

## Determination

### **Atlas Copco South Pacific Holdings Pty Limited and Lancaster Group Limited [2014] NZCC 20**

**The Commission:** Dr Mark Berry  
Sue Begg  
Elisabeth Welson

**Summary of application:** An application from Atlas Copco South Pacific Holdings Pty Limited seeking clearance to acquire the businesses operated by four Lancaster Group Limited subsidiary companies: Ash Air (N.Z) Limited; Ash Air Oil & Gas Limited; mbar 2011 Limited; and Fox Air NZ Limited.

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

**Date of determination:** 30 July 2014

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

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## The proposed acquisition

1. On 1 April 2014 the Commerce Commission received an application from Atlas Copco South Pacific Holdings Pty Limited (the Applicant) seeking to acquire the businesses operated by four Lancaster Group Limited subsidiary companies: Ash Air (N.Z) Limited; Ash Air Oil & Gas Limited; mbar 2011 Limited; and Fox Air NZ Limited (together, Ash Air).
2. The acquisition would result in the aggregation of the applicant's and Ash Air's respective air compressors, vacuum pumps and blowers import, distribution and servicing businesses.

## The decision – clearance granted

3. The Commission gives clearance to the proposed merger as it is satisfied that it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

## Our framework

4. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>1</sup>

## The substantial lessening of competition test

5. As required by the Commerce Act 1986, we assess mergers using the substantial lessening of competition test.
6. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>2</sup>
7. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.
8. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
9. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.<sup>4</sup>

### **When a lessening of competition is substantial**

10. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.<sup>5</sup> Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.<sup>6</sup>
11. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

### **When a substantial lessening of competition is likely**

12. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.<sup>7</sup>

### **The clearance test**

13. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>8</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.<sup>9</sup>

## **Key parties**

### **Atlas Copco South Pacific Holdings Pty Limited**

14. The applicant, Atlas Copco South Pacific Holdings Pty Limited, is a subsidiary of the Atlas Copco Group. The Atlas Copco Group is a Swedish based manufacturer who, amongst other products, manufactures a range of brands of air compressors, vacuum pumps and blowers, which it supplies internationally. In addition to Atlas Copco, the brands the Atlas Copco Group manufactures include: Chicago Pneumatic, Ceccato, and ABAC.
15. In New Zealand, a subsidiary of Atlas Copco South Pacific Holdings Pty Limited, Atlas Copco (N.Z.) Limited (Atlas Copco NZ) imports and distributes the Atlas Copco brand of air compressors, vacuum pumps and blowers.

<sup>4</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>5</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

<sup>6</sup> *Ibid* at [129].

<sup>7</sup> *Ibid* at [111].

<sup>8</sup> Commerce Act 1986, s 66(1) of the Commerce Act 1986.

<sup>9</sup> In *Commerce Commission v Woolworths Limited* (CA), above n 2 at [98], the Court held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”. However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

16. Atlas Copco NZ also provides repair and maintenance services for air compressors, vacuum pumps and blowers. It has six branches and another [ ] technicians based throughout New Zealand.

### **Lancaster Group Limited**

17. Lancaster Group Limited is a privately held company, whose interests include Ash Air Limited, Fox Air Limited, and mbar 2011 Limited.<sup>10</sup>
- 17.1 Ash Air Limited (Ash Air) imports and distributes air compressors from the Gardner Denver Group (CompAir and Hydrovane brands), and the Atlas Copco Group (ABAC brand), and vacuum pumps and blowers from Pompetravaini S.p.A. Ash Air has 12 branches nationwide.
- 17.2 Fox Air Limited (Fox Air) imports and distributes air compressors from Ingersoll-Rand plc (Ingersoll Rand). Fox Air has branches in Auckland and Christchurch.
- 17.3 mbar 2011 Limited (mbar) specialises in the sales and servicing of vacuum pumps and blowers for dairying applications and is based in Te Awamutu.
18. Each of these three entities also provides repair and maintenance services for the types of products that they sell. However, these services are not limited to the brands they sell.
19. For convenience, in this report reference to Ash Air will include Fox Air and mbar.

### **Kaeser Kompressoren Se**

20. Kaeser Kompressoren Se is a privately held company based in Germany. Its subsidiary, Kaeser Compressors Australasia Pty Limited (Kaeser), coordinates the supply of Kaeser brand air compressors into New Zealand. Kaeser does not have a direct presence in New Zealand. Rather, it has exclusive distribution agreements with a network of distributors that are independent of each other.
21. These distributors also provide air compressor repair and maintenance services and are situated in Auckland, Whakatane, New Plymouth, Palmerston North, Christchurch, Nelson, Dunedin and Invercargill.

### **Engineering & Compressor Services Limited**

22. Engineering & Compressor Services Limited (ECS) imports and distributes the Atlas Copco Group branded air compressors: Ceccato and Chicago Pneumatic. ECS also provides air compressor repair and maintenance services and is based in Auckland, Christchurch, Napier, Hastings and Wellington.

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<sup>10</sup> The Lancaster Group Limited also owns Ash Air Oil & Gas Limited. Ash Air Oil & Gas Limited is currently a non-trading company.

## Other parties

23. There are a number of smaller servicing firms in New Zealand that also have distribution agreements with international air compressor manufacturers, including:
  - 23.1 Secair NZ Limited, which distributes the Sullair brand;
  - 23.2 ATS Pneumatics Limited, which distributes the Hitachi brand; and
  - 23.3 Industrial Air Systems Limited, which distributes the Pneutech brand.
24. Each of these firms also provides repair and maintenance services.
25. There are also a number of parties who import and distribute vacuum pumps and blowers, including:
  - 25.1 Gardner Denver New Zealand Limited (GDNZ), a subsidiary of the Gardner Denver Group (Gardner Denver), which distributes its own brand;
  - 25.2 Busch New Zealand Limited (Busch), a subsidiary of the Busch Group, which distributes its own brand;
  - 25.3 VABS Limited (VABS), which distributes for a variety of manufacturers including the Atlas Copco Group (the Edwards brand); and
  - 25.4 Vacuum Pumps NZ Limited (VPNZ), which distributes the Becker brand amongst others.
26. Each of these parties also provide repair and maintenance services for vacuum pumps and blowers.

## Industry background

### Air compressors

27. Air compressors store air or gas under pressure. The released air pressure produces energy to power equipment in a wide range of industries such as in food processing plants or in power plants. They can also be used to power air tools such as spray guns in a workshop (with a stationary unit) or on-site (with a mobile unit).
28. Air compressors are differentiated by size, capacity, technology (such as a piston or rotary screw air compressor), oil-free or oil-flooded, and whether they are mobile or stationary products.
29. In New Zealand, distributors tend to import and distribute a single manufacturer's product and these distribution agreements tend to be exclusive. Distributors also sell parts such as hoses, piping and fittings for compressed air and air tools. While a distributor may have an exclusive distribution agreement with a specific manufacturer air compressor parts, such as air pipe systems or air tools, can be obtained from other manufacturers.



30. Air compressors are typically sold with one to two year warranties. Within the warranty period the distributor (or its affiliated service provider)<sup>11</sup> services the air compressor. After the warranty period expires any air compressor servicer with the necessary experienced technicians and access to parts and manuals can service the equipment.<sup>12</sup>
31. Servicing is important to the functioning of the air compressor. If regularly serviced, an air compressor can have a 10 to 20 year lifespan depending on usage.<sup>13</sup> Therefore, aftermarket servicing and maintenance are more important to most businesses than sales. Some owners of air compressors are able to service small air compressors in-house but for most equipment, particularly larger air compressors, they contract the aftermarket services to third parties.
32. Servicers need to be located close to the customer (typically within a two hour drive) as air compressors are core process equipment and any breakdowns can affect the operation of the entire plant.<sup>14</sup>
33. Genuine parts are usually required for servicing and can be sourced from the exclusive distributor or from offshore wholesalers.

### **Blowers and vacuum pumps**

34. Blowers compress air to pressures below most air compressors (between one and four units of pressure, known as bars) and are used, for example, in water treatment plants or in sandblasting equipment.
35. A vacuum pump uses compressor technology in reverse to create suction. The pressure output is less than one bar. Vacuum pumps are most commonly used in the food or medical industries.
36. Distributors tend to import and distribute multiple manufacturers' products. Vacuum pumps and blowers tend to be sold with warranties of varying length (typically between one and six years) under which the distributor (or its affiliated service provider) services the equipment. After the warranty period expires servicing is contestable.
37. Vacuum pumps can have a long life (up to 15 years) so, like air compressors, servicing is an important requirement. However, as vacuum pumps and blowers are not core to a plant's operation in the same way as air compressors are, required

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<sup>11</sup> For example, Bayteck Systems Limited, an independent servicer, services Sullair air compressors under warranty for Secair NZ Limited.

<sup>12</sup> Feedback from industry players, including [ ].

<sup>13</sup> Feedback from industry players including [ ].

<sup>14</sup> Feedback from industry players including interviews with [ ]

response times to breakdowns are 24 hours or longer and so servicing can be undertaken by companies from further away.<sup>15</sup>

### **How the acquisition could substantially lessen competition**

38. There are two principal ways in which this merger could substantially lessen competition.
39. First, the proposed merger would result in horizontal aggregation in the provision of air compressor repair and maintenance services, the distribution of air compressors, the provision of vacuum pump and blower repair and maintenance services, and the distribution of vacuum pumps and blowers. As such, the removal of Ash Air as a competitor may give Atlas Copco NZ sufficient market power to enable it to unilaterally increase prices or adversely affect other aspects of competition.
40. Second, the proposed merger could result in vertical foreclosure. We see this potential issue as being more acute in relation to air compressors than vacuum pumps and blowers.
41. For a manufacturer, being able to distribute your product (including the provision of servicing under warranty) is an essential part of being able to compete. Atlas Copco as a manufacturer competes with other manufacturers such as Kaeser Kompressoren Se, Gardner Denver and Ingersoll Rand. By merging two distributors –Atlas Copco NZ and Ash Air – the merger may foreclose Atlas Copco’s rivals from being able to distribute their products to New Zealand customers. The end result may be a reduction in competition and increased prices for these New Zealand customers.

### **Market definition**

42. For the purposes of considering this application, we consider the relevant markets to be:
  - 42.1 regional markets for the servicing and maintenance of air compressors, including the sale of related parts not under warranty (the air compressor servicing markets);
  - 42.2 regional markets for the importation and distribution of air compressors, associated equipment and servicing under warranty (the air compressor distribution markets);
  - 42.3 the national market for the servicing of vacuum pumps and blowers not under warranty, including the sale of related parts (the vacuum pump and blower servicing market); and
  - 42.4 the national market for the importation and distribution of vacuum pumps and blowers, associated equipment and servicing under warranty (the vacuum pump and blower distribution market).

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<sup>15</sup> Feedback from industry players including [ ].

### **Our approach to market definition**

43. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
44. To help us establish whether customers would switch sufficient purchases to alternative products, we use the hypothetical monopolist test as a conceptual tool. This test asks whether a hypothetical sole supplier of a set of products would profitably increase prices for at least one of the merging firms' products by at least a small, but significant, amount.<sup>16</sup> This small, but significant, amount is often referred to as a SSNIP – a small, but significant, non-transitory increase in price.
45. In general, the smallest set of products in which the SSNIP can be profitably sustained is defined as the relevant product market.

### **The applicant's view of the relevant markets**

46. The applicant submitted that there is a single, national market for the importation and distribution of air compressors, blowers, vacuum pumps and associated equipment such as dryers. It argued that there is supply-side substitutability of these products as:
  - 46.1 most manufacturers produce air compressors, blowers, vacuum pumps and associated equipment; and
  - 46.2 from a distributors' perspective, it makes sense to import and distribute a wide range of equipment.
47. The applicant submitted that the servicing of air compressors, blowers, and vacuum pumps is distinct from the distribution of these products and that there are sub-national servicing markets because the required servicing is undertaken on a regional level.

### **The Commission's view of the relevant markets**

#### *Product dimension*

48. In our view, a national market for the distribution and importation of air compressors, blowers, vacuum pumps and associated equipment together is too wide for the purposes of identifying the competition issues in this instance.
49. Given that there is no demand side substitution between air compressors and vacuum pumps or blowers, we would only consider these products to be in a single market if there is supply-side substitutability. This would mean we would treat a distributor in one market as a 'near competitor' in another distribution market if it

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<sup>16</sup> The test assumes that all other prices are held at current levels.

could easily, profitably and quickly (generally within one year) switch between distributing vacuum pumps, blowers and air compressors without significant cost.

50. The evidence indicates that the set of competitors distributing and servicing air compressors is different to those for distributing and servicing vacuum pumps and blowers. These two sets of competitors differ in their technical expertise and tend to have different sales and servicing teams.<sup>17</sup> The evidence suggests that there would have to be substantial investment in technical capacity for a vacuum pump and blower business to either distribute or service air compressors.<sup>18</sup>
51. Accordingly, it is appropriate to consider the distribution of air compressors separately from the distribution of vacuum pumps and blowers.
52. In addition to importing and supplying an end-customer with an air compressor, the distribution of air compressors involves providing the following:
  - 52.1 associated equipment as these are sold as a complement to the core product. Dryers, for instance, are typically used alongside air compressors and so are supplied by air compressor distributors; and
  - 52.2 servicing under warranty. Typically air compressors are sold with a warranty, usually for one to two years but it can be for a longer period if required by the customer. Under warranty the customer uses the distributor to service the equipment so that any claims under the warranty are honoured.<sup>19</sup>
53. Further, our analysis will focus on industrial-sized air compressors over five horsepower (HP) as the competitive constraints for these products is different to smaller air compressors. This is because there are many suppliers for smaller compressors (including outlets such as the building merchants) which are typically less than five HP and are not used as core equipment in industrial processes. Also, as it is not critical componentry, this equipment is also not always serviced by specialists and maintenance can also be undertaken by the customer.
54. Although air compressors over five HP are highly differentiated products, none of the different categories presented sufficiently different competitive effects for us to consider separating them into different product markets. We will, however, consider how closely distributors compete over the distribution of these products.
55. As noted above, distributors of air compressors provide maintenance services while the machine is under the warranty period. After the warranty has expired servicing is contested by other providers. To this extent, servicing under the warranty period is distinct from servicing outside the warranty period. Accordingly, we have considered

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<sup>17</sup> As well as having different sales and servicing teams, some parties such as Ash Air have different businesses for air compressors as opposed to blowers and vacuum pumps. Feedback from industry players including interview [ ]

<sup>18</sup> Feedback from industry players including interview with [ ]

<sup>19</sup> The servicing of vacuum pumps and blowers is also provided by the distributor under the warranty period.

the effect of the proposed merger on each of the following groups of products and services, which are typically sold together:

- 55.1 the servicing and maintenance of air compressors;
- 55.2 the distribution of air compressors and associated equipment, and servicing under warranty;
- 55.3 the servicing and maintenance of vacuum pumps and blowers; and
- 55.4 the distribution of vacuum pumps and blowers and servicing under warranty.

### *Geographic dimension*

#### Air compressors

- 56. As explained above, distributors import air compressors from manufacturers who are based overseas. Typically, the distributor will store this equipment in a central warehouse before supplying the equipment to the end customer either directly or via a regional branch.<sup>20</sup>
- 57. Large air compressors, in particular, are core to the operation of a plant.<sup>21</sup> For this reason, customers typically require a short response time to a technical fault (such as within two hours).<sup>22</sup> Accordingly, the service and maintenance of air compressors is performed at a regional level.
- 58. Moreover, as mentioned above, air compressors are purchased with a warranty that requires servicing by the distributor for the warranty period. As such, given that distribution of air compressors requires a warranty which in turn appears tied to the ability to provide local servicing capability, the Commission considers it is appropriate to also consider the distribution of air compressors on a regional basis.
- 59. While it is difficult to draw a sharp line between regions, as a general rule, the further a servicer needs to travel to a customer, the weaker a rival they are likely to be for servicing (and therefore for distribution which includes servicing under warranty).<sup>23</sup> Given the geographic density of both service providers and customers, servicers tend to travel further to customers in the South Island than in the North Island.

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<sup>20</sup> Feedback from industry players including interview with [ ]

<sup>21</sup> Feedback from industry players including interview with [ ]

<sup>22</sup> Feedback from industry players including interview with [ ]

<sup>23</sup> For example, there are some servicers that have customers in Nelson, although they are based in Christchurch. For example, see [ ].

Vacuum pumps and blowers

60. Unlike air compressors, both the distribution and the servicing of vacuum pumps and blowers are typically provided from a central location to customers across the country.<sup>24</sup> These markets are therefore national in scope.

**With and without scenarios**

**With the acquisition**

61. The applicant advised us that its primary rationale for the acquisition is the significant scope for synergies across the parties’ respective operations and the scope to give Atlas Copco NZ increased coverage across New Zealand.<sup>25</sup>

62. The proposed acquisition does not include the contracts for the distribution of brands owned by Gardner Denver and Ingersoll Rand that are currently held by Ash Air. As such, it is likely that Gardner Denver and Ingersoll Rand would have to seek alternate distribution arrangements if they want to continue to have a presence in New Zealand.

63. [ 26 27 ]

**Without the acquisition**

64. Without the acquisition, the status quo would likely prevail. That is, Atlas Copco NZ and Ash Air would compete against each other as they do currently in all the relevant

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<sup>24</sup> Feedback from industry players including [ ].

<sup>25</sup> [ ]Atlas Copco NZ is a dedicated distributor for the Atlas Copco brand and therefore does not distribute other brands owned by the Atlas Copco Group. To date, the Atlas Copco Group has maintained separate distributors for its ‘premium’ Atlas Copco brand and its brands such as Chicago Pneumatics or Ceccato brands.

<sup>26</sup> [

] ]

<sup>27</sup> [

]

markets.<sup>28</sup> Ingersoll Rand and Gardner Denver would continue to distribute their products through Ash Air.<sup>29</sup>

## Competition analysis

### Summary of our view

*No substantial lessening of competition likely in relation to the servicing of air compressors outside the warranty period*

65. Although Atlas Copco NZ and Ash Air are close competitors in the air compressor servicing markets, strong servicing alternatives will remain in each region in addition to smaller service providers. These alternative servicers have the capacity and expertise to absorb the merging parties' customers should it attempt to raise prices or decrease quality for servicing of air compressors outside the warranty period. Further, genuine and non-genuine spare parts are available from both the exclusive distributor as well as from overseas wholesalers that would constrain the price of parts.

*No substantial lessening of competition likely in relation to the distribution of air compressors*

66. In relation to the distribution of air compressors, Atlas Copco NZ and Ash Air are close competitors. Distributors for Kaeser are strong alternatives to the merging parties but the smaller distributors do not currently impose a significant competitive constraint on these parties.
67. As mentioned, the proposed acquisition does not include the contracts for the distribution of brands owned by Gardner Denver and Ingersoll Rand that are currently held by Ash Air and it is unlikely that the merged entity would retain the distribution rights for these brands.
68. Gardner Denver and Ingersoll Rand would therefore have to seek alternate distribution arrangements.<sup>30</sup> If Gardner Denver and Ingersoll Rand did not have the ability and incentive to establish such alternative arrangements by these parties, only one network of distributors (those supplied via Kaeser) would be likely to sell non-Atlas Copco products post-merger.
69. However, we consider that the merged entity would be constrained by entry and expansion. Specifically, we consider that there is a real chance that Gardner Denver and Ingersoll Rand would maintain a presence in New Zealand if the merger proceeds, either through creating a multi-regional distribution and servicing network

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<sup>28</sup> Notice seeking clearance, para. 115 and interview with Ash Air (15 April 2014).

<sup>29</sup> [ ]

<sup>30</sup> [ ]

itself through smaller existing players,<sup>31</sup> by opening branches directly or by granting an exclusive distribution licence to a suitable party (or some combination of the three). Both businesses would be distributing well-recognised brands with substantial installed bases.

70. In addition, a large ultimate customer of air compressors could sponsor regional entry of either Gardner Denver or Ingersoll Rand (or some other similar type of air compressor) by granting a large tender and associated service contract to such an entrant.
71. Furthermore, existing distributors may also have the ability and incentive to expand.

*No substantial lessening of competition likely in relation to the distribution and servicing of vacuum pumps and blowers*

72. Atlas Copco NZ and Ash Air are not close competitors in the import and distribution, and servicing of vacuum pumps and blowers. Furthermore, there are existing competitors in this market that would provide a strong competitive constraint on the merged entity.

## **The air compressor servicing markets**

### **The applicant's submission**

73. The applicant submits that this merger should not raise competition concerns in the servicing markets as there are many other servicers operating in each region. Further, entry and expansion would not be difficult because of the low start-up costs of establishing a servicing business, availability of technicians and availability of parts.

### **The Commission's analysis**

74. At the servicing level, in every region where Ash Air has a branch, Atlas Copco NZ appears to be its closest competitor. Atlas Copco NZ and Ash Air each have an established network of branches located throughout the country, a number of technicians per branch, and therefore the expertise to service a range of air compressors.
75. However, any service provider that can respond quickly (generally within two hours) can carry out servicing and so customers switch between service providers in the post-warranty period.<sup>32</sup> It is relatively common for service providers to spend about half of their time servicing air compressors they did not sell themselves.<sup>33</sup>

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<sup>32</sup> Customers that use air compressors as critical components of their operation often require a service agent to have multiple technicians available such that in the event of a breakdown at least one technician would be available to respond immediately.

<sup>33</sup> Feedback from industry players including interview with [ ].



76. Therefore, as set out in Table 1, in all the regions where both Atlas Copco NZ and Ash Air operate, a customer would have several alternative options to the merged entity for the servicing of its air compressor in the post-warranty period. Since service markets are geographically differentiated such that the closer a servicer is to a customer the more likely they are to be a stronger alternative all other things equal. We have therefore included only those servicers located in each region as alternatives.
77. The Commission has not identified any one particular region where the proposed acquisition might have more of an impact than in another region in regards to servicing. As such, since the degree of competition does not vary materially across regional servicing markets, we have assessed the constraints from existing competitors on the merged entity in general.

**Table 1: Air compressor service providers across New Zealand**

Regions	Atlas Copco NZ	Ash Air	ECS	Kaeser	Other service providers we have identified
Auckland	✓	✓✓	✓	✓	✓✓✓ Secair NZ Limited, Air Gas Compressors Limited, S and K Plant Repairs Limited
Waikato	✓	✓	*	✓	✓✓ *Bayteck Systems Limited (ECS partner), Secair NZ Limited
Bay of Plenty	✓	✓	*	✓	✓✓ *Bayteck Systems Limited (ECS Partner), Finnco Pneumatics Limited
Manawatu	✓	✓		✓	✓ Air Boss Limited <sup>34</sup>
Taranaki	✓	✓		✓	✓ Air Gas Compressors Limited
Wellington	✓	✓	✓	✓	
Nelson	✓	✓✓		✓	✓✓ Fluid Power Solutions Limited and Leigh Potten
Canterbury	✓	✓✓	✓	✓	✓✓✓ Allied Air Compressors Limited, ATS Pneumatics Limited, Secair NZ Limited agent
Otago	✓	✓		✓	✓ EB Engineering Solutions

Source: Industry participants

78. Moreover, there do not appear to be any issues in terms of accessing manuals and parts in order to conduct servicing on different manufacturers' equipment.
- 78.1 Service providers noted that, if required, it is relatively easy to obtain the necessary operating manuals for the different brands of air compressors either from customers or over the internet, even if manufacturers endeavour to restrict access to this type of information.

<sup>34</sup> Niven Air & Hoists Limited and Air Boss Limited are companies owned and operated by the same directors. For convenience, in this report reference to Air Boss Limited will include Niven & Hoists Limited.

78.2 Many service providers can and do source genuine spare parts from parties other than the 'exclusive' New Zealand parts distributor, such as from overseas wholesalers or other third party distributors, and there can be significant cost advantages in doing so.

79. We have not relied on the possibility of entry and expansion in the servicing markets since we consider there to be sufficient existing competition. However, we note below that Gardner Denver and Ingersoll Rand are likely to enter New Zealand in both air compressor distribution and servicing. As the majority of servicing is provided post-warranty, this entry would further constrain the merged entity in these servicing markets.<sup>35</sup>

### **Conclusion on the air compressor servicing markets**

80. At present, Atlas Copco NZ and Ash Air are the two main servicers of air compressors and both operate from a number of regional branches.

81. We consider that the presence of a number of alternate service providers would, together, act as a sufficient competitive constraint on the merged entity such that the proposed acquisition is not likely to result in a substantial lessening of competition in any of the different regional servicing markets.

### **The air compressor distribution markets**

#### **The applicant's submissions**

82. The applicant submitted that it would continue to face strong competition from an array of distributors that supply products from well recognised, international manufacturers. It submitted that it would not acquire Ash Air's distribution contracts with Gardner Denver and Ingersoll Rand and so post-merger these companies would likely seek alternative New Zealand distributors and continue to compete with Atlas Copco NZ.

83. Atlas Copco NZ also considered that large customers have a substantial degree of countervailing power.

#### **Commission's analysis**

##### *Existing competition*

84. As in the regional servicing markets, at the distribution level, in every region where Ash Air has a branch, Atlas Copco NZ appears to be its closest competitor.

85. Again, the Commission has not identified any one particular region where the proposed acquisition might have more of an impact than in another region. As such, since the degree of competition does not vary materially across the regional distribution markets, we have assessed the constraints from existing competitors on the merged entity in general.

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<sup>35</sup> [ ] of Atlas Copco NZ and [ ] of Ash Air's servicing revenues are earned on servicing during the post-warranty period.

86. Table 2 below indicates the main distributors by region and the manufacturers they distribute for. In all the regions where there is overlap between Atlas Copco NZ and Ash Air, the merged entity would face competition from a distributor for Kaeser. ECS is also present in most regional markets but distributes Atlas Copco products.
87. There are also a number of other distributors in each region. However, the scale and scope of these distributors differs substantially from the four main distributors.

**Table 2: Air compressor distributors across New Zealand**

Regions	Atlas Copco NZ	Ash Air	ECS	Kaeser	Other distributors we have identified	
<b>Manufacturer</b>	Atlas Copco	Gardner Denver, Ingersoll Rand	Atlas Copco	Kaeser	Include: Sullair; Hitachi; BOGE; Pneutech; Rotair; and Mattei	
<b>Estimated market share</b>	[ ]	[ ]	[ ]	[ ]	[ ]	
<b>Auckland</b>	✓	✓✓	✓	✓	✓✓✓	Secair NZ Limited, Air Gas Compressors Limited, Industrial Air Systems Limited
<b>Waikato</b>	✓	✓	*	✓	✓✓	*Bayteck Systems Limited (ECS partner), Secair NZ Limited
<b>Bay of Plenty</b>	✓	✓	*	✓	✓	*Bayteck Systems Limited (ECS Partner), Finnco Pneumatics Limited
<b>Manawatu</b>	✓	✓		✓	✓✓	Air Boss Limited, ATS Pneumatics Limited
<b>Taranaki</b>	✓	✓		✓	✓✓	Air Gas Compressors Limited, Industrial Air Systems Limited
<b>Wellington</b>	✓	✓	✓	✓		
<b>Nelson</b>	✓	✓✓	*	✓	✓✓	*Fluid Power Solutions Limited and Leigh Potten (ECS resellers)
<b>Canterbury</b>	✓	✓✓	✓	✓	✓✓✓✓	Allied Air Compressors Limited, ATS Pneumatics Limited, Industrial Air Systems Limited, Secair NZ Limited agent
<b>Otago</b>	✓	✓		✓	✓	EB Engineering Solutions

Source: Industry participants, Commission estimates

88. Atlas Copco NZ currently has about [ ]% of the market and Ash Air currently has about [ ]%. This does not necessarily suggest a combined market share of [ ]% with the acquisition. Likely post-merger market shares would largely depend on what would happen to the distribution of Gardner Denver and Ingersoll Rand products, given that, with the merger, Ash Air would likely cease distribution of these products.

*Expansion by existing distributors*

89. There is scope for Kaeser's distributors, as well as the smaller distributors, to expand the sales of the products they already sell. As ECS distributes Atlas Copco products,

we have, in this section of the analysis, only considered the likely constraint imposed by Kaeser's distributors and the other smaller distributors.<sup>36</sup>

### Kaeser

90. Kaeser advised that while it was concerned with the size and presence of the merged entity, the Kaeser brand has an established presence in New Zealand and, if incentivised, its distributors have the ability to significantly increase their supply of Kaeser air compressors in New Zealand. [ ]<sup>37</sup>

### Smaller distributors

91. Table 2 above indicates that there are a number of smaller distributors, most of whom hold exclusive distribution contracts with European brands of air compressors. These smaller distributors do not currently impose a significant competitive constraint on either of the merging parties.
92. Although affiliated with overseas manufacturers, these distributors are seldom invited to tender alongside the major players, particularly for larger machinery.<sup>38</sup> These distributors are usually geographically confined with a smaller pool of technicians and the scale and regional scope of their operations vary.<sup>39</sup> However, many customers have not had the need to explore alternative supply given that there are four major international brands available to customers, each supported by requisite regional servicing capabilities.
93. These smaller distributors may have the ability and incentive to enter new geographic markets or expand to support a larger customer base. This ability and

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<sup>36</sup> [

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<sup>37</sup> Interview with Kaeser (15 May 2014).

<sup>38</sup> The four major distributors have a national footprint and a number of technical staff at each outlet in order to provide the necessary servicing during the warranty period. Larger customers, in particular, require multiple technicians to be available so that the servicer has capacity in the event of a breakdown. Importantly, customers that rely on air compressors, as an essential component to the running of their plant, are cautious to try new or 'untested' manufacturers or distributors as the risk associated with the failure of the machine is so high (a breakdown could lead to the shutdown of a plant until the problem is solved).

<sup>39</sup> The range of air compressors supplied by the distributor is naturally constrained by the range of product produced by the manufacturer with which the distributor has an exclusive contract. Most international manufacturers are able to supply a full range of air compressor products.

incentive to expand is not restricted by access to product as this can be shipped from Europe on demand and so is not likely to require additional stock.<sup>40</sup>

93.1 Secair NZ Limited (Secair) is based in Auckland and supplies a full range of electrical air compressors through a long term arrangement with Sullair.<sup>41</sup> Secair advised that it competes directly with Atlas Copco NZ, Ash Air, ECS and Kaeser in the Auckland and Hamilton regions, but it also has the ability to distribute in other regions through using a regional service agent.<sup>42</sup>

93.2 ATS Pneumatics Limited (ATS), based in Christchurch, recently entered into a distribution arrangement with Hitachi for its range of air compressors. ATS has primarily sold Hitachi air compressors to its existing pneumatic customers, but its intention is to grow the Hitachi brand in New Zealand.<sup>43</sup>

93.3 Industrial Air Systems Limited (IAS) is based in Timaru but it is in the process of establishing sales offices in Auckland, Christchurch and New Plymouth. IAS recently started distributing Pneutech air compressors and advised [ ] it is focused on expansion.<sup>44</sup>

93.4 The BOGE range of air compressors are distributed in New Zealand, by Air/Gas Compressor Specialists Limited in Taranaki and Auckland and Allied Air Compressors Limited in the South Island.<sup>45</sup> Air/Gas Compressor Specialists Limited noted that while it is based in Taranaki it has been supplying into the Auckland regions for some time and that it is in the process of establishing a branch in Auckland. [ ] [ ]

<sup>46</sup>] ]

93.5 Air Boss Compressors Limited, based in Palmerston North, distributes Rotair and Mattei air compressors. Air Boss Compressors Limited advised that it primarily supplies these air compressors in the Manawatu region, where it competes directly with Atlas Copco NZ, Ash Air and Kaeser but that it also has a number of resellers for its air compressors in both the North Island and South Island.<sup>47</sup>

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<sup>40</sup> The smaller equipment that is bought directly is typically stocked in-store while demonstration pieces for larger equipment are held in-store and ordered from the manufacturer once the order is placed. This equipment is generally bought through a tender process and so the timing of orders can be managed.

<sup>41</sup> Some Sullair products are also distributed by another supplier, Gough CAT. Gough CAT exclusively distributes Sullair portable diesel air compressors through its branches nationwide. Gough is the trading name for Gough Holdings Limited which has the New Zealand Caterpillar dealership. See Interview with Gough CAT (29 May 2014).

<sup>42</sup> Interview with Secair (29 May 2014).

<sup>43</sup> Interview with ATS (3 June 2014).

<sup>44</sup> Response from IAS (12 June 2014).

<sup>45</sup> Interview with Air/Gas Compressor Specialists Limited (13 June 2014) and interview with Allied Air Compressors Limited (11 June 2014).

<sup>46</sup> [ ]

<sup>47</sup> Interview with Air Boss Compressors Limited (11 June 2014).

94. The ability to enter new geographic markets or expand an existing customer base is more likely to be impacted by technical servicing capacity. Although we have been told that at present attracting technical staff is not easy, the restructure of this industry following the merger has the potential to create opportunities to attract qualified staff [ ].<sup>48</sup>

*Potential entry*

95. Neither Ingersoll Rand nor Gardner Denver has an established independent presence in the distribution or servicing of air compressors. Both currently distribute air compressors in New Zealand through the Ash Air businesses.

96. If, as mentioned, Ingersoll Rand and Gardner Denver would not allow the merged entity to distribute their products in New Zealand, then both companies are likely to be in a similar position to a new entrant into distribution and servicing.

97. We consider that this entry is likely, sufficient in extent, and within an appropriate timeframe to constrain the merged firm and prevent a substantial lessening of competition. This is referred to as the 'LET test'.

98. There is a real chance that Gardner Denver and Ingersoll Rand would maintain a presence in New Zealand if the merger proceeds and both would be distributing well-recognised brands with substantial installed bases. [

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99. Sufficient extent of entry (in an appropriate timeframe) relies on whether Gardner Denver and/or Ingersoll Rand could establish at least a central warehousing location and regional servicing centres (in order to provide post-warranty servicing) to rival the merged entity's offering.

100. This would likely be challenging for two reasons: one, because most existing distributors already have exclusive distribution agreements with international manufacturers; and two, because the pool of suitably qualified technicians is limited.

100.1 Most of the smaller air compressor businesses already have exclusive distribution agreements with overseas manufacturers. [

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<sup>48</sup> [ ]

<sup>49</sup> [

]  
<sup>50</sup> [ ]  
<sup>51</sup> [ ]

52]

100.2 The industry players we have spoken to have told us that attracting qualified technicians currently is not easy and, in addition, customers with larger equipment require multiple technicians on each site so that at least one technician is available in the event of a breakdown. They advised that to develop expertise in the other areas requires on the job training through a 'buddy' system with experienced air compressor technicians and training provided by the air compressor manufacturers on their product.<sup>53</sup>

101. Currently, Gardner Denver brands are supplied through 12 Ash Air branches nationwide and Ingersoll Rand is supplied through two Fox Air branches (in Auckland and Christchurch). However, such a presence need not be replicated in each region to constrain the merged entity. We consider that entry is likely to satisfy the LET test as:

101.1 the establishment of branches in each of the North Island and South Island should provide a foothold (to provide servicing under warranty) similar to the Ingersoll Rand offer through Fox Air;<sup>54</sup>

101.2 this merger may create opportunities to attract qualified technicians into the market place given evidence that [  
55 ];<sup>56</sup>

101.3 entry could occur either through establishing branches directly, compiling a network of smaller unaffiliated distributors<sup>57</sup> that would be able to sell and

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52 [

53 ]  
Training can last anywhere from three months to two years depending on the previous experience and expertise of the technician. See, for example, [ ]

54 [

]

55 [

56 ]  
[ ]

57 Such as Bayteck Systems Limited or EB Engineering Solutions.

service throughout the country (similar to the Kaeser Network) or by granting an exclusive distribution licence to a suitable party to service various regions throughout the country; and

- 101.4 the entrants need not open branches in each region as some distributors also use servicers (who do not have exclusive distribution contracts with air compressor manufacturers) to undertake service under warranty on their behalf in areas where they are not present.<sup>58</sup>
102. The Commission considers there is a real chance that Gardner Denver and Ingersoll Rand are likely to maintain a presence in New Zealand if the merger proceeds. To this extent, as per Table 3 below, a new customer would likely have the same selection of brands to choose from with and without the proposed merger if entry occurs in their region. If this entry does not occur, then the customer would still have the strong Kaeser alternative.

**Table 3: distribution of air compressors with and without the merger**

Without the merger		With the merger	
Distributor	Manufacturer (Brand)	Distributor	Manufacturer (Brand)
Atlas Copco NZ	Atlas Copco	Atlas Copco NZ	Atlas Copco
Ash Air	Atlas Copco	Ash Air	Atlas Copco
	Gardner Denver	ECS	Atlas Copco
	Ingersoll Rand	Kaeser network	Kaeser
ECS	Atlas Copco	Affiliated network	Ingersoll Rand
Kaeser network	Kaeser	Affiliated network	Gardner Denver
Other (Combined)	Sullair, Hitachi, Pneutech, BOGE, Rotair, Mattei	Other(Combined)	Sullair, Hitachi, Pneutech, BOGE, Rotair, Mattei

Source: Industry participants

#### *Countervailing power*

103. Atlas Copco NZ claimed that large customers would be in a position to exert countervailing power in response to any attempted price increase as these customers could source equipment offshore.
104. Customers purchase air compressor equipment locally because they require the warranty servicing that accompanies this sale.
105. Although large customers do not make up the majority of the merging parties' sales,<sup>59</sup> certain customers may be in a position [

<sup>58</sup> For example, ECS has a partnership with Bayteck Systems Limited to undertake this servicing under warranty in the Bay of Plenty region. Not all servicers appear to be appropriate for this type of partnership as the distributor would have to rely on the independent servicer and cover any faults under warranty.

<sup>59</sup> [



] to sponsor regional entry (expansion of existing smaller distributors to other geographic regions). This sponsorship would create alternatives in that region for customers other than the sponsoring party. [

] <sup>60</sup>

### **Conclusion on air compressor distribution markets**

106. We consider that there is a real chance that both Gardner Denver and Ingersoll Rand would be likely to enter as distributors, provide the associated servicing under warranty and therefore maintain a presence in New Zealand.<sup>61</sup>
107. In all regions, both where entry by these international manufacturers occurs and where it does not, a distributor for Kaeser would be an established alternative to the merged entity. Kaeser's distributors and the other, smaller, distributors have the potential to expand and a large customer could sponsor entry by a smaller distributor into a region with a large contract.
108. We therefore consider that the proposed merger is not likely to result in a substantial lessening of competition in the various regional markets for the distribution of air compressors.

### **The vacuum pump and blower distribution and servicing markets**

#### **The applicant's submission**

109. The applicant submitted that the largest suppliers of vacuum pumps are GDNZ (with the Gardner Denver brands), VPNZ (with the Becker brand) and Busch (with the Busch brand). There have been very few blower sales – in 2012 [ ]].

#### **The Commission's analysis**

110. Atlas Copco NZ distributes the Atlas Copco brand of vacuum pumps and blowers. Ash Air (through mbar) distributes the Pompetravaini brand of vacuum pumps and air compressors.
111. Unlike in the air compressor markets, vacuum pump and blower distributors sell an assortment of manufacturers' products in order to offer a wider range of equipment.
112. Table 4 indicates the share of each of the major vacuum pump and blower distributors. Atlas Copco NZ has a small presence in these markets. The same companies are involved in the servicing and distribution of vacuum pumps and blowers.

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<sup>60</sup> [ ]

<sup>61</sup> As the majority of a distributor's servicing income is earned from servicing post-warranty it is likely that the entrants would provide both servicing under warranty and post-warranty.

**Table 4: Estimated market shares for both the distribution and servicing of vacuum pumps and blowers**

Parties	Distribution	Servicing
<i>Merging parties share</i>	[ ]%	[ ]%
Ash Air	[ ]%	[ ]%
Atlas Copco NZ	[ ]%	[ ]%
VABS sales of the Edwards brand	[ ]%	[ ]%
VABS sales of other brands	[ ]%	
Busch	[ ]%	[ ]%
VPNZ	[ ]%	[ ]%
GDNZ	[ ]%	[ ]%
<b>Total</b>	100%	100%

Source: Industry participants, Commission estimates.

113. Less than [ ] of the VABS sales should be included in the merging parties' share of sales. VABS distributes the Edwards brand of vacuum pumps for the Atlas Copco Group<sup>62</sup> but also distributes the Agilent, SPZ, Finder, Won Chang and Pedro Gil brands of vacuum pumps and blowers which make up the remainder of their sales figures.
114. Busch and GDNZ distribute their own brands while Becker is distributed by VPNZ.  
[  
  
]
115. Other distributors include Pump and Vacuum Specialists Limited based in Rangiora, which exclusively distribute the SIHI brand,<sup>63</sup> and Absolute Vacuum Services Limited, based in Auckland, which distributes the Edwards and Becker brands among others.
116. Some of the air compressor distributors also sell and service vacuum pumps and blowers. [ ]
117. Vacuum pumps and blowers are typically sold with warranties of between one and three years. The distributor services the equipment under warranty. After that warranty period customers can, and do, switch service providers. There is a long tail of companies able to service vacuum pumps and blowers.<sup>64</sup>
118. Over half of the equipment serviced is generally brands that are not sold by the servicer. Servicers can get parts at a discount off the list price from each other.

<sup>62</sup> [ ].

<sup>63</sup> It specialises in liquid ring products that are quite common in the dairy industry.

<sup>64</sup> Some of the air compressor servicers also service vacuum pumps and blowers. For example, [ ]

While much of the equipment requires genuine parts, customers are price sensitive and will look for cheaper (non-genuine) parts.

119. Customers typically use a range of different vacuum pump and blower equipment of various brands. Vacuum pump technicians can service any brand or make of vacuum pump. As discussed above, customers require a breakdown response of approximately 24 hours. Technicians fly across the country from a central location in order to repair breakdowns and undertake scheduled maintenance.

**Conclusions on the vacuum pump and blower distribution and servicing markets**

120. The proposed merger is not likely to result in a substantial lessening in competition in these markets as Atlas Copco NZ is not a substantial player (particularly in servicing), only a portion of the VABS product is Atlas Copco Group's Edwards brand and there are strong alternative suppliers for the sale and servicing of vacuum pumps and blowers.

### **Determination on notice of clearance**

121. 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 a market in New Zealand.
122. Under s 66(3)(a) of the Commerce Act 1986, the Commission gives clearance to Atlas Copco South Pacific Holdings Pty Limited to acquire the businesses operated by four Lancaster Group Limited subsidiary companies: Ash Air (N.Z) Limited; Ash Air Oil & Gas Limited; mbar 2011 Limited; and Fox Air NZ Limited.

Dated this 30<sup>th</sup> day of July 2014

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Dr Mark Berry  
Chairman