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COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

Date: 8 October 2003

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

PART 1: TRANSACTION DETAILS

1 *What is the business acquisition for which clearance is sought?*

1.1 Clearance is sought for Holcim (New Zealand) Limited or any of its interconnected bodies corporate ("Holcim New Zealand") to acquire shares in Atlas Resources Limited ("Atlas"). The proposal is to acquire 100% of the shares jointly owned by W M Collie and E A Collie. At present they own 9 of the 20 A shares and 660 of the 1,980 B shares in Atlas. The total number of shares currently issued by Atlas is 2,000.

1.2 As the A shares in Atlas each carry 200 votes and the B shares each carry 1 vote, the shares to be purchased will equate to 41.14% of the voting rights in Atlas but 33.45% of the total shares.

1.3 [

]

1.4 The business acquisition therefore involves the purchase by Holcim New Zealand of a minority shareholding interest in Atlas.

1.5 A copy of the share purchase contract is **attached** as appendix 1.

THE PERSON GIVING NOTICE

2 *Who is the person giving this notice?*

2.1 John Reeves
Acting Chief Executive Officer
Holcim (New Zealand) Limited
PO Box 6040
Addington
Christchurch

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Telephone No: (03) 339 7500

Fax No: (03) 339 7499

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

Anthony Harper
Lawyers
Anthony Harper Building
47 Cathedral Square
PO Box 2646
Christchurch

Telephone No: (03) 3790 920

Fax No: (03) 366 9277

Attention: Chris Weir

CONFIDENTIALITY

3 Do you wish to request a confidentiality order for:

3.1 The fact of the proposed acquisition?

No.

3.2 Specific information contained in or attached to the notice?

3.2.1 Confidentiality is sought for all information deleted or excluded in the "public copy" of this notice.

3.2.2 Confidentiality is sought for all confidential information indefinitely or until Holcim New Zealand advises the Commission the information is no longer confidential.

3.2.3 The information that has been deleted is commercially sensitive and valuable information that is confidential to Holcim New Zealand or Atlas. Disclosure of that information could result in a material financial loss and prejudice to the competitive position of the parties. In this respect, Holcim New Zealand relies on section 9(2)(b) of the Official Information Act 1982. The foregoing applies equally in respect of all additional information, expressed to be confidential, that the parties may provide in relation to this application.

DETAILS OF THE PARTICIPANTS

4 Who are the participants (i.e. the parties involved)?

4.1 The participants are Holcim New Zealand and Atlas.

4.2 Holcim New Zealand is the acquirer. Contact details are set out in paragraph 2.

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- 4.3 Atlas is the target company which is currently wholly owned by members of the Collie family and their family trusts.

Contact person for Atlas is:
Mr Graham Collie
General Manager
Atlas Resources Limited
PO Box 33282
Takapuna
Auckland

Telephone No: (09) 412 9456
Fax No: (09) 412 7800

- 4.4 A further contact for Atlas for enquiries, communications and correspondence is its solicitor:

Mr James Varney
McVeagh Fleming Kennedy Tudehope
PO Box 300844
Albany
Auckland

Telephone No: (09) 415 4477
Fax No: (09) 415 4499

- 4.5 The following parties currently own over 10% of shares in the target company and will continue to do so after the acquisition:

- (a) Graham Lloyd Collie and James Thomas Varney (jointly) as trustees of the Graham Collie Family Trust. The current number of shares held are 660 class B shares which equate to 33% of the shares and 11.04% of the vote.
- (b) Stephen Karl Collie and Louis Patrick McElwee (jointly) as trustees of the Stephen Collie Family Trust. The current number of shares held are 660 class B shares which equate to 33% of the shares and 11.04% of the vote.
- (c) In addition Graham Lloyd Collie will continue to hold 8 class A shares which equates to 0.4% of the shares and 26.75% of the vote. Melville Charles Collie will continue to hold 3 class A shares which equates to 0.15% of the shares and 10.03% of the vote.

- 4.6 Contact person for the remaining shareholders identified in paragraph 4.5 is Mr Graham Collie whose details are set out in paragraph 4.3.

5 ***Who is interconnected to or associated with each participant?***

5.1 ***Acquirer group/associates:***

- 5.1.1 Holcim New Zealand is the acquirer which is ultimately 100% owned by Holcim Limited, a Swiss company listed on the Swiss Stock

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Exchange and the virt-x Exchange in London. The parent company is a global producer of cement, ready mixed concrete and aggregates with its headquarters in Switzerland. Holcim New Zealand's annual review for 2002 is **attached** as appendix 2. Further information can be obtained from the website at www.holcim.com/nz.

- 5.1.2 A diagram listing the subsidiaries and associates of Holcim New Zealand is **attached** as appendix 3.
- 5.1.3 Subject to paragraphs 5.1.5 and 5.1.7 below, the acquirer and its interconnected bodies corporate do not own 20% or more of the shares in any company other than those set out in appendix 3.
- 5.1.4 Holcim New Zealand is interconnected to AML Limited as it is a 50% owned subsidiary. The other 50% of AML Limited is owned by Allied Concrete Limited.
- 5.1.5 AML Limited is interconnected to Allied Concrete Limited. Holcim New Zealand is itself interconnected to Allied Concrete Limited through AML Limited. This interconnection was discussed in Commerce Commission decision number 416, Milburn New Zealand Limited and Isaac Concrete Limited, in paragraphs 14-24. Milburn New Zealand Limited was the former name of Holcim New Zealand. Allied Concrete Limited is owned by H W Richardson Group Limited. H W Richardson Group Limited is owned by Mr H W Richardson, Mrs S L Richardson and their family trust. Holcim New Zealand does not have details of ownership of other companies within the Richardson group of companies.
- 5.1.6 Holcim New Zealand owns 50% of the shares in Coastal Resources Limited which is interconnected as a result of the provisions of the constitution. The remaining shares are owned by Kaipara Limited.
- 5.1.7 Kaipara Limited is owned by the Drinkrow family but Holcim New Zealand does not have details of ownership of other companies owned by Kaipara Limited.

5.2 ***Target company group/associates:***

- 5.2.1 The subsidiaries of Atlas and companies in which it owns shares is outlined in appendix 4 which is **attached**.
- 5.2.2 Atlas is owned by trustees of 4 trusts which represent the respective interests of Mr Graham Collie, Mr Wayne Collie and Mr Stephen Collie. Each trust has a 33.3% share of the Class B ordinary shares of Atlas, whilst the 20 Class A shares are held by Mr Graham Collie as to 40%, Mr Melville Collie as to 15% and Mr Wayne Collie's family trust as to 45%.
- 5.2.3 As outlined in paragraph 1.1, the acquirer is seeking to acquire the shares of Mr Wayne Collie's trusts. The other existing Collie family shareholders will remain as shareholders following the acquisition by Holcim New Zealand.

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6 *Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?*

6.1 No.

7 *Identify any links, formal and informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its existing competitors in each market.*

7.1 Holcim New Zealand is a vertically integrated company which currently supplies cement to Atlas. Holcim New Zealand does not currently supply cement to Allied Concrete Limited in the Auckland market. Holcim New Zealand is not the sole cement supplier to Atlas. Holcim New Zealand supplies cement in the Auckland ready mixed concrete market to its operating division, Ready Mixed Concrete, and also to Bridgeman Concrete Limited, Firth Industries and W Stevenson & Sons Limited, but Holcim New Zealand is the minority cement supplier to those other companies. Holcim New Zealand also supply cement to Wilson's Ready Mix Limited.

7.2 Holcim New Zealand currently supplies aggregates to its operating division, Ready Mixed Concrete and to Allied Concrete Limited in the Auckland market but it does not currently supply Atlas with aggregates.

7.3 Holcim New Zealand currently acquires sand from Coastal Resources Limited and Atlas for its Ready Mixed Concrete division in the Auckland market. Coastal Resources Limited also supplies sand to Wilson's Ready Mix Limited in the Auckland market.

8 *Do any directors of the "acquirer" also hold directorships in any other companies which are involved in the markets in which the target company/business operates?*

8.1 No.

9 *What are the business activities of each participant?*

9.1 **Holcim New Zealand**

9.1.1 Holcim New Zealand is involved in the production and distribution of cement which is marketed under the Holcim brand. The distribution of Holcim cement is on a national basis.

9.1.2 Holcim New Zealand's operating division, Ready Mixed Concrete, manufactures and distributes concrete under that brand and operates 10 plants in the upper half of the North Island. It operates 4 ready mixed concrete plants within the Auckland region. AML Limited does not operate in the Auckland regional market, however it has concrete plants in Hamilton, Tauranga and the Coromandel. Allied Concrete Limited through its ownership link with AML Limited is interconnected to the applicant and operates 2 ready mixed concrete plants in Auckland.

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- 9.1.3 Holcim New Zealand operates quarries in the Auckland region which are situated at Bombay and Manukau. The quarries are operated through an operating division, Holcim Aggregates. There are significant reserves in the Bombay Quarry, however, the applicant is working towards [].
- 9.1.4 Coastal Resources Limited operates a sand winning and dredging operation from the coast north east of Auckland City from which it supplies sand to the Auckland market.
- 9.1.5 The other identified subsidiaries and associates of Holcim New Zealand do not operate in the same product or geographic markets as the target company.

9.2 Target Company Atlas:

- 9.2.1 Atlas operates ready mixed concrete plants at five Auckland locations, Wiri, Silverdale, Panmure, Takapuna and Kumeu in West Auckland. A small concrete plant also operates from Atlas' Maungaturoto quarry site. Through its subsidiary Mt Rex Shipping, Atlas is also involved in the extraction and distribution of sand and aggregates to the Auckland and Northland regional markets. However most of the sand and all of the aggregates are supplied internally to Atlas for use in manufacturing its own ready mixed concrete. Some is available for retail sale from its various depots, but there are not sufficient supplies available for wholesale supply.
- 9.2.2 Atlas through its subsidiary Atlas Quarries Limited operates a quarry situated at Maungaturoto in Northland from which it quarries rock and manufactures base course and roading materials and also supplies aggregate to the Northland market. Because of the distance and cost of cartage very little of the aggregates from this source are supplied to the Auckland market.
- 9.2.3 Atlas through its subsidiary Quarry Point Limited operates a quarry situated at Hukatere from which it quarries rock and manufactures base course and roading materials.
- 9.2.4 The aggregates and base course metal produced by the Atlas subsidiaries is mainly sold north of Auckland in the Wellsford, Maungaturoto, Tinopai and Brynderwyn areas. Base metal is barged from Hukatere to Helensville where it is processed into concrete aggregate for the manufacture of Atlas' own ready mixed concrete. Some aggregate from Atlas quarries is trucked to Auckland for the manufacture of ready mixed concrete.
- 9.2.5 Atlas also operates a small concrete tilt slab manufacturing business from the North Shore through its subsidiary Atlas Tilt Slab Limited.

10 *What are the reasons for the proposal and the intentions in respect of the acquired or merged business?*

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10.1 The applicant and target companies have an established business relationship as Atlas has purchased cement from Holcim New Zealand in various quantities for approximately 20 years and Holcim New Zealand has purchased sand from Atlas.

10.2 []. The Atlas Group is a family group of companies operated by the Collie company since 1962. The group essentially consists of Mr M C Collie and his three sons. [

]. The Collie family was of the view that Holcim New Zealand would strengthen the company as a shareholder because of its experience in the businesses in which Atlas operates and that it would also strengthen Atlas' access to cement supply.

10.3 The remaining Collie shareholders consider that Holcim New Zealand's expertise in corporate and technical areas as well as its ability to provide advice and assistance in strategic planning, environmental related matters and health and safety compliance will be of value to the group in the future.

10.4 For its part, Holcim New Zealand sees the acquisition of the shares as a commercial opportunity to obtain a minority shareholding in a profitable group of companies to which it can add strength and value through its expertise and experience.

10.5 []. Holcim New Zealand will have representation at Board level, but as a minority shareholder will have limited influence and will be constrained by its minority shareholding and the terms of a shareholders' agreement entered into between Holcim New Zealand and the remaining shareholders, a copy of which is **annexed** as appendix 5.

10.6 The acquisition of the shares by Holcim New Zealand will enable the Atlas Group to concentrate on the business growth opportunities available to the group [].

10.7 []. That matter is provided for in paragraph 13 of the shareholders' agreement.

10.8 [].

10.9 [

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].

10.10 Although this application is made on the basis that the purchase of the total shareholding of W M and E A Collie would be likely to result in Atlas being associated with Holcim New Zealand, Holcim New Zealand reserves its position in that regard [

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PART II : IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 *Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?*

11.1 *Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 – 5.1.4), and*

- *The business to which the assets relate, or*
- *The "target company" (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)*

are both engaged?

11.1.1 The proposed acquisition will result in aggregation of business activity in the production and sale of ready mixed concrete in the Auckland metropolitan region and to a more limited extent in the extraction and sale of sand and aggregates in the Auckland region.

11.2 *Please identify each market:*

- *The product(s), functional level, geographical area and (where relevant) timeframe;*
- *The specific parties involved;*
- *The relationship of those parties to the acquirer or the target company as the case may be.*

Ready Mixed Concrete

11.2.1 The product is ready mixed concrete. The functional level is manufacture and sale of ready mixed concrete and the geographic market is the Auckland metropolitan market. Taking a conservative approach, for the purposes of this application, Holcim New Zealand defines the geographic area of the market as the Auckland metropolitan area extending from Pukekohe in the south to Wellsford in the north and including all areas in between. Within that broad geographic market, Holcim New Zealand considers there are three submarkets consisting of the southern area of the region extending approximately from Pukekohe to Manukau, the central metropolitan area from Manukau to the harbour bridge and the northern area north of the harbour bridge. Some smaller producers do not operate in all three submarkets, however all major producers operate to some extent in each submarket, through having multiple plants. To a large extent these submarkets are characterised by the positioning at individual plants of delivery trucks. These trucks, in turn, can be readily moved from plant to plant to meet demand fluctuations where a producer has multiple plants.

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- 11.2.2 At present, due to siting of plants, Atlas does not regularly supply to the southern most submarket and likewise Ready Mixed Concrete does not regularly supply the northern submarket.
- 11.2.3 Generally at present, there are no close substitutes for ready mixed concrete due to the function it performs in many uses. In the Commission's two recent decisions relating to this business activity, it identified the product dimensions of the market as the manufacture and supply of ready mixed concrete (Decision Number 416, Milburn New Zealand Limited and Isaac Concrete Limited and 466, Firth Industries and Gill Construction Limited). Substitutes do however exist for concrete in various markets both internationally and in the past internally. For example concrete is a substitute for bitumen in the roading market. Timber and particle board are substitutes for concrete in the housing foundation market and structural steel is a substitute for concrete in commercial structural applications.
- 11.2.4 Because it has a short product life, ready mixed concrete can only be transported relatively short distances resulting in small geographic markets. In Decision Number 416, which related to a large metropolitan area, the Commission concluded that the particular market was that for the greater Christchurch area. However the Auckland market is a larger market in terms of volume and geographic boundaries than the Christchurch market and typically larger suppliers have a number of plants located throughout the Auckland metropolitan area to best service customer needs throughout the greater geographical market. In contrast, some smaller operators focus on one submarket. New entrant Counties Concrete, which currently has one plant at Drury, focuses on the southern submarket.
- 11.2.5 Atlas Concrete Limited has plants in Wiri, Silverdale, Takapuna, and Kumeu in West Auckland. It is also currently building a plant at Panmure. Holcim's operating division, Ready Mixed Concrete has concrete plants at East Tamaki, Avondale and Pukekohe and Waiuku in South Auckland. Interconnected company Allied Concrete Limited has concrete plants situated at Manukau in South Auckland and the North Shore. The plants are geographically dispersed to satisfy customer needs. However, if a hypothetical monopoly supplier of ready mixed concrete in one part of Auckland increased its prices, then suppliers in neighbouring areas could constrain this pricing behaviour by diverting or expanding supply. Because major suppliers have multiple plants, the geographic market would extend throughout the greater Auckland metropolitan area. This is consistent with the actual flows of product.
- 11.2.6 Although Holcim New Zealand and Allied Concrete Limited are deemed to be interconnected through their ownership of AML Limited, there is no shareholding link between Holcim New Zealand and Allied Concrete Limited, nor are there any common directors or management. A major consideration for both Holcim New Zealand and Allied Concrete Limited when AML Limited was originally established was to enable both shareholders to be in a position to

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consolidate the accounts of AML Limited. To achieve this end, AML Limited needed to be a subsidiary of both Holcim New Zealand and Allied Concrete Limited. A consequence of achieving subsidiary status for both shareholding companies is that AML Limited is the interconnecting link between Holcim New Zealand and Allied Concrete Limited.

11.2.7 Holcim New Zealand and Allied Concrete Limited are separate entities which operate independently. AML Limited, which is the linkage, has two Directors from Holcim New Zealand and two Directors from Allied Concrete Limited. It is managed on a day to day basis by its own employees and by management of Allied Concrete Limited. AML Limited does not operate in the Auckland metropolitan area.

11.2.8 The target business []. Allied Concrete Limited, Holcim New Zealand and Atlas are now and will continue to be arm's length competitors.

Aggregate

11.2.9 The proposed acquisition of shares will also result in very limited aggregation in quarrying and the distribution of aggregate in the Auckland region. Holcim New Zealand considers that the geographic market for aggregates would extend from Pokeno in the south to Orewa in the north and all points in between.

11.2.10 Atlas through its subsidiary Atlas Quarries Limited operates a quarry at Maungaturoto in Northland approximately 120 km north of the Auckland Central City. As referred to in paragraph 9.2.2 most of that product is supplied to the Northland market, rather than Auckland. It also operates a quarry at Hukatere through its subsidiary Quarry Point Limited which supplies some of Atlas' requirements in the Auckland market. Mt Rex Shipping Limited, which is also a subsidiary of Atlas, operates a sand extraction and aggregate supply business in Helensville approximately 50 km north of Central Auckland.

11.2.11 The majority of the aggregates produced by Atlas are for internal use within the Atlas Group for its own ready mixed concrete production, and very little of the aggregates produced by Atlas find their way to the market generally, apart from small volumes to the home handyman retail market through its retail distribution yards. Atlas also purchases aggregate from W Stevenson & Sons Limited, to supplement its own supplies.

11.2.12 Holcim operates quarries at Bombay and Manukau in South Auckland and supplies aggregates to the Auckland metropolitan market.

11.2.13 Aggregate is crushed rock, gravel or sand and is one of the most widely used mineral products quarried in New Zealand. The rock which is the base input into aggregate production is extracted from quarries and crushed to the required size. Aggregate is used in all aspects of road construction as well as in the production of concrete.

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There are no close substitutes for the function aggregates perform in many uses, so it will form a separate product market. Aggregate is processed into different sizes to suit its proposed use, and the size is determined by the extent of processing.

11.2.14 Holcim New Zealand considers that there are three product levels in the aggregate market, which equate to the level of processing and consequently the cost. The highest product level and the highest price is for road sealing chip, the next level is for concrete aggregate and the lowest level is for roading base course. All three product levels are produced from the same base quarried product. The differentiation between the three levels is in the degree of processing. From a supply side point of view if the supplier was producing one size of aggregate it could produce other sizes simply by changing its processing of the same base rock. Changing of processing may result in the requirement for additional processing machinery.

11.2.15 In the Auckland market aggregates is produced from either basalt or from greywacke. Approximately 20% of aggregates produced comes from basalt and the remainder from greywacke. For some uses a premium may apply to aggregates produced from basalt, however Holcim New Zealand does not consider there are separate submarkets for basalt and greywacke sourced aggregates.

11.2.16 Production depends on the access to a suitable supply of rock from a quarry or riverbed. Generally the function of quarrying and extraction and further processing of rock is internal. In some instances certain quarrying functions are subcontracted, such as blasting of the quarry face. This is the case for the applicant in its Bombay Quarry.

11.2.17 Distribution of aggregate in the Auckland region varies. Supplies of smaller volumes of up to approximately 500 tonnes are generally by way of the end user purchasing those volumes through independent distributors, which in turn would tend to source aggregate from the closest geographic quarry. For larger volumes of supply, the end user would tend to source directly from the quarry producer and in the case of such larger volumes supply would typically result from a tender process.

11.2.18 Aggregate is a high volume, low value product which is expensive to transport. The distance from the market is an important competitive factor, however, there is a considerable amount of resource available which can be quarried and quarries are situated near large metropolitan areas where a large volume of the product is consumed. The Geographic dimension of the market is likely to be regional in extent. Suppliers in the neighbouring regions offer some competitive constraint at the margin however the geographic dimension of the aggregate market is likely to be the greater Auckland metropolitan region. For example I H Wedding & Sons Limited supplies aggregates from Huntly and could readily supply into the South Auckland market if prices were increased by Holcim New Zealand from its Bombay Quarry and accordingly I H Wedding & Sons Limited

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offers a competitive restraint in that part of the geographic region. A similar competitive constraint is occurring in the south of the region from Kaipara Ltd, which is primarily involved in the contracting and cartage markets, but it also supplies Wilson's Ready Mix Limited with aggregate from its quarry at Brookby.

Sand

11.2.19 The product is sand and the functional level is extraction/processing and distribution and the geographic market is the Auckland region from Pokeno in the south to Dargaville in the North.

11.2.20 Although sand could be seen to be a submarket of aggregates, Holcim New Zealand considers it is a distinct market. Sand can either be extracted as a raw product from the seabed or riverbeds or alternatively it can be a manufactured by-product of the aggregate extraction process. The seabed and riverbed sand tends to be a finer product and accounts for approximately 33% of the sand used in the Auckland ready mixed concrete market. The remaining 66% is a coarser grade sand which is produced as a quarry by-product.

11.2.21 Holcim New Zealand produces some sand as a quarry by-product in the Auckland region and does purchase sand from its associated company, Coastal Resources Limited. It also purchases some sand from Atlas.

11.2.22 Atlas extracts sand from the Kaipara Harbour which it mainly uses internally to mainly produce ready mixed concrete. Some of the sand is used for sports field application.

11.2.23 Coastal Resources Limited extracts sand from the seabed from the east coast north of Auckland City, which it supplies to the Auckland market.

Differentiated Product Markets

12 *Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).*

12.1 Ready mixed concrete is a standardised product and varies according to strength requirements. However suppliers of competing products can provide concrete in different strengths and therefore price is an important competitive factor.

12.2 Aggregate is also a standardised product with size of the crushed rock being a differentiating factor. However most suppliers can supply aggregate in different sizes. There are some differences in geological qualities, such as between basalt and greywacke sourced aggregates, however this is not significant and most rocks will perform the functions required for aggregates in different uses, for example for roading and concrete manufacture.

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12.3 Sand is also a standardised product which is not differentiated other than through its different sources either from sea, river or through manufacture.

13 For differentiated market products:

13.1 ***Please indicate the principal characteristics of products that cause them to be differentiated one from another.***

Not applicable.

13.2 ***To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?***

Not applicable.

13.3 ***Of the various products on the market, which are close substitutes for the products of the proposed combined entity? – Which are more distant substitutes?***

Not applicable.

13.4 ***Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?***

Not applicable.

Vertical Integration

14 Will the proposal result in vertical integration between firms involved at different functional levels?

14.1 No, not in respect of the ready mixed concrete, aggregate or sand markets. The Commission will however be aware that Holcim New Zealand is a manufacturer and supplier of cement and both Ready Mixed Concrete and Atlas use Holcim cement in this market. Atlas also supplies Holcim New Zealand with sand. Questions 14.1-14.3 are therefore not applicable.

15 In respect of each market identified in questions 11 and/or 14 identify briefly:

15.1 ***All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case:***

15.1.1 ***The outcome of the notification (e.g. cleared, authorised, declined, withdrawn)***

15.1.2 ***Whether the proposed acquisition has occurred;***

In the last three years there has been one Commerce Commission notification by Holcim New Zealand. Decision Number 416, Milburn New Zealand Limited (the previous name of Holcim New Zealand) and Isaac Concrete Limited 26 January 2001, involved the acquisition by

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Milburn New Zealand Limited of 100% shares of Isaac Concrete Limited. The application was cleared and the acquisition has occurred with Isaac Concrete being integrated into Holcim New Zealand's operation.

There have been no Commerce Commission notifications by Atlas in the last three years.

15.2 ***Any other acquisition of assets of a business or shares which either participant has undertaken in the last three years?***

Neither Holcim New Zealand nor, to the best of its knowledge, any interconnected body corporate has undertaken any acquisition of assets or a business or shares in the last three years in any of the businesses or markets identified in questions 9 and 11. Holcim New Zealand does not have knowledge of any such acquisitions which may have been made by Allied Concrete Limited or Kaipara Limited and cannot certify on behalf of either of those companies. Holcim New Zealand has been advised by Atlas that the target group has not acquired any assets or shares in the last three years in any of the businesses or markets identified in questions 9 and 11.

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PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

16 *In the market or markets, who are the suppliers of competing products, including imports?*

Ready Mixed Concrete

16.1 *Please identify the owners of those suppliers (including ultimate owner/s):*

16.1.1 Firth Industries, a division of Fletcher Concrete and Infrastructure Limited.

W Stevenson & Sons Limited (Stevenson)

Allied Concrete Limited.

There are a number of smaller suppliers of ready mixed concrete in the Auckland market including relatively new entrants which have recently come into the market, such as Counties Concrete at Papakura, Bridgeman Concrete at Papakura and Wilson's Ready Mixed Concrete at East Tamaki.

16.2 *What are their estimated market shares, both in terms of productive capacity and of sales?:*

- *Give the total size of the domestic market;*
- *Identify at least the 4 leading suppliers;*
- *Include participants to the proposals;*
- *Identify imports clearly (including the country of origin and the importers);*
- *Identify source(s) of the estimates; and*
- *Note that competing goods may not be confined to identical or brand goods.*

16.2.1 The estimated market shares of suppliers in the Auckland ready mixed concrete market are outlined in Table 1. Because price is an important competitive factor in the supply of concrete, both capacity utilisation and whether independent suppliers can increase production to constrain pricing behaviour are important considerations in determining market power. Table 1 outlines estimated market shares based on current market share and also production capacity.

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Table 1: Estimated market shares for Auckland ready mixed concrete market

Supplier	Owner of supplier	Estimated percentage of productive capacity	Estimated percentage of market sales
Allied	HW Richardson Group Limited (Richardson Family & Trusts)	[]	[]
Ready Mixed Concrete	Holcim New Zealand	[]	[]
Atlas	The Collie Family	[]	[]
Acquiring group		[]	[]
Firth	Fletcher Building Limited	[]	[]
Stevenson	The Stevenson Family	[]	[]
Other	Various	[]	[]
Total		100%	100%

16.2.2 The number of trucks operated by a ready mixed concrete producer gives a reasonable indication of productive capacity. While the number of trucks is indicative of capacity, the age of the vehicle and the size of the mixing bowl are also factors to be taken into account. The estimated excess of productive capacity available to the various smaller operators and new entrants gives those operators scope to increase production from existing plant and equipment. In most instances, constraint on supply of ready mixed concrete is due to availability of trucks. The following table is Holcim New Zealand's estimate of trucks and plants currently available in the market:

Table 2: Estimate of number of trucks

Supplier	Estimated Number of Trucks	Number of Plants
Allied	Approximately []	2
Ready Mixed Concrete	[]	4
Atlas	[]	5
Firth	[]	8
Stevenson	Approximately []	4
Other	[]	8
Total	[]	

16.2.3 The data set out in Tables 1 and 2 comprises estimates based on information available to Holcim New Zealand. It is believed to be materially reliable. The information is provided for the most recent year. Data for each of the past 5 years is not readily available. Over that period the new entrants identified in paragraph 16.1.1 have entered the market, which has impacted on market share of the other producers.

Aggregates

16.2.4 W Stevenson & Sons Limited.

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Winstone, a division of Fletcher Concrete and Infrastructure Limited.
Fulton Hogan Limited.

There are also a number of smaller suppliers such as Excell Corporation Limited, I H Wedding & Sons Limited (aggregate only), McCallum Brothers Limited (aggregate and sand) and Kaipara Limited (aggregate).

- 16.2.5 Aggregates are supplied into the Auckland and Northland regional markets by a number of independent suppliers. These include Stevenson, which has a large quarry situated at Drury in South Auckland, and quarries at Huntly and Kaiua near Thames. These quarries supply Stevenson's internal concrete manufacturing businesses and also its aggregate distribution centres as well as other ready mixed concrete operators such as Atlas.
- 16.2.6 Winstone Aggregates ("Winstone") is a large extractor and distributor of aggregates into the Auckland regional market. It has Auckland based quarries at Three Kings, Matakana, Wellsford, Puketutu in Mangere, Pukekawa, Hunua, Papakura, and Top Flat at Kaukapakapa. It also has an Albany Distribution Centre. From these quarries Winstone extracts and distributes aggregate for roading, concrete, drainage, fill and other uses. Winstone also has sand plants in Helensville, Puni in Pukekohe and Tuakau.
- 16.2.7 Fulton Hogan Limited is also involved in quarrying and supplying aggregates into the Auckland market and has a quarry situated in Penrose. Excell Corporation Limited is another independent supplier and has a quarry situated at Woodford, South Auckland.
- 16.2.8 Estimated market shares of the suppliers of aggregate into the Auckland regional market are outlined in Table 3. The figures are based on estimated production and estimated reserves. Reserves of a quarry are an important competitive factor as it dictates whether a competing supplier could increase production in the event of a price change by a competitor.

Table 3: Estimated market shares for Auckland Regional Aggregate Market.

Supplier	Owner of supplier	Estimated reserves	Estimated percentage of market sales
Holcim Aggregates		[] m ³	[]
Atlas	The Collie Family	[]	[]
Acquiring group			[]
Winstone	Fletcher Building Limited	[]	[]
Fulton Hogan	Widely held public unlisted company	[]	[]
Stevenson	The Stevenson Family	[]	[]
Others	Various	[]	[]
Total			100%

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16.2.9 It is extremely difficult to estimate percentage or productive capacity for reserves of quarry material held by other producers other than the acquirer. However as the estimated combined percentage of market sales for the acquirer and the target are in the vicinity of []%, it is anticipated that the estimated share of productive capacity for aggregates is not relevant in this application.

Sand

16.2.10 Sand is supplied into the Auckland regional market by a number of unrelated suppliers. These include Seatow Limited, McCallum Brothers Limited as well as Winstone Aggregates, Atlas and Coastal Resources Limited. Perry Group Limited of Hamilton also supply Waikato River based sand to the Auckland market.

16.2.11 Seatow Limited, McCallum Brothers Limited and Coastal Resources Limited source coastal sea sand from the east coast north of Auckland. Atlas and Winstone Aggregates source sea sand from Kaipara Harbour and Winstone Aggregates also sources river sand from the Waikato River.

16.2.12 Estimated market shares of the suppliers of sand into the Auckland market are outlined in Table 4.

Table 4:

Supplier	Owner of supplier	Estimated reserves	Estimated percentage of market sales
Atlas	Collie Family	[]	[]
Coastal Resources Limited	Associate of Holcim New Zealand	[]	[]
Seatow Limited		[]	[]
McCallum Brothers Limited	Family owned	[]	[]
Winstone Aggregates	Fletcher Building Limited	[]	[]
Others	Various	[]	[]
Total		[]	100%

16.2.13 As with aggregate, it is extremely difficult to estimate percentage of productive capacity for reserves held by other producers but it is believed that sand reserves are enormous and the utilisation of them is subject only to obtaining appropriate resource consents. As the estimate combined percentage of market sales for Atlas and Holcim New Zealand's associate Coastal Resources Limited is in the vicinity of []%, but with the market concentration of the three highest not exceeding 70% either before or after the acquisition, it is anticipated that the estimated share of productive capacity for sand is not relevant in this application.

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Other Considerations

- 16.3 *Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').*

Ready Mixed Concrete

16.3.1 Although the equipment for production of ready mixed concrete is specific to that process, it is believed that all of the firms listed in question 28 could also be near entrants as they would be able to quickly enter the market. Near entrants could come from such related industries as existing pre-cast concrete operators or from larger construction companies.

16.3.2 In addition it is believed that a number of large Australian ready mixed production companies, both multi-national and medium sized companies, in particular those operating on the east coast could, enter the market if they perceived there was opportunity for them to do so. The Auckland market is the most likely to attract Australian companies, given its size and growth profile.

16.3.3 Other potential near entrants are:

Higgins Contracting Limited

Schuler, Ngatea

I H Wedding & Sons Limited

Wharehine Group Limited, Wellsford and Warkworth

Kaipara Limited

Aggregates and Sand

16.3.4 There are a different range of aggregate products which are referred to in paragraph 11.2.12. Generally plant and equipment that is required to produce one size or type of aggregate can produce other sizes and types, therefore from a supply side point of view all aggregate producers are in the same market. Typically producers of aggregate produce a range of different aggregate products, so are near entrants for each range they do not currently produce.

16.3.5 It is believed that the following parties could rapidly expand to the aggregate and sand markets:

I H Wedding & Sons Limited

Wharehine Group Limited

Kaipara Limited

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H G Leach, Coromandel

McCallum Brothers Limited

Waiheke Ready Mixed Concrete Limited

Bridgeman Concrete Limited

16.3.6 Holcim New Zealand believes that aggregates is an under utilised resource in the Auckland area and that there are large reserves which could be quickly expanded. For example it is believed that Winstone could quickly expand production. In addition further large resources could be accessed de novo.

16.3.7 Although Holcim New Zealand is not aware of any potential new entrants for sand, it believes that any quarry operator could easily expand production of sand to significantly increase the manufactured sand resource available if readily available sea and river sources became more difficult to access through resource consent issues. This is what has happened, for example, in the Brisbane market, where previously the majority of sand was sourced from the sea, but is now sourced through quarry manufacture.

16.4 ***Estimate the productive capacity that such near entrants potentially could bring to the market.***

16.4.1 It is believed that near or new entrants could achieve up to []% of total ready mixed concrete market share within 12 months. Please also refer to question 27 in respect of cost and plant capacity.

16.4.2 For aggregate and sand the answer depends on the level of economic reserves available to the entrant.

16.5 ***Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?***

16.5.1 No ready mixed concrete, aggregate or sand is imported, however cement which is a major component of ready mixed concrete can be readily imported.

16.6 ***To what extent is the product exported?***

16.6.1 No ready mixed concrete, aggregate or sand is exported.

16.7 ***Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.***

16.7.1 Atlas has grown steadily over the years since it was first established. Part of this growth can be attributed to the significant growth of the

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market itself over that period. Atlas also has the advantage that it has been able to make decisions quickly and adjust to market conditions perhaps more quickly than its corporate competitors. On balance, the applicant considers it has grown with natural market growth.

Conditions of Expansion

17 *The following listing gives different types of market conditions that may effect the ability of existing firms to expand:*

- *Frontier entry conditions e.g. tariffs, quarantine requirements, international freight costs.*
- *Legislative/regulatory conditions e.g. meat licensing, Resource Management Act requirements, health and safety standards.*
- *Industrial/business e.g. access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (i.e. irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.*
- *Other e.g. responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.*

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

Ready Mixed Concrete

- 17.1 An important factor in an existing competitor's ability to expand supply is its current capacity utilisation of its plant and equipment. If it has excess capacity then the cost of producing one more unit of concrete is variable and supply could be expanded quickly. Expansion may require further investment in concrete trucks, or better utilisation of existing capacity however the cost of investing in this equipment is not prohibitive in a market the size of Auckland, where increased capacity can be used to expand the business within the region. There are no significant barriers to expansion in the ready mixed concrete market. The matters raised in question 27 also apply here, with the qualification that the cost of expanding existing capacity is less than that required to establish new capacity.
- 17.2 Of the categories of market conditions listed above, none are likely to operate as constraints on an existing competitor's ability to expand.
- 17.3 Capacity can be easily increased by extending the hours of plant operation, adding further trucks, using a larger front end loader bucket or adding an

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additional hopper at the batching plant. Additional trucks are readily available and can be leased on short term basis if required. Standard trucks are used, with a bowl unit being added for use with ready mixed concrete. Bowl units are freely available both new and used. A new truck could be acquired and equipped very quickly. Used bowls are regularly imported into the country. Shipments of used complete truck and bowl units are imported from time to time from Japan for sale in New Zealand. Such a shipment arrived very recently. All large operators in the Auckland market can readily and often shift trucks between plants to increase or reduce capacity as required.

- 17.4 There is little sunk cost involved in the expansion of capacity. Trucks and loaders can be purchased and sold on the second hand markets (often imported second hand) and both can be leased as required. Owner or contract drivers is another option which is available for expansion. Trucks are also often available on long term lease from ready mixed concrete producers operating in other markets where demand has fallen. For larger projects, batching plants can be set up on site. Examples of this are Firth at the Auckland Airport project, Allied Concrete Limited at Shakespeare Bay, Marlborough, Ready Mixed Concrete at Marsden Point LVL Plant, Allied Concrete Limited at the Otira Viaduct project and Allied Concrete Limited at the Opuha Dam project.
- 17.5 Over the last five years Counties Concrete, Bridgeman Readymix and Wilsons Pre-Cast Concrete have all entered the Auckland ready mixed concrete market. Holcim New Zealand estimates that Counties Concrete is likely to have achieved approximately 5% of market share from start up. Holcim New Zealand estimates that Bridgeman Readymix would also have approximately 5% of the market from start up. Wilson Pre-Cast Concrete now supplies its own ready mixed concrete and has commenced from a zero base.

Aggregates and Sand

- 17.6 It is important to have access to quarried rock to expand production of aggregates. Subject to the comments in paragraph 11.2.16, the functions of extraction/processing and distribution are generally internal in aggregate supply, so access to inputs is unlikely to be a barrier to expansion. This is subject to the supplier having economic levels of reserves. Supply could be increased quickly by any of the independent aggregate suppliers.
- 17.7 Although there have been no new market entrants over the last five years in the aggregate or sand markets, both Fulton Hogan Limited and Kaipara Limited have significantly expanded production from existing capacity.
- 18 ***Please name any business which already supplies the market – including overseas firms – which you consider could increase supply of the product concerned in the geographic market by any of the following means:***
- ***diverting production into the market (e.g. from exports)***
 - ***increasing utilisation of existing capacity***

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- ***expansion of existing capacity.***

Specify in each case which of the above three points applies.

18.1 Supplies to the ready mixed concrete and aggregate markets do not occur from the diversion of exports. Expansion of existing capacity by existing competitors is less likely than increasing utilisation of existing capacity, however if economic conditions warranted expansion, there are low barriers to expansion.

18.2 The Commission in its earlier decisions relating to ready mixed concrete (referred to in previous paragraph 11.2.3) recognised that ready mixed concrete is a product with a finite life, and as such does not readily lend itself to being supplied from outside its natural geographic market. Aggregates are low value, high volume commodities for which long supply lines are uneconomic. In both the concrete and aggregate markets existing competitors referred to in paragraphs 16.12.1, 16.2.4 and 16.2.7 could increase production quickly because of excess capacity which would constrain the behaviour of the acquirer and the target following completion of the share sale.

18.3 The ability to utilise trucks is a significant issue in the ready mixed concrete market and this can occur through switching of the existing trucks between plants, purchasing new or second hand trucks or leasing trucks either for short or long term utilisation. Owner drivers or contract drivers are also available options.

19 *Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?*

19.1 None of the listed conditions of expansion would adversely impact upon a decision to expand.

20 *How long would you expect it to take for supply to increase in each case?*

20.1 For ready mixed concrete, supply could be increased quickly. Switching trucks between plants, purchasing or leasing additional trucks could all lead to virtually immediate and significant expansion.

20.2 For aggregates and sand, supply could be increased, subject to the status of individual quarries, but production could usually be increased relatively quickly building to a possible doubling of production in less than 12 months. As stated in paragraph 16.3.6 it is believed Winstone has significant reserves which could be readily accessed.

21 *In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?*

21.1 Increased supply or price reductions by competitors in the ready mixed concrete market would make any price increase by Holcim New Zealand or Atlas, after the share purchase, unprofitable because of customer switching. The applicant believes any sustained effort to raise prices would inevitably result in a loss of sales to other suppliers.

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21.2 The total market share of the acquirer and the target following the share sale in the aggregates and sand markets would not result in aggregation in those markets to an extent to give substantial market power to the acquirer and the target.

22 *Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?*

Ready Mixed Concrete

22.1 There are no barriers for existing suppliers of ready mixed concrete to increase supply quickly. There are independent suppliers of inputs available and investment in extra plant and equipment is not prohibitive or sunk. There are low levels of customer and brand loyalty in ready mixed concrete.

22.2 Firth Industries, Stevenson and Allied Concrete Limited are all large, well resourced and strong competitors, each of which has market power and the ability to strongly and effectively compete and therefore continue to constrain the acquirer and the target following the purchase of the shares in the target by the acquirer.

22.3 At paragraph 103 of Decision Number 466, the Commission recorded that Allied Concrete Limited and Firth are competitive throughout New Zealand where they are both in the same market. That assessment is particularly so in the Auckland market where other competitors such as Ready Mixed Concrete and Stevensons and Atlas as well as the smaller operators are also active.

22.4 The ready mixed concrete market is very price sensitive. Acquirers of ready mixed concrete are continually seeking quotations on prices and any price increase would be quickly recognised by the market.

Aggregates and Sand

22.5 With regard to the aggregate and sand markets, the share purchase will result in the aggregation of market share remaining within the Commerce Commission's safe harbour guidelines and accordingly there will be no issue from the small increase in market concentration.

Co-ordinated Market Power

23 *Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede co-ordination effects.*

Ready Mixed Concrete

23.1 The following tables are based on the structural and behavioural market characteristics outlined by the Commission in its Practice Note: 4, in which the right hand column assesses the extent to which Holcim New Zealand believes those factors are likely to be enhanced after the completion of the share purchase.

Table 5

Factors conducive to collusion	Presence of factors
High seller concentration	Yes, but with both pre share acquisition and post share acquisition there is an estimated 3 firm concentration ratio in excess of 70%
Undifferentiated product	Yes
Slow new entrants	No
Lack of fringe competitors	No
Price inelastic demand curve	No
Industry's poor competition record	No
Presence of excess capacity	Yes, but a significant percentage of the excess capacity is in the hands of smaller independent producers
Presence of industry associations	Yes, but the ready mixed concrete industry association operates on a national and broad regional rather than a local level. The relevant region here being the Auckland region.

Aggregates and Sand

Table 6

Factors conducive to collusion	Presence of factors
High seller concentration	No
Undifferentiated product	Yes, to a large extent
Slow new entrants	No
Lack of fringe competitors	No
Price inelastic demand curve	No
Industry's poor competition record	No
Presence of excess capacity	Yes
Presence of industry associations	Yes

23.2 The Ready Mixed Concrete Association is primarily concerned with the administration of an independent quality auditing system in accordance with the New Zealand Concrete Standards.

- 24** *Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of co-ordinated behaviour by market participants.*

Ready Mixed Concrete

24.1 The following tables are based on the discipline characteristics outlined by the Commission in its Practice Note: 4, in which the right hand column

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assesses the extent to which Holcim New Zealand believes those factors are likely to be enhanced after the completion of the share purchase.

Table 7

Factors conducive to discipline	Presence of factors in all relevant markets
High seller concentration	Yes
Sales small and frequent	Yes, but with both pre share acquisition and post share acquisition there is an estimated 3 firm concentration ratio in excess of 70%
Lack of vertical integration	No in the case of both Firth and Stevenson
Slow growth	No
Cost similarities	Yes
Price transparency	Yes

- 24.2 Factors that would facilitate monitoring and enforcement of relative co-ordinated behaviour by other participants in this market include relative lack of vertical integration between ready mixed concrete producers and customers, cost similarities between firms, and a high seller concentration. Sales of large volumes of ready mixed concrete involve a contract price which inevitably results from the purchaser obtaining quotes from a number of suppliers. Sales of smaller quantities to more frequent domestic and small commercial users are subject to list prices but even here, smaller purchasers will tend to phone around for the lowest price and exert pressure to better other quoted prices. Ultimate purchasers of ready mixed concrete can and do mix their own concrete if they consider the price being offered is excessive. Because of the nature of the product the market has a higher seller concentration and there is limited forward integration. However both Firth and Stevenson have forward integration. Firth is part of Fletcher Building Limited which has a significant construction division. Stevenson is involved in property development.
- 24.3 **Attached** as appendix 6 is a chart showing concrete prices for the applicant's division, Ready Mixed Concrete, for the Auckland market for the period November 2001 to August 2003. 17.5, 20, 25 and 30 mpa represents the majority of concrete grades supplied by Ready Mixed Concrete and the unit of measure is megapascals, which is used to determine the strength of concrete. S/layers means special layers, being a softer mix for finishing and STD pump means concrete mixed for application through a pump. The data illustrates that the Auckland market is highly competitive with price fluctuations occurring on a regular basis. These fluctuations result from market pressure, including the buying power of users of ready mixed concrete.

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Aggregates

Table 8

Factors conducive to discipline	Presence of factors in all relevant markets
High seller concentration	Yes, but with a number of smaller producers and new entrants
Sales small and frequent	Sales are not small where distributors purchase the product for resale
Lack of vertical integration	No
Slow growth	No
Cost similarities	Yes
Price transparency	Yes

24.4 Factors that facilitate the monitoring and enforcement of co-ordinated behaviour in this product market include the general cost similarities between firms, some price transparency especially with sales to smaller commercial and domestic customers whose sales are more frequent and are usually through a distributor which distributes large amounts of aggregate and therefore has up to date knowledge of market prices. Such distributors in the Auckland market are Jacksons, Gleeson and Cox, I H Wedding & Sons Limited and Walsh Contractors. Sales of larger volumes are usually made directly by the producer and often are the result of a contract price established after the purchaser obtains quotes from a number of suppliers.

24.5 Factors which would impede monitoring and enforcement include relatively low seller concentration, the fact of vertical integration with some suppliers involved in ready mixed concrete manufacture or road construction, for example Stevenson, Winstone (through Firth) and Fulton Hogan Limited. The market is also growing with growth of population and economic activity.

25 *Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participants.*

25.1 Both ready mixed concrete markets and aggregate markets are highly competitive. Pricing is an important competitive factor, with operating margins remaining static or reducing over recent years due to the intense competitive nature of the markets. A wide range of projects are tendered and predominantly won on pricing. There is no evidence in any relevant market of price co-ordination, price matching or price following.

26 *Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant markets(s).*

Ready Mixed Concrete

26.1 The presence of existing fringe competitors, the speed of potential entry and the number of new or near entrants, and the lack of significant barriers to entry or expansion are all likely to place competitive pressure on any collusive arrangement. Furthermore the monitoring factors are already

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present in this market and acquisition will not materially enhance the risk of co-ordinated behaviour or discipline of such.

Aggregates and Sand

26.2 The proposed acquisition will result in a very small increase in seller concentration, however the increase is not significant and the ability to co-ordinate behaviour or discipline those that may take part in such an arrangement will not be materially enhanced. The increase in seller concentration is well within the Commerce Commission's safe harbour guidelines.

Holcim New Zealand elects not to answer the further questions in Parts IV and V of the clearance notice format in respect of aggregates and sand as any aggregation in those markets will result in the Commerce Commission's safe harbour guidelines still being readily complied with and would not substantially lessen competition in any market. However, Holcim New Zealand would be pleased to provide further information in respect of those matters if requested by the Commission.

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PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27 *The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:*

- *Frontier entry conditions
eg tariffs, quarantine requirements, international freight costs.*
- *Legislative/regulatory conditions
eg entry licensing, Resource Management Act requirements, health and safety standards.*
- *Industrial/business conditions
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.*
- *Other conditions
eg responses to expansion by major firms.*

Which, if any, of the conditions identified do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

- 27.1 There are no significant barriers to entry in the ready mixed concrete market.
- 27.2 Entry could be via the purchase of second hand equipment and the investment would not be sunk. The market is growing due to increases in population and economic activity. This would ensure that the entrant could capture some market share and impose some constraint on incumbents.
- 27.3 In Decision Number 466 the Commission concluded that a new firm could enter the smaller Marlborough ready mixed concrete market imposing competitive constraint in the provision of concrete to small domestic and commercial jobs. It concluded that entry to the Marlborough market at the scale of Allied and Firth was a problem due to large capital requirements and inability to capture economies of scale enjoyed by the larger national firms. It concluded that the cost advantages to obtaining economies of scale make entry or expansion to the large commercial part of the market difficult. The Auckland market is a significantly larger market and is likely to be growing at a faster rate than the Marlborough market which was subject to the earlier decision. Therefore the Commission's conclusion on entry or expansion to the large commercial part of the market can be distinguished on that basis.
- 27.4 Holcim New Zealand estimates that only 10% to 15% of the Auckland market volume of ready mixed concrete is used for large scale projects. Approximately 50% to 60% of sales is for the residential housing market,

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including dwellings, driveways, paths and landscaping. Approximately 10% of sales would relate to roading, curb and channel, footpaths, bridges and culverts. These percentages can change with growth cycles where typically housing recovers first from a recession but then is also the first to slow down. Even in larger jobs, smaller suppliers can obtain part of the ready mixed concrete supply by subcontracting, for example for drainage and block laying components of the contract. Smaller suppliers can and do form joint ventures to challenge the larger corporate suppliers.

- 27.5 The Commission concluded in Decision Number 466 that a new concrete plant would require resource consent, where the major issues would be water run-off, airborne cement dust and systems to contain spills. The Commission stated that in suitably zoned areas there should be no difficulty in obtaining such resource consents.
- 27.6 New entrants into the Auckland market would need a supply of cement and aggregates. Large suppliers in this market, Holcim New Zealand and Firth, are both vertically integrated in cement and aggregates whilst Stevenson supplies aggregates. However there is an independent supplier of cement (Fern Cement) from which entrants could secure supply. Furthermore cement could be imported by or on behalf of these entrants. Likewise aggregates could be obtained from independent suppliers and access to inputs would not impose barriers to entry.
- 27.7 Capital requirements would not be a barrier to either a new entrant or expansion by an existing competitor. In a market the size of Auckland, new firms could enter and achieve a scale sufficient enough to achieve some efficiencies so it could compete effectively on price. This could be done without a significant investment in sunk cost. Existing companies could expand firstly by increasing capacity from existing plant or secondly by investing in extra plant and equipment. Entry can also be gained through leasing of equipment and thereby offsetting capital outlay. New entrants can also obtain access to equipment for use or lease through the likes of quarry suppliers or cartage contractors. Cash sales and use of extended credit facilities can also be further options utilised by new entrants.
- 27.8 Although larger producers may have benefits of economy of purchasing power, these are often balanced by smaller operators which have more immediacy in decision making processes, thus enabling them to quickly take advantage of market conditions. In addition, smaller operators often have more staff flexibility through the use casual staff rather than permanent staff, which is more the norm for the larger corporate operators.
- 27.9 Holcim New Zealand estimates that the capital expenditure required to establish a new ready mixed concrete plant could be as low as \$250,000 depending on specific design. Such plant could be expected to produce around 30,000m³ per annum which compares with an estimated Auckland market at present of 1,200,000m³ per annum. Front end loaders and delivery trucks can be readily purchased second hand as well as new. A new plant could be easily established within three months.
- 27.10 Labour availability is not a constraint to new market entry.

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- 27.11 Within the Auckland region, it is believed, there are a large number of sites available for the establishment of ready mixed concrete manufacturing plants. The area required for the establishment of a ready mixed concrete plant is approximately 3,000 m². New entrants often do so by way of setting up at existing industrial sites such as quarries or cartage yards or pre-cast concrete yards. Bridgeman Concrete Limited, for example, commenced ready mixed concrete operations in Auckland through establishing a plant in a major customer's pre-cast concrete yard.
- 27.12 Manufacture of ready mixed concrete involves mixing together readily available commodity ingredients. The mix design technology is readily available from a number of independent sources.
- 27.13 The fact that there are low barriers to entry is exemplified by the large number of new entrants to the ready mixed concrete industry over recent years. The Commission has this information from an earlier application, but Holcim New Zealand has updated the information to known entrants to the date of this application, which is **attached** as appendix 7.
- 27.14 The Commission, at paragraph 169 of Decision Number 466, acknowledged that the 21 new entrants in concrete markets around New Zealand since 1996 indicate entry is both possible and sustainable in concrete markets.
- 27.15 **Attached** as appendix 8 is the applicant's estimate of sales volumes required from a new start-up plant to achieve a breakeven result. The calculation is based on a two truck operation and assumes 50% equity and 50% borrowing. The breakeven point is achieved at a production level of [] cubic metres or an annual gross sales turnover of []. Entry could be achieved at a lower cost through the leasing of a loader and trucks. It could also be achieved with one truck rather than two trucks which would further reduce the cost. A smaller entrant could therefore do so more cheaply than set out in the calculation. Typically smaller operators often do not factor in depreciation in their set up calculations. This is a particularly common approach in the case of owner drivers.

28 ***Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:***

- ***investing in new production facilities to produce the product;***
- ***overseas companies diverting production to New Zealand;***
- ***domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment).***

Specify for each named business which of the above three might apply.

- 28.1 Large construction companies could backwardly integrate to produce ready mixed concrete for internal operations and also supply the external market. Aggregate accounts for approximately 30% of the cost of concrete, therefore

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other aggregate suppliers could also enter the ready mixed concrete market if incentives existed for it to do so.

- 28.2 Existing pre-cast concrete manufacturers are also potential entrants into the ready mixed concrete market.
- 28.3 The following are possible new entrants to the ready mixed concrete market, but the list is by no means exhaustive:

Construction companies

Hawkins Construction Limited

Multiplex Construction Limited

Mainzeal Property and Construction Limited

Fletcher Construction

Large Residential Builders

G J Gardner Ltd

Universal Homes

Jennian Homes

Precast Producers

Pre-cast Components Limited

FormStress Limited

Wilco Precast Limited

Hynds Pipes Limited

Larger Cartage Operators

Mainfreight

Owens

Gleeson & Cox

Contractors

HEB Contractors

Ross Reid Contractors

Downery

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Building Supply Merchants

Bunnings

Carters

ITM

Placemakers

Aggregate Producers

Kaipara Limited

H G Leach

I H Wedding & Sons Limited

28.4 It is expected that with regard to each of the above businesses entry would be achieved by investing in new facilities. However, building supply merchants, for the benefit of their large customer base, could enter the market through joint ventures or associations with independent suppliers. Major construction companies could enter through acquiring mobile batching plants which could be moved around projects as required.

28.5 Ready mixed concrete is not exported so diversion by exporting companies or imports are not relevant considerations.

29 *What conditions of entry do you consider would most influence the business decisions to enter in each case?*

29.1 Given the right incentives such as price rises, output reduction, decline in service or product quality levels, none of the conditions of entry would adversely influence a decision to enter the market. Such entry could be achieved by commencing a new operation or linking up with existing pre-cast concrete producers, or existing construction companies, or with existing quarry operators which produce suitable aggregates as a by-product from their prime quarry products.

29.2 Innovation and technology could also encourage new entrants, such as improved GPS technology allowing better utilisation of delivery vehicles.

Likelihood, Sufficiency and Timeliness of Entry

30 *How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?*

30.1 Entry could occur relatively quickly once the decision had been made to invest and once resource consent had been obtained. If the plant was located in the right areas resource consent would not prevent entry. A new entrant could begin production and supply the market quickly. It is estimated

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that a new entrant could be established well within 3 months. For those with existing plant, entry could be immediate.

31 *Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?*

31.1 With the right strategy, entry into this market could be profitable at pre-acquisition prices. Appendix 8 illustrates the break even sales volume which would support entry.

32 *Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?*

32.1 Ready mixed concrete is a standardised product where price is an important competitive element. A new entrant could initially compete for domestic and small commercial jobs and expand once it had established itself in the market and achieved some scale. It is this threat of expansion which imposes constraint on the behaviour of suppliers to larger contracts. Once its scale had increased, the entrant would have the ability to move resources within the Auckland market, to better utilise capacity and improve efficiency. A plant along the lines discussed in the answer to question 27 would cause market participants to react in a significant manner. Given that only approximately 10% to 15% of the volume of ready mixed concrete produced in the Auckland market is used for major projects, new entrants at a lower level could cause market participants to react in a significant manner.

32.2 [

]. This threat of entry is real and places significant constraint on suppliers.

33 *What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie de novo entry?*

33.1 Entry could be achieved without significant investment in sunk costs. Furthermore the competencies required for ready mixed concrete production can be obtained through employing skilled staff. Second hand plant and equipment could be purchased which would reduce investment costs. None of the conditions of entry would adversely influence the business decision to enter the market given incentive to do so, such as service reduction, price rises or quality reduction.

34 *How long would you expect it to take for de novo entry to occur?*

34.1 Assuming a suitable site and resource consent was necessary, entry could occur within 3 months. If a site was already owned or leased, entry could be achieved more quickly.

35 *In your opinion, to what extent would the possibility of de novo entry constrain the merged entity?*

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- 35.1 The possibility and threat of de novo entry would impose real and significant constraint on the behaviour of Holcim New Zealand and Atlas. If these companies were to increase pricing above the competitive level, then entry would be likely which would make such a price increase unprofitable. New entry would add extra capacity. The growing Auckland market would provide added incentives for de novo entry. A new entrant could start on a small to medium scale and increase production as demand rises. The ability of existing smaller suppliers to increase scale quickly from existing capacity also imposes constraints on larger suppliers.

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PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

36 *Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?*

36.1 Because of the integrated structure of the merged entity, most of the suppliers of inputs are internal and any constraint offered by the suppliers is neutral.

37 & 38 Not applicable, because of answer to 36.

Constraints on Market Power by the Conduct of Acquirers

39 *Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?*

39.1 Acquirers of ready mixed concrete in the Auckland market are large construction companies, pre-cast manufacturers, smaller construction companies for small commercial and domestic jobs, residential builders, property developers, roading and civil contractors, Councils, concrete installers and placers and individual customers. Some of the large purchasers are concentrated and would impose some constraint. The threat of backward integration by large construction companies would impose further constraint on the merged entity. A number of the larger acquirers are identified in paragraph 28.3.

40 *Who owns them (where appropriate)? Please list as follows:*

40.1 As there is a wide category of acquirers, with many participants in each category, the information is not readily available to Holcim New Zealand.

41 *In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?*

41.1 The conduct of acquirers of ready mixed concrete would have a significant constraining impact. Pricing is the single most relevant factor in determining the choice of supplier. Switching of suppliers already occurs within the market and there is little cost to an acquirer of ready mixed concrete to do so. Any price increase would inevitably result in the loss of customers to other suppliers.

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APPENDIX 1

**[Share Purchase Agreement
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APPENDIX 2

Holcim New Zealand's Annual Review

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APPENDIX 3

Holcim (New Zealand) Limited Group

100% shareholding:

- Buller Port Services Limited
- Geocycle Limited
- Holcim (New Zealand) Superannuation Limited
- Holcim (New Zealand) Offshore Holdings Limited

72% shareholding:

- McDonald's Lime Limited

59% shareholding:

- Yangtze Cement Holdings Pte Limited

50% shareholding:

- AML Limited
- Coastal Resources Limited

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APPENDIX 4

Atlas Resources Limited Group

100% shareholding:

- Mt Rex Shipping Limited
- Atlas Concrete Limited
- Kaipara Metals Limited
- Atlas Tilt Slab Limited
- Quarry Point Limited
- Atlas Quarries Limited

50% shareholding

- October Developments Limited

25% shareholding:

- National Mini Storage Limited
- Self Storage Limited

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APPENDIX 5

**[Shareholders' Agreement
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APPENDIX 6

**[Ready Mixed Concrete Price Chart
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APPENDIX 7

LIST OF NEW ENTRANTS TO THE READY MIXED CONCRETE INDUSTRY IN THE LAST FIVE YEARS

Northland

Doubtless Bay Readymix, Tokerau	Established 2002
Jonda Enterprises, Whakapara, Whangarei	Established 1999
Oue Concrete Co, Rawene	Established 1998/99
Mangawhai Readymix	Established 1997
Ready Mixed Concrete, Kaikohe	Established 2003

Auckland

Counties Concrete, Drury	Established 1999
Bridgeman Concrete, Papakura	Established 2000
Wilson's Concrete, East Tamaki	Established 2002

Rotorua

Jackson Concrete	Established 1998
------------------	------------------

Whakatane

Allied Concrete	Established 1998
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Tauranga

Bay Mix Concrete	Established 1998
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Kati Kati

Supacrete	Established 2002
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Napier/Hastings

Allied Concrete	Established 1998
-----------------	------------------

Taranaki

Sandfords Concrete, Auroa	Established 1999
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Wellington

Porirua Readymix	Established 1997
Upper Hutt Readymix	Established 1997

Nelson

Isaacs Concrete (since sold to Holcim New Zealand)	Established 1996
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Christchurch

Mini mix Industries	New owners 2000
Baker Transport Mini Mix	Established 1999
Kiwi Concrete	Established 1998 – since closed

Culverdon

Balmoral Concrete	New owners 2000
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Banks Peninsula

Peninsula Contracting

Established 2001

Ashburton

Ashburton Contracting Ltd

Established 1999

Timaru

Isaacs Concrete
(since sold to Holcim New Zealand)

Established 1996

Dunedin

Dunedin Mini Mix

Established 1996

Gore

Eastern Concrete

Established 1996

Tapanui

Calder Developments

Established 1999

Invercargill

Southern Concrete

Established 1999

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APPENDIX 8

**[Breakeven Estimates
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