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## COMMERCE COMMISSION

### DECISION NO. 291

Determination pursuant to the Commerce Act 1986 (the Act) in the matter of an application for clearance of a business acquisition involving:

CAROMA INDUSTRIES (NZ) LIMITED

and

JAMES HARDIE BUILDING PRODUCTS LIMITED

- The Commission:** Peter Allport (Chairman of Division)  
Terry Stapleton  
Cathie Harrison
- Summary of Proposal:** That Caroma Industries (NZ) Limited acquires the assets comprising the bathroom products operation, including vitreous china, plastics and hot water heaters, of James Hardie Building Products Limited.
- Determination:** Pursuant to s 66(3)(a) of the Act, the Commission determines to give a clearance for the proposed acquisition.
- Date of Determination:** 30 April 1997

AUT/BA-C  
M2334

MEMORANDUM

To: Peter Allport  
Terry Stapleton  
Cathie Harrison

From: Jo Bransgrove  
John Preston  
Lisa Weir  
Jane Chilcott

Date: 30 April 1997

Subject: **Commerce Act 1986: Business Acquisition: Caroma Industries (NZ) Limited/James Hardie Building Products Limited**

**Working Day 10: 18 April 1997**  
**Working Day 17: 30 April 1997**  
**Working Day 19: 2 May 1997**  
**Confidential material in this report is contained in square brackets**

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THE PROPOSAL

- 1 On 4 April 1997 the Commission registered a notice from Caroma Industries (NZ) Limited (“Caroma”) seeking clearance for the proposed acquisition of the bathroom products operation of James Hardie Building Products Limited (“JHBP”).
- 2 Section 66(3) of the Commerce Act 1986 (“the Act”) requires the Commission either to clear or to decline to clear a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree

to a longer period. By agreement, the time for a decision on the proposal has been extended to 2 May 1997, or 19 working days.

- 3 This report concludes that staff are satisfied that implementation of the proposal would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in either the market for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand or the market for the wholesale distribution of wash hand basins in New Zealand.
- 4 Therefore, it is recommended that the Commission give clearance to the proposal.

## THE PARTIES

### **Caroma Industries (NZ) Limited (Caroma)**

- 5 Caroma's core business is the distribution of bathroom ware manufactured in Australia by Caroma Industries Limited. At the time of the proposed acquisition, Caroma will be a wholly owned subsidiary of Caroma Industries Limited, belonging to a group of Australian companies of which GWA International Limited ("GWA") is the parent. There are no relevant persons interconnected or associated with Caroma in New Zealand.
- 6 At present, Caroma imports all of its toilets (both plastic and vitreous china) and basins from Australia and it distributes these to merchants such as Mico Wakefield and The Building Depot, as well as to competing importers such as Franklin Plumbers & Builders Supplies.

## **James Hardie Building Products Limited (JHBP)**

7 JHBP is a subsidiary of the Australian company James Hardie Industries Limited (“JHIL”). It distributes its bathroom ware in New Zealand under the “Fowlerware” brand. These products are manufactured by related companies in Australia, with JHIL also having a limited manufacturing plant at Avondale, Auckland. This plant is the remains of the original “McSkimming” plant, which was acquired by JHIL from Ceramco in the mid-1980’s (the fourth owner in the decade). A limited range of products is produced at this plant, with the balance coming from Sydney. It is estimated that JHBP currently manufactures approximately [ ] Fowlerware toilet pans in New Zealand and imports [ ] from Australia per annum.

8 JHBP currently distributes both its imported and locally manufactured bathroom ware through several of the major retailers in New Zealand including Benchmark Building Supplies and Mico Wakefield.

## **GWA International Limited (GWAIL)**

9 GWAIL is the holding company of a group of Australian manufacturing companies and has been listed on the Australian Stock Exchange since May 1993. GWAIL currently has 8,286 shareholders holding a total of 227.7 million ordinary shares. GWAIL’s major shareholders as at 31 August 1996 (the most current record) were:

	Million	Percentage
• Permanent Trustee Co of Australia	12.7	5.6
• Colonial Investments Management Ltd	12.6	5.5
• Axiom Funds Management Corp	11.8	5.2
• State Authorities Super	10.9	4.8
• HGT Investments	8.7	3.8

• Erand Pty Limited	8.6	3.8
• KFA Investments	8.2	3.6
• CJZ Investments	8.2	3.6
• Theme (No 3 Pty) Limited	7.5	3.3
• Ashberg Pty Limited	7.2	3.1
• JMB Investments	7.1	3.1
• AMP Society	6.6	2.9
• NRMA Investments	5.4	2.4

10 The 20 largest shareholders in GMAIL hold 53.3% of the total issued capital.

## BACKGROUND TO THE BATHROOM WARE INDUSTRY

11 The proposed acquisition relates to the wholesale distribution of bathroom ware, the most significant of which is toilet cisterns, pans and close coupled suites<sup>1</sup>, as well as wash hand basins, throughout New Zealand. In its application, the applicant identified eleven competing brands of bathroom ware currently imported and available in New Zealand. These products are supplied to the New Zealand retail market by seven main importers (excluding Caroma and JHBP) of bathroom ware in general. These parties are:

- American Standard/Robertson Agencies - This company currently imports and distributes American Standard and Ideal Standard vitreous china<sup>2</sup> bathroom ware from the UK, France, the Netherlands and Indonesia;
- Paterson Trading Company - This company currently imports and distributes Villeroy & Boch vitreous china bathroom ware into New Zealand from Europe and Brazil;

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<sup>1</sup> Close coupled suites are toilet cisterns and pans commonly connected by a vitreous china or plastic joining piece which incorporates a toilet seat.

<sup>2</sup> Vitreous china is a type of ceramic mixture commonly used in the manufacture of bathroom ware.

- Franklin Plumbers & Builders Supplies (FPBS) - This company previously acted solely as a distributor of bathroom ware and predominantly on-sold Caroma products to plumbers, builders and developers. However, in the last 15 months, it has started importing its own exclusive 'Vitra' brand of vitreous china bathroom ware from Turkey. FPBS on-sells these products both directly to the public as well as to plumbers and developers;
- MCD Limited - This company imports and distributes the 'Kohler' brand of vitreous china bathroom ware from the USA and Europe. This brand is retailed through Plumbing World. [

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- Sitruc Marketing & Agencies Limited (Sitruc) - This company is the sole importer of the Doulton, Twyford and Shires brands of vitreous china bathroom ware into New Zealand. Sitruc distributes these brands to all the major retailers/merchants (such as Mico Wakefield) throughout New Zealand;
- Metrix Group Plumbing & Bathroom Fittings Limited - This company sources Duravit and Serel bathroom ware from Switzerland and Turkey. These products are distributed to a variety of retailers/merchants for on-sale to the public; and
- Dux Industries Limited (Dux) - Dux currently imports Johnson-Suisse vitreous china toilet pans from Malaysia which it sells in conjunction with

its plastic toilet cisterns manufactured in New Zealand. At present, Dux is not involved in the distribution of wash hand basins in New Zealand.

### **Bathroom Ware in New Zealand**

- 12 A large variety and number of general bathroom products are imported into New Zealand. These products include all common bathroom fittings (ie. toilets and hand basins), as well as bidets, shower and bath bases, taps, urinals and pedestals for basins. The proposed acquisition will result in an aggregation in the area of toilet cisterns, pans and close coupled suites (toilet ware), as well as wash hand basins.
- 13 As already stated, there are currently two manufacturers of toilet cisterns and pans in New Zealand. They are JHBP and Dux. These companies manufacture only part of their range of toilet ware in New Zealand and commonly import the remainder from Australia (JHBP) and Malaysia (Dux).
- 14 Toilets are commonly purchased as a cistern and pan together. When purchasing a toilet, consumers have a choice between either a vitreous china or a plastic cistern to be used in conjunction with a vitreous china pan. These components can be 'mixed and matched' to some extent, although close coupled suites (suites) are most common. All current distributors of toilet ware in New Zealand (with the exception of Dux) currently have close coupled suites with matching wash hand basins in their range. Where these matching sets are available, distributors and retailers alike tend to push these products as a package. This is particularly prevalent in the 'design' end of the market where consumers tend to want matching basins and toilets to create an overall effect for their bathrooms.
- 15 For the year ended 30 June 1996, 87,552 toilet cisterns, pans and close coupled suites were imported into New Zealand. In the area of wash hand basins

approximately 34,479 vitreous china units were imported into New Zealand to 30 June 1996.<sup>3</sup>

### **Import Protection and Tariff Rates**

- 16 In 1987 import protection for vitreous china and porcelain bathroom ware imports was removed in New Zealand. Since that date, standard tariff rates on these products have progressively reduced from 32.5% to their current level of 14%. This tariff is due to reduce further to the following rates on the following dates:
- 12% on 1 July 1997;
  - 9.5% on 1 July 1998;<sup>4</sup>
  - 7.5% on 1 July 1999;
  - 5% on 1 July 2000.
- 17 In addition to the above, certain ceramic and porcelain products have concessions for import duty in New Zealand. For example, vitreous china bidets, notched basins (commonly used by hairdressers), ceramic urinals, siphon water closet pans and shallow fronted height adjustable basins are currently free of any form of import duty. No import tariffs apply between New Zealand and Australia (as per the CER Agreement). Further, import tariffs do not apply to products derived from any of the least developed countries (such as Bangladesh). Canadian import tariffs are currently due to reduce from 4% to 2% as at 1 July 1997.

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<sup>3</sup> These figures were obtained from Statistics New Zealand.

<sup>4</sup> At this date it is anticipated that importation from Canada will be free.



## **Intellectual Property Rights**

- 18 Having spoken to a variety of importers of competing brands of toilet cisterns, pans and close coupled suites, it appears that dual flush systems are commonplace in the New Zealand market. While single flush systems are still available in most large ranges, nearly every brand has a patented dual flush system which is currently available in New Zealand. For example, Caroma registered a patent for a dual flush cistern mechanism in Australia and New Zealand in October 1987. Dux also has a patented dual flush system available on the market, [ ] In addition, staff understand that most of the imported brands of toilet cisterns also have patented dual flush systems available in their ranges. These systems all differ in the actual operation method.

## **THE RELEVANT MARKETS**

### **Introduction**

- 19 The purpose of defining markets is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in terms of s 47(1) of the Act.
- 20 Section 3(1A) of the Act (as amended by the Commerce Amendment Act 1990) provides that:

“the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common-sense, are substitutable for them.”

### **The Relevant Markets**

*Toilet cisterns, pans and close coupled suites*

- 21 It has been suggested to staff that the market for toilet ware in New Zealand consists of several core products of varying quality. It appears that at the budget end of the market cisterns are commonly made of plastic and are sold either separately or in conjunction with vitreous china pans. In the design (fashion line) end of the market vitreous china close coupled suites are sold with matching wash hand basins and other accessories. Somewhere in the middle of this market fall close coupled suites consisting of either plastic or vitreous china cisterns with accompanying vitreous china pans. In this middle area of the spectrum also would fall vitreous china pans and vitreous china cisterns sold separately<sup>5</sup>.
- 22 As already stated, over the last decade the import tariffs on vitreous china and porcelain products into New Zealand have reduced. This trend is set to continue with a further reduction (ie. of 2%) due to take effect at 1 July 1997. This trend has meant that more vitreous china products are being imported into New Zealand, with the price of these products being reduced even further to both the merchant and the consumer.
- 23 Given the reduction in vitreous china prices, the two 'ends' of the market are moving closer together. As explained above, the middle to upper price end of the market largely consists of vitreous china products. A clear overlap exists however in the middle range of the market where both plastic and vitreous china cisterns feature heavily. For example, a vitreous china suite would retail anywhere from \$250 to \$1,000. In comparison, a plastic/vitreous china suite would retail somewhere within the range from \$150 to \$400. In the \$250 to \$400 (overlap) price range, retailers indicated that sales of plastic and vitreous china suites are evenly matched. Further, the range of toilet ware priced in this range for both plastic and vitreous china cisterns is large (as is indicated by the advertisements attached to the application). All retailers staff spoke to believed that there was a clear 'overlap' in the middle range where vitreous china/plastic suites and full vitreous china suites were distinctly price competitive. They

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<sup>5</sup> As already stated, most toilet ware is sold as a complete unit with either a plastic or vitreous china cistern and accompanying vitreous china pan.

estimated that of the total sales in the toilet ware market, approximately 15% would fall in this middle range. Further, all importers and retailers spoken to believed that prices for vitreous china toilet cisterns on their own are now only around 20% more expensive than their plastic counterparts. This price difference appears to be steadily decreasing, and is likely to continue to decrease given the reduction in import tariffs and the apparent increase in the number of brands of product available.

- 24 In light of this information, it appears likely that, as a matter of fact and commercial common sense, plastic would be reasonably substitutable for vitreous china (and vice versa). Further, it is clear that pans, cisterns and close coupled suites are all components or alternative forms of the one main product (ie. a toilet). Therefore, staff believe that the relevant market is likely to incorporate both plastic and vitreous china cisterns, pans and close coupled suites, and would be defined as that for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand (the toilet ware market).

#### *Wash Hand Basins*

- 25 In New Zealand, wash hand basins tend to be made of plastic, porcelain or vitreous china. Of all the importers and merchants spoken to by staff, only one<sup>6</sup> imported stainless steel (and some glass) basins which are used in bathrooms. However, this importer stated that it would only sell approximately [ ] stainless steel and glass wash hand basins in any given year. Current trends indicate that vitreous china is indeed the preferred material for wash hand basins in New Zealand. In addition, importers indicated that wash hand basins were generally sold in conjunction with a close coupled suite at the design (upper) end of the market.
- 26 In its application, the applicant referred to chemical process vanity tops and suggested that vanity units are substitutable for wash hand basins distributed by

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<sup>6</sup> Metrix Group Plumbing & Bathroom Fittings Limited (Metrix) was the only company identified by staff that sold stainless steel or glass wash hand basins.

the applicant and various importers in New Zealand. Staff have spoken to all four of the main manufacturers and distributors of vanity units in New Zealand<sup>7</sup>.

While these parties considered that they competed against Caroma and Fowlerware products to some extent, they believed that their main competition came from the other three vanity unit manufacturers. Each of the parties spoken to acknowledged that the products which they manufacture are generally of a larger size than the single wash hand basin and pedestal arrangement which Caroma, JHBP and the importers sell in New Zealand. While vanity unit manufacturers do have smaller vanity units suited more to a separate toilet<sup>8</sup>, their vanity units commonly are larger and are incorporated into a full bathroom area. Further, it appears that vanity units are generally sold for their storage capabilities which wash hand basins are obviously unable to accommodate. It appears also that several of the current manufacturers of vanity units currently source vitreous china wash hand basins from either Caroma or JHBP for insertion into their vanity unit tops.<sup>9</sup>

27 In addition, vanity units are predominantly sold in conjunction with a bath and/or shower fitting. This would suggest that, especially in the design end of the toilet ware market, vanity units would not be bought in conjunction with toilet ware (which is commonly the case with wash hand basins).

28 In light of all of these factors therefore, it appears that while some smaller vanity units could be used as an alternative to a vitreous china or plastic wash hand basin (although to a very limited degree), the majority of vanity units would not be substitutable. Therefore, staff do not believe that vanity units as a whole would be a reasonable substitute for wash hand basins. Accordingly, the market should be defined as that for the wholesale distribution of wash hand basins in New Zealand (the basin market).

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<sup>7</sup> St Michel, Vogue, Clearlite and Athena.

<sup>8</sup> An example is the St Michel toilet basin vanity unit which is 500 x 250mm in dimension.

<sup>9</sup> Each of the vanity unit manufacturers staff spoke to indicated that around 5-10% of their total production of vanity units would require wash hand basins to be bought and inserted into the vanity unit mould.

- 29 It is to be noted further that with respect to both the toilet ware and basin markets, a degree of complementarity exists between these two commodities. This is evidenced by the trend for distributors and retailers alike to sell a toilet suite and wash hand basin as a joint product/package at the 'design' end of the toilet system market. Indeed, several imported brands of these products (such as Villeroy & Boch and to some extent American Standard) currently sell a close coupled suite and wash hand basin as a 'whole package' to merchants and no option exists for these to be supplied separately. Further, it appears that consumers commonly 'mix and match' brands of product and often will make their own choice of basin in conjunction with a single toilet suite. Given that a clear overlap exists between the toilet ware and basin markets at the 'design' end (and possibly in the middle range also), staff believe that the two markets should be considered as partly complementary.

### **Other Markets**

- 30 The applicant has submitted that the markets for tap ware, bath/shower bases and water heaters are not relevant to the proposed acquisition. This is because JHBP does not distribute tap ware or bath/shower bases in New Zealand, while Caroma has ceased importing water heaters for distribution in New Zealand. Consequently, if the proposed acquisition is implemented, no aggregation in these particular markets would occur.
- 31 Staff enquiries disclose that while JHBP was previously involved in the manufacture and distribution of tap ware and shower bases, this production has ceased and it no longer distributes these products. In addition, Caroma is not currently involved in distributing water heaters in New Zealand. Therefore, staff accept that no aggregation in these markets will result from the implementation of the proposed acquisition, and, therefore, these markets will not be considered in this report.

### **Conclusion on Market Definition**

32 Staff have determined the relevant markets to be those for:

- The wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand (the toilet ware market); and
- The wholesale distribution of wash hand basins in New Zealand (the basin market).

#### ASSESSMENT OF DOMINANCE

33 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to give clearance to a proposed acquisition if it is satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market, or, conversely, to decline to give clearance if it is not so satisfied.

34 Section 3(9) of the Act states that a person is in a dominant position in a market if:

“... that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”

35 That section also states that a determination of a dominant position shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

36 In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing non-exhaustive factors and any other relevant matters that may be found in a particular case, such

as entry barriers, the viability of imports and the existence of near entrants to the market.<sup>10</sup>

37 In *Port Nelson Ltd v Commerce Commission*<sup>11</sup>, the Court of Appeal approved the following dominance standard adopted by the High Court (McGechan J):

“... [dominance] involves more than “high” market power; more than mere ability to behave ‘largely’ independently of competitors; and more than power to effect ‘appreciable’ changes in terms of trading. It involves a high degree of market *control*.”

38 For the purposes of assessing whether a dominant position might be acquired or strengthened as a result of the proposed acquisition, it is intended to consider each of the markets separately.

#### *Market Shares*

39 Although market share alone does not establish a dominant position, a substantial market share may be a strong indication of dominance.<sup>12</sup>

40 According to the Commission’s *Business Acquisition Guidelines*, a dominant position in a market is unlikely when, after the acquisition, the combined entity will possess:

- a market share of less than in the order of 40% in the relevant market(s);  
or
- a market share of less than in the order of 60% and at least one other market participant having no less than in the order of a 15% share of the relevant market(s).

41 If either of the foregoing situations apply, the proposed acquisition will generally fall within a “safe harbour” and the acquisition is likely to be cleared.

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<sup>10</sup> *Business Acquisition Guidelines*, 1996.

<sup>11</sup> *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554.

## The market for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand

42 Estimated market shares for the toilet ware market are:

	Current unit volume
	% Share <sup>13</sup>
Caroma	[
JHBP	
Caroma and JHBP	
Dux	

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<sup>12</sup> See *Magnum/Dominion Breweries* (1987) 1 NZBLC (com) 104,073 (“While it is understandable that the presumption of dominance increases as market share rises, it is the cumulative impact of various factors that is important in determining whether or not a dominant position would be acquired or strengthened”)

<sup>13</sup> Given that there are no independent research figures which denote market shares, these figures are a conservative estimation of market shares calculated as a percentage of total imports and manufacturing levels in New Zealand over the last year. Staff believe that the total level of sales in this market for the year ended 31 December 1996 would have been approximately 210,000 units.



American Standard

Other imported brands ]

100

43 This level of market concentration falls outside the ‘safe harbours’ cited in the Commission’s *Business Acquisition Guidelines*. In assessing whether dominance could arise from a proposed acquisition, several factors are considered.

*Barriers to Entry*

44 The nature and height of any entry barriers must be determined before the threat of new entry, which might constrain the conduct of the combined entity, can be properly evaluated.

45 Having spoken to a variety of market participants, it appears that no real barriers to entry exist to the toilet ware market. As already explained, the import duties for vitreous china into New Zealand have been steadily decreasing over the last decade, with further reductions imminent. As a result of this, the importation of different brands of toilet ware into New Zealand has noticeably increased, with further increases likely.

46 Further, there are no onerous or restrictive legislative or regulatory conditions present in New Zealand which would unnecessarily hinder a new entrant from entering this market. It is noted that while Australia has uniform standards which parties must adhere to, the only requirement in New Zealand is that parties comply with the Building Act.<sup>14</sup>

47 It is clear that access to resources or expertise by any competitor is not restricted in New Zealand. Importers can currently access these products within six to eight weeks (airfreight) and 12 to 14 weeks (by shipping container). To establish a

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<sup>14</sup> The Building Act 1991 provides for the Building Code which deals with general requirements for buildings in New Zealand. This code provides for such things as appropriate facilities for personal hygiene and adequate plumbing and drainage systems.

supply line with a manufacturer can take longer but this is not considered to be an onerous restriction.

48 Further, access to merchant and retail networks in New Zealand is not restricted, and importers are currently able to, and from present indications will continue to be able to, distribute their products to whoever they wish. Staff enquiries have not revealed any exclusive dealing arrangements between any importer/distributor and any retail chain.

49 In addition to the above, it is clear that intellectual property rights over different brands of dual flush systems are unlikely to restrict any party from entering the market if it wishes to do so.

50 All of these factors suggest that it would not be difficult for an existing wholesale distributor of toilet ware to import a new brand of product into the New Zealand market. Similarly, should one of the major global manufacturers<sup>15</sup> decide to enter the market and distribute its toilet ware in New Zealand itself, no onerous entry conditions would prohibit that entry. Staff were advised by one party that a net outlay of approximately \$150,000 to \$200,000 only would be needed for a company to establish a distribution chain and provide showroom displays of its products in each of its major retailers/merchants. Given that import tariffs are steadily decreasing and no regulatory requirements exist to any real extent in New Zealand for this market, a prospective importer/distributor would face little restriction if contemplating entering the toilet ware market.

#### Conclusion on Barriers to Entry

51 No real barriers to entry exist to the toilet ware market.

#### *Constraints by Existing Competitors*

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<sup>15</sup> The term 'global manufacturer' refers to large scale conglomerate manufacturers presently not exporting to New Zealand.

52 It appears that there are largely two major competitors to Caroma and JHBP in New Zealand. At present, Dux competes by manufacturing plastic cisterns in New Zealand and importing vitreous china pans from Malaysia. In addition, American Standard currently imports close coupled suites (as well as hand basins and design bathroom fittings) which it distributes to a variety of large scale merchants throughout New Zealand.

53 Dux currently manufactures plastic cisterns in New Zealand and imports vitreous china pans from Malaysia. At present it has a variety of plastic cisterns on the market, [

]

54 In addition to the above, [

]

55 [

]

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56 Staff understand that American Standard [

]

57 It appears that the other competing importers of toilet cisterns, pans and close coupled suites into New Zealand do not, at this time, have any plans to increase the quantities of product they import.

58 We understand that PT Surya Toto Indonesia<sup>16</sup> has also entered the New Zealand market recently by establishing a distribution arrangement with The Building Depot to retail its 'Toto' range. Toto is presently a very aggressive competitor in the Asian toilet ware markets. However, it appears that Toto amounts to only a small percentage of the total annual sales of toilet ware products by The Building Depot. At this point, The Building Depot does not anticipate that Toto will increase its range given that demand for its product does not appear to be large in the New Zealand market.

*Constraints by Potential Competitors*

59 In order for the threat of market entry to be a sufficient constraint on the exercise of market power, entry of new participants in response to the exercise of market power must be likely, sufficient in extent, timely and sustainable.

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<sup>16</sup> PT Surya Toto Indonesia is one of the largest manufacturers of bathroom ware in South East Asia. It was established as a joint venture with Toto Limited of Japan. It is renowned as being an aggressive competitor in Japan and Indonesia.

“It is the ease with which firms may enter which establishes the possibility of market concentration over time; and it is the threat of the entry of a new firm or a new plant into a market which operates as the ultimate regulator of competitive conduct.”<sup>17</sup>

- 60 The applicant has stated that most of the major global manufacturers of vitreous china toilet ware already export to New Zealand to a greater or lesser extent. However, there are several major global manufacturers of toilet ware that do not presently export their products to New Zealand. These companies include the Thai manufacturing conglomerate Karat, as well as two large Malaysian companies, GBH and Sime Inax.
- 61 It has been suggested that given the small size of the New Zealand toilet ware market, it is unlikely that these world producers are likely to be, themselves, interested in establishing subsidiary companies in New Zealand. However, retailers and importers alike have noted that alternative brands of product could readily be brought into New Zealand on very short notice (ie. 6 to 8 weeks by airfreight). Given the huge production levels of these large manufacturers, the ability of an existing New Zealand importer to access a shipment of one of these brands of product should be unconstrained in any way. While forming a supply line may take time, this should not be onerous. Therefore, the expansion of product lines by existing importers appears feasible if sufficient demand was evident.

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<sup>17</sup> Queensland Co-operative Milling Association Ltd, Re: Defiance Holdings Ltd (1976) 25 FLR 169.

### *Constraints by Customers*

- 62 Staff have spoken to several large merchants and distributors of bathroom ware in general throughout New Zealand. Given the wide range of alternative brands of toilet cisterns, pans and close coupled suites available, nearly all the retailers expressed an ability to negotiate with suppliers of product for competitive prices. None of the retailers/merchants spoken to believed that the proposed acquisition would result in them losing bargaining power or choice of product in New Zealand.
- 63 In addition, retailers were keen to note that they do have the ability to keep the importers/suppliers 'honest' by virtue of their ability to import product themselves directly from overseas manufacturers. For instance, Plumbing World has previously imported bathroom ware into New Zealand and has indicated that it would do so again if the need arose. However, at present, given that there is such a wide range of brands of bathroom ware available, there is no need to do so. This sentiment was reinforced by Mico Wakefield which noted that, since it is an international company, its ability to import product would be greatly enhanced.

### *Conclusion on the market for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand*

- 64 If the proposal were to proceed, the combined entity is likely to face sufficient constraint from its main existing competitors, Dux and American Standard, as well as the other smaller existing importers in the toilet ware market. Further, it appears that the large retail chains which sell bathroom ware directly to the public would also act as a sufficient constraint on the combined entity. Therefore, staff do not believe that the proposed acquisition would result, or would be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand.

## The market for the wholesale distribution of wash hand basins in New Zealand

65 Estimated market shares for the basin market are:

	Current Unit Volume % Share <sup>18</sup>
Caroma	<b>CONFIDENTIAL</b>
JHBP	
Caroma and JHBP	
American Standard	
Other imported brands	
Locally manufactured plastic brands	
	100

66 As already stated, both the toilet ware and basin markets appear to be complementary to some extent. Therefore, given this factor and the indicative market share figures above, it is not necessary to repeat the preceding analysis of barriers to entry discussed with respect to the toilet ware market.

67 [ ]

68 [ ]

<sup>18</sup> As already stated, no industry research figures exist which denote the respective shares in this market. Therefore, these market shares are a conservative estimation calculated as a percentage of total imports and manufacturing levels in New Zealand over the last year. Staff believe that the total sales of wash hand basins in New Zealand for the year ended 31 December 1996 would have been approximately 54,000 units.

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] In addition, importers presently hold a reasonably large share of the basin market. Given that no real barriers exist to preclude either an existing importer or a new entrant from distributing alternative brands of wash hand basins in New Zealand, it is unlikely that the combined entity would acquire a dominant position within the meaning of the Act in the basin market.

*Conclusion on the market for the wholesale distribution of wash hand basins in New Zealand*

69 If the proposal were to proceed, the combined entity is likely to face sufficient constraint from other existing competitors in the basin market. Therefore, staff do not believe that the proposed acquisition would result, or would be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the wholesale distribution of wash hand basins in New Zealand.

CONCLUSION

70 Staff conclude that the proposal would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in either the market for the wholesale distribution of toilets cisterns, pans and close coupled suites in New Zealand or the market for the wholesale distribution of wash hand basins in New Zealand.



## RECOMMENDATION

- 71 Having had regard to the factors set out in s 3(9) of the Act, staff are satisfied that the proposed acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in either the market for the wholesale distribution of toilet cisterns, pans and close coupled suites in New Zealand or the market for the wholesale distribution of wash hand basins in New Zealand.
- 72 It is recommended that, in terms of s 66(3)(a) of the Act, the Commission give a clearance for the proposed acquisition.

Investigators

Chief Investigator

Manager

## DETERMINATION ON NOTICE OF CLEARANCE

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3)(a) of the Commerce Act 1986, we hereby give clearance for Caroma Industries (NZ) Limited to acquire the assets comprising the bathroom products operation, including vitreous china, plastics and hot water heaters, of James Hardie Building Products Limited.

Dated at Wellington this                      day of                      1997

\_\_\_\_\_  
Peter Allport  
Deputy Chairman

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Terry Stapleton  
Member

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Cathie Harrison  
Member