



## COMMERCE COMMISSION

### **Decision No. 695**

Determination pursuant to the Commerce Act 1986 in the matter of an application for a merger transaction between

**Preformed Line Products Company**

**and**

**Electropar Limited**

**The Commission:** Dr Mark Berry  
Sue Begg  
Anita Mazzoleni

**Summary of Application:** The acquisition of 100% of the issued shares in Electropar Limited by Preformed Line Products Company.

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

**Date of Determination:** 24 June 2010

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## THE PROPOSAL

1. On 20 May 2010, the Commission received a notice pursuant to s 66(1) of the Commerce Act 1986 (the Act). The notice sought clearance for the acquisition by Preformed Line Products Company (PLP or the Applicant) of 100% of the issued shares in Electropar Limited (Electropar).

## DECISION

2. The Commission considers that the merged entity is likely to be constrained by a combination of:
  - existing competition from Dulhunty Power Limited (Dulhunty);
  - the ability of existing competitors (local distributors) to expand by sourcing products from large overseas manufacturers; and
  - the countervailing power of Transpower and distribution network companies.
3. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national market for the supply of conductor and insulator fittings.

## ANALYTICAL FRAMEWORK

4. The Commission applies a consistent analytical framework to all its clearance decisions.<sup>1</sup> The first step is to determine the relevant 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 (the factual); and
  - in the absence of the acquisition (the counterfactual).
5. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the relevant markets between those two scenarios. To analyse the extent of competition in the factual and counterfactual, the Commission considers:
  - existing competition;
  - potential competition;
  - other competition factors, such as the countervailing market power of buyers and suppliers; and
  - coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

## **PARTIES**

### **PLP**

6. PLP is a US-based multinational company with subsidiaries in 13 countries. It manufactures products and systems employed in the construction and maintenance of overhead and underground networks for energy, communications and broadband.
7. Part of PLP's business is the supply of transmission and distribution (T&D) equipment used by Transpower and by electricity lines businesses. Rather than having manufacturing facilities in New Zealand, PLP imports all of the equipment it supplies. The range of T&D equipment currently sold by PLP in New Zealand is only a small sub-set of PLP's full product offering. PLP sells directly to Transpower but otherwise sells through distributors, in particular, Transnet New Zealand Limited (Transnet).

### **Electropar**

8. Electropar is a privately owned New Zealand based company operating in New Zealand and Australia. It manufactures and distributes electrical engineering components for use in the electricity transmission and distribution, defence and industrial sectors.
9. Like PLP, Electropar is involved in the supply of T&D equipment. Electropar manufactures two types of T&D equipment in New Zealand; transmission line fittings and substation componentry. It imports all the other T&D equipment it supplies (including insulators and preformed fittings) from overseas manufacturers. In 2009, locally manufactured products accounted for [ ] of Electropar's T&D equipment sales, and imported products the remaining [ ].

### **Other Parties**

10. Dulhunty is a competing supplier of T&D equipment. It imports and supplies T&D equipment into New Zealand from its manufacturing plants in Australia and Asia and also supplies equipment made by other overseas manufacturers. In respect of higher voltage (66kV and above) T&D equipment, Dulhunty sells direct to Transpower and distribution networks. For 33kV and below T&D equipment, it sells to customers through a distributor, OHUG Power Equipment Limited (OHUG). At present, Dulhunty is best known for its range of vibration control products.

## **INDUSTRY BACKGROUND**

11. T&D equipment includes all of the equipment used in electricity transmission and distribution networks (i.e. all of the equipment used to transport electricity from the generator to the end users' premises). This includes transmission towers, cables, poles, wires, meters, substations, switchgear, transformers, insulators and fittings.
12. The products currently supplied in New Zealand by PLP and Electropar, overlap only in respect of some specific T&D fittings that are used to hold electrical

conductors to power poles or transmission towers (referred to as conductor fittings), namely:

- preformed or helical fittings – deadends, guy grips, guy locks, armour rods and line guards;
  - full tension aluminium compression deadends (compression joints);
  - clevis thimbles; and
  - various forged steel fittings.
13. The most significant area of overlap is in preformed fittings, which are all imported. PLP manufactures overseas the preformed fittings it supplies, but Electropar imports and distributes preformed fittings made by two Canadian companies.

### **PREVIOUS DECISIONS**

14. The Commission has not examined T&D fittings before, but has considered the supply of other T&D equipment. In Decision 463<sup>2</sup>, the Commission considered an acquisition involving firms engaged in the manufacture and supply of transformers and switchgear. In that instance, the Commission defined a relatively narrow market; the national market for the supply of 11kV indoor switchgear.
15. In December 2009, PLP acquired Dulmison, a business unit of Tyco Electronics.<sup>3</sup> The Australian Competition and Consumer Commission (ACCC) reviewed but did not oppose the acquisition as it formed the view that the acquisition was unlikely to result in a substantial lessening of competition. Factors informing this conclusion included the existence of other competitors, the presence of actual and potential competition from importers, and an absence of substantial barriers to entry or expansion. For the purposes of its competition analysis the ACCC did not consider it necessary to form a definitive view regarding market definition. It provisionally defined the relevant market as the market for the supply of overhead line hardware and fittings.

### **MARKET DEFINITION**

16. The Applicant submitted that the relevant market for the proposed transaction is the market for the manufacture and wholesale supply of T&D equipment in the power industry. Alternatively, PLP submitted that if the Commission proposed the market should be narrower, that the relevant market would be the market for the manufacture and supply of insulators and fittings (commonly referred to as line hardware) in the power industry.<sup>4</sup> PLP submitted that the narrow market relates to the area of overlap between the businesses of PLP and Electropar and reflects the

<sup>2</sup> Reyrolle Pacific Holdings Limited / VA Tech Reyrolle Pacific Limited, 2002.

<sup>3</sup> Dulmison also supplied T&D equipment in New Zealand, selling direct to Transpower and to distribution networks through Transnet. The market share estimates for PLP provided later in these reasons include the 2009 sales of Dulmison of [ ].

<sup>4</sup> PLP submitted that insulators and fittings include disc and plate insulator strings, spacers, anti-galloping fittings, splicing joints and transmission strings.

fact that customers issue single tenders for a range of fittings and insulators. PLP also submitted that there was no need to further delineate the market into general or specific product categories.

17. Given that the businesses of PLP and Electropar overlap only in respect of some specific T&D fittings, the Commission considers a product market for the supply of T&D equipment is likely to be too broad. Accordingly, in this instance, the Commission's starting point in defining the relevant market has been to consider a market for the supply of insulators and fittings.
18. Industry participants advised the Commission that the manufacturing processes for insulators and fittings are significantly different. The products also perform different functions and are not substitutable for each another (rather they are complementary in that fittings are used to attach insulators to poles and towers). Insulators are relatively standardised, while fittings tend to be manufactured to meet the specifications of individual transmission and distribution networks (the exact specifications of which vary between networks).
19. Contrary to submissions from PLP, customers do not generally purchase insulators and fittings together nor do they purchase them by issuing tenders. Some suppliers specialise in only supplying insulators. On the other hand, PLP does not supply insulators in New Zealand, only a range of fittings. To date, tenders have mainly been issued for insulators and other types of T&D equipment; fittings tend to have been purchased on a more ad-hoc basis. However, Transpower and some of the distribution companies investing significantly in network upgrades advised the Commission that they are starting to issue tenders for the supply of T&D fittings for significant projects.
20. Within the definition of T&D fittings is a range of different fittings that are not substitutable for each another and are not necessarily purchased together. Such fittings include conductor fittings, insulator fittings and vibration control fittings (dampers and spacers).
21. In comparison to conductor and insulator fittings, vibration control fittings are a specialised and high-priced product. Neither PLP or Electropar supply vibration control fittings in New Zealand, but they are a significant portion of sales for Dulhenty. The area of overlap between PLP and Electropar is in terms of the supply of other fittings. Including vibration control fittings within the market has the potential to distort market share estimates.
22. While there are factors that might support a broader product dimension, in this instance the Commission proposes to adopt a conservative approach and define a narrower product market for conductor and insulator fittings, on the basis that if no competition issues arise from analysing the acquisition using a narrow product market, it is unlikely they will arise using a broader definition.
23. Transpower and the distribution networks (or their appointed contractors) purchase conductor and insulator fittings either directly from companies that manufacture and supply the fittings or from distributors that import and supply fittings on behalf of overseas manufacturers. Accordingly, the Commission considers that the

functional dimension of the market is the supply of conductor and insulator fittings to customers.

24. As conductor and insulator fittings are distributed throughout New Zealand, the geographic dimension of the market is national in scope.
25. The Commission concludes that, for the purposes of assessing this application, the relevant market is the national market for the supply of conductor and insulator fittings.

### COUNTERFACTUAL

26. The Commission considers that the likely counterfactual is the sale of Electropar to a third party with no presence in the relevant market, which is equivalent to the status quo.

### COMPETITION ANALYSIS

27. The Applicant argued that it would, post-acquisition, be constrained by existing firms who have the capacity and capability to increase supply in response to any attempt by the merged entity to increase prices or reduce supply. In addition, the Applicant argued that likely entry by potential competitors (given the ease of entry) would provide further constraint, as would Transpower and large distribution utilities who hold and exercise a significant degree of countervailing power.
28. Parties interviewed (both suppliers and customers) have identified only three major suppliers of conductor and insulator fittings, being PLP, Electropar and Dulhunty. Other suppliers are significantly smaller. Table 1 provides estimated market shares based on information the Commission obtained from industry participants.

**Table 1: Estimated Market Shares in the Supply of Conductor & Insulator Fittings**

Supplier	Revenue (\$m)	% Market Share
PLP	[ ]	[ ]
Electropar	[ ]	[ ]
<b>Merged Entity</b>	[ ]	[ ]
Dulhunty	[ ]	[ ]
Others <sup>5</sup>	[ ]	[ ]
<b>Total</b>	[ ]	[ ]

29. Table 1 indicates that the merged entity would have a market share of [ ]% and the three-firm concentration ratio would be [ ]%. The major competitor to the merged entity, Dulhunty, currently has an estimated [ ]% market share. This is outside the Commission's safe harbour guidelines.
30. The processes involved in manufacturing conductor and insulator fittings are not particularly specialised. However, some fittings are custom-made to suit the specifications of particular transmission or distribution networks. The ad-hoc

<sup>5</sup> This is an estimate of the combined sales of the revenue and market share of a number of distributors of imported conductor and insulator fittings. The individual market share of each party is very small.

nature of the purchasing of conductor and insulator fittings also requires that suppliers hold large stocks of product in New Zealand to ensure quick delivery. In addition, the size of the New Zealand market is small by global standards. As a result, while there are numerous overseas manufacturers, only a few sell products in New Zealand, and there are not that many distributors of imported fittings.

31. Dulhunty is PLP's main competitor in Australia and would be its main competitor in New Zealand in the factual. Dulhunty is a significant supplier to Transpower, [ ] While a significant portion of its New Zealand sales are currently vibration control fittings, Dulhunty is keen (and able) to sell a greater volume of the full suite of preformed and other fittings. [ ] The Commission considers that Dulhunty is likely to provide competitive constraint for PLP in the factual.
32. The largest distributor is Transnet, which sells PLP fittings (and until recently also Tyco fittings<sup>6</sup>), as well as some other brands of T&D equipment. [ ]. Given this, the Commission considers that Transnet could provide additional competitive constraint in the factual.
33. A number of small distributors of conductor and insulator fittings make up the others category. The Commission notes that some of these distributors are affiliated with large international suppliers of conductor and insulator fittings. These other suppliers could easily expand their supply in the factual with necessary product testing (which can be done either in New Zealand or overseas).
34. While price is a factor considered by customers of conductor and insulator fittings when they make purchasing decisions, quality is significantly more important. Transpower and the distribution companies need certainty that the fittings will work on their networks. They conduct their own independent inspections and tests of fittings before using a supplier. Customers of Electropar and PLP advised the Commission that they could and would readily switch suppliers if PLP were to reduce quality in the factual but that it may take more than a 5-10% increase in price to cause customers to switch suppliers. However, while this may be their perception in the short term, the Commission considers that over time there will be enhanced incentive for them to exert downward pressure on prices, particularly in light of increased tendering for the purchase of conductor and insulator fittings.
35. The Commission considers that Transpower, as the largest customer by far, is likely to have countervailing power. Transpower has indicated that, [ ].<sup>7</sup>
36. The Commission considers that distribution networks do not currently have as much countervailing power as Transpower. However, a number are becoming more sophisticated buyers and calling for tenders for their fitting acquisitions. This is likely to enhance their countervailing power in the future.
37. The Commission considers that coordination is not more likely in the factual than in the counterfactual. The market includes an extensive range of fittings for which there are fringe competitors and imports. Fringe competitors could easily expand,

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<sup>6</sup> In December 2009, Tyco sold its Dulmison business to PLP. While Tyco continues to supply insulators, it no longer manufactures or supplies T&D fittings.

<sup>7</sup> [ ]

particularly if facilitated by customers. Pricing does not appear to be transparent because there are hundreds of products that are purchased by customers on an ad hoc basis, via confidential period contracts or via tender. The Commission concludes that the scope for, and risk of, the coordination of pricing in supply of conductor and insulator fittings would not be significantly enhanced by the proposed acquisition.

38. In summary, the merged entity is likely be constrained in the factual by a combination of:
- existing competition from Dulhunty;
  - the ease of expansion from other existing competitors (local distributors) that could source products from very large overseas manufacturers; and
  - the countervailing power of Transpower and distribution network companies.
39. Consequently, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national market for the supply of conductor and insulator fittings.

#### **OVERALL CONCLUSION**

40. Having considered the competition effects of the proposal, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national market for the supply of conductor and insulator fittings.



**DETERMINATION ON NOTICE OF CLEARANCE**

41. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by Preformed Line Products Company of 100% of the issued shares in Electropar Limited.

Dated this 24th day of June 2010

Dr Mark Berry  
Division Chair