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

Date: 20 June 2005

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

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

PART I: TRANSACTION DETAILS

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

1.1 The business acquisition for which clearance is sought is the acquisition by Fletcher Concrete and Infrastructure Limited (the "Applicant" or "Fletcher Concrete") of certain business assets of W Stevenson & Sons Limited ("Stevensons"). The business assets concerned (the "Assets") together comprise the Stevensons Building Products division. These comprise of the assets relating to:

(a) Stevensons' ready mixed concrete business;

(b) Stevensons' concrete masonry business;

(c) Stevensons' terrazzo business;

(d) Stevensons' precast concrete products business; and

(e) Stevensons' building retail business.

1.2 The Applicant intends to submit an indicative bid for the Assets in [ ]. If clearance is granted the Applicant intends to submit a final bid in [ ]. Alternatively the Applicant intends to submit a final bid conditional on obtaining such clearance.

The Person Giving Notice

2. Who is the person giving this notice?

2.1 This notice is given by:

Fletcher Concrete & Infrastructure Limited
810 Great South Road
Penrose
Auckland
Telephone:(09) 525 9000
Facsimile: (09) 525 9989
Attention: Mark Binns

Email: mark.binns@fb.co.nz

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

Simpson Grierson
92-96 Albert Street
Private Bag 92518
Auckland
Telephone: (09) 358 2222
Facsimile: (09) 307 0331
Attention: Peter Hinton/Mark Tan
Email: peter.hinton@simpsongrierson.com
mark.tan@simpsongrierson.com

Confidentiality

3. Do you wish to request a confidentiality order?

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long, and why?

3.2.1 The Applicant has provided two versions of the notice to the Commission:

- one copy marked "Confidential Highlighted Version", in which the confidential information the Applicant wishes the Commission to withhold is highlighted in square brackets; and

- one copy marked "Public Version", in which the confidential information has been deleted.

3.2.2 The foregoing request for confidentiality is made not only in relation to this application, but also for all additional information of a similar nature that the parties provide to the Commission.

3.2.3 The Applicant requests that the confidential information identified in the Confidential Highlighted Version or any additional information provided be subject to a confidentiality order for an indefinite period, or until the Applicant advises the Commission that it may disclose the information concerned.

3.2.4 Confidentiality is sought under section 100 of the Commerce Act 1986. After the expiry of such an order, confidentiality is sought under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and its disclosure would be likely to unreasonably prejudice the commercial position of the parties;

(b) the Applicant believes that there are no other considerations which render it desirable in the public interest to make the information available under the Official Information Act 1982.

Details of the Participants

4.	Who are the participants?

4.1 The Acquirer is:

Fletcher Concrete & Infrastructure
810 Great South Road
Penrose
Auckland
Telephone: (09) 525 9000
Facsimile: (09) 525 9989
Attention: Mark Binns
Email: mark.binns@fb.co.nz

4.2 The Vendor is:

W Stevenson & Sons
364 East Tamaki Road
East Tamaki
Auckland
Telephone: (09) 921 8400
Facsimile: (09) 921 8401
Attention: John Rae
Email: jmr@stevensons.co.nz

5.	Who is connected to or associated with each participant?

5.1 **Acquirer group/associates:**

Refer Appendix I for corporate structure diagram and also to the most recent Fletcher Building Annual Report (a copy of which the Applicant would be happy to make available if the Commission so requests).

As at the date of the most recent Fletcher Building Annual Report one shareholder held more than 10% of the shares in Fletcher Building, being Perpetual Trustees Australia Limited.

5.2 **Target company group/associates:**

The Applicant intends to acquire certain assets from Stevensons rather than shares in Stevensons and therefore does not believe that the corporate structure of Stevensons would strictly be relevant to the application for clearance. The Applicant would be happy to provide further information on Stevensons' corporate structure if required by the Commission.

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 The Applicant is not aware of either participant or any interconnected body corporate of either participant holding any beneficial interest in other participants.

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

7.1 Fletcher Concrete has entered into the following agreements with its competitors in the Auckland readymixed concrete market:

7.1.1 [ ]; and

7.1.2 an agreement with Stevensons for the supply to Fletcher Concrete of readymixed concrete from the Stevensons readymixed concrete batching plant in Takanini and the supply to Stevensons of readymixed concrete from the Fletcher Concrete readymixed concrete batching plant in Henderson.

7.2 Fletcher Concrete also operates an upstream cement manufacturing business which supplies cement to a number of participants in the Auckland readymixed concrete market including its vertically integrated Firth Certified business, Allied Concrete, Stevensons, Bridgeman Concrete and Counties Readymix. Furthermore, at this upstream level, it has already been noted by the Commission that Fletcher Concrete and Holcim (New Zealand) Limited ("Holcim") have entered into:

> "*co-operative arrangements for the coastal shipping of cement, whereby only Holcim discharges cement into the Port of Taranaki and only Golden Bay discharges cement into Tauranga. In New Plymouth, Holcim then sells some of this cement to Golden Bay, and in a similar way Golden Bay on-sells cement to Holcim in Tauranga.*"[1]

7.3 The Applicant notes that there is a similar arrangement between Golden Bay and Holcim whereby Golden Bay onsells cement to Holcim in Auckland and Holcim onsells cement to Golden Bay in Christchurch.

7.4 In the concrete masonry area, Fletcher Concrete has entered into an exclusive supply agreement with Oamaru Shingle Supplies Limited

[1] Decision 513 (Holcim (New Zealand) Limited and Atlas Resources Limited, 20 November 2003) at paragraph 77.

("Oamaru Shingle") in respect of concrete masonry products manufactured at Oamaru Single's concrete masonry plants in Southland.

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 The directors of the Applicant are not directors in any other companies that are involved in the markets in which Stevensons operates.

9. What are the business activities of each participant?

9.1 The Applicant is a division of Fletcher Building Limited which is a building materials manufacturer and distributor with a diverse range of operations. Relevant to this application are its operations in cement, concrete and concrete based products and retail distribution of building products.

9.2 The Stevensons Building Products division's key business activities are the manufacture and supply of concrete, masonry, precast and terrazzo as well as the operation of its retail supply yards in Auckland and Christchurch.

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

10.1 [ ]

10.2 [ ]

10.3 The Applicant believes that the proposed acquisition of the precast concrete products business of Stevensons will allow Fletcher Concrete to increase its involvement in the precast concrete area [ ].

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 In summary, the markets in which there is an overlap between the business operations of Fletcher Concrete and the business operations to which the Assets relate are:

(a) the market for the manufacture and supply of readymixed concrete in Auckland;

(b) the market for the manufacture and supply of precast concrete products in Auckland; and

(c) the markets for the manufacture and wholesale supply of concrete masonry products in the Northland, Auckland, and Canterbury regions.

11.1.2 The relevant market definition for these areas is considered in greater detail in section 11.2 below.

11.1.3 Technically, there is also an overlap in the retail supply of concrete based building materials and supplies and other outdoor landscaping materials and supplies in the sense that these products are sold at retail by both Fletcher Distribution and Stevensons. The Applicant addresses this further in the supplementary submissions to this application.

11.2	Please identify for 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.

READYMIXED CONCRETE

11.2.1 The proposed acquisition would involve an aggregation of the readymixed concrete operations of Fletcher Concrete and Stevensons. The Commission has considered acquisitions in the readymixed concrete industry on a number of occasions in the past and has consistently expressed the view that the appropriate market definition is the local market for the manufacture and supply of readymixed concrete.[2]

11.2.2 The Applicant does not take issue with the view expressed by the Commission on this market definition and it therefore only remains to discuss the limits of the local markets in which the readymixed concrete operations of Fletcher Concrete and Stevensons overlap.

11.2.3 The only area of overlap is in the Auckland region where both Fletcher Concrete and Stevensons have significant operations. Here the Commission has expressed the view that:

> "*...the appropriate geographic market for ready-mixed concrete is the greater Auckland region, which extends approximately from Silverdale in the north to Pukekohe in the south.*"[3]

11.2.4 The Applicant agrees that this region arguably forms a separate geographic market from the region extending from Silverdale to Wellsford given the impracticalities of transporting ready mixed concrete between the two regions. However the Applicant notes that market information on the greater Auckland region is collated on the basis of a slightly wider geographic market extending from Pukekohe in the south to Wellsford in the north.[4] The Applicant is therefore able to provide relatively accurate market share information on the basis of this wider geographic market but market share information for the slightly narrower geographic market defined by the Commission would

[2] Decision 416 (Milburn New Zealand Limited and Isaac Concrete Limited, 26 January 2001), Decision 466 (Firth Industries and Gill Construction Co Limited, 26 July 2002) and Decision 513.
[3] Decision 513 at paragraph 144.
[4] The Department of Statistics collates information on total market size for the wider geographic region extending to Wellsford, and it is on this data which market share data for the Auckland region is based.

involve a greater degree of guesswork on the part of the Applicant.

11.2.5 The Applicant does not believe that the difference in market shares between the wider and the narrower geographic markets would materially affect the competition analysis, and as such, the Applicant provides market information in this application on the basis of a wider geographic market extending northwards to Wellsford, but would be happy to provide market share estimates on the basis of the narrower market preferred by the Commission in Decision 513 if the Commission considers this to be necessary.

PRECAST CONCRETE PRODUCTS

11.2.6 Both Fletcher Concrete and Stevensons manufacture and supply precast concrete products. The proposed acquisition would therefore result in the aggregation of the precast concrete operations of both parties.

Product Market

11.2.7 Precast concrete essentially consists of concrete wall panels, beams and columns which are manufactured by setting concrete in a cast of the appropriate size and shape.

11.2.8 There is little demand side substitutability between the various product lines within the precast concrete products category in the sense that a customer wishing to acquire a wall panel is unlikely to find a beam or a column to be reasonably substitutable. However, there is a high degree of supply side substitutability with all manufacturers of precast concrete products having the capability to produce wall panels, beams and columns. On this basis, the Applicant believes that the relevant product market should not be defined any narrower than the market for precast concrete products. For the purposes of this application the Applicant is content to proceed on the basis that the product market should be defined as that for precast concrete products but reserves the right to argue for a wider product market in future.

Functional Level

11.2.9 Fletcher Concrete and Stevensons manufacture precast concrete products to builders for incorporation into building projects. The Applicant therefore believes that the relevant functional level is that for manufacture and supply of precast concrete products.

Geographic Extent

11.2.10 The Applicant recognises that regional markets may be appropriate in respect of precast concrete products given the high transportation costs and the fact that such products are generally transported at best on a regional rather than a national basis.

11.2.11 The only area of overlap between Fletcher Concrete and Stevensons is in Auckland as this is the only area where Stevensons is involved in the manufacture and supply of precast concrete products. The Applicant has no objection to proceeding on the conservative basis that the geographic extent of the relevant market is limited to the Auckland region. However, the relevant market may arguably be wider than the Auckland region in the sense that there are a certain level of imports into Auckland from outside the region, and the Applicant reserves its right to argue for a wider geographic market in future.

CONCRETE MASONRY

11.2.12 Both Fletcher Concrete and Stevensons manufacture and supply concrete masonry products and the proposed acquisition would include Stevensons' concrete masonry assets in Whangarei, Auckland and Christchurch.

Product Market

11.2.13 Concrete masonry refers to a variety of products including concrete blocks, concrete bricks, concrete pavers and retaining wall systems.

11.2.14 There is little demand side substitutability between individual product lines within the concrete masonry category but there is a high degree of supply side substitutability between each of the individual product lines in the sense that a concrete masonry plant is capable of producing each individual product line within the concrete masonry range, and all manufacturers of concrete masonry products compete head to head in each individual product line.[5] On this basis, the Applicant believes that the appropriate product market definition should be no narrower than the market for concrete masonry products.[6]

11.2.15 The Applicant does not object to proceeding for the purposes of this application on the basis of a product market which is limited to concrete masonry products. However, the Applicant

[5] The Applicant notes that Stevensons also operates a terrazzo business. The Applicant believes there is limited demand and supply side substitutability between concrete masonry and terrazzo masonry and the Applicant does not consider terrazzo masonry to be within the concrete masonry product market. Fletcher Concrete does not have a terrazzo masonry business and accordingly the Applicant does not intend to address the terrazzo masonry business of Stevensons further in this application.
[6] It is relevant to note that the High Court of Australia in *Boral Besser Masonry Limited v ACCC* [2003] HCA 5 was of the view that an overall market for concrete masonry products was appropriate.

makes the observation that other building materials such as plasterboard and clay bricks in many instances provide a viable substitute for concrete masonry products, and the Applicant reserves the right to argue for a wider product market definition in future.

Functional Level

11.2.16 Both Fletcher Concrete and Stevensons manufacture concrete masonry products and supply them wholesale to volume builders for incorporation into building projects and to building retailers for resale. Both Fletcher Concrete and Stevensons also have downstream building retail operations which carry concrete masonry products together with other products.

11.2.17 The field of rivalry at the manufacturing and wholesale supply level is quite different from that existing at the retail level in the sense that competition at the upstream manufacturing and wholesale supply level is limited to manufacturers of concrete masonry products whereas competition at the downstream retail level encompasses other general building merchants such as Bunnings Warehouse, Mitre 10, Carters, ITM and Benchmark. For this reason the Applicant believes that it is appropriate to define the manufacturing and wholesale supply level as distinct from the retail supply level.

11.2.18 The Applicant addresses the retail level further in its supplementary submissions and deals only with the manufacturing and wholesale level here.

Geographic Extent

11.2.19 In the North Island, Fletcher Concrete operates concrete masonry plants in Auckland, Mount Maunganui, Napier and Wellington while Stevensons operates plants in Whangarei and Auckland. In the South Island, Stevensons operates a plant in Christchurch while Fletcher Concrete operates plants in Nelson and Christchurch and has an exclusive supply agreement in respect of concrete masonry products manufactured at Oamaru Shingle's plants in Invercargill and Oamaru.

11.2.20 The High Court of Australia in *Boral Besser* proceeded on the basis of a relatively narrowly defined geographic market and defined the relevant market to be the market for concrete masonry products in Melbourne.

11.2.21 The Applicant has no objection to defining city based markets as appears to have been done in *Boral Besser* but notes that concrete masonry products are transported on a regional rather than a local basis and that, as such, the Applicant believes regional markets are more appropriate. Having said that, the transport costs of concrete masonry are relatively high in comparison to their value and they are generally not transported a considerable distance from source of manufacture for delivery to customers, and as such, the Applicant believes that the regional markets for concrete masonry should be defined relatively narrowly.

11.2.22 In the South Island, the relevant regional market is relatively discrete in the sense that the concrete masonry plants operating in Christchurch tend to transport product within the Canterbury region and not beyond, while plants outside the Canterbury region tend not to "import" product into the region. As such, the Applicant believes that the relevant geographic market in the South Island for the purposes of this Application is the Canterbury market.

11.2.23 Geographic market definition in the North Island is not as clear as there is a degree of overlap between various regions within which concrete masonry products are generally transported.

11.2.24 However, the Applicant believes that there are distinct regional markets in respect of the Northland region and the greater Auckland region. While suppliers from outside Northland or outside Auckland do 'import' some volume of concrete masonry into those regions, they are generally at a distinct cost disadvantage given the relatively high transportation costs associated with concrete masonry, and "imported" volumes are relatively limited.

11.2.25 The very significant market share variations between Northland, Auckland and other regions also suggests that the field of rivalry is very different between these regions. As an example, the Applicant notes that in the Northland region Stevensons has a market share of around [ ]% and Fletcher Concrete has a market share of around [ ]%, whereas in the greater Auckland region, Fletcher Concrete and Stevensons are more evenly matched at around [ ]% to [ ]% each. The Applicant believes this strongly indicates distinct and separate regional markets for Northland and Auckland.

11.2.26 Hence, while it is difficult to define the relevant regional markets with any precision, the Applicant believes that it is appropriate to define the Auckland region and the Northland region as distinct areas of rivalrous behaviour in the concrete masonry market. The Applicant notes that the only region in the North Island where both Fletcher Concrete and Stevensons both have production facilities is in the greater Auckland region but the Applicant recognises that there is also a degree of market aggregation in the Northland due to 'imports' from outside those regions. The Applicant believes that it is appropriate to consider each of those geographic markets separately for the purposes of this application.

CONCLUSION ON MARKET DEFINITION

11.2.27 Hence, the Applicant believes that the following markets are relevant for the purposes of this application:

(a) the market for the manufacture and supply of readymixed concrete in the Auckland region;

(b) the market for the manufacture and supply of precast concrete products in the Auckland region; and

(c) the markets for the manufacture and wholesale supply of concrete masonry products in the Northland, Auckland and Canterbury regions:

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)

The Applicant does not believe that there is material product differentiation in the various markets identified. In each of these markets customers base their choice of supplier largely on price. This accords with experience in Australia where, for example, concrete masonry was described as "*being, in essence, a commodity*".[7]

13. For differentiated product markets:

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 in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?

Not applicable.

[7] *Boral Besser Masonry Limited v ACCC* [2003] HCA 5 at paragraph 7.

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	Are the "acquirer" (or any interconnected or associated company identified in questions 5.1.1-5.1.4) and: • the business to which the assets relate, **or** • the 'target company' (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2) engaged at different functional levels of the same product market(s)?

14.1.1 Technically, the proposed acquisition will result in a degree of vertical integration in the market for concrete masonry products in the sense that Fletcher Concrete and Stevensons are both involved at both the wholesale and retail levels of that market. As mentioned above, the Applicant deals with the retail operations of Stevensons in its supplementary submissions.

14.1.2 Apart from this, there are no product markets in which Fletcher Concrete and the businesses to which the Assets relate are engaged at different functional levels of the same market.

14.1.3 However, the Applicant notes the Fletcher Concrete is engaged in the manufacture and supply of cement which is an essential ingredient in the production of readymixed concrete, concrete masonry products and precast concrete products. Although cement is not strictly in the same product market as readymixed concrete, concrete masonry products or precast concrete products, the Applicant certainly sees them as part of a single vertical chain.

14.1.4 The Applicant agrees with the view expressed by the Commission that the relevant market definition here is the "*national market for the manufacture/import and wholesale supply of cement*".[8]

14.1.5 The Applicant notes that in Decision 513 the Commission considered the key issue in terms of vertical integration to be as follows:

[8] Decision 513 at paragraph 157.

> "*...the Commission needs to ascertain how the proposed transaction might affect entry or expansion in the cement market. In particular, to what degree will potential new entry or future expansion by Fern be frustrated due to Atlas being foreclosed as a potential cement client by the structural link between Holcim and Atlas? If the result is a substantial change in the ability of a new or existing competitor to secure customers then any present constraint from potential entry or expansion of imports may be weakened further.*"[9]

14.1.6 In relation to this issue the Commission expressed the view that:

> "*Currently [ ] of the Auckland ready-mixed market is contestable for potential suppliers of cement which, under the factual, would reduce to [ ]. Atlas currently uses about [ ] tonnes of cement per annum. However, as discussed in the market definition section, the market for cement is a national one, and accordingly Atlas's usage of cement as a proportion of the total cement market is not substantial. In the factual scenario the possible lock-in of Atlas as a Holcim cement user reduces the amount of contestable cement by about [ ] of the national market.*
>
> *Given the small share of the cement market Atlas represents, the Commission considers that the extent of the possible foreclosure of demand for cement due to the proposed transaction is unlikely to substantially affect the ability of a new entrant, or expanding supplier, to supply the New Zealand cement market. Further, the constraint on the two existing competitors will not be substantially lessened as a result of this acquisition.*"[10]

14.1.7 The Applicant believes that Stevensons is an even smaller user of cement than Atlas Resources using less than [ ] tonnes of cement in its readymixed concrete operations *per annum* throughout New Zealand compared to Atlas Resources which, in the Applicant's estimation, used more than [ ] tonnes per annum at the time Decision 513 was entered into. In these circumstances the possible foreclosure of demand for cement should raise even fewer concerns than they did in Decision 513.

14.1.8 The Applicant also notes that Fletcher Concrete is also engaged in the quarrying and supply of aggregates through its Winstone Aggregates business and that, like cement, aggregates are an essential input in the manufacture of readymixed concrete.

[9] At paragraphs 202 and 203.
[10] Decision 513 at paragraphs 206 to 207.

14.1.9 The Applicant agrees with the view expressed by the Commission that the relevant market definition here is the "*Auckland market for the quarrying and wholesale supply of aggregate for making ready-mixed concrete*"[11]

14.1.10 The Applicant recognises that the Commission may have the same concern in respect of this market that it had in respect of the cement market in Decision 513 i.e. the foreclosure of demand for aggregates. However, the Applicant does not believe that the proposed acquisition will lead to any material foreclosure of demand for aggregates. Stevensons has an aggregates business (which is not the subject of the proposed acquisition) which currently supplies the bulk of the aggregates requirements of its downstream readymixed concrete business, and this demand would be effectively foreclosed to the market even if the proposed acquisition were not to proceed.

14.2 Please identify for each market:

14.2.1 products(s), functional level(s), geographic area(s) and (where relevant) time frames;

14.2.2 the specific parties involved;

the relationship of those persons to the 'acquirer' or 'the target company' as the case may be.

The Applicant has provided this information in section 14.1.

14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.

The Applicant has provided this information in section 14.1 rather than in the responses to subsequent questions.

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, the outcome of the notification (eg cleared, authorised, declined, withdrawn) and whether the proposed acquisition has occurred.

15.1.1 Firth Industries (which is interconnected with Fletcher Concrete) applied for clearance to proceed with an acquisition of Gill Construction Co Limited. Clearance was granted in

[11] Decision 513 at paragraph 157.

Decision 466 and Firth Industries proceeded with the acquisition.

15.1.2 The Applicant is not aware of any other occasion during the previous three years during which either itself or Stevensons notified the Commission of any proposed acquisition.

15.2	Any other acquisition of assets of a business or shares in the last three years which either participant (or any interconnected body corporate) has undertaken in the last three years.

Not applicable.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

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

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

Refer 16.2.

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

READYMIXED CONCRETE

16.2.1 Market share information for the Auckland ready mixed concrete market is as follows:

Auckland Ready Mixed Concrete Market*						
Rank	**Supplier**	**Owner of Supplier**	**Number of Plants**	**Estimated Number of Trucks**	**Estimated % of Productive Capacity****	**Estimated % of Market Sales**
[]	Holcim Readymixed Concrete	Holcim (New Zealand) Limited	4	[ ]	[ ]	[ ]
	Atlas Resources	Holcim New Zealand Limited and interests associated with the Collie family	5	[ ]	[ ]	[ ]
	Total		9	[ ]	[ ]	[ ]
[]	Firth Industries	Fletcher Concrete	6***	[ ]	[ ]	[ ]
[]	Stevensons	Interests associated with Stevenson family	4***	[ ]	[ ]	[ ]
[]	Allied Concrete	HW Richardson Group Limited	2††	[ ]	[ ]	[ ]
[]	Bridgeman Concrete	John Bridgeman	1††	[ ]	[ ]	[ ]
[]	Counties Ready Mix	Interests associated with John and Lynda Payne and George and Lynette Wilson	1	[ ]	[ ]	[ ]
[]	Wilson Ready Mix Concrete	Interests associated with Grant and Denise Wilson	1	[ ]	[ ]	[ ]
[]	Wharehine†††	Interests associated with the Dodd and Schmidt families	2	[ ]	[ ]	[ ]
[]	Others	Various	2	[ ]	[ ]	[ ]

	Total		28	[ ]	100%	100%

*Total size of the market for the region extending from Pukekohe into South to Wellsford in the north is 1.267 million cubic metres per annum, based on data collated by the Department of Statistics as at 10 March 2005. The Department of Statistics does not collate such data for the slightly narrower region extending only as far as Silverdale in the north. Accordingly, market shares are based on the wider geographic region used by the Department of Statistics and would need to be adjusted if market shares for the narrower geographic market are required

**Estimates of productive capacity are based on the number of trucks. The Applicant believes that the number of trucks provides a reasonable proxy for productive capacity although a number of other factors will also be relevant to an assessment of capacity including the age and capacity of the relevant trucks and the locations of readymixed concrete batching plants (conveniently located plants can result in more efficient usage of available trucks).

***Additionally Stevensons has access to Fletcher Concrete's plant in Henderson and Fletcher Concrete has access to Stevensons' plant in Takanini pursuant to the agreement described in paragraph 7.1.2.

† [ ]

†† Allied Concrete and Bridgeman Concrete will each have one additional plant once the new plants described in paragraphs 16.2.9 and 16.2.15 become operational.

††† Wharehine operates in the region between Silverdale and Wellsford but generally does not supply ready mixed concrete south of Silverdale, and as such, would be excluded from the market share table on a narrower geographic market definition which extended only as far north of Silverdale.

16.2.2 Based on market sales Fletcher Concrete would have a post acquisition market share of approximately [ ]% in a market where the three largest firms post acquisition would have a combined market share in excess of [ ]%.[12] This would fall outside the Commission's prescribed safe harbours.

16.2.3 However, the Applicant believes that existing competition will nevertheless continue to provide a substantial constraint on the ability of Fletcher Concrete to exercise unilateral market power following the proposed acquisition.

16.2.4 The Commission expressed the view in Decision 513 that Holcim and Allied Concrete are interconnected pursuant to section 2(7) of the Commerce Act 1986 (the "Act") and as such considered them for the purposes of that decision to be a single head in the market.

16.2.5 The Applicant does not take issue with the Commission considering Holcim and Allied Concrete to be a single head in the market in the context of Decision 513 as section 47(2) effectively requires this to be done in a situation where the proposed acquirer is interconnected with a competitor in the same market.

16.2.6 However, the Commission is *not* here considering a proposed acquisition of the Assets by Holcim or Allied Concrete and section 47(2) therefore does not apply to require the Commission to consider those competitors to be a single head in the market. Rather, the Commission should have regard to market reality in making this assessment. The mere fact that Allied Concrete has a casting vote on the board of a company in which Holcim owns 50.01% of the shares may technically mean that they are interconnected but does not affect the market

[12] Although the Applicant believes customer attrition will decrease Fletcher Concrete's post acquisition market share significantly.

reality that Allied Concrete and Holcim *do* compete head to head in the Auckland market for readymixed concrete. This reality was recognised by the Commission in Decision 513:

> "*In addition, and in spite of their relationship through AML, Holcim's RMC Division seems to compete against Allied in Hamilton and in Auckland.*"[13]

16.2.7 Indeed, the Applicant notes that in addition to competing vigorously at the ready mix concrete level, there does not even appear to be a vertical relationship between Holcim and Allied Concrete in Auckland in the sense that Allied Concrete does not appear to have any obligation to acquire its Auckland cement requirements from Holcim but instead sources much of its requirements from Fletcher Concrete. This is in part due to a historical contractual relationship between Allied Concrete and Fletcher Concrete[14] [ ]

16.2.8 On this basis, the Applicant believes that Holcim and Allied Concrete should be considered to be separate heads in the market for the purposes of this application.

16.2.9 If Holcim and Allied Concrete were considered to be separate heads in the market then Fletcher Concrete would, following the acquisition, face in Holcim a rival which is at least its equal in terms of market sales and in Allied Concrete a competitor which, although smaller than Fletcher Concrete and Holcim, nevertheless has a significant market share of [ ]% by market sales. More importantly, it would face in Holcim and Allied Concrete competitors with strong production and transportation capabilities in the Auckland region who would be able to service customers of Fletcher Concrete who wish to switch suppliers in the event of an attempted exercise of market power by Fletcher Concrete either in terms of tendered commercial projects or smaller residential projects. Here the Applicant notes that both Holcim and Allied in fact provide an even stronger competitive constraint than their plant and trucking capabilities in the Auckland region suggest. Both operate in a number of geographic regions throughout New Zealand and could easily (and very quickly) expand their productive capacity in the event of an attempted exercise of market power by Fletcher Concrete, simply by bringing in additional trucking capacity from those other regions. Furthermore, Allied Concrete will be a more powerful competitor than its current plant capacity suggests in the sense that it is currently building a large central location plant in Penrose which will put it in a position to increase its market share considerably once the plant is completed in June 2005. With barriers to switching being as low as they are in the readymixed concrete industry, the

[13] At paragraph 100.
[14] Decision 513 at paragraph 80.

Applicant believes that Holcim and Allied Concrete provide a very significant competitive constraint.

16.2.10 This degree of competitive constraint might even be considered to be greater if they were considered a single head in the market in the sense that even after the proposed acquisition Fletcher Concrete would face a rival with a market share of almost [ ] % by market sales and with production and trucking capabilities significantly exceeding those of Fletcher Concrete.

16.2.11 In these circumstances, the Applicant believes that, whether or not they are considered to be a single head in the market, Holcim and Allied Concrete would provide a sufficient competitive constraint to preclude Fletcher Concrete being able to exercise unilateral market power in the Auckland readymixed concrete market.

16.2.12 In addition to Holcim and Allied Concrete, Fletcher Concrete would also continue to face competition from a number of other competitors operating in the Auckland region including Bridgeman Concrete, Counties Ready Mix, Wilson Ready Mixed Concrete and Wharehine.

16.2.13 The Commission stated in Decision 513:

> "*However, it is important to note that the Commission has been informed that smaller industry participants are primarily price followers, and as such do not exert a significant degree of competitive pressure on the larger participants.*"[15]

16.2.14 The Applicant believes that this seriously understates the competitive constraint provided by these industry participants. The Applicant believes that they have provided and will continue to provide a very relevant competitive constraint on the ability of Fletcher Concrete to exercise market power.

16.2.15 The Applicant believes that Bridgeman Concrete in particular would provide a strong competitive constraint post acquisition. The Applicant understands that Bridgeman Concrete is currently in the process of constructing what will be one of the largest plants in the Auckland region in East Tamaki to add to its existing plant in Papakura. [ ] In addition to this new trucking capacity in the Auckland market, Bridgeman Concrete, like Holcim and Allied Concrete, has a presence in a number of geographic regions throughout New Zealand (in particular it has significant readymixed concrete operations in the Hawkes Bay, Waikato and Bay of Plenty regions) and could easily use trucks from those regions to service the Auckland market in the event of an attempted exercise of market power. With its increased plant and trucking capacity and the ability to bring in significant

[15] At paragraph 224.

additional trucking capacity from other regions, the Applicant believes that Bridgeman Concrete would provide a significant competitive constraint against Fletcher Concrete (or, for that matter, any one or all of the remaining three larger suppliers) attempting to exercise market power.

16.2.16 The Applicant also believes that Counties Ready Mix and Wilson Ready Mixed Concrete would provide a material measure of competitive constraint against Fletcher Concrete given their ability to increase utilisation of their existing capacity or to add to their productive capacity (the Applicant addresses this in section 17 below).

Conclusion on Existing Competition

16.2.17 The Applicant therefore believes that existing market participants provide a strong competitive constraint against Fletcher Building and would continue to do so following the proposed acquisition.

PRECAST CONCRETE

16.2.18 Market share information for the Auckland precast concrete market is as follows:

Precast Concrete Products*				
Rank	**Supplier**	**Owner of Supplier**	**Estimated % of Productive Capacity**	**Estimated % of Market Sales**
[]	Wilco Precast	Interests associated with the Sinclair family	[ ]	[ ]
[]	Stevensons	[Interests associated with Stevenson family]	[ ]	[ ]
[]	Busck Prestressed Concrete	Interests associated with the Yovich family and others.	[ ]	[ ]
[]	Stresscrete	Fletcher Concrete	[ ]	[ ]
[]	Wilson Precast Construction	Interests associated with Grant and Denese Wilson	[ ]	[ ]
[]	Atlas Tilt Slab	Atlas Resources Limited	[ ]	[ ]
[]	Nauhria Precast	Roshan Nauhria and Thakor Prabhu	[ ]	[ ]
[]	Stahlton Prestressed Flooring	Fulton Hogan Limited (owned by a variety of shareholders including Shell New Zealand as a majority shareholder)	[ ]	[ ]
[]	Concrete Structures (NZ)	Mikro Holdings Limited (owned by Michael Romanes)	[ ]	[ ]
[]	Mediterranean Pre-Cast	Henriette Nakhle and Warren Finn	[ ]	[ ]
[]	Other	Various	[ ]	[ ]
Total			100%	100%

*Total size of the Auckland market is approximately $90 million per annum.

16.2.19 Fletcher Concrete would have a post acquisition market share of [ ]% in a market where the largest three firms post acquisition would have a combined market share of [ ]%. This falls well within the Commission's prescribed safe harbours and as such the Applicant does not propose to provide further information on this market in the remaining sections of this application. However, the Applicant would be pleased to provide any such further information to the Commission upon request.

CONCRETE MASONRY

16.2.20 Market share information in each of the relevant geographic markets is provided below:

Concrete Masonry Manufacturing and Wholesale*					
Region	**Rank**	**Supplier**	**Owner of Supplier**	**Estimated % of Productive Capacity (excluding product imported from other regions)**	**Estimated % of Market Sales**
Northland	[]	Stevensons	Interests associated with Stevenson family	[ ]	[ ]
	[]	Firth Industries	Fletcher Concrete	[ ]	[ ]
	Total			100%	100%
Auckland**	[]	Firth Industries	Fletcher Concrete	[ ]	[ ]
	[]	Stevensons	Interests associated with Stevenson family	[ ]	[ ]
	[]	Others	Various	[ ]	[ ]
	Total			100%	100%
Canterbury	[]	Firth Industries	Fletcher Concrete	[ ]***	[ ]
	[]	Stevensons	Interests associated with Stevenson family	[ ]**	[ ]
	Total			100%	100%

*Total size of the Northland market is approximately $3.5 million per annum. Total size of the Auckland market is approximately $30 million per annum. Total size of the Canterbury market is approximately $8.5 million per annum.
**The Applicant is aware that there is a significant volume of concrete masonry being 'imported' into Auckland from other regions but does not have data on the volume of such imports. Market shares for the Auckland region therefore cannot be estimated with as much accuracy as for other regions and accordingly the Applicant has provided a range within which it believes market shares within the Auckland region fall.
*** [ ]

16.2.21 The Applicant recognises that the proposed acquisition would result in Fletcher Concrete acquiring a market share of [ ]% in Northland and Canterbury and an [ ]% to [ ]% market share in Auckland.

16.2.22 However the Applicant does not believe that the proposed acquisition will have the effect or likely effect of substantially lessening competition in the various concrete masonry markets for the reasons noted in its supplementary submissions, and does not intend to make further submissions on these markets in this application.

16.3	Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

16.3.1 As mentioned above, market shares in respect of the Auckland readymixed concrete market have been provided on the basis of a market extending to Wellsford in the north whereas the Commission is likely to prefer a slightly narrower geographic market which extends north only as far as Silverdale.

16.3.2 The total market size for the wider geographic region up to Wellsford is published by the Department of Statistics. [ ] The Applicant believes that this provides reasonably accurate market share estimates.

16.3.3 Published data on the total market size for the narrower geographic region adopted in Decision 513 is not readily available. While the Applicant would be pleased to provide market share estimates on the narrower market which extends north only as far as Silverdale if required, it is unlikely to be as accurate as the market share data on the slightly wider geographic market which extends up to Wellsford.

16.3.4 The Applicant similarly estimates market share data for pre-cast concrete and concrete masonry on the basis of [ ], although this market share data is likely to be less accurate than market share data provided for ready mixed concrete as there is no data on total market size from the Department of Statistics.

16.4	Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

Accurate historical market share information over the last five years is not readily available. However, the Applicant could provide the Commission with rough historical market share estimates if the Commission so requires.

Other Considerations

For the reasons stated above the Applicant will only be responding to this question and all subsequent questions in respect of the Auckland readymixed concrete market.

16.5	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').

16.5.1 The Applicant does not believe that there are any firms which are not currently operating in the Auckland readymixed concrete market and which could enter the market using their *existing* productive capacity as:

(a) much of the equipment associated with the manufacture and supply of readymixed concrete is relatively specialised such that manufacturers of other goods would not be able to use their existing productive capacity to manufacture and deliver readymixed concrete; and

(b) readymixed concrete is not easily transportable such that readymixed concrete suppliers outside the Auckland region would not be able to use their productive capacity outside Auckland to supply to the region.

16.5.2 However, as mentioned in section 16.2 above, Allied Concrete and Bridgeman Concrete are soon to introduce new productive capacity to the Auckland market and, as described below, further productive capacity can be added either by existing competitors or potential entrants within a relatively short timeframe.

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

The Applicant believes that the new Bridgeman Concrete plant will introduce an additional productive capacity of approximately [ ] cubic metres of readymixed concrete per annum to the Auckland market. The new Allied Concrete plant will introduce an additional productive capacity of approximately [ ] cubic metres per annum although [ ]

16.7	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?

Readymixed concrete is not capable of being imported.

16.8	To what extent is the product exported?

Readymixed concrete is not capable of being exported.

16.9	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.

The Applicant believes that Stevensons is a conservative competitor and cannot be described as a maverick.

Conditions of Expansion

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

- Frontier entry conditions

  eg tariffs, quarantine requirements, international freight costs.

- Legislative/regulatory conditions

  eg meat licensing, Resource Management Act requirements, health and safety standards.

- Industrial/business

  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

  eg 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.

17.1 Existing competitors are able to expand by:

(a) increasing utilisation of existing plant capacity by:

(i) increasing utilisation of existing trucking capacity;

(ii) expanding existing trucking capacity; or

(b) expanding existing plant capacity.

17.2 Quite clearly the easiest way to expand is to increase utilisation of existing plant capacity by increasing utilisation of existing trucking capacity. The Applicant does not believe there are any barriers to expanding in this manner and here the Applicant notes in particular that Bridgeman Concrete and Allied Concrete have recently increased their productive capacity significantly, and will obviously be looking to make as efficient utilisation of that new capacity by expanding supply as much as possible.

17.3 Increasing utilisation of existing plant capacity by expanding existing trucking capacity is a little more problematic. Holcim, Allied Concrete and Bridgeman Concrete are able to increase the utilisation of existing plant capacity in this manner very quickly and at a very low cost by bringing readymixed concrete trucks from other regions to service the Auckland region in the event that Fletcher Concrete attempts to exercise market power.

17.4 Other suppliers would need to acquire trucks to add to their existing fleet in order to increase plant utilisation in this way which would involve a degree of sunk cost. However, this sunk cost can be minimised by leasing readymixed concrete trucks from readymixed concrete suppliers operating in regions where demand has fallen. Even if this is not the case, the only true sunk cost in respect of a readymixed concrete truck is the drum component for which the Applicant believes the cost is reasonably low – as demonstrated in the report at Appendix II this cost is estimated at $[ ] per cubic metre compared to an overall delivered product cost of $[ ] per cubic metre. Furthermore, the Applicant notes that there is a ready second hand market for readymixed concrete trucks in which a new or expanding supplier could acquire a second hand truck (both locally and from overseas) and a supplier wishing to exit could recoup at least some of its investment in a readymixed concrete truck by either selling it or leasing it on a long term basis to suppliers in other regions.

17.5 The Applicant accordingly does not see sunk costs as being a significant barrier to expansion nor does the Applicant see there being any other barriers to expansion in terms of increasing plant utilisation by expanding trucking capacity.

17.6 Expanding existing plant capacity is a little more problematic again. The sunk costs involved in building a new plant are obviously greater than those involved in expanding trucking capacity. However, the report at Appendix II demonstrates that this sunk cost is again low compared to the overall delivered product cost of $[ ] per cubic metre, and for this reason the Applicant does not see sunk costs as being a significant barrier to expanding plant capacity.

17.7 Furthermore, demand growth has been significant in Auckland and demand is expected to continue to grow. As a consequence of that growth in demand, margins have reached a point where they would cover costs of new plants, and this has been evidenced by the recent additions of new plants in the Auckland region.

17.8 This is borne out by the history of entry and expansion in the Auckland market and here the Applicant notes that plant capacity has grown significantly in the Auckland market over the past four years and that most of this capacity has been added by what the Commission refers to as 'smaller industry participants':

Company	Plant Location	Estimated Capacity m^3	Year	% of Auckland Market**

Allied Concrete	Penrose	[ ]*	2005	[ ]
Bridgeman Concrete	East Tamaki	[ ]	2005	[ ]
Wilson Ready Mix	East Tamaki	[ ]	2004	[ ]
Atlas Concrete***	Mt Wellington	[ ]	2004	[ ]
Counties Readymix	Drury	[ ]	2001	[ ]

* [ ]
** Based on market size of 1.267 million m^3.
***[ ].

17.9 The Commission has recognised that there are legislative conditions in the form of the Resource Management Act when setting up a new plant:

> "*Resource consent would also be required in order to build a concrete batching plant. Industry participants have suggested that obtaining this can be a lengthy and costly process. Resource consents have also become considerably harder to obtain in the last decade, and carry an increasing number of conditions concerning noise, dust and roading.*"[16]

17.10 However the Applicant notes that resource consent has not prevented Allied Concrete or Bridgeman Concrete from building new readymixed concrete plants in the recent past and also makes the observation that as long as the land selected for construction of a new plant is appropriately zoned, the resource consent process is unlikely to cause any undue delay in setting up a new plant. Here the Applicant notes that the Fletcher Concrete is currently engaged in the construction of a new plant in East Tamaki which it is confident will have been completed within a period of [ ] months including the time taken to obtain resource consent.

17.11 The Commission may also have concerns that setting up a new plant could draw a strategic response from incumbents in the market, as it did when considering Decision 513:

> "*The Commission is also of the view that the cost involved in fighting off incumbent response to new entry also represents a significant barrier…*"[17]

17.12 However, the Applicant again notes that sunk costs associated with setting up a new plant represent only a small proportion of the overall delivered product cost of readymixed concrete, and on this basis, does not believe that the other firms in the industry would have much room to engage in such a response. Certainly the threat of a strategic response did not prevent new plant capacity from being installed as described in paragraph 17.8 above.

[16] Decision 513 at paragraph 231.
[17] Decision 513 at paragraph 232. The Commission was here referring to barriers to entry but the Applicant accepts that this would equally apply to barriers to an existing supplier setting up a new plant.

17.13 For these reasons, the Applicant does not believe there are significant barriers to expansion even where expansion involves building new plant capacity.

17.14 For the sake of completeness the Applicant deals with each category of barriers to expansion listed by the Commission above:

Frontier Entry Conditions

17.14.1 The Applicant does not believe frontier entry conditions are relevant to this market as readymixed concrete is not capable of importation.

Legislative/Regulatory Conditions

17.14.2 The Commission has recognised that there are resource consent issues in setting up a new plant and the Applicant has expressed its view on this above. The Applicant does not believe there are any other legislative conditions relevant to any of the three modes of expansion listed above.

Industrial/Business Conditions

17.14.3 The Applicant has dealt with the issue of sunk costs above in respect of expansion of trucking capacity and expansion of plant capacity.

17.14.4 The Applicant does not believe that access to raw materials will be a serious concern for a supplier wishing to expand production. Certainly the Applicant does not believe access to cement will be problematic as the two domestic cement manufacturers have historically sold cement to competitors of their own vertically integrated readymixed concrete operations. Nor does the Applicant believe that access to aggregates will be problematic for those suppliers who do not have access to a vertically integrated quarrying business. As the Commission recognised in Decision 513:

> "*An alternative is to purchase aggregates, which suggests that a supply of aggregates is not sufficiently difficult to acquire such as to be considered a barrier to entry in this case.*"[18]

Other

17.14.5 The Applicant has dealt with the issue of the costs of dealing with strategic responses from other suppliers above.

17.15 In these circumstances, the Applicant does not believe that there are any significant barriers which would prevent an existing supplier from expanding supply either by increasing utilisation of existing plant

[18] Decision 513 at paragraph 235.

capacity or by expanding plant capacity (apart from possibly a limited barrier to expansion of plant capacity in the form of the Resource Management Act).

17.16 As an illustration of this, [ ]. Over the last five years, the Auckland readymixed concrete market has experienced average annual growth of 8% [ ].

17.17 In these circumstances the Applicant believes that the threat of expansion provides a very significant competitive constraint on the ability of Fletcher Concrete, Holcim or Allied Concrete (or all of them) from exercising market power.

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
- expansion of existing capacity.

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

Refer section 17.

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 As discussed above the Applicant does not believe there are any conditions to expansion by increasing utilisation of plant capacity through increased utilisation of trucking capacity.

19.2 The only condition to expansion by increasing trucking capacity was sunk costs, and as explained above, the Applicant does not see this as being a serious barrier to increasing supply.

19.3 As explained above, the Applicant does not see sunk costs as being a serious barrier to increasing supply by increasing plant capacity. The Applicant accepts that resource consent may provide a barrier to increasing supply by expanding plant capacity, but sees this as being only a limited barrier.

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

20.1 Increasing utilisation of existing plant capacity by increasing utilisation of existing trucking capacity could take place immediately.

20.2 Increasing utilisation of existing plant capacity by expanding existing trucking capacity could also take place very quickly. Those suppliers which have trucking assets available in other regions would only need to drive the relevant trucks up to Auckland to expand capacity. Those not having such trucking assets available to them would be able to source new trucking assets relatively quickly.

20.3 There is a longer timeframe involved when increasing utilisation by expanding existing plant capacity. The Applicant does not take issue with the Commission's view expressed in Decision 513:

> "*Given the history of previous entry the Commission is of the view that, on the balance of probabilities, entry could occur within a two year time period*"

although the Applicant believes that a new plant can be set up in as little as six to nine months including the time required to obtain resource consent and again points to Fletcher Concrete's East Tamaki plant as an example.

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

21.1 Refer to questions 16 to 20.

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?

22.1 Refer to questions 16 to 20.

Coordinated Market Power

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

23.1 Refer to Appendix III.

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

24.1 Refer to Appendices IV and V.

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

The Applicant is not aware of price co-ordination, price matching or price following by any market participant. The Applicant believes the market for readymixed concrete in Auckland is a competitive market.

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

26.1 The Applicant does not believe that the proposed acquisition would lead to a material increase in the capacity for co-ordination in the Auckland readymixed concrete market.

26.2 The Applicant recognises that the proposed acquisition would lead to increased market concentration but the Applicant notes that:

(a) the market already has a three firm concentration ratio of well in excess of 70% and it is difficult to see how the incremental increase in market aggregation occasioned by the proposed acquisition would increase the capacity for co-ordination in any material sense; and

(b) the other factors relevant to assessing the capacity for co-ordination largely remain the same.

26.3 In any event the Applicant believes that there are factors which would continue to exist in the market to discourage collusion and detect any deviation from a collusive arrangement.

26.4 The Applicant believes that the speed with which a new entrant could enter and expand in the market and the existence of a number of potential new entrants is a particularly strong factor discouraging collusion. Any attempt to collude could lead to new entrants in the market undercutting existing competitors and obtaining market share. Consequently, collusion would be rendered unprofitable. This is supported by customers' ability to easily switch to the new entrant.

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 above 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?

Please refer to section 17. The Applicant believes that the conditions for entry would be very similar to the conditions to expansion by way of setting up a new plant.

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 The Applicant considers the following businesses which do not currently supply the Auckland readymixed concrete market but which could supply the market by investing in new plant and trucking facilities:

28.1.1 The Applicant believes that Australian readymixed concrete suppliers could seek to extend their operations to New Zealand and the market most susceptible to this is the Auckland market given the high level of building activity in the area;

28.1.2 The Applicant also believes there are a number of domestic companies operating in readymixed concrete in other regions which could enter the Auckland market in much the same was as Bridgeman Concrete has done or which operate in related markets which could enter the readymixed concrete market in Auckland e.g.:

(a) Higgins Contracting Limited;

(b) I H Wedding & Sons Limited;

(c) Perry Group Limited;

(d) Kaipara Excavators Limited;

(e) Wilco Precast Limited; and

(f) Fulton Hogan Limited;[19]

(g) Wharehine Limited.[20]

28.1.3 Construction companies could seek to 'self supply' concrete for major development projects by installing a plant onsite in much the same way that existing readymixed concrete suppliers do when supplying a major development project;

28.1.4 Building contractors could also seek to enter the Auckland market e.g.

(a) HEB Contractors

(b) Ross Reid Contractors;

(c) Downers.

[19] Wilco Precast and Fulton Hogan currently have precast concrete operations in the Auckland region and Fulton Hogan also has an upstream aggregates business. The Applicant believes that both Wilco Precast, and especially Fulton Hogan, could integrate into the readymixed level given the incentive to do so by any attempted exercise of market power.

[20] As noted above Wharehine does not currently operate south of Silverdale but could expand into this region from its existing territory between Silverdale and Wellsford.

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

See section 19.3.

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?

See section 20.3.

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?

Yes. Please refer to Castalia report at Appendix III for an analysis of costs.

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?

Even with a single plant, a new entrant would be able to bring productive capacity of upwards of [ ] cubic metres per annum as demonstrated by the recent addition by Bridgeman Concrete of its plant in East Tamaki. This represents over [ ]% of total Auckland demand for readymixed concrete which would be enough, in the Applicant's view, to cause market participants to react in a significant manner. What is more, the Applicant repeats its views in section 17 that there would be very few barriers preventing the new entrant from expanding by increasing plant capacity, should there be an incentive to do so in the form of an attempt by Fletcher Concrete to exercise market power.

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?

See section 19.3.

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

See section 20.3

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

The Applicant considers that the threat of *de novo* entry would provide a reasonably significant constraint on the ability of Fletcher Concrete, Holcim, and Allied Concrete (or all of them) to price above competitive levels. Please refer sections 27 to 34.

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?

Fletcher Concrete acquires its raw materials from its vertically integrated upstream operations.

37. Who owns them?

Fletcher Concrete.

38. In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?

The Applicant does not believe suppliers of goods or services would provide a material constraint on Fletcher Concrete post acquisition.

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?

Acquirers of readymixed concrete are typically construction companies acquiring readymixed concrete for large tendered commercial construction contracts and building companies and individuals acquiring for smaller residential building projects.

40. Who owns them (where appropriate)?

Not appropriate.

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?

The large construction companies have a relatively high degree of countervailing power in the sense that they can and do play the major readymixed concrete suppliers off against each other in seeking to obtain the best price.

THIS NOTICE is given by **MARK BINNS** and **FLETCHER CONCRETE AND INFRASTRUCTURE LIMITED**

I am a Director of Fletcher Concrete and Infrastructure Limited and am duly authorised to make this application.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to the Applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of this application.

Fletcher Concrete and Infrastructure Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this 20th day of June 2005

Signed by **MARK BINNS:**

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Director
Fletcher Concrete and Infrastructure Limited

APPENDIX I

CORPORATE STRUCTURE DIAGRAM FOR FLETCHER BUILDING LIMITED

Building Group Structure
June 2005

FLETCHER BUILDING LIMITED

Fletcher Challenge Finance Investments Limited

Subsidiaries:

- Terrace Insurances Limited
- Residential Mortgages Limited

Indirect Subsidiaries:

- Residential Advances Limited
- Residential Mortgage Investments Limited

Fletcher Building Finance Limited (& Australian Branch)

Aramis Investments Limited

Fletcher Building Holdings Limited

Tasman Holdings New Zealand Limited

Subsidiaries:

- Tasman Insulation New Zealand Limited
- Tasman Staff (NZ) EBP Trustee Limited
- Tasman Building Products Offshore Limited (& Hong Kong Branch)
- AHI Roofing Limited

Indirect Subsidiaires:

- AHI Roofing (Middle East) Limited

Fletcher Building Products Limited

Subsidiaries:

- Formica (N.Z.) Limited
- Laminex Group (N.Z.) Limited
- PanelBilt Systems Limited
- Delcon Holdings (No. 3) Limited

Joint Ventures – 50%:

- Architectural Window Solutions Limited
- Vistalite North Harbou Limited

Fletcher Concrete & Infrastructure Limited

Subsidiaries:

- Raoul Holdings Limited
- Fletcher Concrete (Fiji) Limited

Indirect Subsidiaires:

- Metromix Concrete Company Limited

Joint Ventures – 50%:

- Byfords Readi-Mix Limited
- Cromwell Certified Concrete Limited
- South Pacific Cement Limited
- Oamaru Shingle Supplies Limited
- Pipe Company Certified Concrete Limited
- Precast Concrete Structures Limited
- Rangitikei Aggregates Limited

Winstone Wallboards Limited

Subsidiaries:

- Cemac Hong Kong Limited

Indirect Subsidiaires:

- Shunde Cemac Building Material Company Limited

Joint Ventures – 50%:

- Powerscape Limited
- Powerscape Pty Limited

Fletcher Steel Limited

Subsidiaries:

- Delcon Holdings (No. 2) Limited
- Delcon Holdings (No. 5) Limited
- Delcon Holdings (No. 1) Limited

Indirect Subsidiaires:

- Fletcher Pacific Steel (Fiji) Limited

Joint Ventures – 50%:

- Sims Pacific Metals Limited

The Fletcher Construction Company Limited

Subsidiaries:

- Fletcher Construction (Malaysia) SDN BHD
- Fletcher Construction (Nouvelle Caledonie) Limited
- Fletcher Construction (Singapore) Pte.
- Fletcher Construction (Solomon Islands) Limited
- Fletcher Construction Company (Fiji) Limited
- Fletcher Projects (Malaysia) SDN BHD
- Pacific Trade & Export Limited
- The Fletcher Construction Company Cook Islands Limited
- The Fletcher Organisation (Vanuatu) Limited

Indirect Subsidiaires:

- Fletcher Morobe Construction Limited

Joint Ventures – 50%:

- Manukau Wastewater Services Limited

Fletcher Residential Limited

Fletcher Property Limited

Subsidiaries:

- Fernhill Realty Limited
- Fletcher Resorts Limited
- Meleccio Enterprises Limited
- Winstone Limited
- Winstone Property (Hillside) Limited
- Inventure Limited

Indirect Subsidiaires:

- BVP No. 1 Limited
- BVP No. 3 Limited

Seabar Holdings (No. 16) Limited

Delcon Holdings (No. 8) Limited

Fletcher Distribution Limited

Subsidiaries:

- Placemakers Limited
- Trademates Limited
- Mount Timber & Hardware Limited
- Auckland Frame & Truss Limited – 73%
- Trade Mart Limited

Subsidiaries:

- Aickin Timber Ltd
- Cotter & Thomas Bldg Supplies Ltd
- Craig Bldg Supplies Ltd
- FDL No. 9 Ltd
- FDL No. 10 Ltd
- FDL No. 11 Ltd
- FDL No. 12 Ltd
- FDL No. 13 Ltd
- FDL No. 14 Ltd
- FDL No. 15 Ltd
- Grant McLeod Bldg Supplies Ltd
- Hilson Bldg Supplies Ltd
- Hudson Building Supplies Ltd
- Key Bldg Supplies Ltd
- Neil Thomson Bldg Supplies Ltd
- Warren Smith Bldg Supplies Ltd

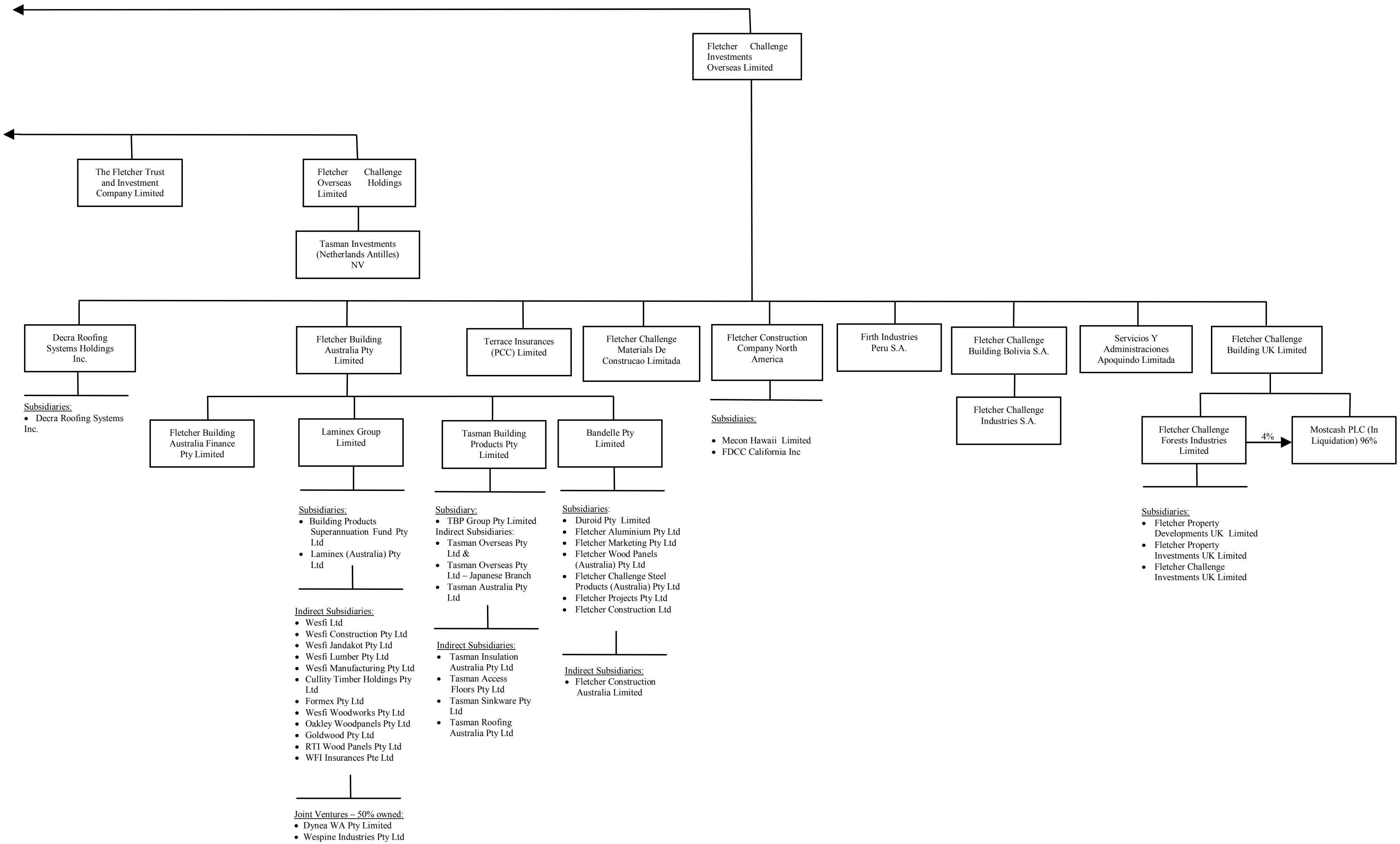
69% Varoy Bldg Supplies Ltd

- 50.1% Owned:

Alan Milne Bldg Supplies Ltd
Amies Bldg Supplies Ltd
Anson Bldg Supplies Ltd
Bowen Bldg Supplies Ltd
Bramley Bldg Supplies Ltd
Builders Hardware Company Ltd
Bldg Choices Ltd
Calder Bldg Supplies Ltd
Cleaver Bldg Supplies Ltd
Collier Bldg Supplies Ltd
Cullen Bldg Supplies Ltd
Davis & Casey Bldg Supplies Ltd
Evans Bldg Supplies Ltd
Geoff Brown Bldg Supplies Ltd
Graeme Joy Bldg Supplies Ltd
Hedges Bldg Supplies Ltd
Hooper Bldg Supplies Ltd
John Cockburn Bldg Supplies Ltd
Ken Jones Bldg Supplies Ltd
Kenna Bldg Supplies Ltd
Kevin Jarvis Bldg Supplies Ltd
Kimura Bldg Supplies Ltd
Langford-Lee Bldg Supplies Ltd
Laracy Bldg Supplies Ltd
M Wong Bldg Supplies Ltd
McDonald Bldg Supplies Ltd
McGill Bldg Supplies Ltd
McLaughlan Bldg Supplies Ltd
Mike Mattin Bldg Supplies Ltd
Minnell Bldg Supplies Ltd
Nick Letica Bldg Supplies Ltd
Nock Bldg Supplies Ltd
Peter Flint Bldg Supplies Ltd
Rolleston Bldg Supplies Ltd
Southbound Bldg Supplies Ltd
Steven Marshall Bldg Supplies Ltd
Stichbury Bldg Supplies Ltd
Stickland Bldg Supplies Ltd
Sullivan Bldg Supplies Ltd
Ted Harper Bldg Supplies Ltd
Terry Mellsop Bldg Supplies Ltd
Trevor Cockburn Bldg Supplies Ltd
Van Der Vossen Bldg Supplies Ltd
Waterman Bldg Supplies Ltd

Fletcher Building Netherlands B.V.

Building Group Structure
June 2005



APPENDIX II

REPORT BY CASTALIA

Competition in the Supply of Ready Mix Concrete

27/05/2005

1. Introduction

I have been asked to comment on the proposed acquisition by Fletcher Concrete of just the ready mix concrete assets of W Stevenson & Sons Ltd (not the aggregate business).[21] Given the description of the sector in the recent Commerce Commission clearance of Holcim NZ Ltd's acquisition of Atlas Resources Ltd (Decision 513), I have not reassessed market definitions or set out the background of the industry in detail or assessed competition in cement production, but have focused on reviewing the framework and analysis brought up in Decision 513 relating to vertical links in the sector and barriers to expansion in output by existing small ready mix producers.
[ ]

My understanding of the main features of the ready mix sector in the Auckland market is shown in the following diagram.

There are two vertically integrated firms (Holcim and Fletchers), a few independent aggregate suppliers (Fulton Hogan, Weddings, Wharehine etc), and a number of ready mix plant operators (Allied, Bridgemans, Counties and Wilsons) that buy all their aggregate and cement inputs. Stevensons have quarries and ready mix plants but buy cement from Golden Bay Cement (and a smaller amount from Holcim, not shown on the diagram). Stevensons also supply Firth with ready mix from their Takanini plant and buy ready mix from Firth's Henderson plant.
The market for the supply of **aggregate** is competitive and will not be made any less so by the acquisition. Stevensons may continue to supply aggregate to the ready mix plants sold to Fletcher Concrete.

The degree of competitiveness in the **cement** market is less certain. Cement NZ is owned by a firm that has been importing Asian cement successfully into Australia for 8 years. So far, I understand that Cement NZ has brought one shipment of bulk bagged cement into Tauranga and Timaru. If the business can establish supply lines and adequate scale for efficient stock holding, it may be able to compete effectively in Auckland.

In the discussion below, I will treat two cases, one where the cement market is a domestic oligopoly with equilibrium prices below the cost of imports and one where domestic suppliers compete directly with imports.

2. Ready Mix in a Cement Duopoly

Would the acquisition of Stevensons by Firth enable Firth and Holcim to increase ready mix

[21] The acquirer is Fletcher Concrete. Fletchers owns Winstone Aggregates, Golden Bay Cement and the ready mix and concrete masonry business Firth.

prices, perhaps also raising cement prices to force other ready mix businesses to follow suit? In this scenario, I assume that the price of cement is not constrained by imports but has settled at a somewhat lower level than import parity as a result of the competition between Golden Bay and Holcim. Nevertheless, it will be the profit maximising duopoly price.[22] The cement market has been relatively stable; the total volume of cement sales varies with the level of economic activity but market shares have not changed much over recent years.

Competing in this way, cement producers want plant and trucking operations to be as competitive as possible, since higher costs at this downstream level would lower Fletchers' and Holcim's profits. Higher ready mix plant costs would increase final ready mix prices (harming customers) but would reduce ready mix use (and cement use), thus lowering cement profits.[23]

The rationale for minimising ready mix plant costs makes sense of what ones sees in the market, Holcim and Fletchers selling cement to competitors of their own ready mix plant operations. Despite Holcim's minority shareholding, Allied competes with Holcim's ready mix business, as well as with Firth obviously. [ ] Fletcher Concrete's subsidiary Winstones also supplies aggregate to Stevensons and Allied. Holcim also supplies aggregates to independents.

These parallel operations are analogous to oil companies selling petrol and diesel to independent retailers that compete with the oil companies' own retail outlets. Over time, one would expect to see such upstream businesses experimenting with greater or lesser degrees of vertical integration into "retailing" to look for operational cost synergies and better downstream performance incentives.

The important point is that increasing ready mix plant margins cannot be in Fletcher Concrete's interest. The acquisition must be motivated by cost savings.

I conclude that under this scenario, the acquisition cannot substantially lessen competition in ready mix supply.[24]

3. Ready Mix with Competitive Cement Supply

In this scenario, I assume instead that cement prices are constrained by imports, despite the fact that there is no major import operation at present. In this case, there will not be the same interaction between cement prices and ready mix plant margins and the relevant question is whether the Stevenson's acquisition could enable Firth and Holcim to sustain increased margins in ready mix plants (through coordinated market power).

Examining the preconditions to this type of tacit collusion and the prospects for detection and disciplining of deviations from the collusive understanding, price rises appear implausible because of the likelihood that existing fringe players would expand output rapidly if the major firms raised prices.

In my view, the key is that 70% of ready mix inputs are competitively supplied (aggregate clearly, and cement by assumption) and the remaining 30% of costs (the batch plant and the trucking component) involve only modest sunk costs and no appreciable economies of scale. The table opposite is taken from Firth's accounting system with my addition of full return on capital figures for the ready mix plant itself and trucks.[25]

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[22] As an illustration, with linear demand the ready mix market price in a Cournot model of the cement duopoly will be $(P + 2C)/3$ where P is the cutoff price above which ready mix demand goes to zero and C is the combined variable cost of cement, aggregate and the ready mix plant. The profit maximising *margin* on cement is $(P - C)/3$. Note that the margin declines if variable costs increase.

[23] This is familiar to industrial organisation theorists as the double monopoly problem in a setting where inputs are used in fixed proportions. See e.g. Carlton & Perloff, 2000 *Modern Industrial Organisation*, p 398

Return to the illustration outlined in footnote 2 above. If through a weakening of competitive pressures between ready mix businesses, the costs of this stage in the process were to increase, the profit maximizing market price of ready mix would also increase (as $(P + 2C)/3$). But the ready mix *price* increase would be less than the ready mix *cost* increase and the profits achievable by the cement producers (which are proportional to $(P - C)^2$) would drop.

[24] i.e. cannot substantially lessen competition in the sense that it prices might increase as a consequence

[25] Batch plants are assumed to have a capital cost of $[ ] per annual cubic meter of production (e.g. $[ ] for a plant producing 100,000 m^3 pa). With a [ ]% real WACC and an assumed [ ] year life, the capital recovery factor is [ ]% so the fixed plant sunk capital unit cost is $[ ]/$m^3$. Trucks are assumed to cost $[ ] plus $[ ] for the frame and drum and to deliver typically [ ] m^3 pa.

The plant and truck "fixed" costs shown in the table refer to the short run. If an entrant were considering the risks of a strong incumbent response post entry, the truly unavoidable sunk costs are only the plant capital cost of $[ ]/$m^3$ and the frame and drum component [26] of the truck cost $[ ]/$m^3$.

For firms like Allied and Bridgemans that have significant operations elsewhere, the sunk costs associated with trucks in an expansion of Auckland production will be even lower as the trucks can be borrowed from other centres.

But even leaving aside this effect, the total of sunk costs is around [$]/m^3 in a total ready mix selling price of $[ ]/$m^3$ or a ready mix plant and delivery cost of $[ ]/$m^3$.

In my view, it is difficult to see this cost structure as providing significant barriers to expansion by the existing small players.[27] The Auckland market has been growing at 8% pa over the last few years and all this growth has been met by smaller players, not Fletchers or Holcim. I understand that growth is maintaining pressure on peak production capacity in the regional market and that new plants are being developed by Firth, Allied and Bridgemans.[28]

These new plants are likely each to have capacities of the order of several percent of Auckland regional ready mix production (about 1.267 million m^3 pa). This program could be accelerated if, in this scenario with competitive cement supply, Firth and Holcim were to attempt to increase ready mix prices.

Stephen Gale

With a [ ]% real WACC and an assumed 10 year life, the capital recovery factor is [ ]% so the total fixed truck unit cost is $ [ ] /m^3.

[26] The truck can be resold if no longer required so the sunk cost component is $[ ]/$m^3$.

[27] For the same reason that expanding output would be very straight forward for Holcim, it does not appear that Firth could raise prices unilaterally as a result of the acquisition.

[28] Allied's [ ] Penrose plant and the new Bridgeman's plant are each expected to have a capacity of about [ ] m^3 pa.

APPENDIX III

Factors Relevant to Collusion

Market	High Seller Concentration	Undifferentiated Product	Static Production Technology	New Entry Slow	Lack of Fringe Competitors	Acquisition of Maverick Business	Excess Capacity	Price Inelastic Market Demand	History of anti-competitive behaviour	Characteristics of Buyers	Presence of Industry Associations
Readymixed Concrete	Market is concentrated but a number of smaller suppliers exist.	Yes.	Yes.	No.	No.	No.	No significant excess capacity as demand growth has outstripped growth in supply. However, new plants with significant capacity have been added recently, and the Applicant believes more could be added in the short to medium term.	Reasonably inelastic.	No	Construction companies have a high degree of countervailing power and are able to play suppliers off against each other, thus undermining co-ordinated market power.	There are industry associations at which market participants discuss industry wide initiatives such as environmental protection, quality control, building regulation etc.

APPENDIX IV

Factors Relevant to Detection

Market	High Seller Concentration	Frequent Sales	Little Countervailing Power	Lack of Vertical Integration	Stable/Slow Growth in Demand	Cost Similarities Between Businesses	Little Technological Change	Multi-Market Contact	Price Transparency
Readymixed Concrete	Market is concentrated but a number of smaller suppliers exist.	Yes.	Construction companies have a high degree of countervailing power.	No.	No	Yes	Yes.	Yes.	Yes.

APPENDIX V

Factors Relevant to Retaliation

Market	Credibility of Threats	Available of Excess Capacity	Strong Profit Incentive to Preserve the Collusion	Ability to Dump Output in Deviating Business' Market
Readymixed Concrete	Costs involved in the production of readymixed concrete are largely variable costs which makes it difficult to decrease prices in retaliation.	No significant excess capacity as demand growth has outstripped growth in supply. However, new plants have been added recently, and the Applicant believes more could be added in the short to medium term	Uncertain.	No.

COMMERCE ACT 1986: BUSINESS ACQUISITION SUPPLEMENTARY SUBMISSIONS TO CLEARANCE APPLICATION

Date: 20 June 2005

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

1. INTRODUCTION

1.1 Fletcher Concrete & Infrastructure Limited (the "Applicant" or "Fletcher Concrete") has submitted a notice dated 20 June 2005 (the "Application") pursuant to section 66(1) of the Commerce Act 1986 seeking clearance of a proposed acquisition of certain business assets of W Stevenson & Sons Limited ("Stevensons").

1.2 These submissions are intended to supplement the submissions made in the Application.

2. DIVESTMENTS

2.1 The Applicant recognises that the proposed acquisition of the business assets the subject matter of the Application would, absent a divestiture, result in a degree of horizontal aggregation in the regional markets for the manufacture and wholesale supply of concrete masonry products identified in the Application and further recognises there will also be aggregation in the retail supply of concrete based building materials and supplies and other outdoor landscaping materials and supplies in the sense that these products are sold at retail by both Stevensons (through its supply yards in Auckland and Christchurch) and Fletcher Distribution Limited (through its Placemakers stores).

2.2 In order to address any competition concerns that may arise out of the proposed acquisition the subject matter of the Application, the Applicant agrees to execute a divestment undertaking by way of deed in favour of the Commission as set out in Appendix I which is to be treated as a condition of any clearance granted by the Commission in respect of the Application.

2.3 Essentially the Applicant intends to divest the Auckland concrete masonry business of either Fletcher Concrete or Stevensons and the Christchurch concrete masonry business of Stevensons in order to address any aggregation concerns in the Northland, Auckland and Canterbury regional markets. The Applicant also intends to divest the Stevensons supply yards in order to address any aggregation concerns at the retail level and also to ensure that any purchaser of the concrete masonry businesses has a retail channel to market for concrete masonry products.

3. IMPACT OF DIVESTMENTS

3.1 The Applicant believes that the divestments proposed would ensure that the proposed acquisition would not have the effect or likely effect of substantially lessening competition in the markets for the manufacture and wholesale supply of concrete masonry products in Northland, Auckland and Canterbury or for the retail supply of concrete based building materials and supplies and other outdoor landscaping materials and supplies.

3.2 The Commission has indicated that a counterfactual analysis is appropriate in assessing the adequacy of divestment undertakings:

> "*The comparison between the factual and the counterfactual will test whether the divestment would, of itself, or in combination with other market conditions enable the Commission to be satisfied that there is not likely to be a substantial lessening of competition.*"[1]

3.3 The Applicant believes that an appropriate counterfactual to have regard to here is that a third party not currently involved in the relevant markets would acquire the Stevensons Building Products division and continue to run it as a going concern.[2]

3.4 The Applicant believes that the factual will be that Fletcher Concrete acquires the Stevensons Building Products division but divest to another party not currently involved in the relevant markets those business assets the subject matter of the divestment undertaking in Appendix I.

3.5 The Applicant does not believe that the competitive environment in the relevant markets under the factual would be materially different from the competitive environment in those markets under the counterfactual.

3.6 The Applicant will be undertaking to divest as going concerns the concrete masonry operation of Stevensons in Canterbury and also to divest the supply yard business which Stevensons currently operates in that region. The Applicant believes this would give a potential purchaser the necessary manufacturing assets and retail channel to market to compete as effectively in the concrete masonry market and at the downstream retail level as an independent third party who had acquired the entire Stevensons Building Products division as a going concern.

3.7 A similar analysis can be applied to the divestiture in Auckland of either the Fletcher Concrete operation or the Stevensons operation together with the Auckland supply yard business of Stevensons. In either case the

[1] Decision 545 (Gallagher Holdings Limited and Tru-Test Corporation Limited) 23 February 2005 at paragraph 10.

[2] The Applicant does not believe it appropriate for the *status quo* to be considered as the counterfactual as there is nothing to indicate that, if Fletcher Concrete did not proceed with the proposed acquisition, Stevensons would not sell to the next highest bidder, but the Applicant does not believe the assessment of the competitive impact of the proposed divestments turns on this.

Applicant believes that the Auckland market would ultimately end up with two relatively evenly matched manufacturers of concrete masonry each with a viable retail channel to market, just as would occur under the counterfactual.

3.8 Fletcher Concrete does not have a manufacturing presence in the Northland region but it does maintain a small wholesaling presence in that region by importing concrete masonry products into that region primarily from its Auckland operation. The divestiture of the Auckland operation of either Fletcher Concrete or Stevensons would enable the potential purchaser to similarly import concrete masonry products into Northland from the Auckland region and as such, the Applicant again does not believe that the state of competition under the factual would be significantly different from that under the counterfactual.

3.9 The divestment undertaking at Appendix I includes a covenant that Fletcher Concrete endeavour to operate those business assets intended to be divested as viable going concerns prior to divestment which the Applicant believes would minimise the risk that the competitive capability of the business assets intended to be divested deteriorating significantly and thereby ensure that a purchaser of those assets would be able to operate those business assets in such a way as to provide as strong a competitive constraint as would have been provided under the counterfactual.

3.10 The Applicant believes that there are a number of possible purchasers of the business assets intended to be divested pursuant to the divestment undertaking at Appendix I.

Dated this 20th day of June 2005

Signed by **MARK BINNS:**

____

Director
Fletcher Concrete and Infrastructure Limited

APPENDIX I

DIVESTMENT UNDERTAKING

DIVESTMENT UNDERTAKING

between

FLETCHER CONCRETE & INFRASTRUCTURE LIMITED

and

COMMERCE COMMISSION

Simpson Grierson

THIS DEED is dated the day of 2005

BETWEEN **FLETCHER CONCRETE & INFRASTRUCTURE LIMITED,** a duly incorporated company having its registered office at Auckland (the "Covenantor')

AND **COMMERCE COMMISSION,** a body corporate established by section 8 of the Act (the "Covenantee")

BACKGROUND

A. The Covenantor submitted the Application to the Covenantee pursuant to section 66(1) of the Act which Application, pursuant to a supplemental submission, included an undertaking to divest certain assets pursuant to section 69A of the Act.

B. This Deed sets out the terms upon which such divestment shall be made.

WITNESSES AS FOLLOWS:

1. INTERPRETATION

In this deed unless the context indicates otherwise:

1.1 Definitions:

"**Act**" means the Commerce Act 1986;

"**Agreement**" means any binding Agreement for Sale and Purchase between the Covenantor and the Vendor in respect of the Assets;

"**Application**" means the notice dated 20 June 2005 submitted by the Covenantor to the Covenantee pursuant to section 66(1) of the Act seeking clearance for the proposed acquisition by the Covenantor of the Assets;

"**Assets**" means all the assets associated with Stevenson Building Products and which include without limitation the Auckland Supply Yard Business, the Christchurch Supply Yard Business, the Stevenson Auckland Concrete Masonry Business and the Stevenson Christchurch Concrete Masonry Business;

"**Auckland Supply Yard Business**" means the supply yard business presently operated by the Vendor in Auckland and proposed to be acquired by the Covenantor;

"**Christchurch Supply Yard Business**" means the supply yard business presently operated by the Vendor in Christchurch and proposed to be acquired by the Covenantor;

"**Fletcher Auckland Concrete Masonry Business**" means the concrete masonry manufacturing and wholesale distribution business operated by the Covenantor in Auckland;

"**Stevenson Auckland Concrete Masonry Business**" means the concrete masonry manufacturing and wholesale distribution business presently operated by the Vendor in Auckland and proposed to be acquired by the Covenantor;

"**Stevenson Building Products**" means the building products division presently operated by the Vendor and proposed to be acquired by the Covenantor;

"**Stevenson Christchurch Concrete Masonry Business**" means the concrete masonry manufacturing and wholesale distribution business presently operated by the Vendor in Christchurch and proposed to be acquired by the Covenantor;

"**Vendor**" means W Stevenson & Sons Limited, a duly incorporated company having its registered office at Auckland;

1.2 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;

1.3 **Headings:** section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;

1.4 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.5 **Parties:** references to parties are references to parties to this deed;

1.6 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;

1.7 **Plural and Singular:** words importing the singular number include the plural and vice versa;

1.8 **Schedules:** the schedules to this deed and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this deed;

1.9 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this deed's sections, clauses and schedules; and

1.10 **Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. COVENANTS

2.1 **Divest:** The Covenantor will sell or procure the sale of the following business assets as going concerns within one year after the Covenantor completes the acquisition of the Assets pursuant to the Agreement:

(a) the Auckland Supply Yard Business;

(b) the Christchurch Supply Yard Business;

(c) the Stevenson Christchurch Concrete Masonry Business; and

(d) either the Stevenson Auckland Concrete Masonry Business or the Fletcher Auckland Concrete Masonry Business.

2.2 **Conduct Pending Divestment:** The Covenantor shall use reasonable endeavours to operate those business assets intended to be divested pursuant to clause 2.1 as viable going concerns pending any sale contemplated by clause 2.1 and shall endeavour as far as is reasonably practicable to operate the Auckland Supply Yard Business, the Christchurch Supply Yard Business, the Stevenson Christchurch Concrete Masonry Business and the Stevenson Auckland Concrete Masonry Business independently of any businesses presently operated by the Covenantor.

2.3 **Divestment Process:**

2.3.1 **Initiating Sale Process:** The Covenantor shall initiate the sale process in respect of the business assets intended to be divested under clause 2.1 either before or as soon as practicable after the closing date of any binding Agreement for Sale and Purchase entered into between the Covenantor and the Vendor.

2.3.2 **Acceptance of Offers:** In accepting an offer for any of the businesses intended to be divested pursuant to clause 2.1 the Covenantor shall be entitled to take into account the price offered for the business assets and the terms of such offer but shall not take into account any future competitive threat which the offeror may pose to the Covenantor in the markets relevant to the Application.

2.4 **Sale to Person Unrelated to Covenantor:** Any sale of a business asset contemplated by clause 2.1 shall be to a purchaser which is not an interconnected body corporate (as that term is defined in the Act) or an associated person (as that term is defined in the Act) of the Covenantor.

2.5 **Timing:** The sales of business assets contemplated by clause 2.1 shall be effected within 12 months after the Covenantor completes the acquisition of the Assets pursuant to the Agreement.

2.6 **Notification:** The Covenantor shall notify the Commission of each sale of business assets contemplated by clause 2.1 upon completion of such sale.

2.7 **Conditions:** The covenants contained in this Deed are subject to the following conditions precedent and shall have no effect unless and until such time as such conditions are satisfied:

2.7.1 **Clearance:** the Covenantee granting clearance to proceed with the proposed acquisition of the Assets pursuant to the Act;

2.7.2 **Closing:** the closing of the Agreement.

3. MISCELLAENOUS

3.1 **Binding and Enforceable:** The Covenantor confirms that in entering into this Deed it intends to create binding and enforceable legal obligations in favour of the Covenantee.

3.2 **Governing Law:** This deed is governed by the law of New Zealand and the parties accept the exclusive jurisdiction of the New Zealand courts.

3.3 **Counterparts:** This Deed may be executed in any number of counterparts each of which is deemed an original, but all of which together are to constitute an instrument. It is acknowledged that this Deed may be executed by an exchange of facsimile copies and the execution of this Deed by that means is valid and sufficient execution.

Executed as a deed.