



COMMERCE COMMISSION

Decision No. 642

Determination pursuant to the Commerce Act 1986 in the matter of an application for a merger transaction between

Flint Group Holdings S. A. R. L.

and

Siegwerk New Zealand Limited

The Commission: Paula Rebstock
Denese Bates QC
Donal Curtin

Summary of Application: The acquisition of up to 100% of the assets of the business of Siegwerk New Zealand Limited by Flint Group Holdings, S. A. R. L.

Determination: Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

Date of Determination: 14 May 2008

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EXECUTIVE SUMMARY

- E1. Flint Group Holdings S. A. R. L. (Flint Holdings) sought clearance to acquire up to 100% of the assets of the business of Siegwerk New Zealand Limited (Siegwerk).
- E2. The parties' business activities overlap in the manufacture/importation, and supply of a number of types of packaging ink, and coatings and adhesives.
- E3. Ink manufacture involves the processing and blending of pigments and other raw materials to produce an end product. A limited amount of ink manufacture occurs in New Zealand. The majority of industry participants in New Zealand import finished product, or product that simply needs to be colour matched to the end user's specifications.
- E4. For the purpose of the analysis of this clearance application, the Commission concludes that the relevant markets are the national markets for:
- the manufacture/importation, and supply of liquid packaging ink;
 - the manufacture/importation, and supply of sheetfed ink;
 - the manufacture/importation, and supply of narrow web ink;
 - the manufacture/importation, and supply of metal decorating ink; and
 - the manufacture/importation, and supply of coatings and adhesives.
- E5. In the factual scenario Flint Holdings would acquire up to 100% of the business assets of Siegwerk, and Siegwerk would cease to exist as a standalone entity.
- E6. The Commission considers that, in respect of the proposed acquisition, and in each of the relevant markets;
- the degree of aggregation in all but one affected market (coatings and adhesives) is small;
 - post-acquisition, a significant degree of competition is likely to exist in the coatings and adhesives market;
 - entry is unlikely due to the declining nature of the market; however, should market conditions alter, entry could be undertaken to a sufficient extent and in a timely manner;
 - smaller customers face no barriers to switching and have a wide range of potential suppliers; and
 - large customers hold a significant degree of countervailing power that is regularly exercised to maintain or reduce prices.
- E7. The Commission is therefore satisfied that the proposed acquisition will not have, or would not be likely have, the effect of substantially lessening competition in any of the affected markets.

THE PROPOSAL

1. On 3 April 2008, the Commission received a notice pursuant to s 66(1) of the Commerce Act 1986 (the Act). The notice sought clearance for the acquisition of up to 100% of the assets of the business of Siegwark New Zealand Limited (Siegwerk), by Flint Group Holdings, S. A. R. L. (Flint Holdings or the Applicant).

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 30 May 2008.
3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.

STATUTORY FRAMEWORK

4. Under s 66 of the Act, the Commission is required to consider whether the proposal will have, or would be likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal would not be likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline the application. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.¹
5. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held;

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgement is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.²
6. In determining whether there is a change along the spectrum which is significant, the Commission must identify a real lessening of competition that is not more than nominal and not minimal.³ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

¹ *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-721.

² *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

³ *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

7. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

THE PARTIES

Flint Holdings

9. Flint Holdings is a multinational company headquartered in Luxembourg. Flint Holdings is regarded as the second largest global manufacturer and supplier of printing inks and printing accessories, with over 140 operations worldwide. Flint Holdings had worldwide revenues of US\$4 billion for the 2007 financial year.
10. In New Zealand, Flint Holdings imports, manufactures and supplies packaging ink products from its manufacturing plant in Auckland. None of the Applicant's upstream companies are included in the proposed acquisition, which relates solely to the Applicant's New Zealand manufacturing, importation and distribution business.

Siegwerk

11. Siegwerk Group International is an international company involved in the manufacture and supply of printing inks with operations in 36 countries worldwide. Siegwerk Group International is headquartered in Siegburg, Germany. In 2005, Siegwerk Group International acquired SICPA, and its New Zealand based subsidiary, SICPA New Zealand Limited. Post-acquisition the New Zealand entity was renamed Siegwerk New Zealand Limited.
12. Siegwerk is a wholly-owned subsidiary of Siegwerk Australia Pty Limited, which in turn is a wholly-owned subsidiary of Siegwerk Group International.
13. In New Zealand, Siegwerk imports, manufactures, and distributes packaging ink products. None of Siegwerk's upstream companies are involved in the proposed acquisition, which relates solely to Siegwerk's New Zealand manufacturing, importation and distribution business.

OTHER PARTIES

Competitors in the Supply of Packaging Ink

14. Flint Holdings submitted that a number of other parties currently supply various printing ink segments.
 - Dianippon Ink and Chemicals Incorporated (DIC) supplies printing ink in New Zealand and is a subsidiary of the largest ink company in the world. The company has factories in Auckland, Wellington, Christchurch and Dunedin;
 - Nova Inks & Chemicals Limited (Nova) supplies printing ink, and coatings and adhesives in New Zealand. This multi-national company has a plant in Auckland;
 - Valspar New Zealand Ltd (Valspar) supplies coatings in New Zealand; and
 - Fujifilm Sericol Limited (Sericol) currently supplies narrow web ink in New Zealand through its agent Blueprint Imaging Ltd.
15. Other smaller suppliers include Pacific Inks Ltd (Pacific Inks), Este Inks Ltd (Este), Mainland Paint and Printing Ink Ltd, Toyo Ink New Zealand Ltd, Rohm & Haas New Zealand Ltd (Rohm & Haas), PPG Industries New Zealand Ltd (PPG Industries), AM International Ltd, and Whitehall Technical Services Ltd.

Customers

16. The relevant markets are characterised by a number of large customers. [

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17. Large customers are typically international packaging producers and include Visy Board (NZ) Ltd (Visy), Carter Holt Harvey Ltd (CHH), Aperio Group New Zealand Ltd (Aperio), Huhtamaki (NZ) Holdings Ltd (Huhtamaki) and Sealed Air New Zealand Ltd (Sealed Air).
18. Typically, large customers buy ink, which the supplier has tested for compatibility with the purchaser's printing equipment, in bulk. Large customers may also have additional dispensing facilities provided to them by the supplier.
19. In general, small customers are print contractors who buy finished product off the shelf from suppliers. This product is typically homogeneous and can be sourced from a number of suppliers.

INDUSTRY BACKGROUND

Ink

20. Ink is a liquid used for colouring surfaces to produce an image, text or design. Ink contains, among other ingredients: pigments, dyes, solvents, water or oil. Ink can be used for publishing and packaging applications.
21. Packaging inks can be split in to a number of different categories, namely, liquid, sheetfed, narrow web and metal decorating ink. Liquid packaging ink can be water-

based or solvent-based. Water-based inks are used on absorbent paper and pulp substrates and solvent-based liquids are used on polymer-based substrates⁴. End use examples include printing on cardboard boxes, paper towels, chocolate bar wrappers, and potato chip packets.

22. Sheetfed ink is a paste ink that is used on high-gloss, coated substrates, such as high-end coffee-table books. Metal decorating inks are used to print on metallic substrates such as screw caps for wine bottles and drinking cans.
23. Narrow web ink is used in tag and label packaging applications, such as those used for bottles, cosmetics and food. The inks used for these applications are developed for particular press types that are narrower in width than those used for flexible packaging (such as plastic and paper).
24. In New Zealand, inks can be:
 - imported as a finished product;
 - blended from semi-processed products; or
 - manufactured from imported raw materials.

Ink Associated Products

25. During the packaging process, a coating may need to be applied to the packaging surface, or two types of packaging may need to be joined. Coatings and adhesives are used for these purposes and are sometimes referred to as 'ink associated products'.
26. Some ink suppliers supply coatings and adhesives with their packaging inks. Typically, it is a combination of inks and coatings that produces the end product from a purchaser's perspective. Consistent with this, the two largest purchasers of liquid inks are also the two largest purchasers of coatings and adhesives.
27. Accordingly, the supply of coatings and adhesives is ancillary to the supply of packaging ink. The largest proportion of this market is supplied by specialist coatings and adhesive suppliers, for example Rohm and Haas⁵, BASF⁶, and Henkel⁷.

⁴ Industry participants refer to surfaces to be printed on as *substrates*.

⁵ Rohm and Haas, a Fortune 500 company based in Philadelphia, supplies coatings and adhesives in New Zealand. In other countries, Rohm and Haas manufactures and/or supplies specialty materials that allow end use products to have a particular characteristic, for example low-odor, water-based paints, sunscreens with greater SPF functionality, or more powerful semiconductor chips. Rohm and Haas employs more than 17,000 people in 27 countries with annual sales revenues standing at about USD 8.2 billion.

⁶ BASF is a chemicals company based in Germany with €58 billion of sales revenues and 95,000 employees world wide in 2007. The company manufactures and distributes, among other products, coating and adhesives, chemicals, plastics, oil and gas, and pharmaceutical products.

⁷ Henkel AG & CO KGaA is a German based company with €13 billion of sales revenues and 52,000 employees in 2007. The company manufactures and distributes, among other products, coatings and adhesives, personal care (beauty and oral care products such as shampoo, toothpaste, hair colorants and shower gel) and home care products (household cleaning products such as laundry detergent and dishwashing liquid).

MARKET DEFINITION

Product Dimension

28. There are two different categories of printing ink: publication ink and packaging ink. Flint Holdings and Siegwirk's business activities in New Zealand do not overlap in the supply of publication ink. Accordingly, for the purposes of assessing this application, the Commission will not consider this type of ink any further.
29. As outlined above, there are four types of packaging ink:
 - liquid packaging ink;
 - sheetfed ink;
 - metal decorating ink; and
 - narrow web ink.
30. The Commission considers that there is limited scope for demand-side substitution between these categories of packaging ink. This is because the type of packaging a purchaser prints dictates the ink type the purchaser uses.
31. However, there appears to be some degree of supply-side substitutability for the distribution of packaging ink. This is because ink suppliers in New Zealand are moving to an import-only model where they take the role of agents, as opposed to ink manufacturers.
32. Flint Holdings and Pacific Inks are the only packaging ink suppliers in New Zealand that still manufacture ink. [

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33. Despite the degree of supply-side substitutability, for the purposes of this analysis, the Commission proposes to adopt a conservative view and define discrete product markets for each of the four types of packaging ink identified above, on the basis that if there are no competition concerns identified in the narrower markets then there are unlikely to be any in a broader market.
34. The Commission understands that the supply of coatings and adhesives to ink customers by ink suppliers forms a small part of a market for the general supply of these products to a wide range of customers, including ink customers. Ink suppliers are not significant players in this market and only supply coatings and adhesives as complementary products to the ink customers they supply. Consequently, the Commission considers that for the purposes of this analysis, defining a broad product market for the supply of coatings and adhesives is appropriate.

Functional Dimension

35. In assessing the functional level of the affected markets, the Commission has considered the stages of the supply chain of packaging ink and coatings and adhesives in which Flint Holdings and Siegwerk are active. The Commission is of the view that the functional level of the affected markets is the manufacture/importation and supply.

Geographic Dimension

36. In assessing the geographic scope of the affected markets, the Commission has considered whether the markets are regional or national. Based on the significant level of imports, the national presence of all market participants and similar prices across regions, the Commission is of the view that the geographic scope of the relevant markets is national.

Conclusion on Market Definition

37. The Commission considers that for the purposes of assessing this application, the relevant markets are the national markets for:
- the manufacture/importation and supply of liquid packaging ink (liquid packaging ink market);
 - the manufacture/importation and supply of sheetfed ink (sheetfed ink market);
 - the manufacture/importation and supply of narrow web ink (narrow web ink market);
 - the manufacture/importation and supply of metal decorating ink (metal decorating ink market); and
 - the manufacture/importation and supply of coatings and adhesives (coatings and adhesives market).

FACTUAL AND COUNTERFACTUAL

38. In reaching a conclusion about whether an acquisition is likely to lead to substantial lessening of competition, the Commission makes a with and without comparison rather than a before and after comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).⁸

Factual

39. In the factual scenario, Flint Holdings would acquire up to 100% of the business assets of Siegwerk.
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⁸ Commerce Commission, Decision 410: Ruapehu Alpine Lifts Ltd/Turoa Ski Resorts Ltd (in receivership), 14 November 2000, paragraph 240, p 44.

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41. [

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42. [

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43. [

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Counterfactual

44. The Commission considers that there are two possible counterfactual scenarios. In the first scenario, Siegwirk would continue to operate as an independent company. In the second scenario, Siegwirk would be acquired by an independent third party.
45. In either scenario, Siegwirk would continue to operate independently from Flint Holdings.

COMPETITION ANALYSIS

Existing Competition

46. The Commission considers that in each of the relevant markets, Flint Holdings and Siegwirk compete against each other. Consequently, the proposed acquisition would result in a reduction in the number of competitors in each of the markets.
47. In the case of metal decorating ink, the combined entity's major use for this type of ink is in the production of screw caps for wine bottles. Flint Holdings submitted that it and Siegwirk are niche players in the market and, to this extent it is difficult for Flint Holdings to estimate its own and Siegwirk's relative market shares.
48. Further, Applicant submitted that the production of screw caps represents only a minor proportion of the total metal decoration ink market, of which the combined entity would have less than a [] market share.
49. The Applicant estimated that the vast majority (approximately [] %) of all metal decorating inks supplied in New Zealand are supplied by Valspar and PPG Industries and used in the production of cans. Accordingly, the Commission does not intend to consider the market for metal decorating ink further.
50. Tables 1 to 4 show the estimated market shares of participants in the liquid packaging ink, sheetfed commercial ink, narrow web ink, and coatings and adhesives markets.

51. The Commission notes that the market shares presented in Tables 1 to 4 are the Applicant's estimates.⁹

Table 1: Estimated Market Shares for the Supply of Liquid Packaging Ink in 2007

Participant	Value (NZ\$m)	Share (%)
Flint Holdings	[]	[]
Siegwerk	[]	[]
<i>Combined entity</i>	<i>[]</i>	<i>[]</i>
DIC Coates	[]	[]
Pacific Inks	[]	[]
Este	[]	[]
Mainland Inks	[]	[]
Total	[]	[]

Source: Flint Holdings' estimates

52. In the liquid packaging market, the combined entity would have a market share of [] % and the three firm concentration ratio would be [] % post-acquisition. This is outside the Commission's safe harbours. However, the Commission notes that the degree of aggregation that would occur as a result if the proposed acquisition is small. In addition, DIC has a strong presence and there are a number of fringe competitors.

Table 2: Estimated Market Shares for the Supply of Sheetfed Commercial Ink in 2007

Participant	Value (NZ\$m)	Share (%)
Flint Holdings	[]	[]
Siegwerk	[]	[]
<i>Combined entity</i>	<i>[]</i>	<i>[]</i>
Micro Ink / Nova	[]	[]
DIC Coates	[]	[]
Toyo	[]	[]
Others	[]	[]
Total	[]	[]

Source: Flint Holdings estimates

53. In the sheetfed ink market the combined entity would have a market share of [] % and the three firm concentration ratio would be [] % post-acquisition. This is outside the Commission's safe harbours. However, the Commission notes that the degree of aggregation is small, that Micro Ink / Nova has a strong presence, and that there are a number of fringe competitors.

Table 3: Estimated Market Shares for the Supply of Narrow Web Ink in 2007

⁹ The Commission has sought to verify these estimates with wider industry participants. Due to the different ways in which companies record sales, the Commission was unable to estimate market shares independently. However, the Commission's market inquiries confirmed that the Applicant's estimates are sufficient for the Commission's purposes in this instance.

Participant	Value (NZ\$m)	Share (%)
Flint Holdings	[]	[]
Siegwerk	[]	[]
<i>Combined entity</i>	<i>[]</i>	<i>[]</i>
Sericol	[]	[]
Nova	[]	[]
Mainland Inks	[]	[]
Total	[]	[]

Source: Flint Holdings estimates

54. In the narrow web ink market the combined entity would have a market share of [] % and the three firm concentration ratio would be [] % post-acquisition. This is outside the Commission's safe harbours. Again, the Commission considers that aggregation in this market would be minimal.

Table 4: Estimated Market Shares for the Supply of Coatings and Adhesives to Packaging Customers in Year 2007 (by value)

Participant	Value (NZ\$m)	Share (%)
Flint Holdings	[]	[]
Siegwerk	[]	[]
<i>Combined entity</i>	<i>[]</i>	<i>[]</i>
Rohm and Haas	[]	[]
Whitehall	[]	[]
Este	[]	[]
Total	[]	[]

Source: Flint Holdings estimates

55. In the coatings and adhesives market the combined entity would have a market share of [] % and the three firm concentration ratio would be [] % post-acquisition. This is outside the Commission's safe harbours.
56. The Commission notes the strong presence of both Rohm and Haas and Whitehall in this market. In addition, industry participants advised the Commission that the Applicant's estimate of market shares is likely to overstate its position in the broader market for the supply of coatings and adhesives. The Applicant only supplies coatings and adhesives to packaging customers and advised that its figures only take these customers into account. Industry participants informed the Commission that packaging customers are one of a number of customer groups in the supply of coatings and adhesives.
57. Taking these factors into account, the Commission considers that post-acquisition, there is likely to remain a significant degree of competition in the coatings and adhesives market.

Barriers to Switching

58. Industry participants advised the Commission that for large customers, switching suppliers requires some investment by the new supplier. For example, in the liquid packaging ink market suppliers typically provide blending and/or dispensing equipment to their larger customers. In order to switch, a customer has to remove the incumbent supplier's equipment and install the equipment of the new supplier.
59. Further, the new supplier must satisfy the customer that it can match the customer's colour needs precisely and that its ink will run trouble free on the customer's printing equipment. The trial period required to ensure that a new supplier's ink will operate satisfactorily on a customer's printing equipment can take up to six months.
60. The Commission notes that larger customers, such as [], do not appear to regard the barriers to switching suppliers to be significant. Smaller customers typically purchase ink products off the shelf and can readily choose from a number of suppliers. Consequently, the Commission does not see any significant barriers to small or large customers switching.

Other Factors

61. Industry participants advised the Commission that, from a customer's point of view, the proposed acquisition would be the equivalent of customers being forced to switch from their existing supplier to Flint Holdings.

62. [

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63. In addition, [

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Conclusion on Existing Competition

64. The proposed acquisition would give rise to a minimal degree of aggregation. In each of the relevant markets there are a number of other participants with a significant presence and barriers to switching are low. In the metal decoration and coatings and adhesives markets, neither the Applicant nor Siegwerk has a significant presence and although the market share data provided by the Applicant indicates a higher level of aggregation than the other relevant markets, that data is in reference to one customer group only, and overstates the Applicant's position with regard to supply of these products.

POTENTIAL COMPETITION

65. The Commission is of the view that entry conditions for each of the markets are similar and as such the following analysis applies to each of the markets defined.

Likelihood, Extent and Timeliness of Entry

66. In order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other manifestations of market power must be Likely, sufficient in Extent, and Timely (the LET test).

Extent of Entry

67. If it is to constrain market participants, then the threat of entry must be at a level and spread of sales that is likely to cause market participants to react in a significant manner. Entry that might occur at only relatively low volumes, or in localised areas, does not represent a sufficient constraint to alleviate concerns about market power.
68. The Commission considers effective entry into the relevant markets could be undertaken in one of two ways:
- entry by establishing manufacturing and distribution facilities; or
 - entry by importing ink and establishing distribution facilities.
69. Industry participants advised the Commission that the most likely and effective form of entry into any of the relevant markets would be by importing ink and establishing distribution facilities. Key requirements for such entry include:
- ability to source ink;
 - a facility from which product could be distributed;
 - a distribution network; and
 - depending on the size of customer targeted, a potential entrant may need to provide blending facilities to tailor ink to specific (larger) customers' needs.

70. With regard to laboratory blending facilities, the Commission considers that most ink suppliers maintain only limited facilities in this regard.¹⁰ Laboratory blending can be undertaken on off the shelf imported product.
71. Given the requirements outlined above, the Commission considers that effective entry into the relevant markets is possible to a sufficient extent as an importer/distributor of ink products. This is particularly the case for international ink suppliers wishing to enter New Zealand.

Timeliness of Entry

72. To effectively constrain the exercise of market power, potential entry must also be timely. For most markets, entry that cannot be achieved within two years from initial planning is unlikely to alleviate concerns about substantial market power.
73. Given the limited entry requirements, the Commission considers entry in the manner described above could be undertaken well within the two year timeframe period that the Commission typically adopts.

Likelihood

74. In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational firm will be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on investment, including allowance for any risks involved.
75. Although the Commission is not aware of any recent examples of either type of entry, industry participants submitted that the success of the import-only model makes it easier for international brands to enter the market should they choose to do so. The Applicant supplied examples of two possible entrants:
- Hostmann-Steinberg¹¹
 - Rieger Printing Ink Ltd (Rieger)¹²
76. The Commission notes that Hostmann-Steinberg currently distributes its product in New Zealand through Nova. The Applicant has suggested that this company could commit to full entry in New Zealand by purchasing its current distributor, as it did in the Australian market in 2003. The Commission notes that entry in this manner would effectively replace one market participant with another and is unlikely to pose additional constraint on the combined entity.

¹⁰ Only one company, Pacific Inks, maintains a manufacturing facility in New Zealand [

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¹¹ Hostmann-Steinberg (Hostmann) is a Germany company that has been a member of the Hubergroup since 1977. Hostmann produces printing inks for printing newspapers, brochures, magazines, labels, packaging, carrier bags, drinks cans etc which are exported to more than 100 countries.

¹² Rieger is a wholly owned Canadian ink manufacturer specialising in coldset, sheetfed and heatset ink for the printing industry as well as water-based and solvent based inks for the flexographic and printing industries for wallpaper and packaging. Rieger has an operation in Australia, which imports finished ink from its Canadian parent and distributes these products from its warehouse in Sydney.

77. The Commission considers that, in principle, international companies such as Hostmann-Steinberg or Rieger could enter as importer/distributors. However, given evidence of a declining market in New Zealand¹³ and the low selling prices of ink¹⁴, the Commission considers that entry into the relevant markets is unlikely.

Conclusion on Potential Competition

78. The Commission is of the view that, although a new entrant could effectively enter the relevant markets to a sufficient extent within two years, because of the number of participants in the relevant markets and the fact that the markets are declining, new entry is unlikely.

OTHER COMPETITIVE FACTORS

Countervailing Power

79. The Applicant provided evidence that the majority ([] %) of its sales are made to [] customers. The Applicant maintains that this gives large customers a significant degree of buyer power. In addition, all ink suppliers interviewed informed the Commission that large customers are particularly price sensitive.
80. Larger ink customers provided the Commission with evidence that illustrates that they can and do exercise their buyer power. []¹⁵, informed the Commission that it was able to demand an across the board price decrease of [] from each of the ink companies by which it is supplied. []
81. A second large customer, [], informed the Commission that it refuses to accept price increases from its ink suppliers and that, should price increases be proposed, it would consider the following actions in response:
- shift supply to a competitor of its current supplier, possibly [];
 - consider self-supply by importing [];
 - purchase a small ink supplier in New Zealand [] and vertically integrate its operations.
82. [] accepted that raw material costs are increasing; however, it expects ink suppliers to maintain current prices by taking cost out of the supply chain. These comments were echoed by other large customers.
83. To ease any barriers to switching, one industry participant informed the Commission that it is its preference to maintain a dual supplier strategy, where a secondary supplier acts as a check and balance on a primary supplier. [] informed the Commission that it obtains approximately [] of its inks, []

¹³ The Applicant informed the Commission that several manufacturers of FMCG products that require liquid packaging ink have recently moved their packaging facilities offshore to be closer to where the products they are packaging are manufactured. Some examples include, Unilever and Nestle. The Applicant maintains that this trend is likely to continue.

¹⁴ []

¹⁵ []

] from [], with the remainder of its inks being supplied by []. Dual supply means that for [] there is always an alternative supplier that has tested product on [] equipment and could act as an alternative primary supplier if needed.

Conclusion on Countervailing Power

84. In conclusion, the Commission considers that large customers have a significant degree of buyer power which, in the past, they have demonstrated they are prepared to exercise. The Commission is of the view that the ability of large customers to exercise this buyer power is likely to continue in both the factual and the counterfactual scenarios.

OVERALL CONCLUSION

85. The Commission concludes that in each of the relevant markets:
- the degree of aggregation in all but one affected market (coatings and adhesives) is small;
 - post-acquisition, a significant degree of competition is likely to exist in the coatings and adhesives market;
 - entry is unlikely due to the declining nature of the markets; however, should market conditions alter, entry could be undertaken to a sufficient extent and in a timely manner;
 - smaller customers face no barriers to switching and have a wide range of potential suppliers; and
 - large customers hold a significant degree of countervailing power that is regularly exercised to maintain or reduce prices.
86. Accordingly, the Commission is satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the national markets for:
- the manufacture/importation, and supply of liquid packaging ink;
 - the manufacture/importation, and supply of sheetfed ink;
 - the manufacture/importation, and supply of narrow web ink;
 - the manufacture/importation, and supply of metal decorating ink; and
 - the manufacture/importation, and supply of coatings and adhesives.

DETERMINATION ON NOTICE OF CLEARANCE

87. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by Flint Group Holdings S.A.R.L of up to 100% of the assets of the business of Siegwark New Zealand Limited.

Dated this 14th day of May 2008

Paula Rebstock
Chair