



COMMERCE COMMISSION

Decision No. 583

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

VISY INDUSTRIAL PLASTICS (NZ) LIMITED

and

ALTO HOLDINGS LIMITED

The Commission: Paula Rebstock
David Caygill
Donal Curtin

Summary of Application: The application of Visy Industrial Plastics (NZ) Limited or an interconnected body corporate to acquire either all the issued shares in Alto Holdings Limited or the entire plastic packaging business and assets of Alto Holdings Limited and any subsidiaries.

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

Date of Determination: 28 June 2006

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CONTENTS

EXECUTIVE SUMMARY	4
THE PROPOSAL	6
PROCEDURE.....	6
STATUTORY FRAMEWORK.....	6
ANALYTICAL FRAMEWORK.....	7
THE PARTIES.....	7
Visy Industrial Plastics (NZ) Limited (VIP).....	7
VisyPET (NZ) Limited (VisyPET).....	8
Alto Holdings Limited (Alto)	8
OTHER PARTIES	8
Amcor Packaging (New Zealand) Limited (Amcor)	8
T.S.L. Plastics Limited (TSL).....	9
Link Plas Limited (LinkPlas).....	9
Coca-Cola Amatil (NZ) Limited (CCA).....	9
Frucor Beverages Group Limited (Frucor).....	9
Simply Squeezed Fresh Limited (Simply Squeezed).....	10
Devan Plastics Limited (Devan)	10
RX Plastics Limited (RX Plastics).....	10
INDUSTRY BACKGROUND	10
Plastics Industry	10
Types of Processing Methods	10
PET	11
Warm-fill and Hot-fill Technology.....	11
Aseptic Filling.....	12
Rigid Containers	12
Closures.....	13
CCA supply agreement.....	13
PREVIOUS COMMISSION DECISIONS	13
ASSOCIATION	14
MARKET DEFINITION	14
Product Dimension.....	15
<i>PET bottles</i>	15
<i>Other Rigid Plastic Containers</i>	19
<i>Plastic closures</i>	21
<i>Conclusion on product market</i>	21
Functional Dimension.....	21
<i>PET beverage bottles</i>	21
<i>Rigid plastic containers</i>	22
<i>Plastic closures</i>	22
<i>Conclusion on relevant functional markets</i>	22
Geographic Market	22
<i>PET beverage bottles</i>	22
<i>Small rigid plastic containers</i>	26
<i>Large rigid plastic containers</i>	26
<i>Plastic closures</i>	26
<i>Conclusion on relevant geographic markets</i>	27
Conclusion on Market Definition	27
COUNTERFACTUAL AND FACTUAL	27

Factual.....	28
Counterfactual.....	28
COMPETITION ANALYSIS.....	28
North Island PET market	28
<i>Existing competition</i>	28
South Island PET Market.....	30
<i>Existing Competition</i>	30
<i>Countervailing Power</i>	32
<i>Potential Competition</i>	34
<i>Conclusion on South Island PET market</i>	40
Small Rigid Plastic Container Market	40
<i>Existing Competition</i>	40
<i>Conclusion on small rigid plastic container market</i>	42
Large Rigid Plastic Container Market	42
<i>Existing Competition</i>	42
<i>Conclusion on Large Plastic Container Market</i>	46
Plastic Closures Market	46
CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION.....	46
DETERMINATION ON NOTICE OF CLEARANCE.....	48
APPENDIX 1	49

EXECUTIVE SUMMARY

The Proposal

1. Clearance is sought for the acquisition by Visy Industrial Plastics (NZ) Limited of either all the issued shares in Alto Holdings Limited or the entire plastic packaging business and assets of Alto Holdings Limited and any subsidiaries.

Market Definition

2. The Commission concludes that the relevant markets for the purpose of analysing the proposed acquisition are:
 - the North Island market for the manufacture and supply of PET beverage bottles (the North Island PET market);
 - the South Island market for the manufacture and supply of PET beverage bottles (the South Island PET market);
 - the national market for the manufacture and supply of small rigid plastic containers - of a size up to 20 litres (the small rigid plastic container market);
 - the national market for the manufacture and supply of large rigid plastic containers - of a size in excess of 20 litres (the large rigid plastic container market); and
 - the national market for the supply of plastic closures (the closures market).

Factual and counterfactual

3. In the factual scenario, the proposed acquisition would result in the combined entity becoming the only PET manufacturer with equipment in the South Island. The combined entity would also be the only extrusion blow-moulder manufacturing plastic containers of a size in excess of 20 litres, these assets being located in the North Island only.
4. The Commission considers that the most likely counterfactual scenario would be the continuation of the status quo.

North Island PET market

5. The Commission is of the view that the level of existing competition in the North Island PET market is of a level to ensure that the proposed acquisition is unlikely to result in a substantial lessening of competition between the factual compared to the counterfactual. In addition existing competitors have the ability to expand easily to meet increased demand for PET.
6. The Commission considers that
[
], as in the status quo.

South Island PET market

7. In the South Island PET market large customers (of a size of three million containers and above) are likely to have countervailing power in the factual. In addition, the acquisition is unlikely to have a material effect on very small customers which already purchase containers through a distributor or wholesaler in the South Island. The Commission has concluded that barriers to entry into the PET market are relatively low and that potential entry, on a small scale, is likely,

timely and would be sufficient in extent to provide a constraint on the combined entity.

8. The Commission concludes that as a result of weighing all of these factors, a substantial lessening of competition is unlikely to result in the South Island PET market in the factual compared to the counterfactual.

Small Rigid Plastic Container market

9. The Commission considers that given the range of existing competition in this market, and the relative ease of expansion, the proposed acquisition would be unlikely to result in a substantial lessening of competition in this market.

Large Rigid Plastic Container market

10. The Commission considers that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in this market because of the continued competition from rotational moulding manufacturers and the potential for containers to be imported.

Closures Market

11. The Commission considers that, given the minimal aggregation that would occur as a result of the proposed acquisition and the ease with which closures can be imported from overseas, there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition.

Overall Conclusion

12. The Commission is satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 3 April 2006. The notice sought clearance for the acquisition by Visy Industrial Plastics (NZ) Limited (VIP or the Applicant) of either all the issued shares in each of Vertex Group Holdings Limited (Vertex) and Alto Plastics Limited (Alto) or the entire plastic packaging business and assets of each of Vertex and Alto and their respective subsidiaries and associated companies. On 22 May 2006, the application was amended to reflect the incorporation of Vertex into Alto Holdings Limited. Accordingly, clearance was sought for the acquisition of either all the issued shares in Alto Holdings Limited or the entire plastic packaging business and assets of Alto Holdings Limited and any subsidiaries.

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 30 June 2006.
3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

STATUTORY FRAMEWORK

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

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

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

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

³ *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

minimal.⁴ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

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

ANALYTICAL FRAMEWORK

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

THE PARTIES

Visy Industrial Plastics (NZ) Limited (VIP)

11. VIP is a New Zealand company wholly owned by Visy Industrial Holdings (NZ) Limited (VIH).
12. VIP was formed in 2002, by its chairman, Raphael Geminder. Mr Geminder, who is the son-in-law of Richard and Jeanne Pratt, the owners of Visy Industries in Australia, acquired some rigid packaging assets of Visy Industries and commenced trade as VIP.

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

13. VIP's plant at Onehunga in Auckland manufactures products from polyethylene materials. This includes a limited range of industrial bottles from 500ml to 100 litres, as well as some retail market products such as petrol containers, watering cans, piggy banks, etc. VIP currently has no PET container capability.

VisyPET (NZ) Limited (VisyPET)

14. VisyPET is a member of a group of Visy Industries companies which are ultimately owned by Pratt Holdings Pty Ltd. VisyPET specialises in PET containers and products.
15. Visy Industries was established in Melbourne, Australia in 1948 and has become one of the world's largest privately-owned paper recycling and packaging companies. Visy Industries' total manufacturing revenues exceed \$2.5 billion and total manufacturing assets exceed \$3 billion.
16. In February 2001, Visy Industries acquired Southcorp Packaging, now named Visy, which manufactures and supplies PET bottles and jars, aluminium and tinplate cans, paperboard cartons and rigid plastic packaging.
17. VisyPET is Visy Industries' New Zealand PET beverage container manufacturing operation, with production facilities in Auckland and Christchurch. Both operations produce a range of PET beverage containers, ranging in size from 390ml to 2.25l that are used for both carbonated soft drinks (CSD) and water. VisyPET is the preferred supplier of CSD bottles to Coca-Cola Amatil Limited (CCA).

[]

Alto Holdings Limited (Alto)

18. Alto is a privately owned company that specialises in injection moulding, blow moulding and injection stretch blow moulding production for PET products. Alto has tended to specialise in warm and hot fill technology, having CCA's contract to supply all of its juice and E2 bottles.

[

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19. In 2005 Masthead Equities Limited, the major shareholder of Alto, acquired Vertex Group Holdings Limited (Vertex). Vertex specialised primarily in larger sized plastic containers (ie 50 litres to 200 litres). During the Commission's assessment of the current Application Vertex was incorporated into Alto Holdings Limited.

OTHER PARTIES

Amcor Packaging (New Zealand) Limited (Amcor)

20. Amcor is a global packaging company with annual sales of approximately NZ\$12.5 billion. It is based in Australia and has operations throughout Australasia, Asia, Europe and the Americas. Amcor produces a range of plastic, fibre, metal and glass packaging products, PET containers, plastic and metal closures, along with packaging-related services. This includes, in New Zealand, the manufacture of PET bottles and aluminium cans. Amcor has a 31% share of the global PET market.

21. In New Zealand, Amcor has tended to specialise in warm and hot fill bottle production technology but also has the capability to manufacture ambient fill bottles. Amcor manufactures Mizone, G Force, 3litre Citrus Tree, Just Juice and Freshup bottles for Frucor, and Powerade bottles for CCA.

T.S.L. Plastics Limited (TSL)

22. TSL is a manufacturer and supplier of PET bottles to soft drink and water bottling companies, as well as to the spirits and liquor industries in New Zealand. TSL supplies up to [] % of the PET requirements of its vertically integrated downstream filler company, Bevpac.

Link Plas Limited (LinkPlas)

23. LinkPlas manufactures PET containers for the food, drink, industrial, personal care and healthcare industries. LinkPlas is recognised in the industry as being an innovator, having developed, in conjunction with Air New Zealand, the first PET plastic bottle for wine, which can be cellared for 12 months.

Coca-Cola Amatil (NZ) Limited (CCA)

24. The Coca-Cola Company (TCCC) is a global soft-drink manufacturer, based in Atlanta, USA. TCCC owns a number of soft-drink brands internationally. TCCC licences these brands to (mostly) independent bottlers in various territories, and produces beverage concentrates and syrups. TCCC also handles “big picture” promotional activities for its brands. All other activities are carried out by the licensed bottler in each territory.
25. In New Zealand, the licensed bottler is CCA. TCCC, through four subsidiary companies, owns [] of CCA.
26. TCCC brands in New Zealand are *Coca-Cola*, *Sprite*, *Fanta*, *Lift*, and *Lift Plus*, *Powerade*, *Pump* and *Hi-C*. TCCC also acquired the Schweppes brands in New Zealand in 1999. These are *Schweppes*, *Roses* and *Sunkist*. In addition, TCCC purchased Rio beverages in 2002 and added the following fruit juice brands to its portfolio: *Keri*, *Pacific Orchard*, *Rio Gold*, *Robinson Brothers* and *Top Juice*.
27. CCA holds a number of brands itself that compete with TCCC and Schweppes brands. These include *L&P*, *Deep Spring*, and *Bubbly*.
28. CCA is the largest participant in the market for the supply of non-alcoholic beverages with around [] % market share.

Frucor Beverages Group Limited (Frucor)

29. Frucor is a large New Zealand non-alcoholic beverage company, which was established by the Apple and Pear Marketing Board. In 1998 the company was sold to a consortium of financial investors led by United States based Pacific Equity Partners (PEP). In 2000 PEP sold 50.1% of Frucor through a public float. Frucor was subsequently purchased by the Danone group, the world’s largest food and beverage manufacturer.
30. Frucor has brands in each of the main categories within the non-alcoholic beverage market. In the CSD segment it has the Pepsi range of products, in the fruit juice market it has *Just Juice*, *Fresh-Up*, and *Citrus Tree*, *Mizone* and *G Force* in sports drinks, *V* in energy drinks and *H2Go* and *Mizone* in water.
31. Frucor is the second-largest player in the market for the supply of non-alcoholic beverages with around [] % market share.

Simply Squeezed Fresh Limited (Simply Squeezed)

32. Simply Squeezed is a privately owned company in the Hawke's Bay. Simply Squeezed grows oranges and makes a variety of fruit juices and fruit smoothies. It has recently started to manufacture its own HDPE and PET bottles.

Devan Plastics Limited (Devan)

33. Devan is based in Tauranga and was established in 1988. It manufactures rotationally moulded plastic drums, tanks, bins and other products.

RX Plastics Limited (RX Plastics)

34. RX Plastics has plants in Ashburton and Hamilton and produces a range of plastic products including pipes, valves, septic tanks and other tanks and drums. It manufactures plastic products using injection, rotation, and extrusion technologies.

INDUSTRY BACKGROUND**Plastics Industry**

35. Plastic resins, the raw material for plastic product production, are imported from a variety of countries and used to make a variety of plastic products. The various types of plastics all have different physical properties that make them suitable to different end-use applications. Some of the more common resins used in processing in New Zealand include:
- Polyethylene Terephthalate (PET) - used in the production of soft drink and water bottles, salad domes, biscuit trays, salad dressing and peanut butter containers.
 - High Density Polyethylene (HDPE) - used to produce milk bottles, ice cream containers, juice bottles, shampoo, chemical and detergent bottles.
 - Polyvinyl Chloride (PVC) - used for cosmetic containers, plumbing pipes and fittings.
 - Low Density Polyethylene (LDPE) - used as pallet wrap and shrink wrapping in flexible packaging.
 - Polystyrene (EPS and PS) - used for foamed meat trays, cups, containers and lids.
 - Polypropylene (PP) - used for household chemical bottles and food bottles, cups and other uses.

Types of Processing Methods

36. The types of plastics listed above can be processed using a range of manufacturing processes. The most commonly used processes are listed below.
- Extrusion – The hot molten plastic is forced out of a die of a particular shape to produce a long continuous profile of plastic. Once the plastic is forced out through the die it must be cooled quickly to prevent it from collapsing. The plastic objects produced in this way include rods, tubes and house guttering.
 - Blow Moulding – Blow moulding is for making hollow objects with narrow necks such as bottles or jars. A hollow tube of plastic material is extruded, and placed between two moulds, one on either side. The two halves of the mould close around the plastic and air under pressure forces the molten

plastic against the sides of the mould. The two sides of the mould then open to release the object. Because blow moulded objects are made in a two sided mould there is usually a seam running around the completed object.

- Injection Moulding – This involves forcing molten resin into a mould at very high pressure. The plastic is allowed to cool for a small period of time and then the mould opens to release the object. Often a small bump of plastic at the centre bottom or elsewhere on the object will indicate where the molten plastic was forced into the mould. Objects such as buckets and cooking bowls are made by injection moulding.
- Rotational Moulding – Resin in powder form is inserted into a mould. The mould is placed into an oven, heated and rotated on two axes so that the resin coats the whole inner surface. The mould is then slowly cooled and opened, and the object removed. This method is usually used for larger objects such as water tanks, shipping drums, large toys and surfboards and kayaks.

PET

37. PET is a resin material. PET bottles are transparent plastic bottles typically used for packaging carbonated soft drinks (CSDs), water, sports and energy drinks and juice.
38. There are two distinct stages in the production of PET bottles:
 - the production of plastic preforms, the pre-production tubes used to make PET bottles; and
 - the production of empty PET bottles using the plastic preforms in specialised stretch blow-moulding machines.
39. PET preforms are injection moulded. The PET is extruded into a water-cooled mould, which consists of a neck section, core and cavity. The hot PET solidifies in the mould and forms the preform shape. The preform is then removed from the mould.
40. PET bottles can be produced either on single-stage machines or on two-stage machines. In the single-stage process, the two injection and stretch blow moulding steps take place consecutively in the same production unit. The preform, which is still warm from the injection moulding process, needs only to be thermally conditioned before being fed into the stretch blow-moulding chamber. In the two-stage process, PET preforms are produced on a separate production line and subsequently blown into bottles on another machine.
41. One advantage of a two-stage process is that it yields a higher output per unit of time. Such a process is required for high volume runs such as those for CSDs. These machines can produce between 8,000 and 20,000 bottles per hour (depending on the machine). Existing single-stage machines in the New Zealand market produce between 1,000 and 1,500 bottles an hour.
42. However, although single-stage production is slower, operating multiple single-stage machines affords a PET bottle manufacturer the ability to conduct a variety of smaller runs simultaneously.

Warm-fill and Hot-fill Technology

43. Warm-fill products are filled at around 74 degrees Celsius. Warm-filling is a non-aseptic method of packaging into PET and is used to package high acid drinks such as juices and isotonic sports drinks, in order to enhance their shelf

life. Warm-fill bottles are typically thicker than standard PET bottles so that they can withstand the heat of the warmed liquid.

44. Hot-filling is a method of packaging into PET bottles, in which sterilisation is achieved by heating the drink to around 85 degrees Celsius and filling into the PET bottle at that temperature. Hot-fill bottles must also be thicker than standard PET bottles so that they can withstand the heat. In addition some hot-fill bottles have multiple contours such that the walls of the bottle do not collapse when the hot liquid is introduced. Sports waters such as Mizone are typically packaged in this way.
45. Warm and hot-filling has allowed for the packaging into PET of many more beverages than previously, and is presently a growth area of the PET bottle manufacturing industry.
46. Warm and hot-fill bottles are typically manufactured on different machines to those which manufacture ambient fill bottles, although ambient fill bottle production machines can be altered to manufacture warm and hot-fill bottles. For less than \$10,000 single-stage ambient-fill machines can be modified to produce warm or hot-fill bottles.

Aseptic Filling

47. Aseptic bottle filling is a process whereby pre-sterilised and treated products are filled into bottles that are sterile on the inside and are then sealed with closures that have also been sterilised. The filling process takes place in a sterile chamber within the filling machine. Typically juices that are packed into liquid paperboard cartons (LPBs) are handled aseptically, which requires a separate filling line from ambient, warm and hot filling lines. Aseptically-filled products have an enhanced shelf life and reputedly a better taste than warm and hot-filled products.

Rigid Containers

48. Non-beverage rigid plastic containers are a form of primary packaging used for a variety of applications, including:
 - packaging food, including food products that are liquid or semi liquid (e.g. milk, sauces, mayonnaise, oil) and solids or dry food (e.g. fruit, vegemite, jam and other spreads);
 - packaging personal care products, including hair care products (e.g. bottles for shampoo and conditioner), sunscreen, moisturizers etc;
 - packaging household products, including dishwashing products, laundry detergents and fabric softeners, and household cleaners;
 - packaging pharmaceutical products (e.g. bottles/containers for tablets, vitamins etc);
 - packaging industrial and chemical products, including oil and oil additives, fertilizers, and garden chemicals.
49. There are several types of resins used to manufacture non-beverage rigid plastic containers, including PET, PP, PVC and HDPE. These types of plastics can be processed using a range of manufacturing processes including injection and blow moulding.

Closures

50. Closures are used to seal a container. Closures are used in almost all forms of primary packaging, including in containers for beverage products (i.e., resealable caps for CSD PET bottles) and non-beverage products. Plastic closures are typically used for plastic bottles and containers. Plastic closures are made using rotation and injection moulding.

CCA supply agreement

51. CCA has entered into a contract with Visy for the supply of the majority of its PET bottles. The most relevant clauses of that contract are outlined below.
52. []
53. []
54. [] the Commission considers that the CCA volumes are not contestable within the period that the Commission uses to assess acquisition clearance applications.

PREVIOUS COMMISSION DECISIONS

55. The Commission, in 2004, considered the plastics industry in Decision 524⁵ and Decision 527⁶. In addition, the Commission has previously considered the downstream beverage market in Decision 480⁷ and Decision 481⁸.
56. In Decision 524 the Commission examined the proposed acquisition of ACI Operations NZ Limited (ACI) by Visy Industrial Plastics NZ Limited (VIP). The Commission concluded that the acquisition would be unlikely to result in a substantial lessening of competition in any of the relevant markets.
57. In that case the Commission defined the relevant market as the New Zealand market for the manufacture and supply of PET bottles for non-alcoholic beverages.
58. The Commission also formed the view that VisyPET and VIP were properly considered to be associated for the purposes of assessing the Application.
59. The Commission concluded that the degree of existing competition and the countervailing power held by certain large customers would be sufficient to prevent a substantial lessening of competition between the factual and the counterfactual.
60. In Decision 527 the Commission considered the on-sale of some of VIP's assets, acquired from ACI following the Commission's determination in Decision 524, to VisyPET. Due to the Commission's finding in Decision 524 regarding the association of VIP and VisyPET, the Commission determined that the proposal would not be likely to result in a substantial lessening of competition.

⁵ *Visy Industrial Plastics (NZ) Limited & ACI Operations NZ Limited*, 26 May 2004.

⁶ *VisyPET (NZ) Limited & Visy Industrial Plastics (NZ) Limited*, 30 June 2004.

⁷ *Coca-Cola Amatil (NZ) Limited & Rio Beverages Limited*, 1 November 2004.

⁸ *The Coca-Cola Company & Rio Beverages Limited*, 1 November 2004.

ASSOCIATION

61. Section 47(2) provides that, for the purposes of s 47(1), a reference to a person includes two or more persons that are interconnected or associated.
62. Sections 47(3) and (4) stipulate that two or more corporate entities are associated if one, either directly or indirectly, is able to exert a substantial degree of influence over the activities of the other. The Commission is of the view that, in this context, a substantial degree of influence means being able to bring real pressure to bear on the decision making process of the other.
63. In its Application VIP stated that it did not propose the Commission should revisit the determination reached in Decision 524 (that VIP and VisyPET are associated), and that the Application be assessed on the basis that VIP and VisyPET are associated. However, VIP specifically reserved its position on this point.
64. The Commission is not aware of any material changes to the facts and conclusions drawn in Decision 524, in regard to the association of VisyPET and VIP.
65. Accordingly, for the purposes of assessing this clearance Application, the Commission considers VIP and VisyPET to be associated and hereafter they are referred to collectively as 'Visy'.

MARKET DEFINITION

66. The Act defines a market as:

. . . a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.⁹
67. For competition purposes, a market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.¹⁰
68. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry, would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the five dimensions of a market discussed below. The

⁹ S3(1A) Commerce Act 1986.

¹⁰ Australian Trade Practices Tribunal, *Re Queensland Co-operative Milling Association*, (1976) 8 ALR 481; *Telecom Corporation of NZ Ltd v Commerce Commission & Ors* (1991) 3 NZBLC 102,340 (reversed on other grounds).

Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

Product Dimension

69. Initially, markets are defined for each product supplied by two or more of the parties to an acquisition. For each initial market so defined, the Commission considers whether the imposition of a SSNIP would be likely to be profitable for the hypothetical monopolist. If it were, then all of the relevant substitutes must be incorporated in the market.
70. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market. The degree of demand-side substitutability is influenced by the extent of product differentiation.
71. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
72. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change in relative prices.
73. The Applicant submitted that there are three product markets in which there will likely be an aggregation of business activity as a result of the proposed acquisition. These are:
 - PET bottles;
 - rigid plastic containers; and
 - plastic closures.
74. Each of these areas are discussed below.

PET bottles

75. The proposed acquisition of Alto would result in Visy increasing its market share in respect of PET bottles.
76. Consistent with previous Commission decisions, the Applicant submits that the relevant product market for considering this proposed acquisition is the manufacture and wholesale supply of PET bottles for non-alcoholic beverage containers.
77. In previous decisions, the Commission has considered whether a broad market definition for beverage containers encompassing glass, aluminium, PET, and in some cases liquid paper board (LPB) and HDPE may be appropriate. For instance, CSDs are currently packaged in PET bottles, aluminium cans, and glass bottles. Water is packaged in PET, glass, and HDPE bottles. Juices are found in warm-fill PET bottles, aluminium cans, glass bottles, LPB cartons, and HDPE bottles. Isotonics are currently packaged in only one medium (hot-fill PET containers).
78. The Commission is aware of a number of factors that limit the substitutability of various packaging types under certain circumstances. The findings of the Commission in Decision 524, that PET beverage containers constitute a separate product market, were generally confirmed during this investigation's

consultations with industry participants. Three key factors have been consistently identified as determinants of the choice of packaging materials by fillers:

- the wholesale cost of packaging;
- the nature of the beverage being packaged; and
- the retail distribution channel being targeted.

Wholesale cost of packaging

79. Views expressed by fillers to the Commission suggest that the wholesale cost of beverage containers is a significant consideration when deciding on packaging material.
80. For instance, it was submitted to the Commission that while glass possesses many of the desirable characteristics for packaging water (clear and resealable), the high cost of glass in relation to PET makes it prohibitively expensive as a packaging option. Only imported premium waters, such as San Pellegrino, that retail at a price significantly higher than domestically bottled water, are sold in glass in New Zealand.
81. Hence, even in the face of a SSNIP of five to ten percent on the price of PET bottles, substitution away from PET towards glass would be unlikely to occur. Therefore, the Commission concludes that, for the purposes of the present Application, glass would not fall within the same market as PET beverage packaging.
82. The SSNIP test is less informative over the substitutability between aluminium cans, LPB cartons, and PET as beverage packaging options since the cost to fillers of these materials are relatively similar, yet most industry participants submitted that these should be excluded from the relevant market. In order to form a view about the substitutability of these materials, the Commission examined the applicability of alternative packaging materials to different beverage types.

Nature of the product being packaged

83. Industry participants have confirmed that from both a product characteristic and marketing standpoint, the degree of demand-side substitutability between packaging types depends on the nature of the beverage being packaged.
84. Non-PET plastics, such as HDPE, are unsuitable for packaging CSDs due to their lack of carbonation retention. Water is often packaged in clear containers such as PET bottles (sometimes with a light blue tint) to capture the 'pure' water image. Juice products are generally not packaged in aluminium cans. Isotonics (sports drinks) are packaged in hot-fill PET bottles that have resealable sipper-top closures for on-the-go consumption, a feature not offered by cans.
85. Whilst PET beverage bottles in New Zealand are used mostly for containing CSDs, water, juice and isotonic, the Commission has previously considered whether the relevant product market should encompass the packaging of alcoholic beverages and milk.
86. Traditionally, beer and other alcoholic beverages have not been packaged in PET due to technological barriers. Multi-layer preforms are presently being used to produce PET bottles to package beer for events venues. However, the

proportion of alcohol sold in New Zealand in PET bottles remains minimal, primarily due to consumer preferences.

87. Milk, which is considered by industry participants to be a liquid food rather than a beverage, is not packaged in PET primarily because HDPE is a cheaper option. Also, transparent PET bottles allow unsightly milk residue at the neck of the bottle to be visible. Technology around moulding an integrated handle on a PET bottle (a feature of most milk bottles) is also very limited.
88. In the course of the current investigation the Commission was informed that, although still rare, the use of PET for low budget alcoholic beverages is increasing. Alcoholic beverages require a different preform (usually coloured and containing an 'oxygen barrier') but there is no technical difference in blowing a PET bottle for an alcoholic application than for any other application. Similarly, it is primarily marketing decisions that result in milk being sold in HDPE containers. The Commission understands that some milk is currently packaged and sold in PET containers in Australia.
89. The end-use of PET bottles is relevant in that it determines the possible substitute materials for bottling beverages, but this does not necessarily require the identification of those particular applications in the product market. The suitability of potential substitute materials will be determined by both technical and marketing factors related to the end-use liquid content type.
90. The Commission recognises that certain materials are more suited to packaging certain beverage types from a technical application standpoint. In particular, for the purposes of the present Application, the Commission is of the view that aluminium cans, LPB cartons, and HDPE bottles are unlikely to fall in the same product market as PET beverage packaging.
91. The Commission has previously considered whether cold-fill, warm-fill, and hot-fill bottles should be defined within the same product market. The Commission was informed that warm and hot-fill machines are capable of manufacturing cold-fill bottles (after some relatively simple and costless retooling). Similarly cold-fill machines can be converted to warm and hot-fill production relatively cheaply by incurring a one-off conversion cost of approximately \$10,000. As such, the Commission is of the view that supply-side substitution may occur reasonably readily and therefore, for the purposes of the present application, that cold, warm and hot-fill bottles are likely to be in the same product market.
92. Distinctive packaging is often used in marketing product placement strategies as a means to differentiate beverage products and create a desired image. Substituting away from packaging strongly associated with a previously established image is likely to require fillers to incur significant marketing expense in order to reposition the product. The potentially large sunk costs associated with remarketing products in alternative packaging may be a significant hurdle for fillers to overcome in order for smooth substitution to occur between beverage packaging materials. The Commission is of the view that this may in turn limit the degree of substitutability between beverage packaging materials.
93. The Commission considered whether it is appropriate to limit the market to PET containers for beverages or whether it should extend to include all types of end use application (including, for instance, honey jars). The Commission considers

that the particular characteristics of beverages often dictate that if a plastic container is chosen as the packaging option, then PET containers must be used. The Commission considers that PET, as a food or consumer goods packaging option, is subject to a greater number of substitution alternatives. Accordingly, the Commission considers that it is appropriate to adopt a conservative approach and limit the extent of the PET market in this case to beverage applications.

Retail distribution channel of end product

94. The retail distribution channels used by fillers in New Zealand may be classified broadly into two categories: the supermarket channel and the route trade (petroleum outlets, convenience stores and corner dairies).
95. Industry participants have previously submitted to the Commission that beverage products distributed through the supermarket channel are designed more for home consumption, in contrast to route trade products, which are designed for occasional consumption. For instance, supermarket channel beverage products are generally sold in larger volume units so customers tend to seek light-weight packaging that facilitates easy storage (for example, LPB cartons and PET bottles that are designed to fit easily in refrigerators).
96. Fillers have suggested to the Commission that the packaging needs of customers consuming at home are different to those consuming occasionally and on-the-go, so different packaging types are used depending on whether the end product is destined for the supermarket or the route trade. Route trade customers tend to prefer packaging that offers functionality and ease of use (for example, resealable closures or small single-serve cans for on-the-go-consumption).
97. Given that there are two retail channels that fillers use to distribute their beverage products, and that the packaging needs of the customers serviced by these two channels are sometimes quite different, the number of substitutable packaging options available to fillers is likely to be more limited than indicated by the Applicant. For instance, fillers are unlikely to consider using glass packaging, which is both heavy and expensive, for 3 litre juice products commonly found in supermarkets. Similarly, PET is a highly unlikely substitute for glass for packaging energy drinks such as V or Lift Plus, which are branded as premium beverages in order to create a point of difference from regular CSD beverages, commonly packaged in PET.
98. The Commission considers that the choice of distribution channel plays a role in determining the level of substitutability between different beverage packaging materials, and takes this factor into consideration when framing its definition of the relevant product market.

Supply-side substitution

99. From a supply perspective, different technology is required to make PET bottles and HDPE bottles. As explained above, a PET bottle is manufactured by stretching and blowing a plastic preform. HDPE bottles are manufactured by a different method whereby a mould is clamped around a length of extruded plastic and then blown into the correct shape. There is no ability to convert machinery from one manufacturing process to the other and therefore no ability for a plastics manufacturer, not currently manufacturing PET products, to easily re-deploy resources in order to do so.

Conclusion on PET bottles

100. The Commission considers that due to the demand and supply-side substitution considerations discussed above, for the purposes of the present Application, it is appropriate to define a distinct product market for PET beverage bottles.

Other Rigid Plastic Containers

101. The Applicant submitted that another of the relevant product markets affected by the proposed acquisition is a collective non-beverage rigid plastic container market.

102. Rigid plastic containers come in many different shapes and are used to package a range of products including chemicals, hair care products and cosmetics.

103. The Applicant submitted that this market includes containers made from PP, PVC, HDPE and PET (for non-beverage applications) plastics. The Commission understands that there are no products which physically require one type of rigid plastic packaging over any of the others (other than those beverages requiring PET discussed above). However, there appear to be strong marketing incentives for choosing particular materials in particular circumstances. The Commission considers that in many cases the materials are complementary. For instance, a product may be packaged in a PVC bottle, an HDPE bottle or a PET container depending upon its volume and intended use. In addition, it may be possible to use other packaging alternatives such as glass, aluminium or cardboard tetrapaks. Some materials may be better suited to single use applications, whilst others are better suited to repeated use or allow greater portability.

104. The Commission considered the extent to which other options proposed by the Applicant such as steel, intermediate bulk containers (IBCs) or 'bag in box' containers, are substitutes for plastic packaging. The Commission spoke to a number of users of plastic containers to explore the extent to which the industry perceived these materials to be substitutes. Most customers spoken to said that they did not consider these materials to be alternatives for plastic for a number of reasons including physical weight, ease of transport, durability, cost and the propensity for steel to dent. However, some customers indicated that under certain conditions these alternatives may be more feasible, particularly during intermediate transport or bulk storage.

105. In this instance, the Commission considers it appropriate to adopt a conservative approach and limit the product market to plastic containers consisting of all plastic packaging options other than PET used for beverage applications. As such, PET jars (for cosmetics, etc) are included within this market definition. The Commission considers that alternatives such as glass, steel and aluminium offer very limited competition at the fringes of the market.

106. Whilst the Applicant submitted that the relevant market is for 'non-beverage' rigid plastic containers, it does appear that there is a large amount of rigid plastic used for beverages (in addition to that contained in PET containers). Market participants have reported that the rigid plastics products used to package beverages are exactly the same as those used to package food or chemicals, other than in their physical design. The Commission is aware of numerous examples of beverages packaged in HDPE plastic containers, including fruit juice, water and milk; albeit that the shelf life of the product may be contingent on the

packaging material selected. Accordingly, the Commission does not consider it necessary to narrow the market to exclude beverage applications.

Size of the container

107. Plastic packaging comes in an array of shapes and sizes for many different applications. Typically a producer of these plastic packaging options will produce a range of sizes, depending on the preferences of the purchaser. Such capabilities will generally be determined by the range of moulds to which a producer has access.
108. Industry participants informed the Commission that, in general, machines used to manufacture these products would be capable of producing a container up to a size of 20 litres. It was suggested that specialised equipment would be needed if a container of a greater size was desired. Hence, a manufacturer of small rigid plastic containers (20 litres and below) is unlikely to be able to manufacture larger containers (in excess of 20 litres) without first investing in new machinery.
109. Containers in sizes above 20 litres are typically used in “industrial” applications, for example bulk packaging of oils, paints, juice, dairy products, edible oils and agricultural and household chemicals.
110. From a demand perspective the Commission considers that there is a chain of substitution in respect of the size of the container required. In many instances a 500ml container may be substitutable for a 750ml container, and similarly between a one and two litre container. However, the Commission considers that the demand side substitutability between these small containers and large containers eg 50 litres to 100 litres would be much more limited.
111. For these reasons, the Commission considers it appropriate to split the product dimension into two distinct markets, namely the markets for small containers (20 litres and below) and large containers (in excess of 20 litres).

Method of manufacture

112. The Commission considered the extent to which blow moulded containers (manufactured by Visy and Alto) were considered substitutes for plastic containers made by rotational moulding.
113. [] informed the Commission that there were no functional differences between the two types of containers and they could be used (and are used) to carry the same types of goods. Industry participants informed the Commission that in many instances the choice between the options is based on marketing preferences.
114. The Commission considers that it is appropriate to include rotationally moulded containers and blow moulded containers in one product market. The Commission has further considered the extent to which these types of containers compete in the competition analysis.

Conclusion on rigid plastic containers

115. Following its consultation with industry participants, for the purposes of the present Application, the Commission is of the view that there are two relevant product markets in respect of rigid plastic containers:

- small rigid plastic containers (up to 20 litres); and
- large rigid plastic containers (in excess of 20 litres).

Plastic closures

116. The Applicant submitted that a distinct market should be defined for plastic closures.
117. Plastic closures are used to seal a container and in many instances a closure will be chosen independently from the bottle and may be sourced from a variety of industry participants. Closures are often imported from overseas manufacturers. This is possible due to the common use of generic bottle neck sizes and threads. Industry participants informed the Commission that in most instances a beverage container will have a 28ml or 38ml neck size.
118. The Commission considered whether metal (including aluminium) closures are a substitute for plastic closures. Most industry participants were of the view that plastic closures will be required to seal plastic bottles, with there being no suitable substitution alternatives made from other materials. In addition, the Commission was informed that metal closures were generally manufactured by companies unrelated to the plastics industry and require different machinery.
119. The Commission considers that it is appropriate to define a single product market for plastic closures in this case.

Conclusion on product market

120. The Commission considers that, for the purposes of the present application, the relevant product markets for the proposed acquisition are:
- PET beverage bottles;
 - small rigid plastic containers (up to 20 litres);
 - large rigid plastic containers (in excess of 20 litres); and
 - plastic closures.

Functional Dimension

121. The production, distribution, and sale of a product typically occur through a series of functional levels, conventionally arranged vertically in descending order. Generally, the Commission identifies separate relevant markets at each functional level affected by an acquisition, and assesses the impact of the acquisition on each.

PET beverage bottles

122. The Applicant submits that the functional dimension of the market for PET bottles is that for the manufacture and wholesale supply. This functional dimension has not been challenged by the interested parties.
123. Visy and Alto are involved in the manufacture of PET bottles. They wholesale supply these bottles to customers, but are not involved at the downstream retail level of the market (selling the filled beverage bottles to customers). Therefore the Applicant submits that the relevant functional market is limited to the manufacture and wholesale supply of PET beverage bottles.
124. The Commission considers that the functional market suggested by the Applicant, that for the manufacture and wholesale supply of PET bottles, is the appropriate functional market in this case.

Rigid plastic containers

125. The Applicant submits that the functional dimension of the market in respect of rigid plastic containers is that for the manufacture and wholesale supply. This functional dimension has not been challenged by industry participants.
126. The Commission was informed by industry participants that a large amount of large plastic containers are imported into New Zealand. Accordingly, the Commission considers that the functional market in respect of both large and small rigid plastic containers should be the manufacture and wholesale supply.

Plastic closures

127. The Applicant submits that the functional dimension of the market for closures is that for the manufacture and wholesale supply. This functional dimension has not been challenged by industry participants.
128. The Commission was informed, by the Applicant and industry participants, that a large amount of plastic closures are imported into New Zealand. Accordingly, the Commission considers that the functional market in respect of closures should be the manufacture or import and wholesale supply.

Conclusion on relevant functional markets

129. The Commission concludes that for the purposes of the present Application, the relevant functional markets are the:
- manufacture and wholesale supply of PET bottles;
 - manufacture and wholesale supply of small rigid plastic containers;
 - manufacture and wholesale supply of large rigid plastic containers; and
 - manufacture or import and wholesale supply of plastic closures.

Geographic Market

130. The Commission defines the geographic dimension of a market to include all of the relevant spatially dispersed sources of supply to which buyers would turn, should the prices of local sources of supply be raised.

PET beverage bottles

131. The majority of contracts for the supply of PET beverage bottles in New Zealand to larger customers are won through tender processes. Customers of PET bottles put out an open tender on which PET bottle manufacturers submit bids. The two largest customers in New Zealand, CCA and Frucor, both have filling plants located in Auckland and Christchurch. The geographic spread of these plants allows efficient distribution of filled products throughout the North and South Islands, respectively. Similarly, both parties to the acquisition have plants in Auckland and Christchurch, allowing easy delivery of converted PET bottles to the fillers.
132. In Decision 524 the Commission defined a national geographic market, in respect of PET containers. This was done primarily on the basis that PET bottle manufacturers (such as Visy and Alto etc) commonly have machinery located in both Islands and on the basis that the cost of transporting preforms between Islands is not prohibitive. However, in this investigation the Commission has found very little evidence of customers blowing their own bottles from pre-

bought preforms, and so is concentrating on the manufacture and wholesale supply of the finished PET bottle.

133. The Commission has considered whether the geographic scope of the PET market should be national or consist of separate markets for the North and South Islands. Separately defined markets may be appropriate if manufacturers and suppliers of PET bottles on the South Island were hypothetically able to raise their prices by 5-10 percent without South Island customers switching to North Island suppliers. Evidence gathered included both anecdotal evidence gained in interviews with industry participants, and detailed numerical market analysis.
134. South Island beverage manufacturers have expressed concern over the proposed acquisition on the basis that it is uneconomical to freight bottles from the North Island to the South Island and that Visy and Alto are the only manufacturers in the South Island.
135. [], expressed concern that in the factual scenario the price of plastic bottles could be raised and that the cost of freighting bottles from the North Island was not financially viable. [] use approximately [] PET bottles each year and said that the freight cost on PET containers would be likely to double the ultimate cost per unit.
[]
136. Quantitative data on sales to all customers were gained from all New Zealand manufacturers and PET bottle wholesalers. This included information on bottle prices, bottle volumes, whether the bottle was from a specialised or generic blow mould, the location at which the bottle was produced, the customer's location, and freight charges paid by the customer. This has enabled the Commission to undertake a detailed survey of the geographic dimension of the PET bottle market.
137. The data provided indicate the following:
- PET bottle manufacturing and sales are concentrated in the North Island;
 - freight costs differ between islands; and
 - the cost of freight from the North to South Island is substantial.
- These points are discussed in turn.
138. The majority of PET bottle manufacturing and filling takes place in the North Island. Customers in the South Island represent less than ten percent of New Zealand's PET bottle sales and revenues, as shown in Table 1 below:

Table 1: North and South Island shares

Island shares*	Number of PET bottles sold		PET bottle revenue	
	<i>total</i>	<i>NZ share</i>	<i>total</i>	<i>NZ share</i>
North Island	[]	[]%	[\$]	[]%
South Island	[]	[]%	[\$]	[]%

* NZ shares based on customer location. Exports account for []% of bottles sold, and []% by revenue.

Source: Commission estimates based on data provided to the Commission by industry participants.

139. An interesting dimension of the geographic market is that the end use of the bottle has a bearing on the distance it can viably be transported. A PET bottle designed for high value cosmetics could be transported further than a bottle designed for less valuable end-use products as the relative freight component may constitute a smaller proportion of the final retail cost.
140. The Commission was informed by
[

]. The bottles are filled in Christchurch as
[

].
141. Another company that sources its bottles from the North Island is
[

] said that they would incur some of that per unit freight charge in any event if bottles were sourced from Christchurch but could not provide a comparative figure nor the precise reasons why the Auckland manufacturer was preferred over those based in the South Island.
142. Per bottle freight rates will depend upon the size of bottle being transported, the mix of bottles within a pallet and transportation container, and the transportation distance. Factors such as the manufacturer's location, customer location, and where relevant, the distance of the customer from a wholesale storage location will also impact on freight costs.
143. Data on freight costs indicate a marked difference in freight rates between freight within the North Island and freight within the South Island. Freight rates ranged from 1-22 percent mark-up on product cost in the North Island to a 1-99 percent mark-up on product cost in the South Island. The median average mark-up was two percent and five percent, respectively.
144. In order to more accurately compare freight costs between the islands, the Commission's data was split by supplier, customer size, bottle size and type. This was to compare differences in freight costs by removing the influence of other price affecting factors. The following observations were made:

- for the same bottle, [] freight charge to a smaller customer across the Cook Strait from North to South is 65 percent higher than its freight charge within the North Island to a larger customer; and
 - for the same sized bottle, [] North to South Island freight is 221 percent higher than [] within North Island freight for similar sized customers, resulting in a 105 percent higher final delivered price.
145. The Commission recognises that such comparisons are specific instances, and cannot be conclusive regarding the constraint on the potential ability of PET bottle suppliers to raise prices in the South Island.
146. As discussed, in some instances a South Island manufacturer may choose to source bottles from the North Island due to one company producing a particular or specialised bottle shape. In other instances a company may take delivery of bottles in the South Island that are manufactured in the North Island where a national supply contract has been negotiated with that manufacturer.
147. The Commission investigated how far delivered prices could rise in the South Island before buying and shipping in from the North Island would be a viable option for South Island customers. Freight rates were obtained both from existing transporters of PET bottles from the North to the South Island and a number of freighting specialist companies. Data on freight costs indicated that freighting bottles between the islands (from North to South)¹¹ is expensive, which concurs with the anecdotal evidence described above. Hypothetical per bottle freight rates were calculated, making a number of practical assumptions.¹² Comparisons were made only for bottles of identical shape and size, and between either the same customers in the North and South Island or customers of a similar size.
148. Table 2 shows the resulting hypothetical price differentials found between existing delivered prices in the South Island and a South Island customer buying in the North Island and freighting from the North to the South Island.

Table 2: Price differential for South Island customers between existing delivered prices on the South Island and buying and freighting from the North Island

Supplier	Customer	Bottle volume	Percentage price increase if bought and shipped from NI
Visy	Frucor	350 ml	[]%
Alto	Coca Cola Amatil	400 ml	[]%
Visy	Frucor	750 ml	[]%
Alto	Coca Cola Amatil	800 ml	[]%
Visy	Aotea Plastics Industries	1000 ml	[]%
Alto	Coca Cola Amatil	1000 ml	[]%
Visy	Frucor	1250 ml	[]%
Alto	Coca Cola	3000 ml	[]%

Source: Commission estimates based on data provided to the Commission by industry participants.

¹¹ The Commission did not receive any evidence of PET bottles being freighted from the South Island to the North Island (with the exception of one highly specialised PET bottle for a high value end-product).

¹² Assumptions include: a transport cost of \$2415 (inc GST) per 20ft container from Auckland to Christchurch and 44 pallets per container.

149. It must be noted that due to data constraints, the comparisons above were made only for larger customers. It is reasonable to assume therefore that due to economies of scale resulting in both lower transport and product per bottle costs, the above price differential could be an underestimation of the price differential faced by a smaller or medium sized South Island customer wishing to buy from the North Island.
150. The Commission believes that such price differentials are high enough above the 5-10 percent threshold of the *ssnip* test to indicate that defining two separate geographic island markets is appropriate in this case. The Commission also notes that adopting these two geographic markets is the conservative approach.

Small rigid plastic containers

151. The Applicant submits that the geographic dimension of the market for the manufacture and wholesale supply of non-beverage rigid plastic containers is a national market.
152. Despite small plastic containers being, in many instances, similar to PET beverage bottles in size and function, the Commission was informed that the end-use application of these containers typically involves the packaging of higher value products. Accordingly, the freight component (as a percentage) on such products usually is not so large as to prohibit their transport between the North and South Islands.
153. As such, the Commission considers that, for the purposes of assessing this Application, it is appropriate to adopt a national geographic dimension in respect of this market.

Large rigid plastic containers

154. In respect of larger rigid plastic containers (in excess of 20 litres) the Commission considered whether the geographic market should be defined as national or limited to distinct North and South Island markets.
155. Whilst these larger containers are bulky their per unit cost is much more expensive than a PET beverage container. For instance a 500ml PET container may cost 20c whereas a 100 litre container could cost \$60. These types of containers are also commonly used to store relatively high value chemicals, which again lowers the freight cost component as a percentage of the final retail cost.
156. Another consideration is that the two parties to the acquisition (Visy and Alto) manufacture containers of this size only in the North Island. As such, the extent to which an effect may be experienced in this market is likely to be similar in the North and the South Island.
157. For these reasons, the Commission considers that this market can be properly analysed by considering the effect of the acquisition within a combined national geographic market.

Plastic closures

158. The Applicant submits that the geographic dimension of the market for the manufacture and wholesale supply of closures is a national market. This geographic dimension has not been challenged by the interested parties and is consistent with previous Commission decisions.

159. Closures are small and in most instances symmetrical. This allows them to be packaged economically with hundreds of thousands of closures requiring minimal packaging space.
160. The Commission considers that the geographic dimension for the closures market is national.

Conclusion on relevant geographic markets

161. The Commission is of the view that the relevant geographic market dimensions are the:
- North Island market for the manufacture and wholesale supply of PET bottles;
 - South Island market for the manufacture and wholesale supply of PET bottles;
 - New Zealand market for the manufacture and wholesale supply of small rigid plastic containers;
 - New Zealand market for the manufacture and wholesale supply of large rigid plastic containers; and
 - New Zealand market for the manufacture or import and wholesale supply of plastic closures.

Conclusion on Market Definition

162. The Commission concludes that the relevant markets for the purpose of analysing the proposed acquisition are:
- the North Island market for the manufacture and supply of PET beverage bottles (the North Island PET market);
 - the South Island market for the manufacture and supply of PET beverage bottles (the South Island PET market);
 - the national market for the manufacture and supply of small rigid plastic containers - of a size up to 20 litre (the small rigid plastic container market);
 - the national market for the manufacture and supply of large rigid plastic containers - of a size in excess of 20 litre (the large rigid plastic container market); and
 - the national market for the manufacture or import and wholesale supply of plastic closures (the closures market).

COUNTERFACTUAL AND FACTUAL

163. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgement considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (counterfactual).¹³ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

¹³ Air New Zealand & Qantas Airways Ltd v Commerce Commission (No.6), unreported HC Auckland, CIV 2003 404 6590, Hansen J and KM Vautier, Para 42.

Factual

164. In the relevant factual scenario, in respect of all markets, Visy and Alto will combine to become one entity. The combined entity would continue to operate in the relevant markets and become the only PET manufacturer with equipment in the South Island. The combined entity would also be the only extrusion blow-moulder manufacturing plastic containers of a size in excess of 20 litres, these assets being located in the North Island only.

Counterfactual

165. Alto advised the Commission that if the acquisition did not proceed, it would []. Accordingly, in the absence of the acquisition by Visy, the Commission considers that the most likely counterfactual scenario would be the continuation of the status quo.

COMPETITION ANALYSIS**North Island PET market***Existing competition*

166. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).
167. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.
168. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected persons or associated persons) has less than in order of 40% share; or
 - the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
169. There are five competitors in the North Island PET bottle market. Each produce a variety of PET products for a range of customers.
170. The table below indicates approximated market share figures based on the tonnage of resin processed each year by the respective manufacturers. The figures exclude volumes processed for CCA.

Table 3: Estimated Shares in the North Island PET Market (Tons of Resin used 05/06)

Manufacturer	Resin	%
Visy	[]	[]
Alto	[]	[]
Visy and Alto	[]	[]
Amcor	[]	[]
LinkPlas	[]	[]
TSL	[]	[]
Total	[]	100%

Source: Commission estimates based on data provided to the Commission by industry participants.

171. Visy currently holds [] of the market and Alto holds []. Post acquisition the combined entity will have a [] share of the market. The biggest competitor is Amcor with a [] market share. TSL and LinkPlas are two other manufacturers of PET bottles. However, they operate in niche segments of the market with low volumes. Their share of the market is [] and [], respectively.

172. The Commission also assessed the market shares by total sales and revenue, as illustrated below.

Table 4: North Island PET Sales and Revenue

	PET bottles sold		PET bottle revenue	
Manufacturer	Bottle numbers	Bottle share	PET bottle revenue	Revenue share
VisyPET	[]	[]%	[]	[]%
Alto	[]	[]%	[]	[]%
VisyPET & Alto	[]	[]%	[]	[]%
Amcor	[]	[]%	[]	[]%
LinkPlas	[]	[]%	[]	[]%
TSL	[]	[]%	[]	[]%
<i>North Island Total</i>	[]	100	[]	100

Source: Commission estimates based on data provided to the Commission by industry participants.

173. [

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174. [

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175. [

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177. [

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178. [

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179. [

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180. [

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Barriers to Expansion

181. Barriers to expansion in PET are low, given that the existing PET suppliers all have excess capacity. [] both informed the Commission that they have the capacity to easily take on extra work. The Commission understands that the excess capacity of [].

182. [

[] million bottles over a year with a maximum capacity of [] million bottles per annum.]

183. The Commission considers that expansion in the North Island could occur easily with minimal deployment of additional investment. The current manufacturers in the North Island need only run their machines for additional hours to meet any increased demand.

Conclusion on North Island PET market

184. The Commission is of the view that the existing competition in the North Island PET market is such that the proposed acquisition is unlikely to result in a substantial lessening of competition between the factual and the counterfactual. In addition, existing competitors have the ability to expand easily to meet increased demand for PET.

185. The Commission considers that

[

] as in the status quo.

186. Given these conclusions, the Commission will not consider this market further.

South Island PET Market

Existing Competition

187. In the counterfactual scenario, the Commission considers that Visy and Alto would continue to compete facing only limited additional competition from the import and wholesale supply of bottles from the North Island.

188. In the factual scenario, there would be one manufacturer of PET products in the South Island, being the combined entity. This is illustrated in the following table, which estimates industry market shares based on the total amount of resin

processed by the respective manufacturers in the South Island over the last year. The totals exclude quantities processed for CCA.

Table 5: Estimated Shares in the South Island PET Market (Tons of Resin used 05/06)

Manufacturer	Resin	%
Visy	[]	[]
Alto	[]	[]
Visy and Alto	[]	100.0
Amcor	0	0.0
LinkPlas	0	0.0
TSL	0	0.0
Total	[]	100

Source: Commission estimates based on data provided to the Commission by industry participants.

189. In both the factual and the counterfactual, the Commission considers that it is likely that a limited number of PET bottles will be freighted from the North Island to the South Island. However, as discussed in the geographic market definition, this is likely to be limited in extent and provide only very marginal competition to the combined entity, given the relative costliness of freighting empty containers long distances.

190. The table below outlines the total number of PET bottles currently sold in the South Island. It includes the volumes sold by Amcor and TSL (located in the North Island) but excludes the totals sold to CCA.

Table 6: South Island PET Sales and Revenue

	PET bottles sold		PET bottle revenue	
	Bottle numbers	Bottle share	PET bottle revenue	Revenue share
VisyPET	[]	[]%	[]	[]%
Alto	[]	[]%	[]	[]%
VisyPET & Alto	[]	[]%	[]	[]%
Amcor	[]	[]%	[]	[]%
TSL	[]	[]%	[]	[]%
<i>South Island Total</i>	<i>[]</i>	<i>100%</i>	<i>[]</i>	<i>100%</i>

Source: Commission estimates based on data provided to the Commission by industry participants.

Barriers to expansion

191. As Alto and Visy are the only manufacturers in the South Island PET market it is not necessary to consider the barriers to expansion in this market other than to acknowledge the expansion potential of importing companies.

192. As explained above, the most likely companies from which a bottle could be sourced outside the South Island, are Linkplas, TSL and Amcor (all located in the North Island). Accordingly, the comments made above in respect of the expansion potential in the North Island are applicable here. However, the Commission considers that the constraint on the merged entity provided by the potential for imports is minimal.

Conclusion on existing competition

193. The proposed acquisition would result in a reduction in the number of South Island PET manufacturers from two to one.
194. The Commission considers that companies from which products are imported from the North Island could expand easily but this is coloured by the consideration that imports from the North Island are only marginally competitive in the South Island.
195. The Commission concludes that the degree of competition provided by these imports into the South Island is minimal.

Countervailing Power

196. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
197. The Applicant submitted that the purchasers of beverage containers provide a very large and significant constraint on the conduct of participants in the PET market. The Commission investigated the extent to which the purchasers would provide a constraint on the combined entity, post acquisition.
198. Market participants informed the Commission that bottlers can exercise countervailing power by:
- their size in relation to the PET manufacturers;
 - their ability to switch supply volumes; and
 - moving to self supply.

Customer size in relation to PET manufacturers

199. The two large beverage manufacturers, CCA and Frucor, make up between [] of the entire market for PET in New Zealand. Their total combined demand is close to [] per annum. The size of these purchasers in relation to the total size of the market gives them considerable influence on the price and terms of supply. For instance [].
200. The Commission is of the view that Frucor and CCA's size in relation to the corresponding percentage of the manufacturer's businesses they represent, means that they are in a powerful negotiating position.

Ability to switch producers

201. The larger beverage manufacturers advised the Commission that the contracts they enter into with PET manufacturers are usually for 2-3 year periods. For instance [].

202. Market participants informed the Commission that most contracts have exit-clauses for poor quality and other manufacturing issues. Most switching in the market happens during the tendering rounds. For instance, []].
203. The incumbent PET manufacturer has an advantage because it already owns the moulds needed for production. Market participants informed the Commission that switching is not that prevalent for products with unique designs. To switch to a different PET manufacturer requires the new manufacturer to invest in moulds for the particular design. In addition, PET manufacturers and the beverage manufacturers usually work together on research and development. [] both informed the Commission that research and development is done in co-ordination with beverage manufacturers or fillers.
204. Beverage manufacturers will reduce spending with a PET manufacturer if there are quality issues. []].
205. Larger PET users have less ability to switch between large PET manufacturers and smaller PET manufacturers in the short term because the smaller firms do not have the capacity to service them. For instance [] CCA stated that the maximum [] However, a larger user of PET would have the ability to sponsor expansion of a small manufacturer in the medium term.

Ability to self supply

206. []
207. Similarly []
208. PET manufacturers are aware of this possibility and several acknowledged this to the Commission. The Commission considers that the competitive constraint is not the actual occurrence of bottlers self-supplying, but the threat that such an activity could be undertaken if necessary by certain bottlers, []
209. PET manufacturers advised the Commission that self supply would be a realistic option for any beverage producer that was requiring in excess of six million units per year. Simply Squeezed has recently purchased its own PET bottle manufacturing plant and manufactures [] Simply Squeezed was previously []
-]

210. Given Simply Squeezed's actual experience of establishing a self supply operation, the Commission considers that [] Simply Squeezed informed the Commission that it had an existing HDPE extrusion blow-moulding operation and that [] However, the Commission is not aware of any other unique circumstances that would indicate self supply is easier for Simply Squeezed than it would be for another beverage manufacturer of a similar size.
211. Beverage manufacturers [] did not consider self supply to be an option. For instance [] stated that such an option would be "far too expensive". Further, smaller beverage manufacturers considered that manufacturing PET would be a departure from their core businesses. [] stated that "it would be adding a layer of complexity to the business" that was considered undesirable.
212. The Commission considers that self supply is a viable option for a customer requiring in excess of 3m units, []. The Commission considers that this would act as a significant constraint on the actions of the combined entity post-acquisition, with respect to customers of that size.

Conclusion on countervailing power

213. The Commission considers that, given the size of large beverage manufacturers in relation to the PET manufacturers and their potential ability to self supply, these beverage manufacturers would exercise considerable influence over the PET manufacturers both in the factual and the counterfactual. The Commission considers that this influence could be exercised by any beverage manufacturer requiring in excess of approximately three million bottles per year.

Potential Competition

214. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints from the threat of market entry. The Commission's focus is on whether businesses would be able to enter the market and thereafter expand should they have the incentive to do so.

Barriers to Entry

215. The likely effectiveness of the threat of new entry in preventing a substantial lessening of competition in a market following an acquisition is determined by the nature and effect of the aggregate barriers to entry into that market. The Commission is of the view that a barrier to entry is best defined as anything that amounts to a cost or disadvantage that a business has to face to enter a market that an established incumbent does not face.
216. The Applicant submitted that the PET market has reasonably low barriers to entry and that entry is likely. It stated that there are two likely entrants: large scale entrants and beverage manufacturers. Further, the Applicant submitted that there are no frontier entry conditions nor legislative/regulatory conditions that would limit entry to the market for the supply of PET bottles.
217. Decision 524 stated that there was significant excess capacity in the industry, which was a strategic barrier to entering the PET bottle market. Further,

Decision 524 considered the extent to which machinery and equipment costs, and the necessity of securing a supply arrangement, constituted barriers to entry. In that case the Commission ultimately concluded that potential entry was unlikely.

Machinery and equipment costs

218. The Applicant submitted that entry would involve a capital cost of between \$100,000 and \$5 million depending on the method and scale of entry. More specifically it identified the following strategies for potential entrants:
- invest in a two-stage PET manufacturing plant. VIP estimates that investment of this sort would cost approximately \$5 million to set up a new plant (or as little as \$500,000 if second hand machinery is used);
 - invest in a single stage injection stretch blow moulding machine. VIP estimates that this sort of investment would cost at least \$500,000 (although it could be obtained for as little as \$100,000 on a second hand basis); or
 - invest in a blow moulding machine and purchase the preforms either locally or from overseas.
- [] The cost of this sort of investment will vary depending on the size of the machine. VIP estimates that this least cost option would cost between \$100,000 and \$500,000 (depending on the type of machine purchased).
219. The Applicant also submitted that an injection moulding machine currently being used to produce other plastic products could be converted to produce preforms for around \$150,000.
220. In addition, the Applicant submitted that the capital cost involved in entry should not be considered a sunk cost because:
- PET bottle machinery can be converted to produce other PET products. This suggests that the production assets can be used for another use at a relatively low cost;
 - there is a second hand market in which the machinery can be bought (and sold). Prices in this market are low, given the excess capacity in the market; and
 - the cost of the machinery is not an “additional or significantly increased cost or other disadvantage that a new entrant must bear”.
221. Industry participants informed the Commission that PET machine prices vary from \$300,000 for a second hand two-stage blow mould machine and set-up, through to \$5 million for a new one stage injection and blow mould machine and set-up. PET machine suppliers informed the Commission that most PET machines bought in New Zealand tend to be second-hand,
- []
222. In addition to the machine, [] informed the Commission that some ancillary equipment would be needed. This includes:
- a high pressure air system (400psi);
 - bottle moulds;
 - a water chiller; and

- the necessary electrical wiring.
223. The Applicant submitted that this additional machinery would cost roughly \$[] if second hand and \$[] if new.
224. [] provided the Commission with a quote (prepared by [] for a single stage blow moulding machine with an output of 2.6 million units per annum and a two stage blow moulding machine with a maximum output of 2000 units per hour. The two machines were priced [], respectively.
225. The quote also included prices for tooling and moulds (\$[]), water chillers (\$[]) and a compressed air system \$[]. The total cost of the machinery and ancillary equipment was between \$[] and \$[].
226. The Commission was informed by [] that a company could reasonably expect to recover between 70% and 80% of the original investment, should it choose to exit the industry. This equates to a sunk cost component of roughly \$[]. The Commission considers that this is an asymmetric cost that would be borne by an entrant that would not be faced by the incumbent supplier during the same period. However, the Commission considers that such a cost is not a large one compared to the overall cost of the equipment.
227. The Commission considers that the sunk cost in machinery and equipment represents a low barrier to entry.

Excess Capacity

228. In Decision 524 the Commission considered the presence of excess capacity in the industry and the effect that would have on potential entrants' decisions. The Commission considered the presence of excess capacity to be a strategic barrier to entry as incumbent manufacturers could easily meet increased demand quickly and with very little increased cost. An incumbent may also be able to take advantage of lower marginal costs of production in some instances in order to poach the potential customers of new entrants.
229. Table 7 illustrates the existing excess capacity in both the North and South Island PET markets.

Table 7: North and South Island Excess PET Production Capacity

	NI Excess Capacity (millions of units)	% of total capacity	SI Excess Capacity (millions of units)	% of total capacity
Visy	[]	[]%	[]	[]%
Alto	[]	[]%	[]	[]%
Amcor	[]	[]%	NA	NA
TSL	[]	[]%	NA	NA
Linkplas	[]	[]%	NA	NA

Source: Commission estimates based on data provided to the Commission by industry participants.

230. The Commission is of the view that excess capacity is something that a new entrant would consider when contemplating entering, particularly in these circumstances where excess capacity is high, as illustrated by the above figures. However, if a new entrant was able to secure supply contracts for a few years, from a number of customers, then excess capacity in the industry becomes

largely irrelevant as there is no risk that customers will be poached by incumbent firms.

231. The Commission interviewed both [] and [] which are plastics manufacturers in [] and [], Australia. [] informed the Commission that there was a great deal of excess capacity in the regions they respectively entered into PET production. However, both companies said that in entering on a small scale they were relatively unconcerned about this. Both companies said that they targeted the smaller customers that the larger industry competitors were not interested in dealing with. [] informed the Commission that it had not observed any strategic response to its entry by the incumbent PET suppliers.
232. Given these statements, the Commission considers that while a new entrant is likely to consider the capacity of the incumbent suppliers, this is unlikely to be a substantial concern for a small scale entrant intending to service customers with smaller volume requirements. Accordingly, the Commission considers that incumbent response is unlikely strategically to deter entry on a small scale.

Securing Supply Contracts

233. Decision 524 also determined that a new entrant would have to secure supply arrangements with beverage fillers and these contracts were usually for periods of 2-3 years. The Commission determined that this meant any entry would be piecemeal and unlikely to occur without supply contracts.
234. The Commission was informed by industry participants that []
235. The pie graph below illustrates the current PET beverage bottle customers in the South Island and the relative proportion of the South Island market that they comprise. The table excludes CCA's volume which is considered to be uncontestable in the short term, due to the existing supply arrangement with Visy.

Graph 1: Main customers in the South Island PET beverage market

[]

*Source: Commission estimates based on data provided to the Commission by industry participants
Raw data listed in Appendix 1.*

236. The Commission also notes that the above table relates to PET beverage bottle use only and excludes PET packaging used for food and consumer products. There are a number of other PET customers that a potential entrant would have the capability of servicing including honey producers and manufacturers of cosmetics or household goods. [] both informed the Commission that their primary business is in []. [] informed the Commission that some of its work had arisen from companies wanting to move from other rigid packaging options (such as PE) to PET, which is perceived as a more modern look. In this respect [] considered that the market and potential customer base would continue to grow.
- []
237. []

].

238. The Commission considers that securing a supply arrangement in advance of entry would be crucial for companies contemplating entry to serve larger customers such as CCA or Frucor. However, such a requirement, as evidenced by the entry of [] in Australia, does not appear to be critical for smaller scale entry.

Other Entry Considerations

239. Manufacturing PET requires a factory, usually with some facilities for hygiene. There are no standard food grade requirements for premises but some customers set their own, for instance CCA. Having a manufacturing plant is something that is unlikely to weigh heavily on the entry considerations of a new entrant such that it could be considered a barrier to entry. Further, it may be possible for a company with an existing presence in the plastics industry to utilise its existing space.
240. Any potential new entrant would also require a supply of resin (polymer), which is relatively easy to source through agents. Alternatively, and more likely, a new entrant may need to source preforms manufactured by a third party. Again, the Commission considers that this requirement does not amount to a barrier to entry as preforms are not bulky and can be imported from Australia or Asia if necessary. Further, the Commission was informed by [].
241. Some industry participants also suggested that it would be necessary to invest in bottle moulds. The Commission was informed by [] that second hand machines are typically supplied with two or three moulds that were used by the previous owner. Beverage manufacturers will also commonly sponsor the design and development of new bottles [].

Conclusion on Barriers to Entry

242. The Commission considers barriers to entry, in respect of small scale entry into the PET market, are relatively low. The sunk cost component of entry is likely to amount to only approximately \$[]. Strategic considerations such as securing customers in advance of entry, and the excess capacity in the industry, appear to be minor considerations – as evidenced by the recent successful entry of [] in Australia.

The “LET” Test

243. In order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other manifestation of market power must be:
- Likely in commercial terms;
 - sufficient in Extent to cause market participants to react in a significant manner; and
 - Timely, i.e. feasible within two years from the point at which market power is first exercised
- (the LET test).

Likelihood of Entry

244. [] in Australia were both involved in the plastic packaging market before making the transition to PET. Both companies said that despite this there were

only certain transferable skills and equipment, and that in the main, new equipment had to be installed and new skills learned.

245. As mentioned above, [] both informed the Commission that their entry has not elicited a competitive response from the larger industry competitors. It was speculated that the reason was because they do not aggressively compete for the same work.

246. [] informed the Commission that it has leased machinery to industry competitors on previous occasions, and whilst it prefers to sell the machine outright, it may consider a leasing arrangement in some circumstances. [] said that it leased a PET machine to []].

247. The Commission spoke to []

].

248. Despite not being able to identify a specific likely entrant, the Commission is of the view that the barriers to entry (on a small scale) are low, such that entry into the market would be rational and inexpensive. Given an incentive to enter the market, there is nothing to suggest that potential entry would be unlikely.

249. The ability to enter and compete on a small scale [] in Australia.

Extent of Entry

250. Entry on a small scale, involving the purchase of one or two machines, would be sufficient to manufacture up to 10 million bottles per year (depending on the type and model of machine). However, the necessity to try and serve numerous customers would require shorter production runs and involve moulds being changed more often, which would reduce the maximum capacity of the machines.

251. To service CCA or Frucor a much larger investment would be needed into production capacity. It would be necessary to use two stage production equipment, where the preform is manufactured in a different machine to that in which it is blown into a final product. The Applicant estimated that entry at a two-stage level scale would require an investment of at least \$[]. George Adams of CCA estimated that the capital cost required may be [].

252. []

].

253. In this case, the Commission considers that due to the findings in respect of the very small customers and the countervailing power held by large customers, the extent of entry would not need to be of a substantial scale to significantly restrain the actions of the combined entity post-acquisition. The Commission

(from data collected from industry participants) considers that customers in the South Island that would not have countervailing power in the counterfactual would amount collectively to approximately [].

254. The Commission considers that entry on a small scale (with one or two single stage machines) would be sufficient to constrain the combined entity post-acquisition. Such entry would likely afford the ability for an entrant to produce between two and five million PET units per year.

Timeliness of Entry

255. PET bottle machinery could be sourced quickly and installed inside six months. In addition, resin could be sourced and bottle moulds made well inside this time. []. For a larger operation it would not necessarily take any longer. For instance [].
256. Accordingly, the Commission considers that entry could be achieved within the two year period used by the Commission to assess potential competition.

Conclusion on Potential Competition

257. The Commission considers that there are three barriers to entry into the PET manufacturing market, namely: sunk capital costs; the necessity to secure supply contracts and the strategic consideration of existing excess production capacity in the industry.
258. The Commission is of the view that, for entry on a small scale, none of these entry conditions amounts to a significant barrier to entry. Further, the Commission considers that entry is likely, would be sufficient in extent to prevent a substantial lessening of competition between the factual and the counterfactual, and achievable within a two year time period.

Conclusion on South Island PET market

259. In the South Island PET market large customers (of a size of three million containers and above) are likely to have countervailing power in the factual. In addition, the acquisition is unlikely to have a material effect on very small customers which already purchase containers through a distributor or wholesaler in the South Island. The Commission has concluded that barriers to entry into the PET market are relatively low and that potential entry, on a small scale, is likely, timely and would be sufficient in extent to provide a constraint on the combined entity.
260. The Commission concludes that, as a result of weighing all of these factors, a substantial lessening of competition is unlikely to result in the South Island PET market in the factual compared to the counterfactual.

Small Rigid Plastic Container Market

Existing Competition

261. The applicant submitted a list of 16 competitors in this market. Alto currently holds [] of the market and Visy holds []. Post acquisition the combined entity will have [] share of the market. The biggest competitor is imports of unfilled product [] followed by Viscount Plastics [] and Amcor [].

262. The Applicant submitted market share figures based on sales revenue (excluding exports where known). These are set out in Table 8 below.

Table 8: Estimated market share figures for small rigid plastic containers

Supplier	Estimated % of market sales
Alto	[]%
Visy	[]%
<i>Combined Entity</i>	<i>[]%</i>
Viscount Plastics	[]%
Amcor	[]%
Premier Plastcis	[]%
Tecpak Industries	[]%
Huhtamaki	[]%
Pharmapac Limited	[]%
Optoplas	[]%
LinkPlas	[]%
Form Plastic Technologies	[]%
Packit Packaging	[]%
Tubepack Limited	[]%
Q Pac Industries Limited	[]%
Blow Moulders Limited	[]%
Others	[]%
Imports of unfilled product	[]%
Total	100%

Source: Commission estimates based on data provided to the Commission by industry participants

263. Table 2 shows that, post-acquisition, the combined entity would have a market share of []% and the three firm concentration ratio would be []%. This is within the Commission's safe harbours.
264. The Commission spoke to a range of industry participants making rigid plastic containers, none of which expressed concerns over the proposed acquisition in respect of small rigid plastic containers.
265. The Applicant submitted that imports will continue to increase over time providing a real constraint on companies increasing prices or reducing quality. For example,
[]
].

Barriers to Expansion

266. The market for manufacture and supply of non-beverage rigid plastic containers seems to be characterised by low barriers to entry and expansion. The applicant submitted that the nature of contractual relationships between manufacturer and customer enables smaller suppliers to gain market share easily as the contracts tend not to specify a formal term.
267. For example,
[]

]

268. In addition, [] informed the Commission that it competes with [] on a range of products and said that [] had the capacity to expand and take on extra work by utilising existing capacity.

Conclusion on small rigid plastic container market

269. The Commission considers that given the range of existing competition in this market, and the relative ease of expansion, the proposed acquisition would be unlikely to result in a substantial lessening of competition in this market.

Large Rigid Plastic Container Market

Existing Competition

270. The Applicant submitted that large plastic containers can be substituted with other types of containers such as: drums (ie, steel drums and fibre drums), intermediate bulk containers (IBCs), pails (ie, steel pails) and containers known as “bag in a box” (which is a 20 litre container made up of two components, ie an external rigid box made of carton-board and an internal “bag” made of flexible packaging).
271. As discussed in the market definition, the Commission considers it appropriate to limit the analysis to plastic containers.
272. Large plastic containers are manufactured by two different processes - blow moulding and rotational moulding. The existing competitors that manufacture large plastic containers by blow moulding are Visy and Alto. Devan and RX Plastics also compete in the market with containers manufactured by rotational moulding. The proposed acquisition would reduce the number of players from four to three.
273. The Commission spoke to a number of customers of large plastic containers to get their views on the acquisition. [] said that as far as he was aware, Visy doesn’t sell that many large plastic containers in New Zealand so there would be little effect on competition in the factual compared to the counterfactual. [] also had no concerns regarding the proposed acquisition.
274. All four manufacturers produce a range of different sized large plastic containers ranging from 25 litres to 200 litres. Visy manufacture only up to a 110 litre container or ‘drum’ as they are known. For that reason, the Commission will focus on 25-110 litre sized containers as that is where the aggregation would occur as a result of the proposed acquisition.
275. Table 9 shows market share figures based on production units per annum for containers in excess of 20 litres. The table represents containers manufactured in New Zealand and includes 50 litre, 60 litre, 100 litre, 125 litre and 200 litre containers. The figures exclude imported containers.

Table 9: Estimated Market Shares by Annual Sales 05/06 (large plastic containers)

Manufacturer	Units	%
Visy	[]	[]
Alto	[]	[]
<i>Combined Entity</i>	[]	[]
Devan Plastics	[]	[]
RX Plastics	[]	[]
Total	[]	100

Source: Commission estimates based on data provided to the Commission by industry participants

276. Table 9 indicates that, post-acquisition, the combined entity would have a market share of [] and the three-firm concentration ratio would be []. This is outside the Commission's safe harbour guidelines.
277. Devan and RX Plastics use a different manufacturing process to make their large plastic containers. However, as discussed in the market definition section the containers are functionally the same, being purchased by companies to package similar products and in some cases preferred from a marketing perspective. For instance, rotational moulders have the ability to easily produce short runs of brightly coloured drums for promotions.
278. Devan and RX Plastics informed the Commission that they compete with blow moulders in the large plastic container market.
[

]
279. The Commission was informed by manufacturers and customers of large plastic containers that blow moulded drums tend to be cheaper than rotationally moulded drums due to longer production runs. Commission staff collected prices for a 100 litre container from each manufacturer. These prices are set out in the table below.

Table 10: Retail Prices charged for a 100 litre plastic container

Manufacturer	Price for a 100 litre container
Visy	[\$[]-\$[]]
Alto	[\$[] - \$[]]
Devan Plastics	[\$[]]
RX Plastics	[\$[]-\$[]]

Source: Supplied by industry participants.

280. The Commission was informed by manufacturers of containers that in many instances the price paid per unit will vary depending on the quantity purchased by the individual customer. Table 10 shows price ranges for a 100 litre drum from three of the four manufacturers. For example, [] for its 100 litre

drums from Alto and [] for their 100 litre drums from Alto.
[]

281. Visy's lowest price for a 100 litre blow moulded drum is [] and Devan's price for a rotationally moulded drum is []. The Commission considers that for larger production runs, blow moulded drums are [].

Expansion of existing suppliers

282. There appears to be a degree of unused capacity in the large plastic containers market which could be easily utilised by running additional or longer shifts. For example, [] informed the Commission that it has the capacity to manufacture more drums.

[]

283. It may also be possible for an existing supplier to add capacity and take advantage of some economies of scale and existing resources. For instance, a manufacturer may have the floor space needed to place a new machine and the ability to use the existing wiring. There may also be the ability to deploy existing labour resources to operate the machinery.
284. The Commission spoke to [] a supplier of plastics manufacturing equipment, regarding the cost of machinery used to manufacture large plastic containers. [] said that to make larger sized blow moulded plastic containers very large machinery is required (2 car lengths long x 1 car length wide). He said that for a machine to manufacture 100 litre containers or larger would require an investment of []. He said that an entrant would also need some equipment such as a low pressure air system and dyes.
285. [] said that an entrant would work on a []. This would require production of somewhere between [] units per week.
286. The Commission also asked [] about the cost of machinery used to manufacture rotationally moulded drums. He said that this equipment is cheap but slow. He thought it may be possible to produce 20-30 units per day. He said that some moulds would be required along with a supply of gas and some 'gas burner tips' but that this could be acquired and set up for under []. He estimated that it would be possible to recover [] of the investment if the entrant decided to on-sell the equipment.
287. In addition, the Commission was informed by []
- []
288. The Commission considers that expansion into the large plastic container market is relatively cheap and can be done quickly, particularly in respect of rotationally moulded containers. Further, the Commission considers that [] could fairly easily expand into producing 50 litre blow moulded containers.

Imports

298. The Commission also considers that imports from Australia would significantly constrain the actions of the combined entity in the factual scenario.

Conclusion on Large Plastic Container Market

299. On the information above, the Commission is satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in the market for large plastic containers in the factual scenario compared to the counterfactual scenario. Accordingly, this market is not considered further.

Plastic Closures Market

300. There are a number of competitors in the Closures market. The applicant submitted that Visy currently holds [] of the market and Alto holds []. Post acquisition the combined entity will have a [] share of the market, which is within the Commission's safe harbour guidelines. Imports account for the largest proportion of plastic closures used in the industry, amounting to approximately []. Amcor has [] of the market.
301. Being very small, closures can easily be shipped internationally so domestic producers face strong competition from overseas suppliers. International suppliers of closures include Portola, Amcor (including the businesses operating as Alcoa and Bericap), Brickwood and Tri-sure.
302. Given the minimal aggregation that would occur as a result of the proposed acquisition and the ease with which they can be imported from overseas, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition. Accordingly, for the purposes of this application, the Commission does not intend to consider this market further.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

303. The Commission has assessed the effect of the proposed acquisition within the following markets:
- the North Island market for the manufacture and supply of PET beverage bottles;
 - the South Island market for the manufacture and supply of PET beverage bottles;
 - the national market for the manufacture and supply of small rigid plastic containers (of a size up to 20 litre);
 - the national market for the manufacture and supply of large rigid plastic containers (of a size in excess of 20 litre); and
 - the national market for the manufacture or import and supply of closures.
304. In the South Island PET market large customers (of a size of three million containers and above) are likely to have countervailing power in the factual. In addition, the acquisition is unlikely to have a material effect on very small customers which already purchase containers through a distributor or wholesaler in the South Island. However, the Commission has concluded that barriers to entry into the PET market are relatively low and that potential entry on a small

scale is likely, timely and would be sufficient in extent to provide a constraint on the combined entity.

305. In respect of the North Island PET market and the small rigid plastic container market the combined entity will continue to face competition from existing industry competitors such that a substantial lessening of competition would be unlikely to result. Further, in respect of the closures market, the combined entity would be constrained in the fact that by the ability for closures to be easily imported incurring little additional per unit freight costs.
306. In the large plastic container market the combined entity would continue to face competition from rotational moulders of plastic containers and minimal competition from other packaging options such as steel. The Commission also considers that imports of drums from Australia are a feasible and economic alternative to locally produced containers. The Commission considers that on balance the proposed acquisition would be unlikely to have the effect of substantially lessening competition in this market.
307. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition.

DETERMINATION ON NOTICE OF CLEARANCE

308. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to grant clearance for the proposed acquisition by Visy Industrial Plastics (NZ) Limited or an interconnected body corporate of either all the issued shares or the entire plastic packaging business and assets of Alto Holdings Limited and any subsidiaries.

Dated this 28 June 2006

David Caygill
Deputy Chair
Commerce Commission

APPENDIX 1

Main customers in the South Island PET beverage market

Customers	Manufacturer	PET Bottles	PET Bottles %
Frucor Beverages	[]	[]	[]%
Murdoch Manufacturing	[]	[]	[]%
Croftpak	[]	[]	[]%
West's (NZ)	[]	[]	[]%
Spring Fresh Ltd	[]	[]	[]%
Sanitarium Health Foods	[]	[]	[]%
Australia & NZ Distillers	[]	[]	[]%
Mead International	[]	[]	[]%
Stowers Containment	[]	[]	[]%
Total Others		[]	[]%
Total		[]	100%