

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 18 December 2008

The Registrar
Market Structure Team
Commerce Commission
PO Box 2351
Wellington

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

PART 1: TRANSACTION DETAILS

1. Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice.

The acquirer is Fletcher Building Limited (**Fletcher Building**).

This notice is given by:

Mark Binns (Chief Executive – Infrastructure)
Fletcher Building Limited
810 Great South Road
Penrose
Auckland

Telephone: (09) 525 9000
Facsimile: (09) 525 9989

See www.fb.co.nz.

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

Simpson Grierson
Lumley Centre
Private Bag 92518
Auckland

Telephone: (09) 977 5056
Facsimile: (09) 307 0331

Attention: Peter Hinton

2. Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties.

The potential target businesses are the Auckland and Whangarei masonry businesses of Stevenson Group Limited (**Stevenson**).

The contact person for Stevenson is:

Stevenson Group Limited
364 East Tamaki Road
Auckland
Telephone: (09) 984 8405
Attention: Frank Janssen, CEO, Building Products Division

<http://www.stevenson.co.nz>

Stevenson requests that all correspondence is directed in the first instance to:

Bell Gully
Vero Centre, 48 Shortland Street
PO Box 4199
Auckland 1140

Attention: Phil Taylor
Partner

Torrin Crowther
Senior Associate

Telephone: (09) 916 8940 (09) 916 8621
 Fax: (09) 916 8801 (09) 916 8801
 Email: phil.taylor@bellgully.com torrin.crowther@bellgully.com

3. With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.

Useful details as to the publicly listed Fletcher Building business can be found at <http://www.fb.co.nz/about/ourbusinesses.aspx>. Its Annual Report is available at <http://www.fletcherbuilding.co.nz/Corporate/downloads/FBF%20Final%20Ann%20Report%20with%20links.pdf>. Specific structure charts can be provided if the Commission would like.

Fletcher Building's masonry business is part of its larger Infrastructure Division. This is an integrated business comprising commercial and residential construction, concrete and various quarries. The Infrastructure Division incorporates the following businesses:

- Firth (which is the unit operating in the same area as the target currently operates)
- Fletcher Construction
- Fletcher Residential
- Golden Bay Cement
- Humes Pipeline Systems
- Winstone Aggregates
- Concrete Industries
- Rocla Pipeline Products
- Rocla Quarry Products.

Other relevant formal or informal links between the merger parties, including interconnected bodies corporate and other persons identified in question 3 above and competitors in each market

While Fletcher Building has entered into a number of arrangements in relation to the wider concrete-related market, its view is that the only arrangements arguably relevant to this application are those pursuant to which it:

[Confidential information has been removed].

4. Provide details on what is to be acquired.

Fletcher Building Limited (or an interconnected body corporate of Fletcher Building Limited) seeks clearance to acquire up to 100% of the assets of Stevenson's Whangarei masonry business, and up to 100% of the assets of Stevenson's Auckland masonry business.

5. Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.

This is not part of an international merger.

Fletcher Building believes there are synergies to be gained by utilising the most efficient of its assets and the target's assets to effectively service masonry customers. For instance, [Confidential information has been removed]. In respect of Whangarei, Fletcher Building has no existing "on the ground" presence such that an expansion into Whangarei will allow it to better serve its customers.

6. Provide copies of the final or the most recent versions of any documents bringing about the proposed merger (e.g. contracts, sales and purchase agreements, or offer documents if it is a public bid).

There is no agreement at the current time.

7. If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

- 7.1 Please indicate whether you would be willing to provide the Commission with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the proposed merger.

N/A.

PART 2: THE INDUSTRY

8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

Currently, as far as the proposed acquisition is concerned, the principal overlap occurs in respect of concrete blocks and pavers.

Further background is contained in the 2005 clearance application and Decision 558.

9. Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.

The proposed acquisition relates to the construction industry – specifically the masonry segment.

Fletcher Building manufactures masonry products which it supplies through its related distribution arm, Placemakers, and also through nationwide and local distributors/retailers, such as ITM, Bunnings, Carters, etc. Fletcher Building has a block making plant located in Auckland (at East Tamaki), as well as in other locations throughout the country (although not in Whangarei).

Stevenson also has a block making plant in Auckland (at Drury), and has one in Whangarei.

Unlike Fletcher Building, Stevenson does not have a nation-wide footprint and hence struggles to attract the business of the nation-wide building merchants (many of whom have customers with nation-wide requirements themselves). Stevenson tends to sell the vast majority of its masonry products from its owned and operated distribution yards.

Again, the Commission is referred to the 2005 clearance application and Decision 558.

10. Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

Masonry products compete with a number of other products, including other forms of construction (e.g. pre-cast concrete, timber framing, etc.).

There is very little by way of emerging technologies in relation to the products in question.

Supply for masonry products as a whole has been falling for some time now, on account of increasing use of other building materials and also as a result of the sharp downturn in the construction industry.

11. Please highlight any relevant mergers that have occurred in this industry over the past three years. Include:

11.1 any acquisition of assets of a business or shares which the merger parties (or any interconnected or associated businesses) have undertaken in the last three years.

Fletcher Building is not aware of any acquisitions relevant to the Commission's consideration of this application.

PART 3: MARKET DEFINITION

HORIZONTAL AGGREGATION

12. For each area of aggregation of market shares, please define the relevant market(s) for the:

12.1 product(s) or service(s);

12.2 functional level;

12.3 geographic area; and

12.4 customer dimension and timeframe (if relevant).

Given the counterfactual comments below, precise market definition is not necessary in the context of this application. While not necessarily agreeing with them in all respects, Fletcher Building is happy to adopt the masonry concrete markets adopted by the Commission in Decision 558.

Where relevant, please explain how products or services are differentiated within the market(s).

N/A.

VERTICAL INTEGRATION

13. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

In light of the most likely counterfactual, there is no strengthening of any vertical integration. (Furthermore, Fletcher Building notes that the vast majority of Stevenson's demand for cement is from divisions other than masonry.)

PART 4: COUNTERFACTUAL

14. In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.

Fletcher Building understands that, absent it acquiring Stevenson's masonry businesses, the businesses will close. It further understands that Stevenson is making separate submissions in this regard.

While Fletcher Building believes there are a number of reasons why – quite apart from the counterfactual – an acquisition of the Stevenson masonry businesses would not quite rise to a substantial lessening of competition, Fletcher Building does not rely on any such arguments for the purposes of this application.

Accordingly, it makes no further comment in this application, other than in respect of financial information (Qu. 29) and confidentiality.

PART 5: COMPETITION ANALYSIS

Please answer questions 16-28 below in respect of each market identified in question 12 above.

EXISTING COMPETITORS

15. Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).
16. Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include:
 - 16.1 the estimated total value of the domestic market; and
 - 16.2 the source of the data provided.

Market share information may be illustrated by the use of the table below:

RANK	COMPETITORS (INCLUDING MERGER PARTIES)	ESTIMATED REVENUE	ESTIMATED % OF MARKET SHARE BY REVENUE	ESTIMATED VOLUME	ESTIMATED % OF MARKET SHARE BY VOLUME
1					
2					
3					
4					
5					
6					
etc					

SOURCES OF ESTIMATES

17. 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? Where relevant please include a full discussion and examples of:
 - 17.1 the ease with which customers may switch between suppliers, and, if so, how readily;
 - 17.2 any local or overseas firms that are not currently producing the product, or providing the service in the market, but could enter the market quickly (using essentially their existing productive capacity) in a response to an attempt by suppliers to raise prices or reduce output or quality (near competitors and importers); and

17.3 the extent to which existing competitors, near competitors and importers could expand in the market, and any difficulties that they might face in doing so.

For further information on existing competition, please refer to Part 5 of the Mergers and Acquisitions Guidelines.

POTENTIAL COMPETITION

CONDITIONS OF ENTRY

18. Please explain the requirements for new entry and/or importers in the relevant market(s), including:

- a breakdown of the estimated costs;

Estimated Costs might include, for example, raw materials, machinery, specialised assets, sunk Costs and/or any other costs which may be necessary for new entry.

- anticipated timeframes;
- regulatory requirements;
- frontier requirements (e.g. tariffs, import licensing, quarantine requirements); and
- business requirements involved.

Please provide the source for any data used.

19. Include a full discussion on:

19.1 any factors that could impede entry; and

19.2 what might prompt new entry post-merger.

For further information on market entry and barriers to entry, please refer to Part 6 of the Mergers and Acquisitions Guidelines.

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

20. Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.

21. To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

22. 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 entrants named in question 21 above? Provide reasons for your estimates.

For further information on the LET test please refer to Part 6.3 of the Mergers and Acquisitions Guidelines.

COUNTERVAILING POWER OF BUYERS

23. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected? Where relevant, please include:

23.1 a full discussion on the ability of buyers to self supply or import, and the alternative sources of supply available to buyers; and

23.2 evidence of buyers seeking alternative supply and/or switching suppliers.

24. If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of the buyers please provide details for five medium and five small buyers.

For further information on the countervailing power of buyers, please refer to Part 7.3 of the Mergers and Acquisitions Guidelines.

COORDINATED MARKET POWER

25. Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

For further information on the coordinated market power, please refer to Part 9 of the Mergers and Acquisitions Guidelines,

EFFICIENCIES

26. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition? Please include a full discussion on:

26.1 how the merger would facilitate the realisation of efficiency improvements. Specify the steps the combined entity anticipates it would take, and the timeframe needed, to achieve the efficiencies. Where relevant, include a discussion of the risks and costs involved;

26.2 the magnitude of the efficiencies, whether the impact would be on fixed, variable or other costs, and generally how the cost structure of the merged entity would change;

26.3 whether such efficiencies could be realised without the merger, or over a longer timeframe; and

26.4 whether, and the extent to which, such efficiencies would be passed on to the customers of the merged entity.

For further information on efficiencies, please refer to Part 7.4 of the Mergers and Acquisitions Guidelines.

OTHER FACTORS

27. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

28. Provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants in the form of the example table shown below.

	NAME OF COMPANY	CONTACT DETAILS	RELEVANT CONTACT PERSON
	BOTH LEGAL AND TRADING NAMES	POSTAL AND PHYSICAL ADDRESS, TELEPHONE AND FAX, WEBSITE	NAME, POSITION AND CONTACT DETAILS INCLUDING TELEPHONE PHONE, FAX, EMAIL
COMPETITORS			
BUYERS			
SUPPLIERS			
TRADE ASSOCIATIONS			
ANY OTHER RELEVANT MARKET PARTICIPANTS OR INTERESTED PARTIES			

29. Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

Fletcher Building's Annual Report is available at <http://www.fletcherbuilding.co.nz/Corporate/downloads/FBF%20Final%20Ann%20Report%20with%20links.pdf>.

Fletcher Building understands that Stevenson's financial information will be provided separately.

PART 7: CONFIDENTIALITY

30. If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

Confidentiality is sought in respect of the information in this application that is contained in square brackets. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- (a) the information is commercially sensitive and contains valuable information which is confidential to the Fletcher Building and/or Stevenson; and
- (b) disclosure would be likely unreasonably to prejudice the commercial position of Fletcher Building and/or Stevenson, as the parties providing the information.

Fletcher Building also requests it is notified of any request made to the Commerce Commission under the Official Information Act 1982 for the confidential information, and that the Commission seeks Fletcher Building's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

The foregoing applies equally in respect of any additional information provided to the Commission that is expressed to be confidential.

31. Provide a separate schedule of all confidential information claimed in the application.

A schedule is attached. (The confidential information is limited to that in the rationale section.)

THIS NOTICE is given by:

Mark Binns (Chief Executive – Infrastructure)

I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

(This application depends solely on the Commission verifying the counterfactual. Accordingly, only information relative to that assessment has been included in this application.)

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 18th day of December 2008.

I am a director/officer of the company and am duly authorised to make this application/notice.

Mark Binns (Chief Executive – Infrastructure)

WARNING

IT IS AN OFFENCE TO ATTEMPT TO DECEIVE OR KNOWINGLY MISLEAD THE COMMISSION IN RESPECT OF ANY MATTER BEFORE THE COMMISSION. ANY PERSON WHO DOES SO IS LIABLE UPON SUMMARY CONVICTION TO A FINE OF UP TO \$10,000 (FOR AN INDIVIDUAL) OR \$30,000 (FOR A BODY CORPORATE). REFER TO SECTIONS 103(2) AND (4) OF THE ACT.

NOTES ON DECLARATION

- This declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.
- The wording in this declaration may not be varied by the applicant.
- If this declaration is not completed, the Commission may decline to register the notice/application.