

Statement of Preliminary Issues

Visy / HP

21 February 2012

Introduction

1. On 2 February 2012, the Commerce Commission (Commission) received an application from VPRS Limited and Visy Industries Australia Pty Limited (together Visy) seeking clearance to acquire certain businesses and assets of HP Industries Holding Limited and HP Industries (New Zealand) Limited (together HP). The businesses and assets relate to the following products:

- PET¹ bottles
- plastic containers
- plastic closures.

The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/detail/754>

2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

Relevant parties

The acquirer – Visy

4. Visy is a privately owned packaging and recycling company with operations in Australia, New Zealand and Asia. In New Zealand, Visy supplies a number of packaging products including a range of PET bottles.

¹ Polyethylene terephthalate (PET) is a common resin used in the manufacture of plastic products.

The target – HP

5. HP is also a plastic packaging manufacturer with operations in New Zealand and Australia. HP supplies a range of products including PET bottles, plastic containers and plastic closures. HP is currently in receivership.

Analytical framework

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. An important step in the Commission's analytical framework² is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the acquisition. The Commission then considers the relevant products and geographic regions that may be close substitutes from both a customer's and a supplier's point of view.
7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
 - with the acquisition
 - without the acquisition.
8. The impact of the acquisition on competition is then viewed as the difference between those two scenarios.
9. The Commission analyses the extent of competition in each relevant market for both the with and without scenarios, in terms of:
 - Existing competition – the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices.
 - Potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so.
 - The countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchaser's ability to exert an influence on price, quality and/or terms of supply.
 - Coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
10. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the

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

proposed acquisition might lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

Preliminary issues

11. Visy has made number of submissions in its application that the Commission is considering. Visy's main submission is that while the proposed acquisition may affect competition for the supply of PET bottles, small rigid plastic containers and plastic closures, the only area of significant overlap concerns the supply of PET bottles in the North Island.
12. In previous decisions, the Commission found a number of factors that indicated the relationship between Visy and Pact Group Pty Ltd (Pact) was such that they should be treated as one head in the market. If this is the case here, there would be additional aggregation to consider.
13. At this stage, the Commission's investigation of the proposed acquisition will focus on the areas outlined below.

Areas of overlap

14. Visy's submission is that the relevant markets are the:
 - North Island market for the manufacture and supply of PET beverage bottles
 - New Zealand market for the manufacture and supply of small rigid containers up to 20 litres
 - New Zealand market for the manufacture/import and wholesale supply of plastic closures.
15. The Commission will also consider whether:
 - the manufacture of PET bottles using a one-stage machine is in the same market as those manufactured using a two-stage machine
 - PET bottles compete with other types of beverage containers such as glass, aluminium and other types of plastic
 - there is a degree of product differentiation for the various plastic products
 - the cost of transportation limits the geographic scope of the market(s).

Situation without the acquisition

16. HP is currently in receivership so the Commission will consider HP's position in the relevant market(s) if the proposed acquisition does not go ahead.

Existing competition

17. Visy submits that for the supply of PET bottles:

- there are a number of existing competitors who could easily expand their operations
- the contractual arrangements between suppliers and customers do not restrict customers from switching suppliers.

18. Visy submits that for the supply of small rigid plastic containers:

- Premier Plastics and Pact will continue to be the two largest suppliers and there are also other suppliers who could easily expand
- imports are a viable alternative.

19. Visy submits that it does not currently supply plastic closures. However, if it did supply them, there are a range of different suppliers and closures can be easily imported.

Potential Competition

20. Visy submits that for both PET bottles and small rigid plastic containers the cost of machinery is relatively low, and new entry could occur relatively quickly.

Countervailing power

21. Visy submits that large customers could threaten to self supply or sponsor entry in the event that the merged entity threatened to increase prices. Visy states that this is illustrated by Coca-Cola Amatil's recent decision to manufacture PET bottles itself.

Coordinated Behaviour

22. Visy submits that the merged entity would not have the ability to exercise coordinated market power because there are a number of other competitors in the markets, the barriers to entry are low, and customers have the ability to shift to self supply.

Next steps

23. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of the issues and Visy's application for clearance. An extension of time has been agreed to by the Applicant such that the Commission should make its final decision by **30 March 2012**. However, this timeframe could change. To keep abreast of possible changes to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

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

24. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.

25. The Commission invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference Visy / HP in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **4pm on Friday 2 March 2012**. Please clearly identify any confidential information contained in the submission and provide contact details.