

PACT / FLIGHT
19 OCTOBER 2020
ADDITIONAL INFORMATION FOR THE COMMERCE COMMISSION

Introduction

1. On 9 October you mentioned that Commission staff were satisfied that a number of issues were not a concern in the Commission's consideration of Pact's application to acquire Flight Plastics ("**Flight**") ("**Acquisition**") (for example, no concerns about potential coordinated effects), but that the Commission staff were still considering some issues in advance of the meeting with Commissioners on 20 October, namely:
 - (a) [];
 - (b) Whether there is any particular closeness of competition between Pact and Flight in the supply of rigid packaging in NZ that would be lost as a result of the Acquisition;
 - (c) Whether there would be any substantial lessening of competition in the acquisition of waste PET bales from MRFs in NZ;
 - (d) Whether there would be any substantial lessening of competition in the acquisition of scrap plastic from other plastics manufacturers in NZ; and
 - (e) Whether the Acquisition could give rise to any potential vertical concerns in relation to the supply of RPET inputs to other packaging manufacturers in NZ.
2. Pact does not consider any of these to give rise to potential competition issues, and wanted to provide the Commission with further information on these points to assist Commission staff and the Commissioners.

Executive summary

3. Pact is confident that none of the issues that Commission staff are continuing to consider give rise to any potential substantial lessening of competition concerns. This is for the following reasons:
 - (a) []
[]
 - (b) Pact is also confident that there is not any particular "closeness of competition" between Pact and Flight that needs to be considered given:
 - (i) Each focuses on different end-customer applications, and faces closer competitors in each of those customer applications;
 - (ii) There is a significant number of other NZ-based manufacturers;
 - (iii) There are examples of recent entry and expansion in NZ – for example Linpac (estimated to have built an E&T share of [] in NZ in just four years);

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- (iv) There is a significant quantity of imports (Pact estimates that at least [] of all E&T packaging currently supplied in NZ is imported);
- (v) The threat of new entry in NZ is very real (including []); and
- (vi) E&T packaging competes against a range of alternative substrates in each and every end-customer segment.

Accordingly, by any measure the market that Pact and Flight operate in is highly competitive, with no barriers to entry or expansion (which as the courts have said is the “ultimate regulator of competitive conduct”).

- (c) It would be incorrect as a matter of fact, law and economics to define a separate market for NZ RPET packaging. Pact's in-market experience is that customers do readily switch between NZ RPET and other packaging substrates (including imported RPET, virgin PET, and non-plastic substrates), with there being a chain of substitution between all such products, and accordingly those products need to be competitive with one another across the package of "price-product-service". Furthermore, []
- (d) There will not be any material loss of competition in relation to the acquisition of waste PET bales from MRFs in NZ given []. Furthermore, even setting this fundamental point aside, it is not credible that the Acquisition could have any material impact on competition in the acquisition of PET bales in NZ given:
 - (i) Visy is the largest supplier of PET feedstock in NZ [];
 - (ii) PET bales are a widely traded global commodity, so prices are invariably set by reference to international prices, and there are a number of purchasers / traders that compete for the acquisition of such bales; and
 - (iii) PET bales are a waste by-product. The Commission has previously said it would not be possible for a merger of purchasers of by-products to give rise to a substantial lessening of competition, as the supplier of that product would not decrease the quantity of that material supplied in response to a decrease in the price paid (even assuming the merged entity could decrease prices, which it could not).
- (e) The Acquisition cannot give rise to any feasible loss of competition between Pact and Flight in the acquisition of scrap plastic from other plastics manufacturers in NZ given []. Furthermore, even setting this fundamental point aside, it is not credible that the Acquisition could have any material impact on competition in the acquisition of PET scraps/waste given:
 - (i) there is an active market for PET scrap, with numerous other purchasers / traders, which means that such products are, in effect, sold in an international market at international commodity prices;
 - (ii) if plastics manufacturers are not satisfied with the prices offered for their scraps / off-cuts, they have the option to re-use those scraps / off-cuts themselves in-house, or to send back to their suppliers (indeed that is a common approach for many plastics manufacturers in NZ); and

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(iii) PET scraps / off-cuts are a waste by-product, and as noted above, the Commission has previously said it would not be possible for a merger of purchasers of by-products to give rise to a substantial lessening of competition, as the supplier of that product would not decrease the quantity of that material supplied in response to a decrease in the price paid (even assuming the merged entity could decrease prices, which it could not).

(f) There is no credible way in which any potential vertical concerns could arise from the Acquisition – including because Flight does not sell, and never has sold, its RPET flake or roll-stock to third party E&T packaging competitors, and Pact does not manufacture RPET flake or roll-stock in NZ, []. Accordingly, there is no difference between the factual and counterfactual in the vertical supply of such products. Furthermore, even setting this fundamental point aside, imported RPET inputs:

(i) are readily available at competitive and internationally based commodity prices; and

(ii) can be readily substituted for virgin PET resin or PET roll-stock.

Accordingly, even if there were any suggestion that Flight [] would supply RPET inputs to E&T competitors in the counterfactual (which is not likely, for the reasons described), there is no way that the merged entity could have the ability or incentive to vertically foreclose competitors given the numerous alternative supply options those competitors could turn to.

[]

4. [].

5. []:

(a) []:¹

[].

[]:²

[]

6. []

7. []

8. []

9. []

10. []:

¹ []
² []

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- (a) []
- (b) []
 - (i) [] and
 - (ii) []
- (c) []
- (d) []
 - (i) []
 - (ii) [] and
 - (iii) []
 - []
- 11. []
- 12. []
 - (a) []
 - (b) [].
- 13. []
- 14. []
 - (a) [];
 - (b) []; and
 - (c) [].
- 15. []
- 16. []
 - (a) []
 - (b) []
 - (c) []
 - (d) [].
- 17. []
- 18. []:
 - (a) []

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- (b) []:
 - (i) []
 - (ii) []
 - (iii) []
 - (iv) []
 - (aa) []; and
 - (bb) [].
- []

- 19. []
 - (a) []
 - (b) []

- 20. []
 - (a) []
 - (b) []

21. []

- 22. []³ []:
 - (a) [].⁴
 - (b) [].⁵
 - (c) [].⁶

23. []

24. []:

[]	[]
[]	[] ⁷
[]	[]. ⁸
[]	[]. ⁹
[]	[] ¹⁰

³ []
⁴ []
⁵ []
⁶ []
⁷ []
⁸ []
⁹ []
¹⁰ []

[]	[] ¹¹
[]	[] ¹²
[]	[] ¹³

25. []

(2) Consideration of whether there is any particular closeness of competition between Pact and Flight in the supply of rigid packaging in NZ that would be lost as a result of the Acquisition

26. You have said that Commission staff are considering whether there is any particular "closeness of competition" between Pact and Flight that needs to be considered, due to the parties currently having a larger size in NZ than other competitors.

27. Irrespective of the size of each of Pact and Flight, the parties have previously described to the Commission the reasons why they should not be regarded as particularly close competitors – including that each of them face closer competitors in the end-customer segments where they each focus (see Table 2 of the clearance application).

28. Indeed, the supply of rigid packaging is highly competitive in NZ, with a range of different competitors competing through a range of different business models – including:

- (a) A significant number of other NZ-based manufacturers, including Custom-Pak, Progressive Plastics, Bonson, Formrite Plastics, Aztec Packaging, Plus Pac Packaging, and Berica. Having at least eight manufacturers is, by NZ standards, already a highly diverse industry.
- (b) Examples of recent entry and expansion in NZ – for example Linpac (estimated to have built an E&T share of [] in NZ in just four years).
- (c) Significant quantity of imports. Pact estimates that at least [] of all E&T packaging currently supplied in NZ is imported, with this proportion growing year-on-year. For example, []. This includes very large importers, such as Linpac, and a diverse range of other importers including Jenkins Freshpac, Sealed Air, Multisteps, and many others. The High Court has said that even the threat of import competition is sufficient to constrain domestic manufacturers from pricing above potential import prices (*Fletcher Metals Ltd v Commerce Commission*).¹⁴
- (d) The threat of new entry in NZ is very real – in particular given [] [] already has other manufacturing operations []. In addition, the NZ market is characterised by a lack of long term contracts, and so is highly susceptible to new entry, and []. In other words, the market is dynamic, and is not impeded by any structural feature such as a preponderance of long-term contracts which might be regarded as a barrier to entry. Accordingly, []. Similarly, [], [] already operates an Australian manufacturing plus import based business model in Australia, which it could readily use to compete in NZ). []. Furthermore, any of the large customers in NZ (such as supermarkets) could readily sponsor new entry into the NZ market – with that

¹¹ []

¹² []

¹³ []

¹⁴ (1986) 6 NZAR 33.

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sponsored capacity then, of course, also available to other customers as well. For example:

- (i) as set out in the clearance application, [];¹⁵
- (ii) it is not uncommon for customers to invest in new equipment, whether for their existing or a new supplier, or to facilitate a new supplier “tooling up” using the timing and pricing of their tenders; and
- (iii) [].

29. Moreover, E&T packaging competes against a range of alternative substrates in each and every end-customer segment – as previously outlined to the Commission. As the Court said in *Brambles*,¹⁶ irrespective of how the market is defined, it is necessary to take into account the competition from those other substrates. Indeed, irrespective of whether there has only been nascent uptake of alternative substrates so far in certain end-uses, it is well established in competition law that the question for the Commission is whether customers could *credibly threaten* such a switch as that is considered sufficient to exert “countervailing bargaining leverage”.¹⁷

30. Accordingly, by any measure the market that Pact and Flight operate in is highly competitive. Any attempt at a post-Acquisition price increase above competitive levels will inevitably result in customers switching to other NZ manufacturers, increased imports, expansion of further overseas suppliers in NZ, or increased switching (or the credible threat of increased switching) to alternative substrates in each and every end-customer application.

31. Indeed, as was classically stated in *QCMA*¹⁸ the “ultimate regulator of competitive conduct” which constrains even firms with large market share from increasing price or reducing output is the possibility of new entry and/or expansion. This was recognised in NZ by the Court of Appeal in the leading case of *Southern Cross*.¹⁹ In that case, the Court said:

Market share is relevant to the level and significance of market power but it is not in itself the determinant of market power. What level of market power a firm has, as a result of its market share, will depend substantially on the level of barriers to entry *and expansion* which apply to the market. If the barriers are low, a high market share is unlikely to result in an insufficiently constrained level of market power.... The level of market share and the level of market power have no direct relationship in themselves. The levels of barriers to entry and expansion provide the linkage and must be brought to account when considering the level of a firm’s market power. The lower the barriers to entry or expansion, the more an incumbent firm with a high market share is constrained from using its position in a supra-competitive way.²⁰

...

“the fundamental economic thinking that links market shares to market power also indicates circumstances in which a large market share will not necessarily

¹⁵ [].

¹⁶ At [137].

¹⁷ In a presentation on the use of buyer power, Professor Salop has emphasized that a buyer’s ability to exert “countervailing bargaining leverage” depends on its capacity to make “credible” threats to take their custom elsewhere. Steven C. Salop, *The Buyer Power Defense in Antitrust*, Feb. 11, 2004, at 8.

¹⁸ *Re Queensland Co-operative Milling Association* (1976) 8 ALR 481, 516.

¹⁹ (2001) 10 TCLR 269 (CA).

²⁰ At para. [68].

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confer market power. This will be the case where competitors, even though they have a small market share, are able and willing to expand output quickly and at a relatively low cost. In other words, market share will not confer market power when small competitors face low barriers to expansion and, thus, are able to contest the whole of the relevant market.”²¹

32. Accordingly, Pact and Flight cannot envisage any possibility of a substantial lessening of competition in a properly defined NZ rigid packaging market as a result of the Acquisition.
33. In addition to the above, we understand that Commission staff are considering whether there could possibly be a separate market for NZ RPET packaging products, and whether Pact and Flight could be said to be close competitors in that market.
34. First – []:
- (a) []; and
 - (b) []
35. Accordingly, [].
36. Second, even setting aside this, adopting the proper approach to market definition, there is not a separate market for NZ RPET packaging products.
37. We understand that []:
- (a) []; and
 - (b) []
38. Accordingly, []
39. Moreover, [] and Pact's experience is that customers would readily substitute between any, and all, of the following depending on which supply best met their expectations on price / quality / service:
- (a) NZ post-consumer RPET containers;
 - (b) other RPET containers (given in Pact's experience end-customers are largely indifferent as between claims of "recycled plastics" or "recycled NZ plastics" []);
 - (c) E&T containers manufactured from other plastic polymers (PET, for example); and
 - (d) containers manufactured from other substrates (as set out in Appendix 4 of the clearance application []).
40. This is demonstrated by the revealed preferences of most of the market, which demonstrates that they will readily substitute between local produced PET products, other substrates, and imports (for example, [] purchasing from Linpac, Turners & Growers switching to cardboard for tomatoes, Eastpack / Southern Produce switching to cardboard for kiwifruit, Silver Fern Farms switching to cardboard, Bostock switching to flexible packaging, Woolworths switching to cardboard packaging for meat in Australia, and many other examples). All these

²¹ At para. [71].

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customers would have multiple alternatives in the event of any price increase in locally sourced RPET, and their revealed preferences demonstrate that they would readily switch.

41. Accordingly, it would be incorrect to define a separate market for NZ RPET packaging – any such narrow approach would be contrary to court precedent and long-standing proper approaches to market definition. In particular:

(a) Section 3(1) of the Commerce Act defines a market as:

[G]oods or services as well as other goods or services that, as a matter of fact and **commercial common sense**, are substitutable for them. (Emphasis added).

(b) Pact's in-market experience is that customers do readily switch between NZ RPET and other packaging substrates (including imported RPET, virgin PET, and non-plastic substrates). For example, [] It is widely accepted that in competition law it is important that revealed preferences (i.e. evidence from actual behaviour) are given more weight than stated preferences in response to questions from the Commission, [].

(c) The High Court has previously found that the Commission must, as part of its market definition exercise, consider the evolution in the use of products over time, including the extent to which the development of new products has "supplanted and extended" a product range.²² In particular, in *Brambles* the High Court said it is necessary to:

(i) prioritise consideration of the purpose of products when considering whether they are in the same market. If products are technically substitutable²³ and evidence suggests they are being used concurrently by customers for the same end-use,²⁴ they ought to be considered in the same market. As the High Court said:²⁵

It is appropriate to make a common sense assessment, based on the evidence before the Commission. Clearly, cardboard cartons and plastic crates are technical substitutes for most produce lines, and both are being used in the produce distribution chain at the moment. There are a variety of preferences for one or the other, based on grower or retailer preference and the particular requirements of the produce line, but there is considerable use of both for the same purpose.

Accordingly, it is important that the Commission does not place undue emphasis on a particular customer's preference to define an artificially narrow market; and

(ii) recognise that just because products are differentiated on the basis of certain characteristics, they can still fall within the same market – it is necessary to consider the whole "price-product-service package":²⁶

²² *Brambles New Zealand Limited v The Commerce Commission* HC AK CIV2115-03 [24 October 2003] at [93].

²³ At [132].

²⁴ At [132].

²⁵ At [132].

²⁶ At [130].

There are a great number of other aspects of both which affect buyer preferences, relating to capacity, branding, stackability, strapping required on pallets, resistance to squashing, capital commitment required to buy cardboard or to pay crates deposits and so on.

- (d) Reflecting on the "price-product-service package" that the High Court said it is necessary to take into account, sustainability is only one metric that packaging suppliers use to differentiate their products. Further, given the significant and increasing competitive constraint exercised by imports in recent years, Pact's view is that any stated preference for NZ RPET remains an overwhelmingly a secondary consideration to price.
- (e) The Commission's consideration of sustainability also requires that it considers the significant extent to which PET products are substitutable with other substrates. The displacement of plastic packaging with other substrates across all customer categories (as set out in paragraph 6.2 in the clearance application and in Russell McVeagh's email to the Commission on 5 October 2020) demonstrates the substitutability that, applying the *Brambles* test, means that the market should include those other substrates also. Indeed, *Brambles* makes clear the problems with defining a market too narrowly:²⁷

A decision to define the market by reference to crates only can provide an appropriate basis for analysis of the competition issues which need to be decided, but defining the market in that way should not lead to any under-estimation of the potential substitutability and level of constraint on market participants in that narrowly defined market, from cardboard packaging both premerger and post-merger.

- (f) Furthermore, the Commission has previously outlined that when considering whether to define separate markets it will look to see if there is a "chain of substitution between products and, so long as there is no break in the chain of close substitution possibilities such that each adjacent pair of products are close substitutes, all of these products might be included in the same market".²⁸ For example, the Commission has observed in relation to beer that:²⁹

[B]eer is supplied along a number of different price points but these different prices (and qualities) form a chain of substitution across the entire beer category such that beer falls within the same overall market. In addition, the Commission notes that determining which beers are 'premium' and which beers are 'budget' is a fairly arbitrary process.

- (g) In the context of a market with such a chain of substitution, it is not relevant that a small number of customers may have a preference for NZ RPET. Rather, if a sufficient proportion of customers would switch between NZ RPET, imported RPET, virgin PET or other substrates (as they would, as demonstrated by revealed preferences), then that switching would constrain the prices of NZ RPET and so all those options ought to be considered to be in the same market. It is a long-

²⁷ At [137].

²⁸ Commerce Commission Decision No. 574 *Fonterra Co-Operative Group Limited Kapiti Fine Foods Limited and United Milk Limited* (23 February 2006) at [81].

²⁹ Decision No. 586 *Lion Nathan Limited and Independent Liquor (NZ) Limited*

standing concept in competition law that the marginal customers that would be willing to switch need not be very large or a majority for those options to all be in a same market – just enough to constrain prices (and moreover, in this instance []). Furthermore, there would be no way for the hypothetical merged entity to identify a group of customers that could not switch (and could not credibly threaten to switch) to non NZ RPET packaging alternatives, such that this group could be identified by the merged entity as such, and price discriminated against in the factual on the basis of that preference.

42. Accordingly, it would be inappropriate, and contrary to court precedent and long standing principles of market definition, to define a separate narrow market for the supply of NZ RPET packaging – it is the case that there is chain of substitution that includes NZ RPET, imported RPET, virgin PET, and other substrates (with each of those options offering a differentiated, but substitutable, "price-product-service package" for customers to consider).
43. As a result of the above, Pact and Flight are confident there are no concerns about any particular closeness of competition between them, including no concerns about any loss of competition between them in respect of NZ RPET packaging.

(3) Whether there would be any substantial lessening of competition in the acquisition of waste PET bales from MRFs in NZ

44. Pact is also confident that there will not be any material loss of competition in relation to the acquisition of waste PET bales from MRFs in NZ. This is for the following reasons:

- (a) [];
- (b) []:
 - (i) [];
 - (ii) []; and
 - (iii) []

45. []

46. Furthermore:

- (a) Visy is the largest supplier of PET feedstock in NZ, [];
- (b) PET bales are a widely traded commodity globally. As the Waste Management and Resource Recovery Association of Australia has noted (and the same applies in relation to NZ):³⁰

There are strong local and export markets for clean PET bales that are collected and sorted to specification... The price of recycled resin is linked to the price for virgin resin.... There is minimal difficulty in finding a destination for collected and sorted PET packaging.

As noted in the MFE paper on the Basel Convention, PET has the highest recycling value, and so the Basel Convention will not therefore regulate imports

³⁰ In its Recovered Resources Market Bulletin (March 2019).

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and exports of PET bales (as noted in that paper, exports of PET bales will not require an EPA permit). Indeed, the Basel Convention is intended "to encourage the trade in these high-value plastics" such as clear PET bales.³¹ The demand for export of such bales from NZ is only expected to get stronger as more recycling capacity is built overseas and demand increases worldwide;

- (c) There are a number of other actual or potential purchasers of PET bales aside from Flight, including locally-based traders that purchase bales to sell into the international market, such as Reclaim, Enviro NZ, Waste Management, Oji (Fibre Solutions), Full Circle, Aotearoa International Ltd,³² and Oasis Scraps³³; and
- (d) Recognising the globally traded nature of PET bales, on 1 April 2020 S&P Global Platts (a provider of information and benchmark prices for the commodities and energy markets) started reporting post-consumer PET bale prices.³⁴

47. Indeed, the fact that this type of valuable waste is sold in international markets has been consistently recognised by the Irish competition regulator. For example it stated:³⁵

- (a) In 2010:³⁶

"the parties state that all recycled products are sold outside Ireland at international commodity prices. **The Irish tonnages are a small part of the international market.** The parties state that no Irish company has any market power in this market ...Market inquiries have confirmed that all recycled waste materials (i.e., DSR, domestic and commercial DMR) are sold abroad on international markets."

- (b) In 2016:³⁷

"The vast majority of waste that can be recycled (e.g., glass, paper, plastics, metals) is exported outside the State... third party submissions, market enquiries and information supplied by the parties suggest that the geographic scope of the relevant markets may be the GDA or possibly larger than the GDA... The Commission does not consider that there are credible theories of harm concerning the impact of the proposed transaction on the market for the supply of recyclable materials. While there is a horizontal overlap between Panda and Greenstar in this market within the State, **the merged entity will continue to export recyclable material outside of the State following the implementation of the transaction and it will not have market power to influence export prices.** The proposed transaction will thus not give rise to any significant effect on competition in the market for the supply of recyclable materials in the State and therefore this particular market is not examined further in this Determination."

³¹ <http://www.wasteminz.org.nz/wp-content/uploads/2020/05/Proposal-Documents-May-2020.-Managing-the-trade-in-plastic-waste.pdf>

³² See for example here: <https://www.recycleinme.com/rim-aotearoa/selloffer-55467>

³³ See for example here: <http://oasisallscraps.com/plastics/>

³⁴ <http://press.spglobal.com/2020-04-01-S-P-Global-Platts-to-Assess-Prices-for-US-Plastic-PET-Bottle-Recycling>

³⁵ Emphases added.

³⁶ https://www.lkshields.ie/images/uploads/documents/M-09-024_Greenstar_Veolia_Phase_II_Determination-Non-Confidential_Version.pdf

³⁷ https://www.cpc.ie/business/wp-content/uploads/sites/3/2016/02/M_16_008-PandaGreen_Greenstar-Phase-2-Public-Determination.pdf

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(c) In 2018.³⁸

"The Commission considers that the Proposed Transaction raises no competition concerns in the market for the supply (for sale) of recyclable materials in the GDA... Thorntons Recycling informed the Commission that approximately **55% of the total revenue generated from the supply (for sale) of recyclable materials is attributed to exports....**"

48. Furthermore, [], PET bales are a waste by-product, and, in the context of the acquisition of waste by-products, the Commission previously has said it would not be possible for there to be a substantial lessening of competition as a result of a merger of acquirers, as the supplier of that waste product would not decrease the quantity of material supplied in response to a decrease in the price paid:³⁹

the shop collection market involves a byproduct of a manufacturing operation which must be disposed of. In order for the acquisition to result in a substantial lessening of competition in this market, suppliers of shop material must decrease the quantity of material supplied in response to a decrease in the price received from the renderer. This would involve butchers and other users of shop collection services decreasing the amount of meat they process in response to a decrease in the price they are paid for their by-product material.

Businesses on the 'shop runs', such as butcher and grocery shops, told us that they would not decrease the volume of animal waste that they produced if the merged.

The alternative to selling, or giving away, waste to renderers on a shop run is to landfill that waste, which would occur at a cost.

49. In the context of a global commodity market for waste by-product [], it is not credible that the Acquisition could have any material impact on competition in the acquisition of PET bales in NZ.

(4) Whether there would be any substantial lessening of competition in the acquisition of scrap plastic from other plastics manufacturers in NZ

50. Pact is also confident that the Acquisition cannot give rise to any feasible loss of competition between Pact and Flight in the acquisition of scrap plastic from other plastics manufacturers in NZ. This is for the following reasons:

- (a) As Flight has explained to the Commission, [] Accordingly, irrespective of anything else, there will simply not be any loss of competition between Pact and Flight in the acquisition of scrap plastics in NZ.
- (b) In addition, [].
- (c) Moreover, there is an active market for PET scrap,⁴⁰ and there are numerous other traders of post industrial resin ("PIR") plastic scraps in NZ that will continue to

³⁸ <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/01/M-18-005-Thorntons-A-Plus-Public.pdf>

³⁹ Tuakau Proteins Limited and Graeme Lowe Protein Limited [2014] NZCC 26.

⁴⁰ See for example: https://www.recycleinme.com/selloffers_New%20Zealand/plastic_pet

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purchase such scraps. This means that such products are, in effect, sold in an international market. For example:

- (i) AB Plastics: "AB Plastics is a full service plastic recycling company and associate member of Plastics NZ. We are Traders & Exporters of various kinds of Pre Industrial and Post Industrial Polymer Scraps, based in New Zealand. We buy and sell all kinds of plastic scrap globally, and we specialize in Pre and Post Industrial Polymer Scraps. We recycle all grades of plastic, and purchase raw plastic scrap in any shape or form."⁴¹
- (ii) Oasis Scraps.⁴²
- (iii) Aotearoa International Ltd: which specialises in exporting various plastic scraps such as PET bottle scrap.⁴³

Given this active market, and as the price of scraps needs to be competitive with other sources of inputs (such as virgin resin and RPET flake), []

- (d) Again, scrap is a waste by-product, and, in the context of the acquisition of waste by-products, the Commission has previously said it would not be possible for there to be a substantial lessening of competition arising from a merger of purchasers, as the supplier of that product would not decrease the quantity of that material supplied in response to a decrease in the price paid.⁴⁴
- (e) Finally, all plastics manufacturers, if they were not satisfied with the prices offered for their scraps / off-cuts could invest in an extrusion line to deal with their scrap (extruders can readily be purchased second-hand) or have the option of re-using those scraps / off-cuts themselves in-house or to send back to their suppliers – indeed that is a common approach for plastics manufacturers in NZ. For example:
 - (i) Forward Plastics:⁴⁵

There is another type of recycled content that is termed post-industrial. This is the practice of using your own internal scrap back into regular production. At Forward Plastics, we have always done this from the very beginning as a part of our typical manufacturing process adding up to 50% of post-industrial recycled resin into our products.
 - (ii) Progressive Plastics:⁴⁶

All our PET and LDPE production waste is granulated or compacted and then sent back to plastic manufacturers for recycling into the same raw material (ie a closed loop) or where not possible it is used to make other plastic products.
 - (iii) PPL Plastics Solutions:⁴⁷

⁴¹ See: <http://abplasticrecycle.co.nz/home/>

⁴² See: <http://oasisallscraps.com/>

⁴³ See: <https://www.plastics.org.nz/doing-business-in-nz/members-directory/service-suppliers>

⁴⁴ Tuakau Proteins Limited and Graeme Lowe Protein Limited [2014] NZCC 26.

⁴⁵ <https://forwardplastics.co.nz/sustainability/>

⁴⁶ <http://www.progressiveplastics.co.nz/environmental.html>

⁴⁷ <https://pplplastics.co.nz/>

PPL reuses 97% of all plastic waste by regrinding and reusing it in non-critical items. It is working towards an ambitious 'zero waste' threshold.

(iv) Pro-Form:⁴⁸

Because many of PRO-FORM's manufacturing inputs come from non-renewable sources, we are committed to using recycled materials and reusing all internal by-products, which can be easily achieved as we thermoform our own plastic sheet.

(v) Acron Plastics:⁴⁹

We also work hard to minimise our impact on the environment. Our monitored closed-loop recycling policy means plastic wastage is granulated and sent back to plastic manufacturers to extrude anew into a plastic sheet.

51. In circumstances of an active market, with a number of other traders, where prices are linked to global commodity prices, ([]), the product is a waste by-product, and competitors can use scrap / off-cuts for other ends, Pact cannot see any way in which the Acquisition could potentially have a material effect on competition in the acquisition of plastic scraps / off-cuts.

(5) Whether the Acquisition could give rise to any potential vertical concerns in relation to the supply of RPET inputs to other packaging manufacturers in NZ

52. You also mentioned that Commission staff were considering whether the Acquisition could give rise to potential vertical concerns in the supply of RPET inputs to other packaging manufacturers in NZ. Pact cannot see any way in which any potential vertical concerns could arise – including because this potential vertical concern would require a number of hypothetical steps to occur (none of which are likely) before it could be given any credibility:

(a) First, Flight does not sell, and never has sold, its RPET flake or roll-stock to third party E&T packaging competitors. This is because RPET flake manufactured by Flight is solely used for Flight's RPET products, and [].⁵⁰ Accordingly, Flight cannot see any likely scenario where it would supply RPET to third party E&T packaging competitors. Equally, Pact does not manufacture RPET flake or roll-stock in NZ, []. Accordingly, neither the combined Pact/Flight entity in the factual, [], will be suppliers of RPET flake or roll-stock to third party E&T packaging competitors. There is no difference between the factual and counterfactual.

(b) Moreover:

(i) Imported RPET inputs are readily available at competitive international commodity prices. Indeed, this is how Pact primarily operates its current RPET range, and it is understood that numerous other competitors do the same (for example, []);

(ii) All RPET flake or roll-stock imports are supplied on an internationally commoditised basis (globally traded, and highly competitive), and there

⁴⁸ <https://www.proform.co.nz/about-pro-form/sustainability/>

⁴⁹ <https://www.acronplastics.co.nz/about.html>

⁵⁰ [].

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are numerous alternative supply options. This means that prices reflect international prices and so other NZ manufacturers could readily obtain RPET inputs at competitive prices on the international market; and

- (iii) RPET flake and roll-stock can be readily substituted for virgin PET resin or PET roll-stock. The Parties' experience is that customers are willing to switch between PET and RPET materials in response to a 5% change in relative price.

53. Given the above, even if there were any suggestion that Flight [] would supply RPET inputs to E&T competitors in the counterfactual (which is not likely, for the reasons described), there is no way that the merged entity could have the ability or incentive to vertically foreclose competitors given the numerous alternative supply options those competitors could turn to.

Concluding comments

54. For the reasons outlined above, and as summarised in the executive summary, Pact is confident that none of the issues that the Commission is continuing to consider give rise to any potential substantial lessening of competition concerns.
55. Pact requests that the Commission staff reflect on the information provided above in advance of the meeting with Commissioners on 20 October, and that this material is shared with Commissioners before that meeting.