

Daiken / Dongwha: Laminex's submission on the NZCC's Letter of Issues

1. Introduction

1.1 Set out below is Laminex's response to a number of preliminary findings in the NZCC's Letter of Issues.¹

1.2 The matters on which Laminex submits are:

(a) the constraint imposed by Laminex;

(b) the constraint imposed by:

(i) imports; and

(ii) particle board; and

(c) [REDACTED]

2. The constraint imposed by Laminex

2.1 The LOI states at [61]-[64] that the NZCC does not consider Laminex would provide a material constraint on the market for the sale of raw MDF because:

(a) the scale of the volumes that Laminex is able to supply would be considerably smaller than what Dongwha could supply; and

(b) the price at which Laminex is able to supply is subject to the price that it can purchase raw MDF from manufacturers which, in itself may be prone to coordination.

2.2 The LOI also says that there is no evidence that Laminex competes to supply customers that buy direct from Daiken or other MDF manufacturers.

2.3 Laminex understands that the NZCC has been provided with a copy of the proposed supply agreement between Laminex and Daiken. As a preliminary point, Laminex notes that this was an arms' length negotiation that gives Laminex surety of volume and price. Laminex has ensured that its position has been protected under the agreement; it would not have signed any agreement that left it vulnerable to volume shortages or significant price increases.

2.4 Under the supply agreement, [REDACTED]

2.5 These terms allow Laminex considerable scope to increase the volumes of raw MDF that it supplies, [REDACTED]

¹ For completeness, the fact that it has not submitted on all matters is not an indication that Laminex necessarily agrees with the NZCC's assessment of those matters.

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- (a) Laminex's current demand for raw MDF is approximately [REDACTED], of which approximately [REDACTED] is sold to customers as raw MDF. This gives Laminex significant headroom to increase volumes in response to an attempted price rise.
- (b) Because prices are pegged to [REDACTED] this also means that any coordinated conduct between Daiken and NPIL that resulted in prices 'drifting up' by a SSNIP i.e. 5-10% to other (non-Laminex) customers, would provide an opportunity for Laminex to gain at the expense of rivals:
 - (i) in the market for the supply of raw MDF, by directly targeting customers of Daiken and NPIL (either all of customers' volumes or some of their volumes); or
 - (ii) in downstream MDF markets e.g. MFB, by giving it a cost advantage over rival manufacturers supplied by Daiken and NPIL, providing opportunities to win market share, the consequence of which would be:
 - (A) rivals ordering less volumes from Daiken/NPIL; and
 - (B) Laminex increasing the volumes of raw MDF under its supply agreement with Daiken [REDACTED]; and/or
 - (C) Laminex switching MDF customers over to particle board (see below for further detail).

2.6 In addition to the threat of customers switching to Laminex, there is also the threat of customers switching to particle board (which Laminex also manufactures) and imports.

3. Constraint imposed by particle board and imports

The constraint imposed by particle board

3.1 The LOI finds that:

- (a) particle board and raw MDF are likely to be in separate markets, although it accepts that particle board imposes "some" constraint due to its substitutability in "some" applications (at [13.3]); and
- (b) to the extent that the ability of customers to switch to particle board is limited, it is unlikely that customers have countervailing power (at [40]).

3.2 As the NZCC is aware, Laminex manufactures panels using both MDF and particle board as a substrate. In Laminex's experience, particle board is a substitute – and arguably a superior product – for virtually all applications.

- (a) As previously submitted to the NZCC, it is lower-priced than MDF, with a lower production cost, including because it requires less energy to manufacture.
- (b) It is lighter weight than MDF, making it easier to transport.
- (c) Recent advances in technology mean that particle board is now finer and less hard wearing on cutting equipment.
- (d) It is less affected by expansion/contraction from exposure to moisture than raw MDF.

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(e) It is [REDACTED]

3.3 Laminex has previously provided the NZCC with examples of cabinet makers that use particle board instead of MDF as a substrate. A recent example of a customer that has switched to particle board is [REDACTED]

3.4 This significant account recently switched over its whiteboard requirements from MDF to particleboard. The process took only a couple of months, while excess MDF stock was run out and particle board replaced it.

3.5 In Laminex's experience, more and more customers are switching from MDF to particle board, and particle board is now very much part of clients' considerations when choosing a substrate. Particle board is lower-priced than MDF, and is a substitute for virtually all applications. The process of switching is straightforward. In Laminex's experience, the threat of switching to particle board is very real.

3.6 Laminex therefore considers that the constraint imposed by particle board is likely to disrupt any attempt to coordinate a SSNIP, and that the NZCC's preliminary findings, as noted above, should not be confirmed. Further, the ability of many customers to substitute to particle board makes it very difficult to detect whether a reduction or loss of customer volume is due to another MDF supplier cheating on a tacitly agreed price, or the customer simply switching to particle board.

3.7 To the extent that the NZCC has received market feedback that does not accord with the evidence provided by Laminex, Laminex would appreciate the opportunity to discuss this with the NZCC.

The constraint imposed by imports

3.8 The LOI finds that:

- (a) to the extent that the ability of customers to switch to imports is limited, it is unlikely that customers have countervailing power (at [40]);
- (b) new entry via imports is unlikely (at [66]);
- (c) imports may be viable only if there was a large price increase post-merger (at [68]); and
- (d) customers would factor in a number of non-price factors if considering importing including quality, availability of sheet sizes, shipping costs, delivery time, reliability of supply, exchange rate risk, warehousing and distribution costs which "could" outweigh any cheaper costs from overseas sources (at [69]).

3.9 Laminex is unsure why the LOI made no reference to the real world evidence provided by it in relation to the investigations made of imports.

3.10 [REDACTED]

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3.11 [REDACTED]

3.12 Laminex therefore considers that imports are a viable alternative of raw MDF, and that the threat of imports is likely to constrain the ability of Daiken and NPIL to tacitly collude on a 5-10% price increase post-merger.

3.13 We note that the NZCC says (at [69]) that feedback received suggested that customers “would” factor in a number of considerations that “could” outweigh any cheaper costs of imports. This suggests that at least some market participants may not have gone through the same detailed process as noted above in examining the viability of imports. We would be concerned if the NZCC prefers such evidence to evidence of the actual viability of imports.

3.14 Laminex would appreciate the opportunity to meet with the NZCC to discuss why the NZCC does not consider the evidence provided to be persuasive.

4. **The variable nature of customer volumes**

4.1 The LOI states that the NZCC is considering whether customer allocation may be possible in the market for raw MDF. It notes (at [32]) that if a supplier deviated from a coordinated agreement, this would be easily detected as a supplier would seek to find the rival’s price from the customer who switched and seek to punish the rival by targeting other customers.

4.2 Laminex submits that detecting any loss of volumes as a result of a rival ‘cheating’ on a tacitly agreed price/volume is likely to be very difficult. [REDACTED]

4.3 [REDACTED]

4.4 In Laminex’s view, this would thwart the detection of any breach of a coordinated agreement by pointing to reduced customer volumes, because they vary considerably for a variety of reasons today.

CONFIDENTIAL ATTACHMENT A

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]