.1 [Metalcraft](#) specialises in the manufacture, supply, and installation of insulated panels for a variety of applications from industrial and commercial coldstores to agricultural and architectural buildings.
- 67.2 Metalcraft supplies Metecno PIR fire resistant core panel products in New Zealand. The panel's exceptional strength allows greater spans and a substantial reduction in the buildings support structure. [Metecnopanel](#) products are manufactured by Metalcraft's sister company Metecno in Brisbane.
- 67.3 Metalcraft sources some PIR and mineral wool core panels through its sister company Bondor Australia.⁷
- 67.4 Metalcraft currently has one manufacturing location in Auckland which [produces](#) Thermospan (EPS) and Thermopanel (EPS), as well as Aspirespan (PIR) and Aspirepanel (PIR).
- 67.5 In 2018/2019, Metalcraft Roofing [opened](#) a new office and significant manufacturing facility in Hamilton to increase the size and quantity of their long-run cladding production. The site size is also large enough to accommodate the future development of a second factory.
- 67.6 In May 2023, Metalcraft [announced](#) plans for a new state-of-the-art facility to produce thermally efficient cladding and roofing panels. This is a collaboration between Metalcraft, the international Metecno Group and United Industries Group, who are expanding their operations into New Zealand with a \$30 million, 8500m² manufacturing facility in Te Rapa, Hamilton. The facility will manufacture PIR and mineral wool core products. Work will commence on the 23,000m² site in mid-2023

⁷ Unrelated to Bondor New Zealand.

with factory commissioning expected early 2024. A [statement](#) from Metalcraft explains:

The expansion of Metecno Group into New Zealand demonstrates the group's commitment to local manufacture, reducing the carbon miles of key construction products and supporting the local economy.

With the increasing requirements for green and energy-efficient buildings, investing in the local manufacture of thermally efficient cladding and roofing solutions will allow Metecno Group to provide products that can assist in reducing energy demands of New Zealand buildings.

- 68 There are other smaller panel manufacturers within NZ, they primarily focus on making EPS panels in and amongst a range of other polystyrene products. This includes [Expol](#) (Emperor panels) and [EPS FOAM \(NZ\)](#).
- 69 Other panel companies enter the market from time to time on a project specific basis. For example, Incold (Italy) panels have been used on a number of jobs, and Kirin panel (Korea), SY Panels (Korea), Brucha (Germany) have also been used. Kingspan also hears anecdotal comments about other products from China being used.

Constraints from expansion and entry

- 70 As discussed above, the Insulation Solutions Market is fragmented and, to the extent that the merged entity sought to exercise any market power, it would be constrained by existing competition. Accordingly, analysis of additional constraints from expansion and entry is not required. However, for completeness, Kingspan discusses expansion and entry below (with a focus on panel supply).

Expansion

- 71 Kingspan's view is that both Bondor and Metalcraft/Motecno have significant potential for further expansion. Bondor has significant potential to expand supplies by way of imported products if the merger entities sought to exercise market power. As discussed above in paragraph 67, Metalcraft/Motecno has significant international support and is in the process of increasing its local manufacturing capabilities.
- 72 Companies which currently have a smaller market presence in New Zealand all have the ability to transact in the New Zealand market more frequently, depending on success on any given project. Price is certainly a key factor and their presence keeps pricing at a market level. These other entrants would be able to provide a compliance pathway to New Zealand standards and be able to deliver products to market expectations.
- 73 Kingspan submits that the threat of expansion satisfies the LET test (likely, sufficient in extent and timely) in that:
- 73.1 Expansion is likely if prices were to increase post-merger particularly given the recent capacity increases;
- 73.2 Expansion will be meaningful in scale given the potential of the major players to expand as discussed above; and
- 73.3 Expansion is likely to occur in a timely manner.

Entry

- 74 Various panel companies have entered the market over the last 15 years. In general terms, key requirements for any entrant is that they can satisfy the NZ building code in all aspects

including structure, durability, thermal, fire, weathertightness. A key element is also being able to deliver on time and in full to meet the expectations of New Zealand builders.

- 75 Kingspan notes that the New Zealand Building Code is performance based and may be viewed as requiring more paperwork/compliance steps than is typical in some other countries.
- 76 Based on the above, Kingspan submits that barriers to entry are relatively low, particularly for a well-resourced global player to service the market by way of imports. The other entry strategy, which has been successfully demonstrated by Metecno, is to work with a local partner to establish manufacturing capability.
- 77 As has been identified by the Commission in the context of residential building supplies, the challenges for new products are overcoming regulatory barriers and a general unwillingness of designers to specify new products, particularly those with a higher risk profile such as fire-resistant insulation. Kingspan submits that those challenges can be overcome particularly by a product which is well known and tested in other jurisdictions with comparable regulatory regimes, such as Australia, the United Kingdom, or Europe.
- 78 There are a range of global panel suppliers who could enter the New Zealand market by way of imports. These include Incold, Kirin, SY, and Brucha.⁸
- 79 Given the relative ease in which an importing relationship could be established, Kingspan submits that the threat of entry satisfies the LET test.

Countervailing power of customers

- 80 Particularly at the larger end of the market, owners have countervailing market power. This is a further factor suggesting that the merger will not substantially lessen competition. For example, large customers such as Fonterra, Woolworths, and Foodstuffs, would have an ability to source alternative products from a range of suppliers in the event that the merged entity sought to exercise market power.

Coordinated market power

- 81 In its 2019 Bondor/Long Group investigation, the Commission considered the ways in which coordination might occur between EPS panel suppliers. The Commission concluded that it did not have sufficient evidence to show a likely substantial lessening of competition due to price coordination or market allocation. Kingspan submits that this reasoning is generally applicable in the assessment of the risk of coordinated effects across the broader Insulation Solutions Market following the Proposed Transaction. More specifically:
- 81.1 a large proportion of sales are made by tender where the price is not transparent which would make it hard for the remaining suppliers to monitor the price;
- 81.2 the market is fragmented with smaller players that could disrupt coordination. competitors in the market have differing levels of capacity and are in different locations which may create alternative pricing incentives; and
- 81.3 effective allocation of customers is unlikely given the range of customers within the Insulation Solutions Market and the various routes to market.
- 82 Even if the market was conducive to co-ordinated behaviour, Kingspan submits that the Proposed Transaction would not materially enhance the prospects for any co-ordinated behaviour. Conqueror's [] is not well placed to play the role of a "maverick" to any material degree.

⁸ For competition analysis, these players could either be considered potential entrants or existing participants with the ability to expand.

Summary of competitive analysis – Insulation Solutions Market

83 In summary:

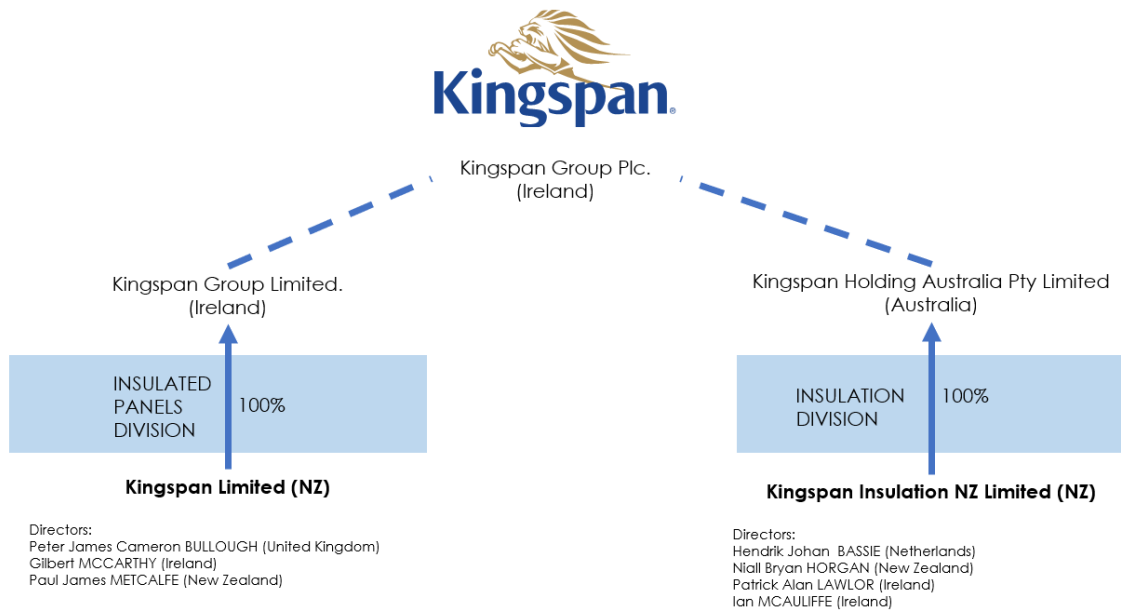
- 83.1 the degree of competition between Kingspan and Conqueror is not as close compared to some of its other competitors due to the significant upgrades needed to Conqueror's processes, products and services, and capital constraints;
- 83.2 the removal of that competition as a result of the Proposed Transaction will not be likely to result in higher prices or a reduction in quality/service by the merged entity that is substantial. The market is extremely fragmented, and there remains well-resourced competitors that have excess capacity and the potential to expand;
- 83.3 while not required to allay competition concerns, the threat of entry will also constrain any exercise of market power by the merged entity; and
- 83.4 the market is not particularly conducive to coordinated conduct and the loss of competition from Conqueror will not materially facilitate coordinated conduct.

Confidentiality

Reasons for seeking confidentiality

- 84 Confidentiality is sought in respect of the information in this application and schedules that is highlighted in yellow (confidential to Kingspan), blue (confidential to Conqueror) or green (confidential to both) and square bracketed. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:
- 84.1 The information is commercially sensitive and valuable information which is confidential to Kingspan and/or Conqueror; and
 - 84.2 Disclosure would be likely to unreasonably prejudice the commercial position of Kingspan and/or Conqueror, as the parties providing the information.
- 85 Kingspan requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. Kingspan also requests that the Commission seek and consider Kingspan's views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.

Schedule 1 Kingspan corporate structure



Schedule 2 Conqueror corporate structure

Conqueror New Zealand

Shareholder	Number of shares
PIRM Limited	900
Colin Richman	100

PIRM Limited

Shareholder	Number of shares
Ian Cassels	500
Patricia Taylor	500

Schedule 3 Additional regulatory information

Building for climate change

- 1 The New Zealand Government's Building for Climate Change programme is about making buildings more resilient and also making them more energy efficient and reducing carbon emissions.
- 2 Increasing insulation and air tightness of buildings is a key element of achieving this.
- 3 In late 2022 – the H1 section of the building code was changed to increase the r values of all buildings being constructed in NZ, example residential roof insulation went from R3.6 to R6.6, commercial roofing R values also increased.
- 4 This is driving investment by all insulation companies to offer new solutions to market to meet the increased requirements – utilizing insulated panels is one option to meet the new standards.

Industry certifications

- 5 All products need to be compliant to the New Zealand Building Code. CodeMark is the highest standard available and Kingspan has it for a number of products as a compliance pathway. A BRANZ appraisal is another option, as is testing to AS/NZS standards.
- 6 Each of these pathways involves a reasonable level of investment, and in some cases can take 6-12 months to attain.
- 7 Compliance is becoming more and more a "must have" by some designers, as it ensures that local councils will raise fewer questions at the consenting stage.

Future legislative changes

- 8 The Ministry of Business, Innovation and Employment has signalled a carbon cap. This is likely to be applied on new builds and will drive further investment by all building material companies to ensure compliance and verification of performance (ie environmental product declarations).

Schedule 4 Further information about Kingspan/Conqueror

Kingspan

Who is Kingspan?

Global building materials company – headquartered in Ireland

5 key divisions – each focussed on different areas of the built environment

NZ active businesses

- Insulated Panels – in market since 2004
- Insulation – in market since 2012

"Together, we have the opportunity to make our built environments more energy efficient, attractive, adaptable, environmentally sensitive and productive. The way we build can be more effective and reach higher standards than ever before. We can make our buildings really work for us, consuming and generating energy smartly, and become real investments in our future. These are Kingspan's aspirations; and they shape every aspect of how the Group works."

Gene Murtagh
Chief Executive Officer
Kingspan Group plc

Insulated Panels

The global leader in high-performance insulated panel systems, enabling low energy and low carbon buildings.

Insulation

Kingspan Insulation is a world leading manufacturer of insulation solutions for the building envelope, pipe and ducting services, district heating and cooling, as well as custom moulded packaging solutions.

Light, Air + Water

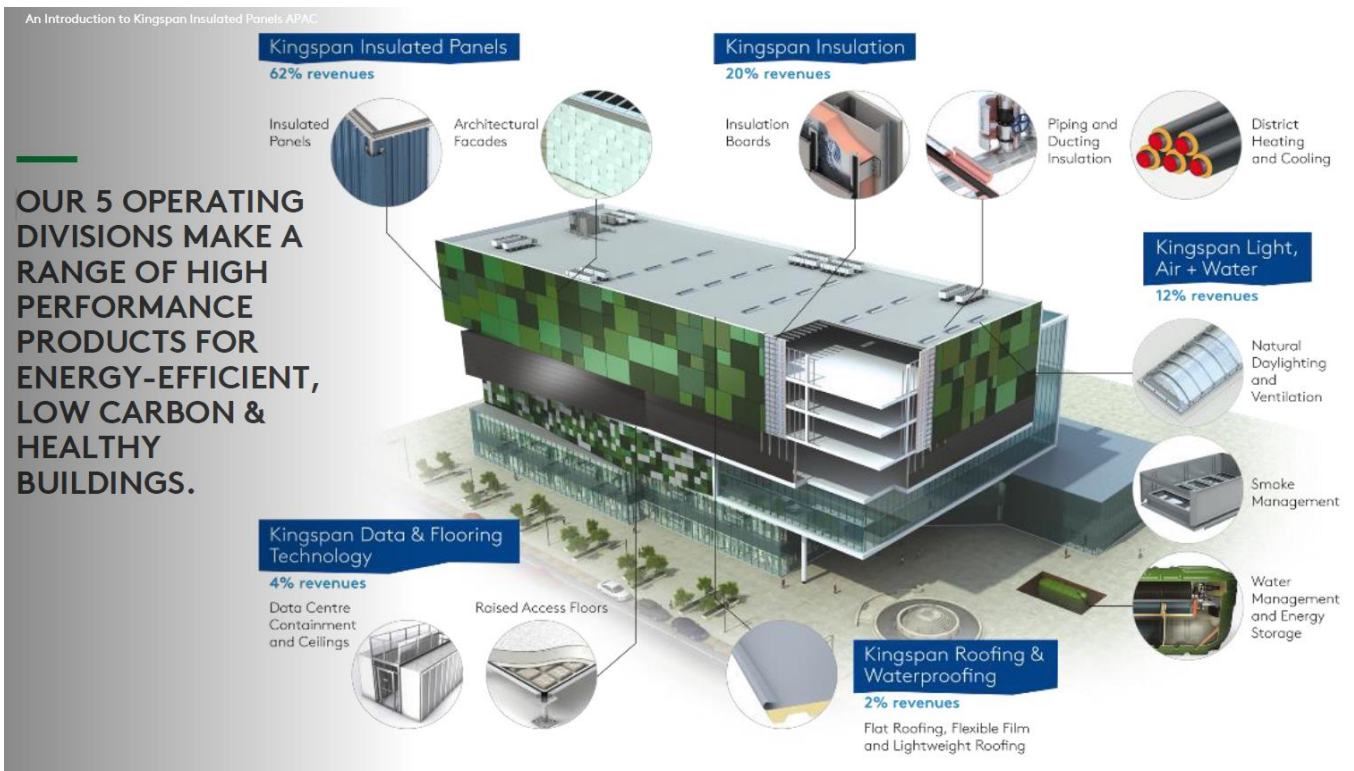
Kingspan Light, Air + Water delivers end services market-leading daylighting, natural ventilation, smoke management and building automation solutions. The Division also delivers sustainable ways of recycling, storing and protecting water and energy.

Data + Flooring

Kingspan Data + Flooring are leading manufacturers in the design, engineering and installation of raised access flooring, architectural finishes, structural ceilings, airflow optimisation and containment solutions.

Roofing + Waterproofing

A new global Division focused on solutions for energy-efficiency and water protection of roofs across all building typologies.

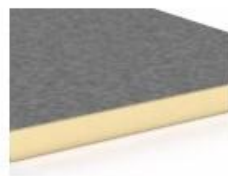
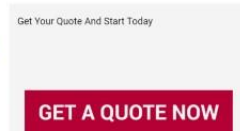
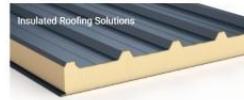


Conqueror

Conqueror products

- Make a variety of different panels and rigid board for different applications
- Insulated Roofing
- Insulated Wall
- Insulated Coolstore Solutions
- Insulated Internal wall and ceiling panel
- Rigid board with different facings

PIR Panels – Our Range



Glass Fabric



Embossed Aluminum Foil



Facing Free



Schedule 5 Key Kingspan information

PIR panel sales revenue and volumes for FY20-22

	2020	2021	2022
Revenue (NZD)	□	□	□
Sales volumes	□	□	□

Names and contact details of Kingspan's top five competitors (in no specific order)

- □
- □
- □
- □
- □

Trade associations

- Roofing Association NZ
- Coldstorage Association NZ

Kingspan's top five customers

Name	Details	FY22 Revenue
□	□	□
□	□	□
□	□	□
□	□	□
□	□	□

Key designers that specify insulation products

Name	Details

Schedule 6 Kingspan documents

Internal documents

-
-

Financial statements

-
-
-

Schedule 7 Key Conqueror information

See accompanying confidential supplementary information.

Schedule 8 Alternative market share information

□

Schedule 9 Competition between Kingspan and Conqueror

□

Schedule 10 Insulation boards

In terms of PIR board insulation on the market in NZ, there is a large number of different market players with product being imported from many countries. Such as:

- Kingspan Insulation
- Conqueror
- IKO
- Recticel
- Celotex
- TD Duct
- Eurothane GP
- Xtratherm
- PirMax
- NF PIR board (rebranded Dae Ham Polytech, Korea)
- Plus, other small players

Insulation board operate in both Commercial and Industrial, and the residential sectors of the market. The market size of roof and wall combined is in excess of 20M m2.

The insulation market is dominated by glass wool / polyester wool insulation – with in excess of 75% market share from major suppliers such as Pink Batts, Knauuf, Autex, Bradford, Terra Lana and many more suppliers.

Below are some estimated market volumes for roof and façade, and also breakdown of the respective insulation types. []

Schedule 11 Declaration

I, Paul Metcalfe have prepared, or supervised the preparation of, this notice seeking clearance.

To the best of my knowledge, I 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 that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director of Kingspan and am duly authorised to submit this notice.

Paul Metcalfe, Director and General Manager New Zealand

Date: 20 October 2023