



COMMERCE COMMISSION

Statement of Preliminary Issues

Pact Group / Viscount

13 October 2011

11.4/13157

INTRODUCTION

1. On 4 October 2011, the Commerce Commission (Commission) received an application from Pact Group Pty Limited (Pact Group) seeking clearance to acquire the plastic pails business of Viscount Plastics (Viscount). The public version of the application can be accessed on the Commission's website at:
<http://www.comcom.govt.nz/clearances-register/detail/726>
2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

RELEVANT PARTIES

The Acquirer – Pact Group

4. Pact Group operates a number of plastic packaging businesses in New Zealand including VIP Packaging (NZ) Limited, Alto Packaging Limited and Tecpak Industries Limited. In addition, Pact Group holds a shareholding in National Can Industries Limited (NCI), which also supplies some plastic pails in New Zealand.

The Target – Viscount

5. Viscount's plastic pails business includes assets from two New Zealand entities, namely Pacific BBA Plastics (NZ) Limited and Viscount Plastics (NZ) Limited. The parent company of all these entities is LINPAC Mouldings Limited.

ANALYTICAL FRAMEWORK

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's

analytical framework¹ is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.

7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
8. The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.
9. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
 - existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
 - potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
 - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
 - coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
10. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition might lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

PRELIMINARY ISSUES

11. Although clearance has been sought only for the acquisition of the plastic pails business, the Commission will also consider whether any competition concerns arise in relation to the other business assets that are included in the proposed acquisition; plastic crates and thin-walled plastic containers.

Market Definition

12. In respect of market definition, the Commission will consider:
 - whether all sizes of plastic pails up to 25 litres should be included in one market;

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

- whether non-food grade plastic pails are substitutable for food grade pails. The Commission will consider this both from the customer's perspective and that of a manufacturer; whether they can easily switch production from non-food grade to food grade production;
- whether both food and non-food grade pails can be imported; and
- whether tinplate pails, and other forms of packaging, are substitutable for plastic pails.

Existing Competition

13. The Pact Group submits that:

- NCI is a vigorous and effective competitor in the plastic pails market in New Zealand;
- local manufacturers supply quality products at competitive prices and could expand their production levels to resist any attempt by the merged entity to raise prices; and
- importers could increase import volumes within a short timeframe.

14. In addition, the Commission will assess:

- the extent and nature of the competition that currently exists between Pact Group and Viscount; and
- the degree of competition between NCI and Pact Group given that Pact Group owns 19.99% of NCI.

Potential Competition

15. The Pact Group submits that:

- the capital costs of setting up a plastic pails manufacturing plant are not significant;
- setting up a manufacturing facility to make a single size of pails would take four to six months;
- importers can easily expand their operations; and
- new importers could enter the market quickly and with low capital costs.

16. In addition, the Commission will consider whether:

- a new entrant would need to offer a range of products in order to win customers; and
- existing importers could expand their business or whether freight costs, warehousing costs and short lead times might make this problematic.

Countervailing Power of Buyers

17. The Pact Group submits that large customers could threaten to self supply or switch to imports in the event that the merged entity threatened to increase prices.

18. In addition, the Commission will assess whether a large customer is likely to sponsor a new entrant into the market, in the event that the merged entity were to attempt to raise prices.

NEXT STEPS

19. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of the issues and Pact Group's application for clearance. An extension of time has been agreed to by the Applicant such that the Commission should make its final decision by **2 December 2011**. However, this timeframe could change. To keep abreast of possible changes to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>
20. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.
21. The Commission invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference Pact / Viscount in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **4pm on Friday 21 October 2011**. Please clearly identify any confidential information contained in the submission and provide contact details.