



COMMERCE COMMISSION

Statement of Preliminary Issues

TEC Projects Limited / Tecpak Industries Limited

29 October 2010

11.4/12505

INTRODUCTION

1. On 19 October 2010, the Commerce Commission received an application from TEC Projects Limited seeking clearance to acquire Tecpak Industries Limited. The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/assets/Uploads/TEC-Tecpak-clearance-application-18-October-2010.pdf>

2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are not binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

RELEVANT PARTIES

The Applicant – TEC Projects Limited

4. TEC Projects Limited (TEC Projects) is a wholly-owned subsidiary of Pact Group (NZ) Limited (Pact Group). In New Zealand, Pact Group manufactures and supplies a range of plastic packaging products, including large and small food storage containers.

The Target – Tecpak Industries Limited

5. Tecpak Industries Limited (Tecpak) is a New Zealand packaging company that manufactures and supplies small plastic packaging products.

ANALYTICAL FRAMEWORK

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's analytical framework¹ is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.

7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.

8. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
 - existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
 - potential competition - the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
 - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
 - coordinated behaviour - whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
9. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

PRELIMINARY ISSUES

10. Of the factors outlined in the previous section, the Commission currently considers its focus in respect of the proposed acquisition will be on the following areas:

Areas of Overlap – Market Definition

11. Both TEC Projects and Tecpak manufacture and supply thin-walled plastic containers to the food processing industry. Thin-walled plastic containers are used as packaging for a number of food products such as yoghurt and margarine.
12. In assessing the relevant market in respect of thin-walled plastic containers, the Commission will consider the following topics:

- whether thin-walled plastic containers manufactured using different processes such as injection moulding or extrusion and thermoforming form one market, or are in separate markets;
- the geographic boundaries of the market, taking into account the location of customers in relation to suppliers, and the distance that these products can be transported; and
- whether large customers (who purchase on a formal contractual basis) and smaller customers (who purchase on an *ad hoc* basis) may form part of discrete markets.

Existing Competition

13. In its application, TEC Projects focussed its analysis on the specific area of overlap – thin-walled plastic containers manufactured using the injection moulding (IM) process. In this context, TEC Projects submitted that although the proposed acquisition would fall outside the Commission’s safe harbour thresholds,² post acquisition, the merged entity would continue to face competition from one large competitor, Huhtamaki, and a number of smaller competitors. Furthermore, these existing competitors would be able to expand their operations in the event that the merged entity raised its prices. The Commission will test the accuracy of this submission.
14. In assessing the constraint posed by these competitors, the Commission will also consider whether custom tooling/intellectual property or long-term contracts could make switching suppliers difficult for customers.
15. The Commission will take into account other forms of existing competition, including imports and plastic container manufacturers that could readily switch to manufacturing thin-walled plastic containers.

Potential Competition

16. TEC Projects has provided the Commission with information on entry conditions, and suggests that barriers to entry would not be insurmountable. The Commission is interested in testing these assertions so as to understand how difficult it would be for a new entrant to commence manufacturing thin-walled plastic containers.
17. In its application, TEC Projects set out a number of different ways in which market entry could be facilitated: switching from manufacture of other plastic containers, importing, and greenfields entry. The Commission whether entry in each of these ways would be likely, sufficient in extent and timely enough to act as a constraint should the combined entity exercise market power post-acquisition.

Countervailing Power

18. TEC Projects has submitted that there are several large customers that account for a large portion of its business and could thwart any attempt at raising prices by exercising countervailing power. The Commission will assess whether these customers could constrain the combined entity by threatening to switch suppliers, self-supply, or sponsoring new entry.

² Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004, Section 5.3

Other Competition Factors

19. The Commission will assess whether the reduction in the number of competitors, as a result of the proposed acquisition, will enhance the ability of the remaining market participants to collude either tacitly or explicitly.

NEXT STEPS

20. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of the issues and TEC Project's application for clearance. An extension of time was agreed to by the Applicant such that the Commission should make its final decision by 1 December 2010. However, also in line with the Merger and Acquisitions Clearance Process Guidelines, this timeframe could change. To keep abreast of possible changes in relation to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>

21. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.
22. The Commission also invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference TEC Projects/ Tekpak in the subject line of your email, or The Registrar, P O Box 2351, Wellington 6140 by **5pm on Tuesday 9 November 2010**. Please clearly identify any confidential information contained in the submission and provide contact details.