



COMMERCE COMMISSION

**Decision No. 639**

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**NEW ZEALAND INVESTMENT HOLDINGS LIMITED**

and

**RX PLASTICS LIMITED**

**The Commission:** Paula Rebstock  
Peter JM Taylor  
Gowan Pickering

**Summary of Application:** The acquisition by New Zealand Investment Holdings Limited, or any of its interconnected bodies corporate, to acquire 100% of the shares, or assets and business, of RX Plastics Limited.

**Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

**Date of Determination:** 3 April 2008

**CONFIDENTIAL MATERIAL IN THIS REPORT IS CONTAINED IN  
SQUARE BRACKETS**

<b>EXECUTIVE SUMMARY .....</b>	<b>I</b>
<b>THE PROPOSAL .....</b>	<b>1</b>
<b>PROCEDURE .....</b>	<b>1</b>
<b>STATUTORY FRAMEWORK.....</b>	<b>1</b>
<b>ANALYTICAL FRAMEWORK.....</b>	<b>2</b>
<b>THE PARTIES.....</b>	<b>2</b>
<b>New Zealand Investment Holdings Limited .....</b>	<b>2</b>
<b>RX Plastics Limited .....</b>	<b>3</b>
<b>OTHER PARTIES.....</b>	<b>3</b>
<b>INDUSTRY BACKGROUND .....</b>	<b>3</b>
<b>PVC pipe .....</b>	<b>3</b>
<b>PE pipe .....</b>	<b>4</b>
<b>Customer Groups.....</b>	<b>5</b>
<b>PREVIOUS COMMISSION INVESTIGATIONS.....</b>	<b>6</b>
<b>MARKET DEFINITION .....</b>	<b>6</b>
<b>Product Market.....</b>	<b>7</b>
<b>Functional Markets.....</b>	<b>9</b>
<b>Geographic Markets .....</b>	<b>9</b>
<b>Conclusions on Market Definition.....</b>	<b>9</b>
<b>COUNTERFACTUAL AND FACTUAL .....</b>	<b>9</b>
<b>Factual.....</b>	<b>9</b>
<b>Counterfactual.....</b>	<b>10</b>
<b>COMPETITION ANALYSIS .....</b>	<b>10</b>
<b>The PVC Pipe Systems Market .....</b>	<b>11</b>
<b>The PE Pipe Systems Market.....</b>	<b>16</b>
<b>The Large Bore Pipe Market .....</b>	<b>18</b>
<b>OVERALL CONCLUSION.....</b>	<b>19</b>
<b>DETERMINATION ON NOTICE OF CLEARANCE.....</b>	<b>20</b>

## EXECUTIVE SUMMARY

- E1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 11 February 2008. The Notice sought clearance for the acquisition by New Zealand Investment Holdings Limited (NZIH), or any of its interconnected bodies corporate, of 100% of the shares, or assets and business, of RX Plastics Limited (RX Plastics).
- E2. NZIH is the New Zealand holding company for the Aliaxis Group, an international company manufacturing plastic plumbing products for construction, industrial, commercial/domestic and public utilities applications. NZIH is most commonly known in New Zealand through its subsidiary, Marley New Zealand Limited.
- E3. RX Plastics manufactures various irrigation products, water storage tanks and effluent disposal systems, including plastic pipes and fittings.
- E4. Plastic pipes are most commonly used in New Zealand in diameters under 250mm. In this diameter range, polyvinylchloride (PVC) and polyethylene (PE) pipes are the most common manufacturing materials. In diameters over 250mm, a much wider range of products are used including PVC and PE, concrete, steel, ductile iron and fibreglass.
- E5. PE and PVC pipes have a wide range of uses across four key customer groups, namely:
- building / plumbing customers;
  - civil / infrastructure customers;
  - rural irrigation customers; and
  - telecommunications / utilities customers.
- E6. PE and PVC pipes have different physical properties. PE pipe is flexible up to a certain diameter, it can be transported in coils and it can be laid in continuous lengths of 50 or 100 metres. However joining PE pipe is labour intensive as it must be fusion welded. PVC pipe is rigid and typically is supplied in 6 metre lengths. Connecting lengths is relatively simple due to the ability of PVC lengths to be glued together. End use and price are the key determinants of which material is used for a particular job. The pipe and fittings together are known as a 'pipe system'.
- E7. The Commission considered the relevant markets to be the national markets for the manufacturer and wholesale supply of:
- PVC pipe systems, under 250mm (the PVC pipe systems market);
  - PE pipe systems, under 250mm (the PE pipe systems market); and
  - large bore pipes, over 250mm (the large bore pipe market).
- E8. RX Plastics has indicated a clear intention to sell its business and has put a competitive tender process in place to facilitate this sale. The Commission considers that the factual would be a sale to NZIH and the counterfactual would be a sale to any other party bidding that has been selected to be on the short list of bidders. It is only the Applicant's bid, as opposed to the other shortlisted bidders, that has the potential to raise competition issues in the relevant markets.

- E9. In respect to both the PVC and PE pipe systems markets, the Commission considers that both existing and potential competition, taken together, are likely to act as a constraint on the combined entity, post-acquisition. In addition, large customers in these markets are likely to have a degree of countervailing power. Accordingly, the proposed acquisition is unlikely to lead to a substantial lessening of competition in either the PVC or PE pipe systems markets.
- E10. In respect to the large bore pipe market, given the high level of substitutability between the various pipes in this market and the relatively large number of manufacturers, the Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in this market.
- E11. Therefore, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 11 February 2008. The Notice sought clearance for the acquisition by New Zealand Investment Holdings Limited (NZIH, or the Applicant), or any if its interconnected bodies corporate, of 100% of the shares, or assets and business, of RX Plastics Limited (RX Plastics).

## PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 4 April 2008.
3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.<sup>1</sup>

## STATUTORY FRAMEWORK

4. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal would not be likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline the application. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.<sup>2</sup>
5. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:
 

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgement is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.<sup>3</sup>
6. In determining whether there is a change along the spectrum which is significant, the Commission must identify a real lessening of competition that is not more than nominal and not minimal.<sup>4</sup> Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

---

<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

<sup>2</sup> *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-721.

<sup>3</sup> *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

<sup>4</sup> *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

7. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

### **ANALYTICAL FRAMEWORK**

9. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
  - with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).
10. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual, in terms of:
  - existing competition;
  - potential competition; and
  - other competition factors, such as the countervailing market power of buyers or suppliers.

### **THE PARTIES**

#### **New Zealand Investment Holdings Limited**

11. NZIH is the New Zealand holding company for the Aliaxis Group. The Aliaxis Group manufactures plastic plumbing products for construction, industrial and public utilities applications throughout the world. In New Zealand, NZIH is most widely known through its subsidiary, Marley New Zealand Limited (Marley). Through NZIH, Marley manufactures and distributes various plastic products, such as plastic pipes, fittings and spouting products from its plants in Auckland and Christchurch.
12. Additionally, NZIH owns Dynex Extrusions Limited, Chemvin Plastics Limited and Dux Industries Limited. Of these, only Dux Industries Limited is in a related industry, manufacturing polybutylene plastic pipe for the reticulation of potable hot and cold water within commercial or domestic buildings.

### **RX Plastics Limited**

13. RX Plastics is majority owned by private Ashburton-based individuals. The company manufactures various irrigation products, water storage tanks and effluent disposal systems, including plastic pipes. It manufactures and distributes these products throughout New Zealand from its plants in Ashburton and Hamilton. Additionally, RX Plastics exports product to Australia, the Pacific Islands, USA and South Africa.

### **OTHER PARTIES**

#### **Crane Group Limited**

14. Crane Group Limited (Crane) is a manufacturer and distributor of plastic pipes and plastic pipeline systems. It also supplies plumbing products through its wholesale and retail outlets which include Mastertrade, Corys, Micos and Hydrotech Sanitar (a plumbing products importer).
15. Crane Group is listed on the Australian Stock Exchange and supplies products in both Australia and New Zealand. In New Zealand, Crane operates through its subsidiaries Iplex Pipelines New Zealand Pty Limited and Crane Distribution New Zealand Limited.
16. On 20 February 2008, Crane submitted a notice seeking clearance for it to acquire 100% of the shares in or assets of RX Plastics. On 11 March 2008, Crane withdrew its application. Crane informed the Commission that [

]

### **INDUSTRY BACKGROUND**

17. NZIH and RX Plastics (and Crane) are involved in the manufacture, importation and wholesale supply of plastic pipe products including polyvinylchloride (PVC) plastic pipes and polyethylene (PE) plastic pipes and the related plastic pipe fittings. Each product is manufactured from a resin that is widely available internationally. There are no producers of the raw material in New Zealand.
18. Industry participants advised that basic plastic pipes and plastic pipe fittings (together, the 'pipe system') are produced to a common Australasian standard and are undifferentiated as between manufacturers.
19. Typically, PE and PVC pipe systems convey liquids and gases such as potable water, waste-water, liquid chemicals and natural gas. Such systems may also be used to contain and protect electrical and telecommunication cables and wiring. In addition, PE and PVC pipes can be pressurised. PE pipe systems (but not PVC pipe systems) can be used with hot water reticulation, typically replacing (the more expensive) copper pipes.

#### **PVC pipe**

20. PVC pipe is supplied in diameters from 32mm to over 250mm. It is typically manufactured in rigid six metre lengths. One end of each length is formed into a larger diameter socket which allows the preceding length to be joined. Solvent glue or O-rings are then used to secure the joint.
21. PVC pipe is supplied in various different types, namely:

- MPVC – a standard PVC that may break down with prolonged exposure to sunlight;
  - UPVC – a standard PVC with titanium dioxide added in the premixing process to improve the end product's resistance to ultra-violet light; and
  - OPVC – a higher strength PVC that uses less raw material. Its manufacture requires costlier equipment and the production technology is restricted by patent and licensed to end users.
22. NZIH, Crane and RX Plastics are currently the only three producers of MPVC and UPVC in New Zealand. Crane is currently the only manufacturer of OPVC in New Zealand.
23. There are also imports of PVC pipes and fittings. Industry participants inform the Commission that some PVC purchasers are reluctant to buy from importers as they cannot be guaranteed a regular supply of product. Typically, importers do not carry a full range of stock sizes, which does not suit certain end users (for example, a plumber or and drain-layer) who often require a particular product immediately.

### **PE pipe**

24. PE pipe can be supplied in 50 metre or 100 metre coils up to a diameter of 125mm. In diameters over 125mm, straight lengths of the product are supplied as at this diameter (and above) the pipe is no longer flexible enough to allow coiling.<sup>5</sup>
25. In diameters below 125mm, PE pipe is tough and flexible making it more suitable than PVC pipe for applications such as:
- use in unstable or rocky ground;
  - when piping must be moveable, for example, in mobile irrigation systems; and
  - when the pipe system has many bends.
26. PE is manufactured through a less complex extrusion process than PVC. PE can be manufactured in medium and high density (MDPE and HDPE). As the name would suggest, HDPE is thicker and is typically used where external pressures are brought to bear on the pipe (for example, where telecommunications cables are laid under a railway line).
27. PE pipes are more time consuming to join than PVC pipes. Electro-fusion or butt-welding are the preferred techniques. Although because of the longer lengths of PE available (e.g., 50m – 100m in diameters under 125mm) less joins are required.
28. Similarly to PVC, PE pipes require complementary fittings for the vast majority of their applications. Currently only a limited amount of PE fittings are manufactured in New Zealand, the remainder being imported. However, due to the bulk of coiled PE pipes, there are no imports of PE pipes into New Zealand.

---

<sup>5</sup> The ability to coil product has a strong bearing on PE being chosen over PVC for a number of the end uses discussed later in this report. The length of coil decreases installation costs as it requires less joins than similar diameter PVC pipe.



## Customer Groups

29. Evidence gathered from industry participants and end users suggests that the end uses to which PE and PVC products are put is largely dependant on the customer group of the market(s) in which the end use occurs.
30. The end uses to which PE and PVC pipe systems are put are varied and based on a number of factors. The key factors include:
  - the physical characteristics of each type of pipe;
  - end user requirements;
  - ease and cost of installation; and
  - purchase price
31. Industry participants identified four key customer groups within the plastic pipes industry. These are:
  - building / plumbing customers, who account for approximately 30% of all pipe end users;
  - civil / infrastructure customers who account for approximately 40% of all pipe end users;
  - rural irrigation customers who account for approximately 25% of all pipe end users; and
  - telecommunications / utilities customers who account for approximately 5% of all pipe end users.

### *Building / Plumbing*

32. This customer group includes pipe used within the boundary of buildings for the reticulation of both potable water and waste water. PVC pipe is used almost exclusively in this customer group for the reticulation of (non-heated) waste water. PE pipe is used for the reticulation of hot and cold potable water, although it can be substituted with other plastic products for the reticulation of hot water (e.g., polybutylene, polypropylene and copper).
33. Building and plumbing customers typically purchase plastic pipe products from plumbing merchants or importers.

### *Civil / Infrastructure*

34. This customer group includes pipes used to carry water to and from residential dwellings, commercial buildings and farms. For example, local authority water mains, storm water and sewerage piping.
35. The civil / infrastructure group is notable for its use of large bore pipes, particularly in urban areas with higher population densities. Plastic pipes are typically less economic in diameters over 250mm. As a result, there is increased use of non-plastic pipe in this group. Substitutes include concrete, steel, ductile iron and fibreglass.
36. Contractors in this customer group typically tender for contracts based on their ability to supply all of the piping materials for the particular contract. In this respect, such tenders often include the supply of both plastic and non-plastic pipes.

*Rural Irrigation*

37. This customer group includes pipe used to irrigate farms. Industry participants advised the Commission that, with very limited exceptions, PE or PVC pipes are used almost exclusively in this customer group due to the relatively small pipe diameters required, the long pipe runs and the ease of transport and installation afforded by plastic pipe.
38. This customer group has seen considerable growth in recent years as a result of a large number of diary farm conversions and the increase in the number of vineyards installing fixed irrigation systems.
39. Contractors in this customer group typically purchase product directly from the manufacturer or through rural supply outlets.

*Telecommunications / Utilities*

40. This customer group includes pipes for the reticulation of gas and the housing of telephone and electrical cabling. Typically, telecommunications network operators design their networks to exact specifications, including their piping requirements, and then contract third party utilities firms to construct and maintain their networks to the set specifications.

**PREVIOUS COMMISSION INVESTIGATIONS**

41. The Commission has previously conducted two investigations in respect of the plastic pipes industry, namely:
  - *Decision 405: Etex Holdings B.V. and Keyplas Limited*, 11 September 2000 (The Etex Decision); and
  - *Iplex Pipelines New Zealand Limited / Keyplas Limited*, Section 47 Investigation, closed December 2004, no further action (The Keyplas Investigation).
42. In the Etex Decision, the Commission considered the relevant market to be the manufacture and wholesale supply of PVC pipe systems in New Zealand. The Commission cleared the proposed acquisition, under the dominance threshold, as the combined entity would likely be constrained by existing competition, which included the availability of imports, as well as noting that the barriers to entry were relatively low.
43. The Keyplas Investigation also came to the same conclusions as the Etex Decision in respect of the assessment of the appropriate market definition. The Commission closed the investigation with no further action as it considered that the combined entity would be sufficiently constrained by existing competition, which included the presence of imported PVC pipe systems.

**MARKET DEFINITION**

44. The Act defines a market as:
 

‘... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.’<sup>6</sup>

---

<sup>6</sup> s 3(1A) of the Commerce Act 1986.

45. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit maximising sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of the market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

### **Product Market**

46. The greater the extent to which one good or service is substitutable for another, on either the demand side or supply side, the greater the likelihood that they are bought and supplied in the same market.
47. Close substitute products on the demand side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
48. Close substitute products on the supply side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
49. The Applicant submitted that the relevant market is a wider combined market for generic pipe systems, or at least a market for plastic pipe systems, rather than separate markets for PE and for PVC pipes. In its withdrawn application, Crane submitted that the relevant market is the market for supply of pipe systems in New Zealand.
50. As discussed above, PE, PVC and other flexible plastics pipe systems, as well as non-plastic pipe systems made from materials including steel, concrete, clay and copper, are available in New Zealand. Whilst PVC, PE and pipe systems made from other materials may often sit alongside each other within one larger system, the Commission's purpose has been to determine whether PVC, PE and other pipe systems are in fact specific to certain end-uses and therefore non-substitutable, or whether the pipe system types are interchangeable to the point of being within the same market.
51. The four main groupings of customers who use PVC and PE pipe systems are described above. The Commission investigated:
- circumstances when PVC pipe systems are used, and substitution possibilities;
  - circumstances when PE pipe systems are used, and substitution possibilities; and
  - circumstances when other pipe systems are used.
52. Substitutability was assessed using the Commission's standard approach of an increase in price of five to ten percent that is sustained for a period of one year.
53. Industry participants in the plumbing sector such as the retailer [ ] and the commercial plumber [ ] stated that PVC pipe system prices would have to increase in price by 30-40 per cent before alternatives to PVC would be considered.

54. Industry participants, including the rural irrigation contractor [ ] and [ ] stated that both PVC and PE pipe systems are used for specific purposes within a larger irrigation system, and whilst a small degree of substitutability is possible, in general, PVC or PE products are selected based on their end use. Further, prices would have to increase by a large amount before alternatives to each would be considered.
55. Local authority representatives, such as [ ], stated that in regard to municipal wastewater and storm water drainage piping systems often price is only one of many factors relevant to their choice of pipe system material. Pipe quality, the physical properties of the pipe, and the suitability for end use are also important.
56. Telecommunications end users [ ] informed the Commission that whether PVC or PE pipes are used depends on the type of environment the relevant cable is to be laid in. Telecommunications companies also stipulate the type of material to be used for certain purposes to the extent that the choice of material is not dependent on price.
57. In contrast to the other customer groupings, industry participants in the civil and infrastructure group noted that while smaller diameter PVC and PE pipe systems are priced lower than other materials, at diameters above 250mm concrete becomes a more cost effective option, and so PVC and concrete pipes become closer substitutes. Clay, ductile iron, steel and fibreglass also become potential substitutes.
58. Overall, the Commission found that whilst a small amount of substitution between PVC and PE pipes does occur, it is generally rare, even in the face of price changes, to see customers switch between the two products. The pertinent factors include relative product cost, differences in installation costs, and the end use of the product.
59. Information provided to the Commission leads to the view that whilst many pipe systems exist, and whilst different materials may often be used in conjunction with one another in a wider piping system, each material is particular for its end use.
60. Therefore, in the Commission's view, substitution of PVC pipes by PE pipes (or vice versa) following a SSNIP does not seem likely. Further, following a SSNIP in both PVC and PE pipe systems, substitution of PVC or PE by pipe systems derived from other materials does also not seem likely.
61. However, the Commission found an exception in the case of large bore PVC and PE pipes with a diameter above 250mm, where concrete and other pipes are a regular substitute due to the high cost of PVC and PE products at larger diameters.

#### *Conclusion on Product Markets*

62. The Commission concludes that for the purpose of assessing the competitive effect of the proposed acquisition, the relevant product markets are
- PVC pipe systems, under 250mm;
  - PE pipe systems, under 250mm; and
  - large diameter bore pipe systems, over 250mm.

63. Nevertheless, the Commission recognises that this is a narrow market definition, and so represents a conservative approach to assessing the competitive impact of the proposed acquisition.

### **Functional Markets**

64. The production, distribution and sale of a product typically occurs through a series of functional levels – for example, the manufacturing/import level, the wholesale/distribution level and the retail level. It is often useful to identify the relevant functional level in describing a market, as a proposed business acquisition may affect one horizontal level, but not others. Generally, the Commission will seek to identify separate relevant markets at each functional level affected by an acquisition and assess the impact of the acquisition on each.
65. Both the Applicant and RX Plastics manufacture and supply plastic products. Accordingly, the Commission considers that, for the purposes of the present application, the appropriate functional dimension is the manufacture and wholesale supply of each product.

### **Geographic Markets**

66. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.
67. All the relevant manufacturers of plastic products distribute their products nationally. Accordingly, the Commission considers that the geographic dimension of the market is national for each product.

### **Conclusions on Market Definition**

68. The Commission concludes that the relevant markets are the national markets for the manufacturer and wholesale supply of:
- PVC pipe systems, under 250mm (the PVC pipe systems market);
  - PE pipe systems, under 250mm (the PE pipe systems market); and
  - large diameter bore pipe systems, over 250mm (the large bore pipe market).

### **COUNTERFACTUAL AND FACTUAL**

69. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgement considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (counterfactual).<sup>7</sup> The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

#### **Factual**

70. In the factual scenario, the Applicant would acquire RX Plastics. The Applicant advised that the rationale for the proposed acquisition is [
- ]

---

<sup>7</sup> *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

## Counterfactual

71. RX Plastics was founded in 1974 making freezer bag ties and flower pots. Since that time, significant investment has seen the company grow to a projected [ ] in annual turnover in 2008. The company was solely Ashburton-based until its 2002 development of an additional manufacturing plant in Hamilton.

72. [

]

73. RX Plastics released an Information Memorandum in January 2008 requesting expression of interests in its business. [

[ ]

]

74. The Commission considers the relevant counterfactual to be RX Plastics acquired by one of the remaining bidders other than the Applicant. The Commission does not consider any of the bidders, other than the Applicant, would raise any significant competition concerns should they be successful in acquiring RX Plastics.

## COMPETITION ANALYSIS

### Existing Competition

75. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).

76. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

77. The Commission considers that a business acquisition is unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- The three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70% and the market share of the combined entity is less than in the order of 40%; or
  - The three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
78. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.

### The PVC Pipe Systems Market

79. The estimated market shares for the PVC pipe systems market are set out in Table 1 below.

**Table 1: Estimated Market Shares for the PVC Pipe Systems Market**

Manufacturer	NZIH Application		Crane Application	
	Sales \$m	Market Share	Sales \$m	Market Share
NZIH	[ ]	[ ]	[ ]	[ ]
RX Plastics	[ ]	[ ]	[ ]	[ ]
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]</i>	<i>[ ]</i>	<i>[ ]</i>
Crane	[ ]	[ ]	[ ]	[ ]
Other / Imports	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	<b>100%</b>	[ ]	<b>100%</b>

Source: NZIH and Crane Applications

80. The Commission received varying estimates of market shares in this industry and had some difficulty reconciling these differences. Nevertheless, all industry participants noted that Crane and NZIH are the largest participants in the market with RX Plastics a distant third player. In addition, there are a number of smaller participants who are exclusively importers. In Table 1, 'Other / Imports' suppliers includes:
- Aquafit Limited;
  - Pipes & Fittings Limited;
  - PipeZone Limited; and
  - The Mad Plumber Limited.
81. The Commission notes that should the proposed acquisition go ahead, the combined entity's main competitor will be Crane. Crane informed the Commission
- [

].

82. The Applicant supplied the following graph to illustrate  
[

].[ ]

83. Additionally, Crane advised that since 2003 imports of PVC pipes into New Zealand have increased by [ ]. Evidence supplied by industry participants suggests that this trend is continuing and that purchasers are increasingly willing to use imports to fulfil their needs.  
[

].

84. Indeed, [ ] advised that importers are currently increasing their market share by undercutting the current prices of domestic manufacturers. No existing importer advised the Commission that they were restricted in their ability to source more PVC product from overseas, if required.

*Conclusion on Existing Competition in the PVC Pipe Systems Market*

85. Although the combined entity's market share will exceed the Commission's safe harbour guidelines in the PVC pipe systems market, the Commission considers that the continued presence of a large existing competitor, namely Crane, and the presence of existing importers with the ability to expand are, taken together, likely to act as a constraint on the combined entity.

**Potential Competition**

86. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints from the threat of market entry. The Commission's focus is on whether businesses would be able to enter the market and thereafter expand should they be given a pricing inducement to do so, and the extent of any impediments they might encounter should they attempt entry.



*Barriers to Entry*

87. Industry participants advised the Commission that entry and expansion in the PVC pipe systems market would most likely occur from either a domestic manufacturer or an importer.

Domestic Production

88. Industry participants advised that the main impediments to entry in the PVC pipe systems market were:

- the cost of equipment;
- the need to supply a full suite of products; and
- the presence of excess capacity in the industry.

**Cost of Equipment**

89. Industry participants advised that the Commission that the equipment required to establish a PVC manufacturing facility is relatively expensive, particularly in comparison with the cost of equipment for the manufacture of PE pipes. [ ] estimated the costs of installing two PVC manufacturing lines at approximately [ ] (excluding buildings). They noted further that it would not be economical to install only one PVC extruder line at a new facility and that at least two, but preferably three or four lines would be ideal.

90. However, the Applicant noted that, although less reliable, cheaper manufacturing equipment was now available from China. [ ]

91. The Applicant provided the following comparative pricelist for a single manufacturing line for PVC pipe and for PE pipe.

**Table 2: Pricelist for PE and PVC Manufacturing Equipment**

<b>Product</b>	<b>Small Bore PVC</b>	<b>Large bore PVC</b>	<b>Small Bore PE</b>	<b>Large Bore PE</b>
European	[ ]	[ ]	[ ]	[ ]
Chinese	[ ]	[ ]	[ ]	[ ]

Source: The Applicant

92. In addition to manufacturing equipment, facilities may need to be constructed to house the equipment where these do not already exist, adding to entry costs, although the Commission understands that no special environmental consent issues are required when installing a new PVC plant.

93. [ ]

]

94. Additionally, [ ]

]

**Supply of a full suite of products**

95. Industry participants, notably retailers and end-users, stressed the importance of access to a full suite of PVC products, in particular for large building / plumbing merchants. A full suite would include a comprehensive range of PVC pipe diameters and the corresponding fittings.
96. The Commission has been informed that it is unlikely that any new entrant into the PVC pipe systems market would install the necessary extruders and injection moulders required to supply a full range of PVC fittings. In this respect, end-users would remain reliant on the existing New Zealand manufacturers, NZIH and Crane, or imports to supply a full suite of PVC products.
97. However, the Commission enquiries suggest that both PE and PVC fittings can be imported from a number of countries with no quality issues. In this respect, the Commission does not see this as a significant barrier to entry.
98. Industry participants noted that RX Plastics began manufacturing PVC pipe in 2002 by targeting rural irrigation customers. This strategy exploited a gap in the market at that time allowing RX Plastics to produce a limited range of PVC pipes and combine it with its rotational moulded products to produce rural irrigation systems. This platform was used as a spring board to increase its range of PVC products over time. In this respect, RX Plastics' was able to efficiently enter the market and build market share over time.

**Capacity**

99. A number of industry participants noted that there appears to be spare capacity in the industry, and expressed concerns that post-acquisition the combined entity could increase production in response to entry by a new participant.

100. The Applicant [ ] [ ]

]

101. The Commission considers that the potential for current industry participants to increase capacity to meet the threat posed by a new entrant as a potential barrier to entry. However, the significance of this barrier would be reduced if the potential new entrant was already actively manufacturing PE pipe. An existing PE manufacturer would likely have the following:
- an established clientele base;
  - facilities that could be converted to in-house PVC production; and
  - established contacts for the purchase (either domestically or imported) of PVC fittings.
102. The Commission notes this is the position RX Plastics found itself in when it expanded into PVC production in 2002. It is further noted that there are several New Zealand PE manufacturers in this position, including:
- Tycoflow Control Pacific Pty Limited (Tyco);
  - PPI Industries Limited (PPI); and

- Interpipe Holdings Limited (Interpipe), a joint venture between Hynds Pipe Systems Limited and Fletcher Building Limited.

### Importation

103. Entry into the PVC pipe systems market by an importer could take the form of de novo entry or expansion of a current importing operation. Industry participants informed the Commission that importing is relatively simple, once the appropriate contacts are made with overseas pipe exporters.
104. For example, PipeZone, a Wellington based PVC pipe systems importer commenced trading 18 months ago [ ]].
105. Industry participants advised that that it would be relatively simple for a current importer to expand its operation and import larger amounts, if it had a pricing incentive to do so. For example, the Commission notes that [ ]]. [ ]].
106. In the Commission's view the barriers to importers' abilities to enter the PVC pipe systems market, given the incentive to do so, are relatively low.

### *Conclusion on Potential Competition*

107. The Commission is of the view that although there are recognisable conditions of entry into PVC pipe systems market, they are not insurmountable barriers and would not be sufficient to deter a determined entrant. This is particularly true where a current participant in the PE pipe systems market, of which a number have been listed above, proposed expanding its production into PVC pipe systems.
108. Accordingly, the Commission considers that potential competition in the PVC pipe systems market from new entry or from imports by independent market participants will likely act as a constraint on the combined entity should the acquisition proceed.

### **Countervailing Power**

109. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
110. A number of industry participants considered they had a degree of countervailing power if the combined entity attempted to raise prices or restrict supply in the factual.
111. For example, [ ]].
112. Further, [ ]].

].

113. [

].

[ ]

114. [

].

115. [ ] has not had any dealings with RX Plastics. It notes that it cannot really consider smaller players in PVC or PE pipe systems markets as it needs a supplier with a nationwide capacity producing on a significant scale. It does not consider that RX Plastics meets those criteria.

116. [

]

[

]

117. [

]

118. [

].

119. The Commission concludes that large customers would likely have a degree of countervailing power in respect of the combined entity, post-acquisition.

**Overall Conclusion on the PVC Pipe Systems Market**

120. The Commission concludes that both existing and potential competition in the PVC pipe systems market, taken together, are likely to act as a constraint on the combined entity, post-acquisition. In addition large customers are likely to have a degree of countervailing power. Accordingly, the proposed acquisition is unlikely to lead to a substantial lessening of competition in the PVC Pipe Systems market.

**The PE Pipe Systems Market**

121. The estimated market shares for the PE Market are set out in Table 3 below.

**Table 3: Estimated Market Shares for the PE Pipe Systems Market**

Manufacturer	NZIH Application		Crane Application	
	Sales \$m	Market Share	Sales \$m	Market Share
NZIH	[ ]	[ ]	[ ]	[ ]
RX Plastics	[ ]	[ ]	[ ]	[ ]
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]</i>	<i>[ ]</i>	<i>[ ]</i>
Crane	[ ]	[ ]	[ ]	[ ]
Other	[ ]	[ ]	[ ]	[ ]
<b>Total</b>	[ ]	<b>100%</b>	[ ]	<b>100%</b>

Source: NZIH and Crane Applications

122. The market shares in the PE Pipe Systems market, as estimated by the Applicant and Crane, do vary to some extent. It has been difficult to reconcile the differences. Nevertheless, all estimates indicate that Crane, NZIH and RX Plastics are the three main players in the PE pipe systems market with the presence of a number of other manufacturers. In Table 3, 'Other' manufacturers include:
- PPI, based in Rangiora;
  - Rural Direct Limited, based in Auckland;
  - Interpipe; and
  - Tyco, based in Hamilton.
123. There are currently no imports of PE pipes into New Zealand. While PE pipe fittings are manufactured on a limited scale, they are mostly imported.
124. The number of players in the market appears to reflect low barriers to entering the market. In this regard, the Commission notes that:
- PE production plant is comparatively low cost;
  - the technical ability required to operate manufacturing equipment is not high;
  - in comparison with PVC, there is a quicker pre-manufacturing process as no dry blending is required; and
  - the availability and low cost of imported PE fittings to complement PE pipe produced in New Zealand allows manufacturers to readily offer a full pipe system without incurring the increased costs of manufacturing fittings.
125. Industry participants have advised the Commission that increasing current supply is simply a matter of either increasing output from extruders, or, where extruders are running at full capacity, purchasing further extruders.
126. The Applicant submitted the following examples of entry or expansion in the PE pipe systems market since 2000:
- Crane installed new PE lines with increased diameters in both its Christchurch and Palmerston North plants;
  - Tyco moved to a new manufacturing site and increased the capacity and the size/range of its PE plant; and

- Rural Direct Limited increased its PE manufacturing capability.
127. A number of industry participants advised the Commission that competition in the PE pipes systems market was very competitive. [ ] advised the Commission that competition in the market is “cutthroat”. Similarly, [ ] advised it is “fierce” and that this situation is unlikely to change post-acquisition.
128. In addition, the Commission considers that large customers have a similar level of countervailing power in the PE pipe systems market as described above in relation to the PVC pipe systems market.

### **Conclusion on the PE Pipe Systems Market**

129. For the foregoing reasons, the Commission considers that:
- the current strong existing competition will remain in the factual; and
  - there are unlikely to be significant barriers to entry into the PE pipe systems market.
130. In this respect, the Commission considers that both existing and potential competition in the PE pipe systems market, taken together, are likely to act as a constraint on the combined entity, post-acquisition. Accordingly, the proposed acquisition is unlikely to lead to a substantial lessening of competition in the PE pipe systems market.

### **The Large Bore Pipe Market**

131. The large bore pipe market consists of pipes systems over 250mm in diameter. Industry participants suggested that there is a far greater degree of substitutability between PVC and PE pipe products in this diameter and pipes made from other materials including concrete, steel, ductile iron and, more recently, fibreglass.
132. Pipes over 250mm are most commonly used in the civil / infrastructure customer group, particularly for storm water and waste water drainage. [ ] informed the Commission that PVC and PE pipe systems are a relatively new addition to the product range in this market and are being used in certain applications to replace more traditional materials.
133. RX Plastics estimates the large bore pipe market to be divided as shown in Table 4 below.

**Table 4: Estimated Large Bore Pipe Market Shares by Product**

<b>Product</b>	<b>Market Share</b>
PVC pipes	25%
PE pipes	25%
Other non plastic pipes	50%

Source: RX Plastics

134. The Applicant manufactures a range of PE and PVC pipes over 250mm. RX Plastics manufactures a limited range up to 450mm. All other PVC and PE manufacturers in New Zealand are either currently manufacturing large bore pipe, or have the ability to expand current production to introduce large bore

pipe to their product lines<sup>8</sup>. This is in addition to those manufacturers making other types of (non-plastic) large bore pipe.

135. The Commission also understands that there have been examples of imports of large bore PE and PVC pipe that have been used for specific projects.
136. The Commission notes customers in the civil / infrastructure customer group are typically large purchasers and that work in this customer group is traditionally conducted by competitive tender. In this respect, as with the PVC and PE pipe systems markets, the Commission is of the view that there is likely to be a degree of countervailing power held by large customers in this market.
137. Accordingly, given the high level of substitutability between large bore PE, PVC and other types of large bore pipes, the relatively large number of manufacturers, the potential for imports and the countervailing power of large customers, the Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the large bore pipe market.

### **OVERALL CONCLUSION**

138. The Commission has considered the nature and extent of competition that would be likely to exist, after the proposed acquisition, in the following markets:
  - the PVC pipes systems market;
  - the PE pipe systems market; and
  - the large bore pipe market.
139. The Commission considers that the relevant counterfactual is that RX Plastics would be sold to one of the bidders for RX Plastics, other than the Applicant.
140. In respect to both the PVC and PE pipe systems markets, the Commission considers that both existing and potential competition, taken together, are likely to act as a constraint on the combined entity, post-acquisition. In addition, large customers in these markets are likely to have a degree of countervailing power. Accordingly, the proposed acquisition is unlikely to lead to a substantial lessening of competition in either the PVC or PE Pipe Systems markets.
141. In respect to the large bore pipe market, given the high level of substitutability between the various pipes in this market and the relatively large number of manufacturers, the Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in this market.
142. Therefore, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market.

---

<sup>8</sup>[

].

**DETERMINATION ON NOTICE OF CLEARANCE**

143. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by New Zealand Investment Holdings, or any of its interconnected bodies corporate, of 100% of the shares, or assets and business, of RX Plastics Limited.

Dated this 3<sup>rd</sup> day of April 2008

---

Paula Rebstock  
Chair  
Commerce Commission