

## COMMERCE ACT 1986: BUSINESS ACQUISITION

### SECTION 66: NOTICE SEEKING CLEARANCE

Date: 30 March 2006

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

#### PART I: TRANSACTION DETAILS

<b>1 What is the business acquisition for which clearance is sought?</b>
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- 1.1 It is proposed that Visy Industrial Plastics (NZ) Limited (“**VIP**”) or an interconnected body corporate acquires either all the issued shares in each of Vertex Group Holdings Limited (“**Vertex**”) and Alto Plastics Limited (“**Alto**”) (together, “**Vertex/Alto**”), or the entire plastic packaging business and assets of each of Vertex and Alto and their respective subsidiaries and associated companies (“**Proposed Acquisition**”). Each of Vertex and Alto are wholly-owned subsidiaries of Masthead Equities Limited (“**Masthead**”).<sup>1</sup>
- 1.2 The parties have not entered into any contractual arrangements for the Proposed Acquisition. VIP wishes to secure clearance of the Proposed Acquisition prior to progressing negotiations with Vertex and Alto and/or Masthead.

#### Summary of application

- 1.3 VIP considers that the markets relevant for the Proposed Acquisition are likely to be:
- a. the market for the manufacture and wholesale supply of polyethylene terephthalate (“**PET**”) bottles for non-alcoholic beverage containers;
  - b. the market for the manufacture and wholesale supply of non-beverage rigid plastic containers; and
  - c. the market for the manufacture and wholesale supply of closures.

In each case, the markets are national.

<sup>1</sup> As discussed in paragraph 5.4, Vertex, Alto and Masthead will soon amalgamate. However, this submission refers to the names of the parties as they are known at the time of lodgement (ie, Vertex and Alto are referred to by their individual names).

*PET bottles for non-alcoholic beverages*

- 1.4 VIP considers that the Proposed Acquisition will not substantially lessen competition in the market for the manufacture and wholesale supply of PET bottles for non-alcoholic beverages for the following reasons:
- a. VIP estimates that post transaction, the merged entity's (ie, VIP and Vertex/Alto) market share would be [ ]. The market share of VisyPET (NZ) Limited, trading as VisyPak ("VisyPak"), would be [ ].<sup>2</sup> Amcor will continue to be a very large supplier of PET bottles, with a market share estimated to be [ ];
  - b. the Proposed Acquisition is occurring in an industry in which:
    - i. there are low barriers to entry and expansion;
    - ii. there is a need for continued product development. As demonstrated by LinkPlas, this means that, regardless of size, firms that are able to offer innovative technologies and products will continue to have opportunities to grow; and
    - iii. there continues to be excess capacity in the market;
  - c. customers, particularly large supermarkets and distributors for large international soft drink companies, have significant countervailing power, including because they can manufacture in-house and they can sponsor new entry and expansion;
  - d. the assets used in the PET production process can easily be converted and used to produce different packaging products. Conversely, manufacturers of non-beverage PET containers can easily convert to manufacture PET bottles; and
  - e. there is strong substitutability by glass and aluminium beverage containers.
- 1.5 In completing the analysis of the competitive impact of the Proposed Acquisition, VIP has taken into account the Commission's views on the question of association between VIP and VisyPak.<sup>3</sup>

*Non-beverage rigid plastic containers*

- 1.6 Post transaction market concentration levels in this market will be within the Commission's safe harbour for acquisitions that are unlikely to result in a substantial lessening of competition. Additionally, VIP notes the following:
- a. post-transaction, concentration levels for the three largest market participants would be [ ] and the market share of the merged entity would be [ ];
  - b. the non-beverage plastic packaging industry is characterised by low barriers to entry. The set up cost for new machinery is low, and there is readily available second-hand machinery.

<sup>2</sup>

[ ]

<sup>3</sup>

New Zealand Commerce Commission, *Decision No. 524 ("ACI Decision")*, at paragraph 88.

- c. imports have a significant impact in the local industry. VIP estimates that on average imports represent approximately 50% of the overall number of non-beverage rigid plastic containers sold in New Zealand. The expectation is that this number will remain high, as large companies are increasingly adopting practices that facilitate importation of filled and unfilled products (eg, the standardisation of products and packaging, the setting up of production and procurement centres that operate across regions rather than on a country basis, etc). As a consequence, many New Zealand suppliers have either lost supply contracts to overseas manufacturers or are now benchmarked against overseas counterparts;
  - d. large customers including manufacturers of fast moving consumer goods (such as Proctor & Gamble, Unilever, Colgate Palmolive), large retailers (including Progressive and Foodstuffs), and other global producers (such as Shell and BP) have significant countervailing power. They represent large volumes and have very competitive procurement processes. Large customers can also bypass packaging suppliers by importing filled products directly or setting up in-house manufacturing facilities. They could also sponsor entry of new suppliers or expansion of smaller ones if they are unhappy with their current supply arrangements; and
  - e. substitutes are readily available. Rigid plastic is only one of the packaging methods used to manufacture non-beverage rigid containers. Other methods and materials include flexible packaging, paperboard, corrugated board, glass, metal and carton.
- 1.7 In this framework, VIP considers that the Proposed Acquisition will not substantially lessen competition in the market for the manufacture and wholesale supply of non-beverage rigid plastic containers.

#### *Closures*

- 1.8 In relation to closures, post transaction market concentration levels will be within the Commission's safe harbour for acquisitions that are unlikely to result in a substantial lessening of competition. Additionally, we note that the level of imports is very high. VIP estimates that approximately [ ] of all closures currently sold in New Zealand are imported. In this framework VIP considers that the Proposed Acquisition will not substantially lessen competition in the market for the manufacture and wholesale supply of closures.

#### *Trays, cups, lids and punnets*

- 1.9 The Proposed Acquisition will result in a small aggregation in respect of the manufacture and wholesale supply of plastic trays, cups, lids and punnets.
- 1.10 To the extent that trays, cups, lids and punnets could be considered to be in a separate market, VIP does not consider the Proposed Acquisition would substantially lessen competition in that market as VIP does not sell these products in New Zealand (although it has imported small amounts in the past on an ad hoc basis).

#### **Conclusion**

- 1.11 Considering overall post transaction concentration levels and the impact of low barriers to entry, high level of imports and the significant countervailing power of

buyers, VIP submits that the Proposed Acquisition will not result in a substantial lessening of competition in any of the markets for the supply of PET bottles for non-alcoholic beverages, non-beverage rigid plastic containers and closures.

## **THE PERSON GIVING NOTICE**

<b>2 Who is the person giving this notice?</b>
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2.1 This notice is given by:

Visy Industrial Plastics (NZ) Limited  
c/o Visy Industrial Holdings Pty Limited  
Corporate Head Office  
Level 17, 644 Chapel Street  
South Yarra, Victoria  
Australia 3141

Attention: Nick Perkins, General Counsel  
Telephone: 03 9815 8400  
Facsimile: 03 9815 8388  
Email: [nick.perkins@visy.com.au](mailto:nick.perkins@visy.com.au)

2.2 VIP requests that all correspondence and notices in respect of this application be directed in the first instance to:

Kensington Swan  
18 Viaduct Harbour Avenue  
Private Bag 92101  
Auckland

Telephone: 09 379 4196  
Facsimile: 09 309 4276

Attention: John Land/David Moorman

[john.land@kensingtonswan.com](mailto:john.land@kensingtonswan.com)/[david.moorman@kensingtonswan.com](mailto:david.moorman@kensingtonswan.com)

## **CONFIDENTIALITY**

<b>3 Do you wish to request a confidentiality order for:</b>
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3.1 **The fact of the proposed acquisition?**

Yes, until midday on 3 April 2006.

3.2 **Specific information contained in or attached to the notice?**

Confidentiality is sought for all information marked as confidential (ie, enclosed in square brackets).

The information that has been marked as confidential is commercially sensitive and valuable information, disclosure of which could result in material financial loss and prejudice to the competitive position of VIP or other parties that have provided the confidential information.

Confidentiality is sought for all confidential information for an indefinite period, or until VIP advises the Commission that it may disclose this information. In this respect, VIP relies on section 9(2)(b)(ii) of the Official Information Act 1982. The foregoing request is made not only for this application but for all additional information the parties may provide in respect of this matter. Confidential information is deleted in the Public Copy of this notice.

## **DETAILS OF THE PARTICIPANTS**

### **4 Who are the participants (i.e. the parties involved)?**

4.1 The acquirer is VIP, or an interconnected body corporate.

4.2 The contact details for VIP are as follows:

Visy Industrial Plastics (NZ) Limited  
c/o Visy Industrial Holdings Pty Limited  
Corporate Head Office  
Level 17, 644 Chapel Street  
South Yarra, Victoria  
Australia 3141

Attention: Nick Perkins, General Counsel  
Telephone: 03 9815 8400  
Facsimile: 03 9815 8388  
Email: nick.perkins@visy.com.au

4.3 The potential vendor is either Vertex and Alto, or Masthead.

4.4 Contact details for Vertex, Alto and Masthead are as follows:

Masthead Equities Limited  
Level 2, 5-7 Kingdom Street  
Newmarket  
Auckland

Attention: Mark Wheeler, Managing Director  
Telephone: 09 523 5014  
Facsimile: 09 523 5064

### **5 Who is interconnected to or associated with each participant?**

**Acquirer group/associates:**

**a. if the acquirer is a member of a group of interconnected bodies corporate, identify all members of the group.**

- b. identify all companies in which the acquirer or its interconnected bodies corporate own 10% or more of the shares.
- c. identify any company which owns over 10% of the shares in the acquirer or any company of which the acquirer is a subsidiary.
- d. identify all interconnected bodies corporate of any company identified under 5.1.c. and all companies in which it, or its interconnected bodies corporate, own over 10% of the shares.

### Acquirer company

#### *VIP*

- 5.1 An ownership structure diagram showing ownership of the companies interconnected with VIP in New Zealand is provided in Appendix B. In summary:
- a. VIP is a New Zealand company wholly owned by Visy Industrial Holdings (NZ) Limited (“**VIH**”);
  - b. VIH is a New Zealand company wholly owned by an Australian company, Visy Industrial Packaging Holdings Pty Ltd (“**VIPH**”). In addition to VIP, VIH also owns Visy Industrial Products (NZ) Limited (“**VIPNZ**”) which is primarily a manufacturer of steel products;
  - c. VIPH is ultimately owned by Salvage Pty Ltd (“**Salvage**”), [ ]]; and
  - d. certain companies interconnected with VIPH were previously subsidiaries of Visy Industries (a member of the Pratt group of companies).

#### *VisyPak*

- 5.2 VisyPak is a member of a group of companies which are ultimately owned by Pratt Holdings Pty Ltd (ie, the Pratt group). Visy Rigid Packaging (NZ) Limited (which also trades as VisyPak) is also a member of the same group.

#### *Relationship between VIP and VisyPak*

- 5.3 In 2004, when considering VIP’s acquisition of the then plastic packaging business of ACI Plastics, the Commission approached the competition analysis of that transaction on the basis that VIP and VisyPak were associated. In the interest of expediting the competition assessment of the Proposed Acquisition, VIP does not propose to ask the Commission to reconsider its earlier view on the question of association between VIP and VisyPak and proceeds in this application on the basis that VIP and VisyPak are associated. However, VIP reserves its position on this matter.

### Target company group/associates

- 5.4 Until 1 April 2006, Vertex and Alto are wholly owned subsidiaries of Masthead Equities Limited. Effective 1 April 2006, the group of companies comprising

Masthead Equities Limited, Alto Plastics Limited, Vertex Group Holdings Limited and Vertex Pacific Limited will amalgamate. The continuing company, Masthead Equities Limited, will change its name to Alto Holdings Limited. Masthead Equities Limited/Alto Holdings Limited will continue to be 61.2% owned by Masthead Limited with the balance of the shares held by various individuals. All members of the group will continue to be New Zealand companies. An ownership structure diagram showing the new ownership structure of the companies is provided at Appendix C.

**6 Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?**

6.1 No.

**7 Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.**

7.1 There are no links between the participants, other than the links between VIP and VisyPak considered by the Commission in the context of the ACI Decision, and as described in paragraph 7.2 below.

7.2 VIP and Alto/Vertex, together with many other plastic manufacturers operating in New Zealand, belong to some of the same industry organisations (eg, Plastics New Zealand and the Auckland Manufacturers Association).

**8 Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?**

8.1 Raphael Geminder, the sole director and shareholder of Salvage Pty Ltd, is also a director of certain companies in the Pratt group.

9	<b>What are the business activities of each participant?</b>
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**VIP**

9.1 VIP is a packaging company that supplies a range of packaging alternatives. It manufactures rigid plastic high density polyethylene (“**HDPE**”) containers, wide mouth bottles and jars in PET for food products (eg, honey, oil, sauces), household and industrial products (eg, cleaning products, detergents, motor oil, etc) and a range of industrial pails used in chemical, food and paint products. Some of VIP’s major customers include [

].

9.2 VIP’s production plant in New Zealand is located at East Tamaki in Auckland. It also operates a single stage stretch blow moulder machine in Christchurch and additional machinery at VIPNZ’s Avondale site.

**VIPNZ**

9.3 VIPNZ is a steel business operating at an Avondale site which manufactures steel drums in various sizes.

**VisyPak**

9.4 VIP understands that VisyPak is a non-alcoholic PET beverage container manufacturing operation with production facilities in Auckland and Christchurch. It produces a range of PET beverage containers ranging in size from 390ml to 2.25L used for carbonated soft drinks (“**CSDs**”) and water.

9.5 VIP understands that other VisyPak divisions producing non-alcoholic beverage containers include VisyPak Beverage Can (a division of Visy Rigid Packaging (NZ) Limited), which manufactures aluminium beverage cans from its plant in Auckland, and VisyPak Carton Systems, which markets, distributes and services Combibloc, Purepak liquid paperboard cartons (“**LPB**”) and filling equipment. VisyPak also manufactures a small amount of PET bottles for beer, vinegar and juice.

**Vertex/Alto**

9.6 Relevantly for the purposes of the Proposed Acquisition, Vertex and Alto are involved in the business of manufacturing and supplying:

- a. PET bottles (eg, for CSDs and water);
- b. rigid plastic non-beverage containers (eg, for food, industrial and chemical products);
- c. closures; and
- d. extruded sheet and thermoformed plastic containers (eg, plastic trays, cups, lids and punnets).

9.7 Vertex/Alto also manufacture other packaging and plastic products, including for the human and animal health industry and the agricultural industry.



9.8 VIP understands that Vertex/Alto's main customers [

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<b>10 What are the reasons for the proposal and the intentions in respect of the acquired or merged business?</b>
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10.1 The Proposed Acquisition will complement VIP's existing business by:

- a. providing customers with a more diverse product offering;
- b. facilitating further investment in new plant and equipment; and
- c. increasing VIP's capacity to compete in the global packaging market, particularly with competitors located in China and South East Asia.

## PART II: IDENTIFICATION OF MARKETS AFFECTED

### HORIZONTAL AGGREGATION

**11 Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?**

#### PET bottles for non-alcoholic beverages

11.1 There is no overlap between the activities of VIP and Vertex/Alto in relation to the manufacture of PET bottles used for packaging CSDs, water, juices and sports drinks. VisyPak, on the other hand, does manufacture these bottles.

##### *Background – PET bottle production*

11.2 PET is a resin material and has gradually replaced PVC over the last 15 years because it is considered more environmentally friendly. PET was first used to make CSD bottles and is now used for packaging a range of liquid products including principally water, sports and energy drinks, and juice.

11.3 There are two stages in the production of PET bottles:

- a. the production of plastic “pre-forms”, ie, the pre-production tubes used to make PET bottles using injection moulding. The PET is injected into a water-cooled mould which consists of a neck section, core and cavity. The hot PET solidifies in the mould and forms the pre-form shape, which has a completely moulded neck thread of a bottle with a body that is a short tube with one end closed; and
- b. the production of empty PET bottles using the plastic pre-forms and specialised blow-moulding machines known as stretch blow moulding.

11.4 PET bottles can be produced on either single-stage machines or two-stage machines:

- a. in the single-stage process, the two stages of PET bottle production take place consecutively in the same production unit. The pre-form, which is still warm from the injection moulding process, needs to be thermally conditioned before being sent to the stretch blow moulding station; and
- b. in the two-stage process, PET pre-forms are moulded in a dedicated injection moulding machine which produces fully cooled pre-forms. A separate machine is then used to blow mould the pre-forms into bottles.

11.5 One advantage of the two-stage process is that it yields a higher output per unit of time. While the single-stage process is slower, operating multiple single-stage machines allows a PET bottle manufacturer to complete smaller runs to produce bottles for different beverages simultaneously.

*Product dimension of market*

- 11.6 VIP considers that the relevant product dimension of the market is PET bottles for non-alcoholic beverages. There are three types of PET bottles that can be produced: standard ("cold fill") PET bottles, bottles that can be filled at temperatures between ambient and 74° Celsius ("warm fill") and bottles that can be filled at temperatures above 84° Celsius ("hot fill").
- 11.7 Certain juices and drinks (such as Rio juices and Mizone) are warm-filled. From a supply side, special technology is required to make bottles capable of withstanding this warm-fill to prevent the bottle from collapsing. Machines used to produce standard PET containers can, however, be modified to produce bottles capable of being warm-filled. The initial conversion costs would be approximately \$400,000 and would take approximately two weeks. Once the alternative mould has been purchased, there are no additional costs (aside from the down-time in production) for switching between standard PET bottle production and warm-fill PET bottle production.
- 11.8 Similarly, isotonics (ie, sports drinks such as Powerade) must be hot-filled. Special technology (hot-fill technology) is required to make PET bottles capable of withstanding this heat. Again, however, a machine capable of producing standard PET bottles can be modified so as to be capable of making bottles capable of being hot-filled.
- 11.9 In New Zealand, PET bottles are used almost exclusively for containing CSD, water, juice and isotonics. While technological developments in PET have made it a more cost effective option for many other uses,<sup>4</sup> there is very limited, or no, use of PET bottles for beer or milk (or any other liquid food) in New Zealand.

*Functional dimension of market*

- 11.10 VisyPak and Vertex/Alto are involved in the manufacture of PET bottles and wholesale supply these bottles to customers (ie, "fillers"). VIP understands that VisyPak and Vertex/Alto are not involved at the retail level of the market. On that basis, VIP considers that the relevant functional market is limited to the manufacture and wholesale supply of PET bottles.

*Geographic dimension of market*

- 11.11 VIP considers that the geographic extent of this market is New Zealand wide. Vertex/Alto has manufacturing facilities in Auckland and Christchurch. VIP understands that VisyPak's New Zealand plants are located in Mt Wellington in Auckland, and Woolston in Christchurch.

*Conclusion*

- 11.12 Taking into account the discussion above, and given the Commission's recent examination of the industry in the context of the ACI Decision, this application proceeds on the basis that there is a national market for the manufacture and wholesale supply of PET bottles for non-alcoholic beverages.

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<sup>4</sup> Packaging Strategies, "2006 Packaging Outlook", January 2006, at 7.

### Non-Beverage rigid plastic containers

- 11.13 There is overlap between VIP and Vertex/Alto in relation to the manufacture and wholesale supply of non-beverage rigid plastic containers.

#### *Background*

- 11.14 Non-beverage rigid plastic containers are a form of primary packaging used for a variety of applications, including:
- a. packaging food, including food products that are liquid or semi liquid (eg, milk, some types of juice/cordial, sauces, mayonnaise, oil), and solids or dry food (eg, fruit, vegemite, jam and other spreads, cereals, pancake mixes, etc);
  - b. packaging personal care products, including hair care products (eg, bottles for shampoo and conditioner), sunscreen, bath oil, liquid soap, moisturisers, etc;
  - c. packaging household products, including dishwashing products, laundry detergents and fabric softeners, and household cleaners (eg, floor and toilet cleaners, surface sprays);
  - d. packaging pharmaceutical products (eg, bottles/containers for tablets, vitamins, dietary supplements, etc); and
  - e. packaging industrial and chemical products, including oil and oil additives, fertilisers, garden chemicals, solvents, insecticide, etc.
- 11.15 Non-beverage plastic containers typically have a lid and are capable of being sealed. The lid of a container is generally referred as the “closure”. Closures are discussed more extensively in section 11.45 below.
- 11.16 There are several types of resins used to manufacture non-beverage rigid plastic containers. Some examples are listed below (with further information provided in Appendix A):
- a. PET, which is principally used to manufacture soft drink and water bottles, salad domes, biscuit trays, dressing and peanut butter containers;
  - b. Polypropylene (“PP”) is used for applications such as reusable and collapsible/stackable crates, caps and closures, blow moulded bottles and other thin walled containers used in food packaging (eg, yoghurt tubs);
  - c. Polyvinyl Chloride (“PVC”) is used for products such as cosmetic containers, electrical conduit, plumbing pipes and fittings, blister packs, wall cladding, roof sheeting, bottles, garden hoses, cable sheathing, blood bags, watch straps, etc; and
  - d. HDPE is used to manufacture products such as chemical drums, jerry cans, toys, picnic ware, household and kitchenware, cable insulation, shopping and freezer bags, milk bottles, ice cream containers, juice bottles, shampoo, chemical and detergent bottles, buckets, rigid agricultural pipe, milk crates and food wrapping material.

11.17 The types of plastics set out above can be processed using a range of manufacturing processes. The most commonly used processes are listed below (with further information provided in Appendix A):

- a. injection moulding (“**IM**”);
- b. blow moulding which is a method of forming hollow articles out of thermoplastic materials. It includes extrusion blow moulding (“**EBM**”), injection blow moulding (“**IBM**”) and injection-stretch blow moulding (“**ISBM**”); and
- c. extrusion moulding.

*Product dimension*

11.18 The combination of different plastics and different manufacturing processes result in a wide range of options for the manufacture of non-beverage rigid plastic containers. Indeed, most suppliers of non-beverage rigid plastic containers use more than one manufacturing process, as shown in the table below.

Process	VIP	Vertex/ Alto	Viscount	Simplas	Blow Moulders	Ancor	Perroplas	Premier Plastics	Huhtamaki	Pharmapac
EBM	✓	✓			✓			✓		✓
Thermoforming		✓							✓	
ISBM	✓	✓				✓				
Small Injection	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Large Injection	✓		✓	✓		✓	✓		✓	
Extrusion		✓							✓	

Source: Data supplied by VIP

11.19 Many of the processes are interchangeable to produce the same containers. IBM, ISBM and small EBM are generally interchangeable and with recent technology advances all three processes can be used commercially to convert HDPE, PP and PET. Similarly, EBM and IBM are interchangeable processes that allow manufacturing the same final products. In some cases (eg, cosmetic jars) small injection may also be a commercially viable substitute for small EBM or ISBM.

11.20 Contractual obligations rarely prohibit such substitution of processes. Typically each manufacturer will decide which process to use depending on factors such as performance, volume, finish, availability and cost.

11.21 The capital costs of switching from one manufacturing technology to another vary due to differences in equipment costs, tooling costs, resin costs and output capacity. Examples of actual switching costs are as follows:

- a. switching from EBM technology to IBM technology, on a small scale, would cost approximately \$235,000 if new plant were utilised and as little as \$65,000 if second hand plant were utilised. There is a reasonably competitive market

in second hand plant and a very cheap source for new Chinese IBM machines which would make sourcing second hand or new plant extremely easy;

- b. switching from IBM to EBM technology, on a small scale, would cost approximately \$195,000 if new equipment were purchased and as little as \$30,000 if second hand equipment were utilised; and
- c. setting up a new tubes plant would cost approximately \$1 million (using new state of the art equipment) and as little as \$300,000 using second hand equipment.

11.22 From the point of view of demand, there is also a high degree of substitutability between different processes and materials, with some of the factors that have a significant influence in the customer's decision to convert from one option to another including transparency, product compatibility, barrier properties (moisture, solvent, air, etc), product "feel", and cost.

11.23 Demand side substitutability is well evidenced by the utilisation of rigid as well as flexible packaging materials to package a range of different products. Many customers "cross-package" (ie they use different packaging for the same product) as a means of differentiating their product from competitors and catering for end-customer preferences. The figure below shows a typical example of cross packaging for Vegemite which is available in PET jars, glass jars, and is also sold in plastic jars, tubes and pails. Closures for Vegemite containers can be made of metal, plastic or foil (ie aluminium or laminated plastic). Further examples are provided in a separate document to be made available to the Commission with this submission.



11.24 Cosmetic companies are another type of customer that engage in active cross packaging for marketing purposes (and to differentiate products within a range). For example, shampoo may be packaged in a bottle, conditioner in a tube, and a hair treatment (ie a "creamier" version of a conditioner) in a jar; similarly, liquid soap may be packaged in small PET transparent bottles with a "gloss" finish, while "refills" for

the same product are packaged in larger low-cost, light-weight bottles (or using flexible packaging).

- 11.25 Fluctuations in the demand for tubes (manufactured using IBM technology) also illustrate the substitution possibilities between different types of non-beverage rigid plastic containers. Tubes are widely used for the packaging of toothpaste, sunscreen, some types of cosmetics and some chemicals (eg adhesives). Over the years, there have been significant fluctuations in demand as key customers have moved products in and out of tubes. For example:
- a. in the mid 90's, the growth in cosmetic hair care, coupled with the growth in sunscreens, facilitated growth in the demand for tubes. The hair care "treatment and conditioner" segment, in particular, used tubes as its container of choice;
  - b. in the late 90's, demand for tubes continued to be strong despite some changes in market conditions. For example, Proctor & Gamble moved the manufacture of its hair care products to Thailand but consumer acceptance of tubes continued to create sufficient growth to off set the lost volume; and
  - c. some companies have moved products from tubes (ie, IBM technology) to "tottles" (which is a tube shaped bottle made using EBM). For example, Unilever shifted some of its products from tubes to tottles for the "Pears Shampoo" range and Dove conditioner; Schwartzkopf also moved some of its conditioners to tottles.

*The packaging of food and non-food products*

- 11.26 The Commission noted in a previous decision (*Decision No. 390*) that from a supply side perspective, containers used for industrial applications are generally not substitutable for containers used in food applications.<sup>5</sup> The Commission said that the manufacture of food packaging requires food standard manufacturing facilities to ensure regulatory compliance, and that to upgrade a facility to such a standard requires a reasonable level of capital investment. On that basis, the Commission found that the packaging of food products is to be differentiated from the packaging of "industrial" (ie, non-food) products.
- 11.27 However, in *Decision No. 390*, the Commission focused on a factual scenario in which the only material overlap between the parties to the transaction occurred in relation to food products. So, it did not consider broader substitutability issues between food and "non-food" products in detail.
- 11.28 VIP submits that in a broader factual context, the issues set out below should also be considered relevant to the question of whether "food" and "non-food" products should be in separate markets.
- 11.29 In New Zealand, the term "food grade" is used to describe a broad range of manufacturing plants and facilities. For example, at one end of the spectrum, a food grade plant may have been set up by repainting floors and walls, and ensuring that all employees wear white coats, clean boots and hair nets. At the other end, the plant may have extensive sterilisation and room temperature control mechanisms. If

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<sup>5</sup> *Decision No. 390 (PolarCup (NZ) Limited and Carter Holt Harvey Plastic Products Division)*, at paragraph 34.

protection from dust is needed, a food grade plant may have air filtration mechanisms or use cheaper “mechanical” alternatives (eg net protection). Also, a food grade plant may have a single room which has “food grade” features, or the entire plant may have been set up to the same standard.

- 11.30 The high degree of variation is demand driven. In New Zealand no regulatory authority requires compliance with particular “food grade” standards for packaging products, so each customer sets up its own requirements and auditing processes. [

Provided that a manufacturer meets the requirements of a particular customer, then the plant may be generally described as a “food grade” even though what is suitable “food grade” for one customer may not fit the standards of another. ]

- 11.31 Because of the high degree of variability in the definition of food grade, the cost of setting up a food grade plant can vary significantly. VIP estimates that depending on the requirements, upgrading a standard plant to food grade could cost between \$50,000 for a simple small “clean room” environment and up to \$3 million for a large, state of the art, plant.

- 11.32 Having a food grade plant is not necessary to be able to supply containers to the food industry. For example, [

] VIP understands that Amcor, Premier Plastics, Blow Moulders and Viscount are also examples of New Zealand manufacturers of rigid plastic containers that supply the food industry without having food grade facilities. Having a food grade plant can, however, offer some advantage (although such advantage may be offset by other factors such as price). VIP, for example, is not aware of any situation in which it lost a supply contract to a customer because of the lack of a food grade plant. [

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- 11.33 In New Zealand, there are several manufacturers of non-beverage rigid plastic containers that have “food grade” manufacturing plants, including Vertex/Alto and some in-house food manufacturers (such as Fonterra). VIP understands that these plants may be used to manufacture food and non-food packaging products. For example, all containers supplied by Vertex/Alto are manufactured in the same (food grade) plant, including those containers supplied to the personal care industry and to the agricultural and chemical industries. Therefore, from both a supply and demand perspective, packaging produced in non-food grade plants is supplied to meet food packaging requirements and is substitutable for packaging produced in food grade plants.

- 11.34 Within the framework described above, and taking into account the narrow factual scenario in which *Decision No. 390* was made, VIP submits that the “food” and “non-food” distinction is not material for the purposes of market definition in the context of the Proposed Acquisition.



### Conclusions

11.35 Taking into account the discussion above concerning the extent of the demand and supply side substitution, and given the Australian Competition Consumer Commission's recent examination of the non-beverage rigid plastic container industry in Australia,<sup>6</sup> this application proceeds on the basis that there is a market for the manufacture and wholesale supply of non-beverage rigid plastic containers. While noting the strong evidence of competitive constraint from other packaging materials (as discussed in section 13.5), VIP submits that even in this narrower definition of the market the Proposed Acquisition would not result in a substantial lessening of competition.

### Trays, cups, lids and punnets

11.36 In *Decision No. 390 (PolarCup (NZ) Limited and Carter Holt Harvey Plastic Products Division 20 April 2000)*, the Commission considered that there is a separate market for the manufacture and wholesale supply of rigid plastic food trays in New Zealand.

11.37 The Commission's decision was based on its analysis of supply side substitution possibilities for trays. As stated by the Commission, the manufacture of trays involves thermoforming, which is a different manufacturing process to that used to manufacture other types of containers.

11.38 Thermoforming of plastic sheets has developed rapidly in recent years. The process consists of heating thermoplastic sheet to a formable plastic state and then applying air and/or mechanical pressure to shape it to the contours of a mould. Air pressure may range from almost zero to several hundred psi. Up to approximately 14 psi (atmospheric pressure), the pressure is obtained by evacuating the space between the sheet and the mould in order to utilize this atmospheric pressure. This range, known as vacuum forming, will give satisfactory reproduction of the mould configuration in the majority of forming applications.

11.39 Thermoforming is used to manufacture a range of packaging products, including:

- a. rigid trays and trays made of expanded foam (eg, meat trays) and made using pressure vacuum (eg, biscuit and cake trays);
- b. fruit trays (eg, for packaging fruit such as pears and kiwifruit);
- c. punnets used for the packaging of soft fruit (eg, strawberries, berries, grapes, etc);
- d. small thermoformed containers, either resealable (eg butter and margarine tubs) or with a peel-off lid (eg, small tubs for fruit or yogurt); and
- e. cups for hot and cold beverages, and lids.

11.40 VIP notes that there is a high degree of substitution between thermoforming and injection moulding.<sup>7</sup> Take away food trays, meat trays, ice cream containers, cups,

<sup>6</sup> Australian Competition and Consumer Commission, Merger's Register (Acquirer: Visy Industrial Packaging; Target: ACI Australia Ltd).

<sup>7</sup> Shifting between one process and another can occur easily. For example, [

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lids and punnets can all be manufactured either using thermoforming or injection moulding technology. Further, they can be manufactured using other materials and packaged using other forms of packaging. For example, trays for packaging and display of fruit can be made of plastic, moulded fibre (egg carton type material) or single package trays (similar to meat trays). Similarly with packaging options for products like yoghurt, containers can be manufactured in-house using “Form, Fill and Seal” technology (instead of using extrusion and thermoforming).

- 11.41 The substitution possibilities between thermoforming and injection moulding and other manufacturing processes would suggest that if the Commission would like to test on a supply side basis whether there is a separate market in which trays are manufactured, the Commission would also need to consider expanding the definition of the market to also include:
- a. other similarly manufactured products (eg, cups, lids and punnets, whether they are manufactured using thermoforming or injection moulding); and
  - b. the range of other rigid plastic manufacturing processes that suppliers of plastic packaging employ (see table above at paragraph 11.18).
- 11.42 VIP submits that such broader approach to the definition of the relevant market would more accurately reflect the full range of supply side substitution possibilities.
- 11.43 Without seeking to resolve this issue, VIP submits the precise definition of the boundaries of this market is not relevant to the question of whether the Proposed Acquisition may lead to a substantial lessening of competition. VIP has in the past imported small amounts of trays, cups, lids and punnets from Australia to New Zealand on an ad hoc basis,<sup>8</sup> but VIP does not manufacture any trays, cups, lids or punnets in New Zealand. (Vertex/Alto, on the other hand, manufactures thermoformed and injection moulded food containers including bakery trays, prepaid meal containers, salad containers, cups, trays, fruit punnets, platters and bowls.)
- 11.44 Therefore, to the extent that the Commission considers there is a separate market in which trays, pails, cups and punnets are manufactured, VIP does not consider that the Proposed Acquisition would substantially lessen competition in that market as any aggregation would be de minimis.

### Closures

- 11.45 Closures are used to seal a container. Closures are used in almost all forms of primary packaging, including in containers for beverage products (ie, resealable caps for CSD PET bottles) and non-beverage products.
- 11.46 In some cases, closures are very similar to the containers they seal and indeed can be said to form part of the container itself. For example, they may be made of the same material and using similar processes (eg, the lid in a tin can). However, a large number of closures are separate from the container. They may be designed to perform a specific role (eg, to provide for a re-sealable container, to protect against contamination and tampering, to be child resistant, etc) and/or may be manufactured using different materials and processes to those used for the container. So, in most

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cases closures are better understood as a “component part”, separate from the container itself (as opposed to being simply an extension of it).

- 11.47 From a demand side, customers tend to purchase closures on their own, not as part of or in combination with a container. Typically, closures are not sourced from the manufacturer that supplies the containers.
- 11.48 The Australian Competition and Consumer Commission has treated closures as a separate market, distinct from the market for the supply of non-beverage rigid plastic containers.<sup>9</sup>
- 11.49 VIP submits the same analysis applies in respect of the manufacture of plastic closures in New Zealand, ie, there is a separate market for the wholesale manufacture and supply of plastic closures.

### **Conclusions on market definition**

- 11.50 In summary, adopting a narrow approach to the definition of the relevant markets, VIP considers that the relevant markets for the purposes of the Proposed Acquisition are likely to be:
- a. the market for the manufacture and wholesale supply of PET bottles for non-alcoholic beverages;
  - b. the market for the manufacture and wholesale supply of non-beverage rigid plastic containers; and
  - c. the market for the manufacture and wholesale supply of closures.

### **DIFFERENTIATED PRODUCT MARKETS**

<p><b>12 Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).</b></p>
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- 12.1 The products in each of the market for the supply of PET bottles for non-alcoholic beverages and the market for the supply of non-beverage rigid plastic containers are differentiated.

<sup>9</sup> Australian Competition and Consumer Commission, Merger’s Register (Acquirer: Visy Industrial Packaging; Target: ACI Australia Ltd).

- 13 **For differentiated product markets:**
- **Please indicate the principal characteristics of products that cause them to be differentiated one from another.**
  - **To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?**
  - **Of the various products in the market, which are close substitutes for the products of the proposed combined entity? – which are more distant substitutes?**
  - **Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?**
  - **The Commission would be assisted in its analysis of the effects of the Proposed Acquisition in a differentiated product market by evidence on product substitutability derived from marketing or consumer surveys, comparative product analyses and evidence of the effect of relative price changes on the demand for different products.**

## **PET bottles for non-alcoholic beverages**

### *Product differentiation*

- 13.1 At the level of retail supply of non-alcoholic beverages, there is significant differentiation between drinking products. Companies such as CCA NZ and Frucor place significant emphasis on differentiating their products from that of their competitors. One of the most noticeable ways of doing this is by using a unique PET bottle shape. Examples include the Powerade Matrix bottle (which is manufactured but not sold in New Zealand) and Sanitarium Water Plus bottle.<sup>10</sup>
- 13.2 However, this differentiation at the retail level does not reduce competition in the market for the wholesale supply of PET bottles because when new bottles are developed, fillers either own the intellectual property rights in the new bottle design or each new manufacturer develops its own design new. In a market in which product innovation is critical, all manufacturers compete developing new designs (including smaller firms such as LinkPlas).

### *Substitutability with other packaging*

- 13.3 The table below identifies the different packaging mediums that are available in relation to, and substitutable for, different beverages that are packaged using PET bottles.

<b>Product</b>	<b>Packaging Medium</b>
Soft drinks (ie CSDs)	PET, aluminium cans, glass bottles
Water	PET, glass bottles, flexibles, HDPE

<sup>10</sup> More recently in 2005, Amcor launched the Aqua Shot bottle, a hot-filled PET design made for CCA NZ.

Product	Packaging Medium
Juices	Warm fill PET, aluminium cans, glass bottles, steel cans, LPB cartons, HDPE, pouches
Isotonics	Hot fill PET, glass, aluminium cans and pouches

Source: Data taken from clearance application used for ACI Decision.

- 13.4 VIP considers that PET bottle manufacturers face strong competition from manufacturers of glass bottles and aluminium cans. There appears to be a large degree of end-use consumer acceptance for different packaging for the same product. For example, Coca-Cola is packaged in PET, glass and cans, while “V” and Red Bull are packaged in glass bottles and slim-line cans. Also, while the end-use consumer may have preferences for certain beverage containers, these preferences can be swayed by marketing and product placement.<sup>11</sup>

### Non-beverage rigid plastic containers

- 13.5 Non-beverage rigid plastic containers can be differentiated on the basis of design and technological features. Typically, a customer will tender for the supply of a container that meets particular requirements and manufacturers will respond with their individual designs. Customers are then able to compare between designs, making a decision on the basis of the container’s shape, functionality, look, finish, technical features (eg, strength, barrier properties, etc) and price. In a market characterised by very competitive tender processes, all manufacturers (regardless of size) are able to put forward responsive design proposals.
- 13.6 Also, there is considerable supply side substitutability between non-beverage rigid containers made of plastic, paperboard, corrugated board, carton, metal and glass. As shown in the examples listed below, non-beverage products can be packaged using either rigid or non-rigid packaging forms, and a range of materials including plastic, paperboard, corrugated board, carton, metal and glass:
- liquid food products (such as oil, honey, sauces, jams and milk) and juices are typically packaged in glass jars, plastic containers, flexibles, pouches and cartons;
  - soups (liquid form) can be packaged using steel cans, flexibles, carton boxes, plastic containers and thermoformed microwave/ovenable containers;
  - solid foods (such as fruit) are packaged using steel cans, flexibles, pouches, LPB and plastic containers;
  - detergents, dishwashing powders and liquids, and some cleaning products are packaged using plastic containers, pails, pouches and carton boxes;
  - personal care products (eg toothpaste, hair care products) are packaged using plastic bottles, bottles and tubes; and
  - industrial and chemical products are packaged using plastic or metal containers.

<sup>11</sup> Based on information supplied by VisyPak management.

- 13.7 From the demand side, the selection of a packaging material depends on consumer preferences (eg an end user in the food service industry may require bulk containers), marketing trends, type of product to be packaged, the packaging materials' properties (eg transparency, durability, heat resistance, whether it offers a good barrier to moisture, strength, etc) and cost. The table below summarises some of the properties of plastic, metal, glass and flexible packaging that are relevant, from the demand side, to the selection of packaging material.

	Plastic (PET/HDPE)	Liquid paper board	Metal	Glass	Flexible (eg pouches)
Durability	✓	✓	✓	✓	✓
Transparency	✓			✓	✓
Heat resistance			✓	✓	
Re-sealability	✓	Depends on closure		Depends on closure	Depends on closure
Strength	✓		✓		✓
Light weight	✓				✓
Recyclability	✓	✓	✓	✓	✓
Barrier to moisture	✓ (In combination with other materials)	✓ (In combination with other materials)	✓	✓	✓
Barrier to air	✓	✓ (In combination with other materials)	✓	✓	✓
Suitability for large containers	✓		✓		✓

Source: Data supplied by VIP

- 13.8 The substitutability of plastic, glass, metal and paper for rigid non-beverage containers has been recognised in the USA. In *FTC v Owens-Illinois*, a Court found that the relevant market was broadly defined as “rigid-walled containers, which comprise glass, plastic, metal and paper”.<sup>12</sup> It also found evidence:

*“[I]ndicating not only that alternative packaging is feasible (...) but also that different types of packaging compete with each other in the eyes of modern customers.”*<sup>13</sup>

- 13.9 Flexible packaging is also increasingly being used as a substitute for rigid plastic packaging materials:

*[The] desire of consumer products companies to enhance the shelf presence and brand identities of their products ... are driving the*

<sup>12</sup> *Federal Trade Commission v Owens-Illinois*, 681 F. Supp 27 (1988).

<sup>13</sup> *Federal Trade Commission v Owens-Illinois*, 681 F. Supp 27 (1988)

*increasing use of pouches and the flexible products rather than traditional rigid packaging.”<sup>14</sup>*

- 13.10 Therefore, VIP submits that a broader approach to the definition of the market in which non-beverage rigid containers are supplied should include containers made using glass, carton, metal and plastic.

## VERTICAL INTEGRATION

**14 Will the proposal result in vertical integration between firms involved at different functional levels?**

- 14.1 No vertical integration will result from the Proposed Acquisition.

**15 In respect of each market identified in questions 11 and/or 14 identify briefly any acquisition or proposed acquisition which either participant has undertaken in the last three years:**

- 15.1 In 2003 VIP acquired Duplast Industries Limited and Plastics Industries (NZ) Limited. No application was made to the Commission for these acquisitions.
- 15.2 In 2004, VIP sought and obtained clearance in respect of the acquisition of the plastic packaging business and assets of ACI Operations NZ Limited. The Commission granted clearance on 26 May 2004 (ACI Decision).
- 15.3 Also in 2004, VisyPak sought and obtained clearance in respect of the acquisition of the two-stage PET manufacturing assets that VIP had acquired from ACI. The Commission granted clearance on 30 June 2004 (*Decision No. 527*).
- 15.4 In early 2005, Masthead Equities Limited completed the acquisition of Vertex Group Holdings Limited. No application was made to the Commission for this acquisition.
- 15.5 [

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<sup>14</sup> Piper Jaffray, "Mergers and Acquisitions in the Packaging Industry: 2004 Year in Review and 2005 Outlook", March 2005 at 50.

## PART III, IV AND V: COMPETITION ANALYSIS

In order to avoid a fragmented analysis of each market, the information relating to parts III, IV and V as it applies to each relevant market is provided in consolidated form. The analysis proceeds as follows:

- a. the market for the supply of PET bottles for non-alcoholic beverages is examined in paragraphs 16 to 41;
- b. the market for the supply of non-beverage rigid plastic containers is examined in paragraphs 42 to 67.5; and
- c. the market for the supply of closures is examined in paragraph 68.

### MARKET FOR THE SUPPLY OF PET BOTTLES FOR NON-ALCOHOLIC BEVERAGES

- 15.6 This section has been prepared principally using information made available to the Commission in the application for clearance in the ACI Decision. VIP has endeavoured to update that information whenever possible. However, given that VIP does not manufacture PET bottles and is not otherwise involved in PET bottle sales, its ability to access new market data is limited.
- 15.7 VisyPak is not involved with the Proposed Acquisition therefore their assistance with the preparation of this submission has been limited. Where information has been provided by VisyPak, this has been indicated in the text.

### EXISTING COMPETITORS

16	<b>In the market or markets, who are the suppliers of competing products, including imports?</b>
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#### Market concentration

- 16.1 VIP understands that market participation levels prior to the Proposed Acquisition taking place are as described in the table below. VIP understands that market participation levels have not changed substantially since 2004 when the Commission considered the ACI Decision (although there has been some net changes as a result of firms losing and gaining customer contracts). Consistent with the Commission's analysis in the ACI Decision, the figures provided in the table below exclude sales to CCA NZ.



Rank	Supplier	Owner(s) of supplier	Estimated % of market <sup>15</sup> excluding sales to CCA NZ <sup>16</sup>
1	Amcor	Amcor Ltd	[ ]
2	VisyPak	Pratt Group	[ ]
3	TSL	Privately owned	[ ]
4	Vertex/Alto	Masthead Equities	[ ]
5	LinkPlas	Privately owned	[ ]
6	Imports	Various	[ ]

Source: Data supplied by VisyPak.

- 16.2 Post transaction, the merged entity's (ie, VIP and Vertex/Alto) market share would be [ ] and the market share of VisyPak would be [ ]. Amcor will continue to be one of the largest suppliers of PET bottles, with a market share estimated to be [ ].

### Description of existing competitors

- 16.3 A brief description of the existing competitors is as follows:

- a. **Amcor** – Amcor is the world's largest manufacturer of PET containers and is one of the world's top three global packaging companies. It also manufactures other rigid plastic packaging, closures, flexible plastic packaging, aluminium cans, cartons and multi-wall sacks (see discussion at paragraph 42.5). Amcor has developed significant technology for its global customer base and some of that technology has been used for the New Zealand market. For example, the Aqua Shot bottle uses patented technology originally developed by Amcor in North America. Amcor's operations in New Zealand allow easy innovation and the development of new products. In this respect, VIP considers that Amcor tends to be more easily able to innovate than VisyPak;<sup>17</sup>
- b. **TSL** – TSL's customers include CSD and water bottling companies, as well as liquor industries in New Zealand, Australia and the Pacific Islands.<sup>18</sup> It has been an innovator in regards to PET packaging for beer and spirits; and
- c. **LinkPlas** – formed in October 1997, LinkPlas manufacture PET containers for the food, drink, industrial, personal care and healthcare industries. LinkPlas is a very innovative company, having won several awards for some of its designs.<sup>19</sup> LinkPlas has expanded its operations since the ACI acquisition in 2004. Indeed, LinkPlas is considered to have the fastest growing high technology PET facility in New Zealand and has been singled out by the New Zealand Trade and Enterprise as a high performer which will assist economic

<sup>15</sup> Calculated on the basis of units sold in New Zealand.

<sup>16</sup> Consistent with the Commission's analysis in the ACI Decision, the figures provided in the table above exclude sales to CCA NZ.

<sup>17</sup> [ ]

<sup>18</sup> See <http://www.petbottles.co.nz>.

<sup>19</sup> LinkPlas, "News – LinkPlas takes top honour", 26 August 2005, at <http://www.LinkPlas.com/news/index.htm>.

growth in the New Zealand plastic industry.<sup>20</sup> At the end of 2005, LinkPlas moved its plant to a state-of-the-art facility in Albany which is double the size of its plant in Wairau Valley.<sup>21</sup> LinkPlas has significant potential to continue expanding and increasing its share of the PET bottle market.

- 16.4 In addition, given the high level of substitutability between PET and other beverage containers, it should be noted that post transaction there will continue to be competition from glass, aluminium can and rigid plastic beverage container manufacturers, including from:
- a. **Amcor** – in addition to its PET manufacturing facilities, VIP understands Amcor has a strong presence in aluminium can manufacturing and its annual sales have been estimated to amount to 142 million units;
  - b. **ACI Glass Packaging** – ACI is a subsidiary of the largest glass manufacturer in the world, Owen-Illinois Inc (US). It has five container manufacturing plants in Australia and New Zealand and annual sales exceed A\$1 billion;<sup>22</sup>
  - c. businesses importing glass, including Frucor (“V” glass bottle) and wine companies. It is estimated that imports of glass amount to 50 million units annually; and
  - d. businesses importing aluminium cans. It is estimated that imports of aluminium cans amount to 8 million units annually.

**Firms not currently supplying the market but who could enter quickly and provide extra capacity**

- 16.5 Firms that manufacture non-beverage PET containers for other uses would be able to divert production to PET bottles for non-alcoholic beverages. This is discussed in paragraph 28.

**Extent to which imports provide a constraint**

- 16.6 Whilst the import rate of PET bottles is relatively low (in the table in paragraph 16.1 imports have been estimated to be [ ]), VIP considers that there is a global trend towards establishing off-shore manufacturing and filling plants. For instance, it is estimated that in 2003 over 50% of the packaging machines manufactured by Tetrapak (the major supplier of PET blow moulding equipment) were sold to manufacturing plants in China. Local customers may outsource production of filled and unfilled bottles to Asia over the short to medium term. Certain other plastic products, such as cosmetic jars, are currently being imported filled and unfilled in very high numbers (see discussion starting in paragraph 42.7).
- 16.7 It is also easy to import pre-forms for conversion into PET bottles. As discussed in section 27, a potential entrant could import pre-forms, purchase blow-moulding equipment and produce PET bottles using a blow-moulding machine. Imports, when

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<sup>20</sup> From <http://www.LinkPlas.com/about/about.htm> (viewed 24 March 2006).

<sup>21</sup> LinkPlas, “News – LinkPlas is on the move!”, 14 December 2005, at <http://www.LinkPlas.com/news/index.htm>.

<sup>22</sup> ACI, “About ACI Packaging”, at [http://www.acipackaging.com/aciwwww.nsf/\(\)/99E81397B098C53FCA256F3900213950?OpenDocument](http://www.acipackaging.com/aciwwww.nsf/()/99E81397B098C53FCA256F3900213950?OpenDocument) (viewed 9 March 2006).

combined with the possibility of new entry, do therefore, provide a significant constraint.

#### **Costs incurred by importers that are not incurred by domestic suppliers**

- 16.8 VIP understands there are no tariffs on imports of PET bottles, aluminium cans or glass bottles from Australia.

#### **Extent to which product is exported**

- 16.9 There is some exporting of unfilled PET beverage bottles, particularly in relation to isotonics. In the past there has also been sporadic exporting of CSD, water and juice beverage containers to, for example, Fiji. This, however, has been at insignificant volumes.
- 16.10 Mizone, which is manufactured by Amcor in New Zealand, is exported to Australia in filled form. CCA NZ also exports filled water products to Australia and Sanitarium exports Water Plus to Australia. In relation to aluminium cans, which are often used for energy drinks, almost all of Australia's slim line cans, for example, are filled in New Zealand.

#### **Vigorous and effective competitor**

- 16.11 VIP understands the market is very competitive. All firms currently supplying the market compete vigorously with one another. For example, if there is a new tender all firms submit a response, and from time to time all firms have adopted aggressive pricing strategies in relation to particular segments or clients (on an ad hoc basis, for example, to regain a lost customer or lost market share). Within this framework, VIP does not consider that Vertex/Alto is a more vigorous or effective competitor than other firms in the market (eg, Vertex/Alto does not display a history of aggressive independent pricing behaviour, a record of superior innovative behaviour or low costs, a growth rate exceeding that of the market, or a history of independent behaviour generally).

### **CONDITIONS OF EXPANSION**

- 17 **The following listing gives different types of market conditions that may affect the ability of existing firms to expand:**
- **Frontier Entry Conditions.** For example, tariffs, quarantine requirements, international freight cost.
  - **Legislative/regulatory conditions.** For example, meat licensing, Resource Management Act requirements, health and safety standards.
  - **Industrial/business.** For example, access to raw materials, critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market's perception of the risk and return); sunk costs i.e. irrecoverable or exit costs (e.g. because of plant specificity);

**influence of branding; technical specifications**

- **Other. For example, responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.**

**Which, if any, of the entry conditions identified above do you consider could be likely to act as a “barrier” to expansion by existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?**

**Please provide evidence, where applicable, of expansion by existing competition during the past five years.**

- 17.1 VIP does not believe any of the conditions identified in the question would be likely to act as a barrier to expansion by existing competitors. There are no frontier entry conditions, no legislative/regulatory conditions and no significant industry/business conditions.
- 17.2 A market participant will expand its operations if it sees an opportunity to gain a new customer. The market is very competitive and all firms have an opportunity to expand. LinkPlas (discussed in paragraph 16.3) is a good example of a firm that has used technology and new product development to grow its business. For example, they developed a world-first injection stretch blow moulded small wine bottle for Air New Zealand, which has a “glass look and feel” and a shelf life of up to 12 months.<sup>23</sup>
- 17.3 Also, packaging is used in the beverage industry as an integral part of the image of a product, so products (and their packaging) are constantly changing in response to marketing demands. This dynamism means there is a constant drive to design new products and bottles. So, well established firms (such as Amcor) and firms that are new to the market (such as LinkPlas) have the same opportunity to gain market share through innovation and new product development.
- 17.4 Customers requiring beverage packaging generally issue a tender for business or request pricing from a number of suppliers. Customers are likely to enter separate contracts for containers in each medium: PET, cans and glass (and potentially HDPE), depending on the application and their marketing strategy. Further, customers often sell their products to the end consumer in more than one medium. For example, CCA NZ sells CSD in PET, cans and glass.
- 17.5 There are few barriers to customers switching between suppliers. Not only are most contracts for relatively short terms but also in most cases, the customer either owns the mould and the intellectual property in it (ie, the design of the bottle), or uses a generic mould owned by the manufacturer. If the mould is not owned by the customer, the only cost associated with switching from one supplier to another is the investment by the customer or the supplier in new moulds (ie, from \$20,000 to \$30,000).

<sup>23</sup> New Zealand Trade Enterprise, “*Plastics Industry on target for \$4 billion*”, 8 August 2005 (available at <http://www.nzte.govt.nz/section/11894/13039.aspx>).

17.6 Other conditions of expansion are similar to conditions of entry and are discussed in section 27.

18 **Please name any business which already supplies the market — including overseas firms - which you consider could increase supply of the product concerned in the geographic market by any of the following means:**

- **Directing production into the market (eg from exports).**
- **Increasing utilisation of existing capacity.**
- **Expansion of existing capacity.**

18.1 VIP considers that the firms discussed below would be able to increase supply of PET bottles for non-alcoholic beverages.

18.2 **Utilisation of excess capacity:** VIP understands that existing competitors continue to have excess capacity (eg, Amcor's excess capacity is estimated to be approximately 10 million units).<sup>24</sup>

18.3 **Expansion by in-house manufacturers:** Bevpac New Zealand Ltd, a CSD beverage manufacturer, has in-house PET manufacturing facilities through TSL, a related entity, to meet some of its requirements. It supplies house-brand CSD to supermarkets. VIP understands Bevpac could increase its PET manufacturing capacity to manufacture for other fillers or could win more filling contracts itself and manufacture more PET as a result.

18.4 **Expansion by non-beverage plastic container manufacturers:** The process for producing non-beverage PET containers (for example, peanut butter jars), is similar to that used to produce PET bottles. Manufacturers of non-beverage PET products such as Amcor and LinkPlas could modify their machines to produce (or increase their production of) PET bottles. A single-stage machine that is currently being used to produce non-beverage PET containers can be converted to use for PET bottles at an estimated cost of approximately \$150,000, inclusive of moulds and tooling. Once the modification has been made, a supplier may swap back and forward between non-beverage PET containers and PET bottles with relative ease (in as little as four hours), as it is only a set of tooling that requires changing.

19 **Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?**

19.1 Manufacturers with excess capacity and those with the technical expertise to develop new innovative products are likely to be the first to supply a new or switching customer.

<sup>24</sup> Based on information supplied by VisyPak management.

**20 How long would you expect it to take for supply to increase in each case?**

- 20.1 Current competitors with excess capacity could increase supply of beverage PET bottles immediately. Conversion of machinery used for non-beverage PET containers to machinery with PET bottling capability takes approximately four hours. Expansion in the form of the acquisition of new or second hand machinery would take approximately three to six months.

**21 In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?**

- 21.1 See answer in paragraph 22.1 below.

**22 Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

- 22.1 The merged entity would be constrained by the conduct of competitors because competitors would have the ability and incentive to respond aggressively to price increases (ie, they have excess capacity, barriers to entry are low and the industry is characterised by customers that are ready to switch suppliers).

## CO-ORDINATED MARKET POWER

**23 Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede co-ordination effects.**

- 23.1 The market has various characteristics that, post acquisition, would impede co-ordination effects, including:
- a. size disparity (ie, disparity in the sizes of the participants in the relevant market makes collusion unlikely);
  - b. there is a degree of product differentiation in the market. This makes it harder for market participants to agree on price;
  - c. barriers to entry are low. Any chance of increasing prices is therefore constrained by the likelihood of new entry;
  - d. consumers are extremely price sensitive and react quickly to price discrepancies. Also, larger customers typically have supply contracts with pricing clauses that link the price of raw materials with the price to be paid by the customer – so there is no room for engaging in co-ordinated conduct with other PET bottle manufacturers;

- e. competition in the beverage industry is vigorous and there is no evidence of anti-competitive conduct between participants;
- f. excess capacity in the market will give participants a strong incentive to deviate from a collusive agreement and to seek to make marginal sales to utilise capacity; and
- g. purchasers have significant countervailing power (See section 41).

**24 Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of co-ordinated behaviour by market participants.**

- 24.1 Any attempted co-ordinated behaviour by market participants would be likely to be detected because :
- a. many customers are large and sophisticated, therefore able to monitor suppliers' behaviour; and
  - b. customers monitor input costs including through international benchmark pricing and can identify changes in the manufacturer's charges for conversion of inputs to manufactured packaging.

**25 Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participants.**

- 25.1 VIP is not aware of any price co-ordination in the relevant markets. The relevant markets do not show any such evidence.

**26 Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant market(s).**

- 26.1 VIP does not believe there will be any increased risk of co-ordination in the market for the manufacture of PET bottles for non-alcoholic beverages. Any price coordination or collusion is unlikely given the nature of the market and the high likelihood of detection.

## CONDITIONS OF ENTRY

**27 The following categories cover different types of market conditions that may affect the ability of new firms to enter the market:**

- **Frontier entry conditions.** For example, tariffs, import licensing, quarantine requirements.
- **Legislative/regulatory conditions.** For example, meat licensing, Resource Management Act requirements, health and safety standards.

- **Industrial/business.** For example, access to raw materials, critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market's perception of the risk and return); sunk costs i.e. irrecoverable or exit costs (e.g. because of plant specificity); influence of branding; technical specifications.
- **Other.** For example, response to expansion by major firms.

**Which, if any, of the entry conditions identified above do you consider could be likely to act as a "barrier" to the entry of new competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price or to lower service or product quality?**

27.1 The market for the supply on PET bottles for non-alcoholic beverages has reasonably low barriers to entry, and entry is likely.

#### **Frontier entry and legislative barriers**

27.2 VIP understands there are no frontier entry conditions nor legislative/regulatory conditions that would limit entry to the market for the supply on PET bottles for non-alcoholic beverages.

#### **Industrial/business barriers**

27.3 PET resin, the raw material in PET container manufacturing, is readily available for importation (see discussion in paragraph 37.2).

27.4 As described in Appendix A there are different ways to produce PET bottles (or "convert") depending on the scale of entry. In summary, a potential entrant could:

- 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);<sup>25</sup>
- 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);<sup>26</sup>
- invest in a blow moulding machine and purchase the pre-forms 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).<sup>27</sup>

27.5 An injection moulding machine currently being used to produce other plastic products could be converted to produce pre-forms for around \$150,000. The costs of entering the PET bottle industry for a participant who already has an injection moulding machine are therefore less.

<sup>25</sup> Based on information supplied by VisyPak and VIP management estimates.

<sup>26</sup> Based on information supplied by VisyPak and VIP management estimates.

<sup>27</sup> Based on information supplied by VisyPak and VIP management estimates.



27.6 There are two likely types of new entrant:

- a. **Large scale new entrant:** the large scale new entrant, who is likely to be in another part of the plastics industry and have the expertise to move into PET bottles, or a PET bottle manufacturer not currently operating in New Zealand. This entrant may want the certainty of a contract from a customer before investing in production facilities. This would not be difficult to achieve because large customers with sufficient volume requirements would be likely to sponsor new entry in response to any reduction in competition; and
- b. **Beverage manufacturer:** the beverage manufacturer that chooses to vertically integrate into manufacturing beverage containers. While this entrant does not necessarily have the plastics knowledge, it has a ready customer base. Such a new entrant could enter on either a small or a large scale. For example, Bevpac is self-manufacturing. VIP understands that Frucor's parent company (ie, Group Danone) requires that Frucor considers self-manufacturing as an option, and Frucor is actively doing so at the moment. CCA NZ has also self-manufactured in the past and could do so in the future. An emerging technology that is likely to encourage entry into this market by beverage manufacturers is called aseptic-filled PET. This involves the development of a sterile environment in which ordinary pre-forms are blown and the bottle is filled. Because the bottle is blown and filled at the same time, beverage manufacturers are well-placed to take up this technology.

27.7 The investment required is not prohibitive compared to the revenue that can be generated. Such investment should not, furthermore, be considered a sunk cost for the following reasons:

- a. 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;
- b. 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
- c. the cost of the machinery is not an "additional or significantly increased cost or other disadvantage that a new entrant must bear".<sup>28</sup>

28 **Please name any business – including overseas business – which do not currently supply the market, but which you consider could supply the products/services concerned in the geographic market identified by:**

- **Investing in new production facilities to produce the product;**
- **Overseas companies diverting production;**
- **Domestic companies expanding or changing utilisation of existing capacity.**

<sup>28</sup> *Brambles' Case*, paragraph 177.

- 28.1 International firms that are not currently manufacturing PET bottles for non-alcoholic beverages in New Zealand but could supply these bottles include:
- a. **Tetrapak** – in 2004, Tetrapak acquired Sidel, the largest manufacturer of ISBM blow moulding equipment. It currently manufactures packaging systems and LPB cartons for milk and juice in New Zealand;
  - b. **Brickwood Holdings** – an Australian PET manufacturer, Brickwood would have the expertise and knowledge to set up operations in New Zealand. In Australia, Brickwood produces plastic bottles, including HDPE milk and juice bottles, PET milk bottles, and closures, using conventional blow moulding (EBM and ISBM) and IM processes. Brickwood's subsidiaries include Blowflex Pty Ltd, which is located in-house at National Foods, one of Australia's largest food companies, and Woodvale Moulders (also known as Blowflex Woodvale), which produces HDPE 1- and 2-litre milk bottles using blow moulding. We also understand that Brickwood is now the main supplier of beverage containers to Berri (part of National Foods which is owned by San Miguel Corporation – see below);
  - c. **San Miguel Corporation** – San Miguel is South East Asia's largest public-listed food, beverage and packaging company. It has a premier soft drink distribution business and is one of the top 10 bottlers of Coca-Cola in the world. Its packaging division supplies PET and glass bottles, corrugated cartons, flexible packaging and plastic crates, amongst other products. The company serves clients in the USA, Europe, Japan and Australia. San Miguel is actively looking for opportunities for expansion. According to San Miguel, "With the domestic market [in Asia] consolidated, San Miguel is looking to widen its theatre of action and replicate its success overseas, through regional expansion and exports".<sup>29</sup> The company has recently created CESBD, a one-stop-shop service unit focused on exporting San Miguel's diverse product range (including packaging) through a network of distributors and traders to 40 different overseas markets. Given its size and expertise both as a soft drink manufacturer and as a PET bottle specialist, San Miguel could easily enter the New Zealand PET bottle manufacturing market if conditions were suitable.
  - d. **Huhtamaki** – Huhtamaki is part of a multi-national family of consumer packaging companies. It has a presence in 36 countries with sales of €2.2 billion annually.<sup>30</sup> It has 11 plants across Australia and New Zealand. In New Zealand, Huhtamaki produces a wide range of rigid paper and plastic containers covering the ice cream, dairy, food and food service industries as well as cups, plastics and cutlery.
- 28.2 In addition, any of the existing beverage manufacturers would be capable of vertically integrating to manufacture their own containers. Bevpac is currently doing so (and it could increase its PET manufacturing capacity to manufacture for other fillers). CCA NZ has self-manufactured in the past and could do so again in the future.

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<sup>29</sup> San Miguel Corporation website, [www.sanmiguel.com.ph](http://www.sanmiguel.com.ph), viewed on 5 January 2005.

<sup>30</sup> See <http://nz.huhtamaki.com/>.

**29 What conditions of entry do you consider would most influence the business decision to do so in each case?**

- 29.1 If the merged entity was to raise the price of PET bottles, or restrict output, it is likely that a large scale new entrant would enter the market, given that they have the product expertise to start up operations within a short period of time. Alternatively, increasing costs could lead a beverage manufacturer to develop in-house production capabilities.

**LIKELIHOOD, SUFFICIENCY AND TIMELINESS OF ENTRY**

**30 How long would you expect it to take for entry to occur, and for supply to increase in respect of each of the potential business entrants?**

- 30.1 VIP estimates that both small and large scale entry could occur within three to nine months, depending on whether new or second-hand equipment was used.<sup>31</sup> The second-hand market is liquid - such equipment is readily available and would take less time to source than new equipment.

**31 Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?**

- 31.1 Yes. Because the barriers to entry are low, there is no reason why a new entrant could not enter the market relatively quickly, and be running at a profit (excluding capital returns) within a short period of time (eg, one year).

**32 Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?**

- 32.1 Yes. Given the low barriers to entry, other firms could enter the market relatively easily, and develop a technological advantage to supply at a more competitive price and/or to supply more innovative products.

**33 What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, i.e. de novo entry?**

- 33.1 See paragraph 29.1.
- 33.2 A beverage manufacturer looking to vertically integrate would not need a customer, as it could use its production itself. A vertically integrated manufacturer would therefore only need to acquire industry knowledge and expertise. Such expertise is readily available, either through the engagement of consultants or by hiring new employees.

<sup>31</sup> Estimate provided by VisyPak management.

**34 How long would you expect it to take for de novo entry to occur?**

- 34.1 VIP estimates approximately three to nine months (the longer time applies if the company also needs to locate new premises).<sup>32</sup>

**35 In your opinion, to what extent would the possibility of de novo entry contain the merged entity?**

- 35.1 VIP considers that de novo entry by any PET manufacturer not currently in New Zealand, such as, for example, Tetrapak or Brickwood, would provide a real constraint on the merged entity as these firms would have the technical expertise and industry knowledge to quickly become very vigorous competitors.

## CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

**36 Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?**

**37 Who owns them?**

- 37.1 As VIP is not involved in the manufacture of PET bottles, its ability to source information on suppliers to the market is limited. VIP understands, however, that information made available to the Commission in the context of the ACI Decision continues to be relevant. That information is reproduced below (with some limited updates by VIP).

### Suppliers of resin

- 37.2 Resin is a commodity product traded internationally. PET resin is readily available to any buyers. Suppliers of resin (and their agents where known) include Shingkong (Hunt Agencies Limited), 5K Global, Indorama, Voridian (Polychem Marketing Limited), Leading Synthetics, Mitsui (Mitsui and Co. (Australia) Limited), and Shinpet (Chemiplas New Zealand Limited).

### Suppliers of machinery

- 37.3 The major suppliers of PET production machinery are:

<b>Production method</b>	<b>Supplier (and their agents where known)</b>
Two Stage blow moulding	Sidel (Sidel Oceania Pty Ltd (Australia)) Krones Sipa (James Forten International Limited) Sig Beverages
Injection Moulding	Husky

<sup>32</sup> Based on information and estimates provided by VisyPak management.

	Nestal Krauss Maffei (HBM NZ Limited) Engel
Single stage blow moulding	ASB – Nissei (represented by Inmac Industries 1997 Limited) Aoki Magic SIG

Source: Information supplied to the Commission for ACI Decision and updated with information sourced by VIP.

- 37.4 There are also a large number of Italian and Asian suppliers available.
- 37.5 Second-hand moulding equipment is readily and easily available both in New Zealand and overseas. Suppliers of new equipment are willing to assist in sourcing such equipment and existing market participants offer old equipment for sale when they upgrade.

**38 In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each affected market?**

- 38.1 The conduct of suppliers of goods is unlikely to provide significant constraint on the merged entity.

#### CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS

**39 Who would be the acquirers of goods and services supplied by the merged entity in each market identified in questions 11 and/or 14?**

**40 Who owns them (where appropriate)?**

- 40.1 As VIP is not involved in the manufacture of PET bottles, its ability to source information on acquirers to the market is limited. VIP understands, however, that Information made available to the Commission in the context of the ACI Decision continues to be relevant. That information is reproduced below (with some limited updates by VIP).

Purchaser/Acquirer	Owner	Current supplier
Coca-Cola Amatil (NZ) Limited	Listed	[ ]
Frucor Beverages Limited	Danone	[ ]
Bevpac NZ (1996) Limited	Privately owned	[ ]
DB Breweries Limited	Listed	[ ]
Yeoman Industries Limited	Privately owned	[ ]
Murdoch Manufacturing Limited	Foodstuffs (South Island) Limited	[ ]

Pinto Beverages	Pinto Limited	[ ]
Other		[ ]

Source: Data taken from clearance application used in ACI Decision and updated with information sourced by VIP.

- 40.2 In addition, there are a number of smaller acquirers of PET products including Waiwera (Zentrum Holdings), New Zealand Quality Waters and Sanitarium.

**41 In your opinion, to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?**

- 41.1 The purchasers of beverage containers provide a very large and significant constraint on the conduct of participants in the market.
- 41.2 Large customers such as supermarkets and international soft drink companies (ie, Coke and Pepsi) have significant countervailing power. They can bypass manufacturers either because:
- a. they have the ability and resources (and in some cases the technical expertise) to manufacture PET bottles in-house. VIP understands, for example, that Frucor is in the process of considering whether to start production of beverage bottles in-house. CCA NZ has manufactured in-house in the past and could do so at some stage in the future;
  - b. in response to any reduction in competition, they would have the resources and large volumes needed to sponsor new entry or expansion by existing smaller suppliers (and such new entry would be feasible, given the low barriers to entry); and
  - c. they can engage in direct importing of PET bottles (or can credibly threaten to do so). Even if they do not import directly, these customers have access to international markets so they tend to benchmark price and other terms and conditions of supply against international standards.
- 41.3 Supply contracts with these large customers contain very competitive pricing clauses. The merged entity would be unlikely to be able to increase prices without facing a response from customers. Indeed, despite the existence of supply contracts large customers do change suppliers (eg, DB Breweries and Murdoch have changed suppliers since the ACI decision).
- 41.4 VisyPak currently has a contract with CCA NZ which was considered by the Commission in the context of the ACI Decision. Details of the contract are confidential to VisyPak [

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## MARKET FOR THE SUPPLY OF NON-BEVERAGE RIGID PLASTIC CONTAINERS

### EXISTING COMPETITORS

42 **In the market or markets, who are the suppliers of competing products, including imports?**

#### Market concentration

42.1 VIP estimates that market participation levels prior to the Proposed Acquisition taking place are as described in the table below.

Rank	Supplier	Owner(s) of supplier <sup>33</sup>	Estimated % of market sales <sup>34</sup>
1	Vertex/Alto	Mastheads Equities Limited	[ ]
2	VIP	VIH	[ ]
3	Viscount Plastics (NZ) Limited	Linpac Group Limited	[ ]
4	Amcors Packaging (New Zealand) Limited	Amcors Investments Pty Limited (Aust)	[ ]
5	Premier Plastics Limited	Privately owned	[ ]
6	Tecpak Industries Limited	Rangatira Limited M G Securities Limited	[ ]
7	Huhtamaki New Zealand Limited	Huhtamaki Finance Company (Netherlands)	[ ]
8	Pharmapac Limited	Pharma Pac Management Limited	[ ]
9	Optoplas New Zealand Limited	Privately owned	[ ]
10	LinkPlas Limited	Privately owned	[ ]
11	Form Plastic Technologies Limited	Alfred Holt & Co Limited	[ ]
12	Packit Packaging	Privately owned	[ ]

<sup>33</sup> Current as at 28 April 2006 according to New Zealand's Companies Office.

<sup>34</sup> Calculated on the basis of sales revenue (excluding exports if known).

	Limited		
13	Tube-pack Limited	GADC Limited	[ ]
14	Q Pac Industries Limited	Privately owned	[ ]
15	Blow Moulders Limited	Privately owned	[ ]
16	RX Plastics Limited	Privately owned	[ ]
17	Others	Various	[ ]
18	Imports of unfilled product	Various	[ ]

Source: VIP estimates.

- 42.2 In the table above, imports of unfilled product (ie, imports of empty bottles) have been estimated to be [ ].<sup>35</sup>
- 42.3 VIP has been unable to obtain reliable market data on the imports of filled products. Such data is very difficult to ascertain, as imports of filled containers are recorded on the basis of the import of the “filling” product (ie, if a filled bottle of shampoo is imported, the record reflects the volume of imported shampoo, not the fact that a bottle was also imported as packaging). However, industry estimates that the total percentage of imports of non-beverage rigid plastic containers are, on average, as high as 50% of the total number of non-beverage rigid plastic containers sold in New Zealand. By customer segments, estimates are as follows:
- in the personal care segment (eg, hair care products, skin care products, etc) imports are as high as 70%;
  - of packaging for household products (ie, cleaning products, dishwasher liquid, etc) imports are as high as 40%; and
  - of containers used in the pharmaceutical sector, imports could be as high as 70% or 80%.
- 42.4 On the basis of the figures provided in the table above, post-transaction concentration levels for the three largest market participants would be [ ] and the market share of the merged entity would be [ ]. These figures are within the Commission’s safe harbour for transactions that are unlikely to result in a substantial lessening of competition.

### Description of existing competitors

- 42.5 A brief description of some of the existing competitors is as follows:
- Amcor** – Amcor is one of the world's top 3 global packaging companies, based on market capitalisation, sales and profits. Amcor is the largest packaging company in Australasia. In New Zealand, the company operates eleven manufacturing facilities producing a diversified range of products

<sup>35</sup> Estimates based on data provided by Statistics New Zealand (ie, report reference numbers JOO11957, ROM11212 and JOO11883).



including beverage cans, corrugated boxes, cartons, food cans, closures and PET bottles.<sup>36</sup>

- **Viscount Plastics** – Viscount is a major rigid plastics packaging manufacturer owned by the Linpac Group, a \$3 billion UK-based international packaging and materials handling business. Viscount has manufacturing locations in China (3 plants), Malaysia, Thailand, Indonesia and New Zealand. In New Zealand, Viscount Plastics produces material handlings products, rigid-walled packaging such as pails, containers and cartridges and industrial products such as footwear. They also manufacture containers for products such as motor oil and household chemicals. Viscount Plastics has plants in Auckland and Christchurch.<sup>37</sup>
- **Rotational Plastics Ltd** – Rotational Plastics produces a range of standard and custom designed rotationally moulded products. Rotational Plastics' manufacturing plant has a capacity to produce items that range from 100 mm to 5000 mm in size.
- **Galloways International Ltd** – Galloways International Ltd has New Zealand's largest plastic rotational moulder manufacturing plant. Galloways' product range includes the G Play playground component system, the MAC moulded polyethylene pontoon boating system and tanks ranging from 295 litres to 25,210 for chemical, septic and water storage. Galloways exports its children's play equipment to over 29 countries and is currently the only internationally approved supplier in Asia for McDonald's Restaurants playground equipment.<sup>38</sup>
- **Galantai Plastics** – The Galantai Plastics group specialises in plastic injection moulding and produces a range of rigid plastic packaging products. Their product range includes tamper proof/evident packaging, scoops and cosmetic pots, tumblers, cups, trays, and CD/DVD and video cases. The Galantai Plastics plant have high speed injection moulding machines ranging in size from 35 to 550 tonnes with shot sizes from 35 to 2500 grams allowing for a wide range of products and materials.<sup>39</sup>
- **RX Plastics Ltd** – RX Plastics Ltd is a New Zealand owned company that produces polyethylene piping systems, threaded and lateral pipe fittings, as well as storage tanks with capacity ranging from 500 litres through to 30000 litres. Together with "off the shelf products", RX Plastics also provides custom manufacturing services using injection, rotation and extrusion technologies.<sup>40</sup>
- **Blow Moulders Ltd** – Blow Moulders Ltd is a privately owned company that produces blow moulded bottles of up to 30 litre capacity and bottle caps ranging from 22mm in diameter to 100mm in diameters. The company is approximately 40 years old.<sup>41</sup>

<sup>36</sup> Amcor, at <http://www.amcor.com> (viewed 8 March 2006).

<sup>37</sup> Viscount Plastics, at <http://www.viscountplastics.co.nz> (viewed 8 March 2006).

<sup>38</sup> Galloway International Ltd "Company Profile", at <http://www.galloway.co.nz> (viewed 8 March 2006).

<sup>39</sup> Galantai Plastics Group, at <http://www.gplastics.co.nz> (viewed 8 March 2006).

<sup>40</sup> RX Plastics Ltd, at <http://www.rxplastics.co.nz> (viewed 8 March 2006).

<sup>41</sup> Blow Moulders Ltd, at <http://www.bml.co.nz> (viewed 8 March 2006).

- **Premier Plastics Group** – The Premier Plastics group consists of three Auckland based companies: Premier Plastics Ltd, Superior Plastics Ltd and LinkPlas Ltd. Premier Plastics Ltd manufactures and supplies “off the shelf” packaging and custom packaging for the personal care, cosmetic, health care, pharmaceutical, veterinary and associated industries. Superior Plastics Ltd specialises in blow moulding larger items including packaging for chemicals & powders and other industrial and agricultural products. LinkPlas Ltd manufactures speciality PET packaging for food, juice, cosmetics and toiletries. Together the Premier Plastics Group provides extrusion blow moulding, injection moulding, injection stretch blow moulding as well as packaging decoration and design.<sup>42</sup>
- **Perroplas One Ltd** – Perroplas One Ltd designs and manufactures injection moulded plastic products. The Perroplas One product range includes storage bins, laundry bins, waste bins, laundry baskets, garden bins and equipment, plastic furniture, assorted child and baby products and kitchen storage items. Post-moulding services provided by Perroplas One include hot stamping, assembly, packaging and drilling.<sup>43</sup>
- **Sullivan Packaging Ltd** – Sullivan Packaging Ltd designs and manufactures thermo-formed ridged and semi-ridged plastic packaging. Sullivan Packaging provides both “off the shelf” and custom designed packaging to present and/or protect fruit and vegetable products or poultry, meat and fish products. It also produces trays for nursery and horticultural products; bakery item packing, mannequin body forms and ovenable food trays.<sup>44</sup>
- **Aztec Packaging Ltd**– Aztec Packaging manufactures a wide range of standard and custom designed blister packs, plastic food packs, clamshell packs, slide-on blister packs and specialty thermoformings for hang-sell display packaging, meat and produce packs, medical packaging and also plastic mouldings for the manufacturing industry.<sup>45</sup>
- **Huhtamaki** - Huhtamaki is one of the world’s largest consumer packaging companies, headquartered in Espoo, Finland. Huhtamaki specialises in rigid thin-walled plastic and paper packaging and moulded fibre packaging but its capabilities include rigid paper, rigid plastics, flexibles and films, and forming and filling machinery. Its assets span 70 manufacturing and sales units and almost 15,000 employees in 36 countries, including manufacturing units in Sydney, Melbourne and Brisbane and a sales unit in Adelaide. Huhtamaki’s major clients include Colgate, Danone, Heinz, Kraft, Nestle and Procter and Gamble.
- **Tecpak**- Tecpak is a New Zealand plastic packaging company. Its product range is limited to plastic tubs and containers ranging from 100ml to 4 litres. It operates a factory located in Dunedin.

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<sup>42</sup> Premier Plastics, at <http://www.premierplastics.co.nz> (viewed 8 March 2006).

<sup>43</sup> Perroplas One Ltd, at <http://perroplas.co.nz> (viewed 8 March 2006).

<sup>44</sup> Sullivan Packaging Ltd, at <http://www.plasticpackaging.co.nz> (viewed 8 March 2006).

<sup>45</sup> Aztec Packaging Ltd, at <http://www.aztec.co.nz> (viewed 8 March 2006).

### **Firms not currently supplying the market but who could enter quickly and provide extra capacity**

42.6 See answers to questions 44.3 and 44.4.

### **Extent to which imports provide a constraint**

42.7 Import competition is acting as an increasingly significant constraint upon New Zealand manufacturers of non-beverage rigid plastics containers. As discussed in paragraph 42.3, VIP estimates that imports of non-beverage rigid plastic containers sold in New Zealand account, on average, for up to 50% of all non-beverage rigid plastic containers sold in New Zealand (and in respect of some products VIP estimates this figure could be higher).<sup>46</sup> Most imports come from Asia, particularly China (although other countries such as India and Malaysia also export to New Zealand). Further information on empty and filled product imports is provided below.

42.8 **Empty Rigid Containers** - A recent BIS Shrapnel report recognised the impact of rigid plastic packaging imports in Australia. It noted that rigid plastic packaging imports from China in particular have:

*“[ ] started to become a genuine concern to the industry and is a wake up call for converters in general. The Chinese packaging industry has steadily improved product quality and has also become interested in smaller production runs which, with few exceptions, define the Australian industry.”<sup>47</sup>*

The comments above are also applicable to New Zealand, as the increase in imports is the response to a trend affecting both countries in a similar way (ie, New Zealand companies typically start by importing from Australia, and then they move away from Australia to Asia).

42.9 **Filled Products** - There are numerous examples of companies who are currently importing filled products from centres of manufacture outside of New Zealand. Head and Shoulders shampoo, Kiwi Shoe Polish, Imperial Leather talcum powder, a high proportion of generic brands from Progressive and all L’Oreal products are some examples of everyday items that are imported filled. Similarly, most household cleaners and several food products such as peanut butter, sauces and some spreads (jams and vegemite) are no longer manufactured in New Zealand but instead are imported as filled product.

42.10 It is likely that imports will continue to increase over time, as large companies have adopted several practices that facilitate the importation of filled products. For example, products and packaging are often standardised, so that a bottle of shampoo or motor oil sold in China is the same as the one sold in New Zealand. Also, an increasing number of customers have moved their procurement and production centres offshore to countries in South-East Asia such as Singapore (Bayer, Cadbury, Proctor & Gamble) and Thailand (Nestle, Unilever, Colgate). These centres operate on a regional, rather than country-to-country, basis. So, for example, regional procurement offices for companies such as Shell and Exxon Mobil (automotive lubricants) and Unilever and Proctor and Gamble (personal care products) procure

<sup>46</sup> See discussion at paragraph 42.3.

<sup>47</sup> BIS Shrapnel, “Plastic Packaging in Australia, 2005-2007”, October 2005, at iii.

filled containers for all of Asia, which in practice means that these products are imported into New Zealand as filled packs and thereby by-pass local suppliers.

42.11 [

]

42.12 Even in cases where New Zealand manufacturers are able to retain the business of companies that typically import filled product, they are still required to compete against plastic packaging operations in the region. For example, VIP understands that Premier Plastic was recently forced to reduce the price of blow moulded bottles sold to a cosmetic and hair care company (otherwise it would have lost the supply contract to an overseas supplier).

**Costs incurred by importers that are not incurred by domestic suppliers**

42.13 VIP understands there are no tariffs on imports of non-beverage rigid plastic containers from Australia or other countries in the Asia Pacific region.

**Vigorous and effective competitor**

42.14 The situation in this market is similar to that described in relation to the market for the supply of PET bottles for non-alcoholic beverages (see answer to question 16.11). The market is very competitive and all firms compete vigorously with one another. Hence, VIP does not consider that Vertex/Alto is a more vigorous or effective competitor than the other firms supplying the market. Further, Vertex/Alto does not have a history of aggressive independent pricing behaviour, a record of superior innovative behaviour or low costs, a growth rate exceeding that of the market, or a history of independent behaviour generally.

**CONDITIONS OF EXPANSION**

43 **The following listing gives different types of market conditions that may effect the ability of existing firms to expand:**

- **Frontier Entry Conditions.** For example, tariffs, quarantine requirements, international freight cost.
- **Legislative/regulatory conditions** For example, meat licensing, Resource Management Act requirements, health and safety standards.
- **Industrial/business.** For example, access to raw materials, critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market's perception of the risk and return); sunk costs i.e. irrecoverable or exit costs (e.g. because of plant specificity); influence of branding; technical specifications
- **Other.** For example, responses to expansion by major firms; lack of

**additional productive capacity; additional productive capacity has a relatively high cost.**

**Which, if any, of the entry conditions identified above do you consider could be likely to act as a “barrier” to expansion by existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?**

**Please provide evidence, where applicable, of expansion by existing competition during the past five years.**

- 43.1 VIP does not believe any of the conditions identified in the question would be likely to act as a barrier to expansion by existing competitors. There are no frontier entry conditions, no legislative/regulatory conditions and no significant industry/business conditions.

On the contrary, the market for manufacture and supply of non-beverage rigid plastic containers is characterised by low barriers to entry and expansion. The cost of establishing a rigid plastic manufacturing operation is low. Also the nature of contractual relationships between manufacturer and customer enables new entrants or smaller suppliers to easily gain market share (see further discussion in paragraph 43.6).

#### **Establishment and equipment costs**

- 43.2 VIP estimates the average cost of new machinery is as set out below:
- a. moulding machine (EBM/IBM), 1-4 litres capacity – \$400,000-\$700,000 for a new machine and \$75,000-\$300,000 for second hand machines;
  - b. moulding machine, 10-25 litres capacity – \$500,000-\$900,000 for a new machine and \$50,000-\$100,000 for a second hand machine; and
  - c. the cost of other tools and equipment would be at least \$50,000 (for larger containers).<sup>48</sup>
- 43.3 State-of-the art manufacturing equipment is available to all market participants. Equipment financing can be freely obtained based on formal, mid to long-term customer contracts.
- 43.4 Smaller suppliers are able to remain viable in the market because they have lower set up costs and new entrants are able to access second-hand equipment to reduce costs. As shown above, the cost of setting up a small-scale operation using second-hand plant and equipment can be significantly lower than by using new equipment.
- 43.5 Participants in the wider plastics moulding industry can also enter the market and compete with rigid plastic manufacturers. Small brand owners are often inclined to seek a converter who will offer them the cheapest price whether the converter is a packaging specialist or not. As a result, converters that do not usually manufacture

<sup>48</sup> Estimates provided by VIP management.

rigid plastic containers should also be regarded as occasional, “de facto” participants in the market.

### Contractual arrangements

43.6 Contractual arrangements do not constitute a barrier to entry. Customers in New Zealand tend not to like formal term contracts therefore it is easier for customers to move business across suppliers. [

] Also, many customers offer contracts for tender (in some cases using Internet auction tenders) on a reasonably regular basis, with businesses required to meet not only offerings in the national market but the international market.

43.7 Larger customers rarely rely exclusively on one supplier of plastic packaging and often enter into contracts with a range of suppliers. VIP’s customers such as [

].

### Intellectual property

43.8 Intellectual property rights in new technological developments are available to most, if not all, participants in the market as these technologies are developed by material suppliers and equipment suppliers rather than by the manufacturers themselves.

44 **Please name any business which already supplies the market — including overseas firms - which you consider could increase supply of the product concerned in the geographic market by any of the following means:**

- **Directing production into the market (eg from exports).**
- **Increasing utilisation of existing capacity.**
- **Expansion of existing capacity.**

44.1 VIP considers that the firms discussed below would be able to increase supply of non-beverage rigid plastic containers through increased utilisation of existing capacity, and through expansion of existing capacity either by in-house manufacturers or plastic container manufacturers. Each firm would be able to constrain the merged entity from raising prices.

44.2 Most companies in New Zealand currently have excess capacity because over the last few years a large percentage of buyers have started to purchase containers from Australia and Asia (rather than rely on local supply). Premier Plastics and Optoplast are examples of companies that have excess capacity and VIP understands they are considering options to increase their share of the market.

- 44.3 It is also possible that in-house manufacturers could increase supply. Fonterra, NZ Dairy Foods, Gisborne Milk, Mainland Foods and Kapiti Foods have large in-house rigid plastic container manufacturing capabilities. VIP understands that currently up to 135,000,000 units per annum of 1 and 2 litre milk bottles are manufactured in-house in New Zealand. In most cases, these firms manufacture enough milk bottles to satisfy a large proportion but not all their internal requirements, so they will often continue acquiring milk bottles from external suppliers (such as Alto/Vertex). In response to a price increase, any of these firms would be able to increase supply of bottles. Additionally, any of these companies could start manufacturing other types of containers in-house. New “Form, Fill and Seal” machines (ie, packaging machines that allow to form a container, fill it and seal it as part of the same process) make this a very convenient option for companies involved in the dairy industry. VIP understands that Meadow Fresh, for example, recently ended a supply contract with Huhtamaki (worth approximately \$1.5 million) following the acquisition of a Form, Fill and Seal machine to manufacture yogurt tubs.
- 44.4 Also, firms specialised in small blow moulding could recognise the opportunity to invest in a large blow moulding machine to produce a range from 10 litre to 25 litre containers. There would be a similar opportunity for a company like Viscount Plastics, Amcor, Premier Plastics, or Huhtamaki. These companies have the capital and technical ability to quickly establish a customer base in New Zealand.

**45 Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?**

- 45.1 Smaller manufacturers with excess capacity that can attract a large customer contract (eg, a customer looking for dual supply arrangement) would be likely to be the first ones to increase supply.

**46 How long would you expect it to take for supply to increase in each case?**

- 46.1 Timing would largely depend on the size of the business on offer. If the customer requirements were relatively small, then supply could increase immediately as many suppliers already have existing excess capacity. If new equipment needs to be installed, then the set up time could be from six to eight months.

**47 In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?**

- 47.1 See answer to question 48.1

**48 Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

48.1 As discussed above, given the low barriers to entry and the ease with which customers can switch suppliers, the merged entity would be significantly constrained by the conduct of competitors (large and small) that could increase capacity and/or expand their operations if the merged entity decided to increase prices.

#### **CO-ORDINATED MARKET POWER**

**49 Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede co-ordination effects.**

49.1 The factors discussed in section 23 in the context of the market for the supply of PET bottles for non-alcoholic beverages also apply to the market for the supply of non-beverage rigid plastic containers. In brief:

- a. the Proposed Acquisition will result in an increased concentration in the market but the disparity in the sizes of the participants in the relevant market makes collusion unlikely;
- b. the market is characterised by a high degree of product differentiation, with product selection driven by performance, cost and marketing. This makes it more difficult for market participants to agree on prices;
- c. barriers to entry are low;
- d. customers are extremely price sensitive, and would be able to react quickly and effectively (eg, by turning to overseas suppliers) to price discrepancies; and
- e. large purchasers have significant countervailing power (discussed further in section 67).

**50 Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of co-ordinated behaviour by market participants.**

50.1 The factors discussed in section 24 in the context of the market for the supply of PET bottles for non-alcoholic beverages are also relevant in the market for the supply of non-beverage rigid plastic containers.



**51 Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participants.**

51.1 VIP is not aware of any price co-ordination in the relevant markets. The relevant markets do not show any such evidence.

**52 Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant market(s).**

52.1 VIP does not believe there will be any increased risk of co-ordination in the market for the supply of non-beverage rigid plastic containers. Any price coordination or collusion is unlikely given the nature of the market and the very high level of imports.

## CONDITIONS OF ENTRY

**53 The following categories cover different types of market conditions that may affect the ability of new firms to enter the market:**

- **Frontier entry conditions.** For example, tariffs, import licensing, quarantine requirements.
- **Legislative/regulatory conditions.** For example, meat licensing, Resource Management Act requirements, health and safety standards.
- **Industrial/business.** For example, access to raw materials, critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market's perception of the risk and return); sunk costs i.e. irrecoverable or exit costs (e.g. because of plant specificity); influence of branding; technical specifications.
- **Other.** For example, response to expansion by major firms.

**Which, if any, of the entry conditions identified above do you consider could be likely to act as a "barrier" to the entry of new competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price or to lower service or product quality?**

### Frontier entry and legislative barriers

53.1 VIP understands there are no frontier entry conditions nor legislative/regulatory conditions that would limit entry to the market.

### Industrial/business barriers

53.2 Raw materials (resins) used for the manufacture of non-beverage rigid plastic containers are readily available for importation.

53.3 VIP estimates the costs of setting up a new plant (using second hand equipment) would be between \$116,000 to \$175,000 (depending on whether a small or large blow moulder is used).<sup>49</sup>

53.4 The investment required is not prohibitive compared to the revenue that can be generated.

**54 Please name any business – including overseas business – which do not currently supply the market, but which you consider could supply the products/services concerned in the geographic market identified by:**

- Investing in new production facilities to produce the product;
- Overseas companies diverting production;
- Domestic companies expanding or changing utilisation of existing capacity.

54.1 See answer to question 28.1.

54.2 Also, firms that currently produce non-beverage containers in-house could also expand their operations (see discussion in paragraph 44.3). Other customers that do not have in-house capabilities at the moment but could do so in the future include Sanitarium, Heinz Wattie and Colgate.

**55 What conditions of entry do you consider would most influence the business decision to do so in each case?**

55.1 If the merged entity was to raise prices, or restrict output, it is likely that a new entrant would enter the market (or be sponsored into entering into the market). Alternatively, increasing costs could lead to an increase in imports or in-house manufacturing.

#### LIKELIHOOD, SUFFICIENCY AND TIMELINESS OF ENTRY

**56 How long would you expect it to take for entry to occur, and for supply to increase in respect of each of the potential business entrants?**

56.1 VIP estimates that both small and large scale entry could occur within three to nine months.

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<sup>49</sup> Assuming that the new plant would produce approximately 1 million containers per year.

**57 Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?**

57.1 Yes. Because the barriers to entry are low, there is no reason why a new entrant could not enter the market relatively quickly, and be running at a profit (excluding capital returns) within a short period of time.

**58 Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?**

58.1 Yes, because barriers to entry are low and it is likely that new entry would be sponsored by a large customer.

**59 What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, i.e. de novo entry?**

59.1 See answer to question 55.1.

**60 How long would you expect it to take for de novo entry to occur?**

60.1 VIP estimates approximately three to nine months.<sup>50</sup>

**61 In your opinion, to what extent would the possibility of de novo entry contain the merged entity?**

61.1 VIP considers that de novo entry by any non-beverage manufacturer not currently in New Zealand, such as, for example, Tetrapak or Brickwood, would provide a real constraint on the merged entity.

## CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

**62 Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?**

**63 Who owns them?**

### Suppliers of resin

63.1 Plastic resins are commodity products traded internationally. There are a number of international suppliers including Polychem Marketing Ltd, Polymers International,

<sup>50</sup> Based on information and estimates provided by VisyPak management.

Clariant, Hunt Agencies Ltd, Huntsman Chemical Ltd, Marplex Australia Pty Ltd, Swift NZ Ltd, Poynter Agencies Ltd, Bayer NZ Ltd, Chemiplas NZ Ltd, Eastochem NZ Ltd, Chevron Phillips Chemicals NZ Ltd, Basell Australia Pty Ltd, Ciba Specialty Chemicals Ltd and Dow Chemical NZ Ltd.

**Suppliers of machinery**

63.2 The major suppliers of PET production machinery are:

<b>Production method</b>	<b>Supplier (and their agents where known)</b>
EBM	Bekum (Germany) SMC (Thailand) Hesta (Germany) Automa (Italy) And many more particularly from South East Asia

Source: Data supplied by VIP.

64 **In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each affected market?**

64.1 The conduct of suppliers of goods are unlikely to provide significant constraint on the merged entity.

**CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS**

65 **Who would be the acquirers of goods and services supplied by the merged entity in each market identified in questions 11 and/or 14?**

66 **Who owns them (where appropriate)?**

66.1 A list is provided below.

<b>Purchaser/Acquirer</b>	<b>Owner</b>	<b>Current supplier</b>
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

Purchaser/Acquirer	Owner	Current supplier
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Source: Data supplied by VIP (with assistance provided by Vertex/Alto).

**67 In your opinion, to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?**

- 67.1 The purchasers of non-beverage containers provide a very large and significant constraint on the conduct of participants in the market
- 67.2 Large customers such as Progressive, oil companies (eg BP and Shell) and personal care companies (eg, Unilever, Colgate Palmolive) have significant countervailing power, as they represent large volumes and have very competitive procurement processes. As an example, companies such as The Warehouse, Frucor, CCA NZ, Progressive and Foodstuffs employ a large team of packaging technologists, utilise overseas buying power, and are highly skilled and sophisticated purchasing organisations.
- 67.3 Large retailers typically negotiate supply contracts at marginally profitable levels, and often at fixed prices.<sup>51</sup> BIS Shrapnel has suggested that in Australia the market strength of larger retailers has had negative effects on the returns of the packaging industry, as these retailers “have been resolute in their resistance” to their suppliers increasing prices.<sup>52</sup> As a consequence, manufacturers are often unable to lift prices even in response to significant increases in the cost of raw materials. Plaspak in

<sup>51</sup> BIS Shrapnel, “Plastic Packaging in Australia, 2005-2007”, October 2005, at 14.

<sup>52</sup> BIS Shrapnel, “Plastic Packaging in Australia, 2005-2007”, October 2005, at 14.

Australia, for example, has noted that “an inability to recover the full impact of raw material price increases from customers as quickly as they are imposed on Plaspak” had a significant impact on its margins.<sup>53</sup> VIP submits the same comments apply to New Zealand.

- 67.4 Further, large customers such as Progressive, Foodstuffs, Unilever, CCA NZ, Colgate Palmolive and Baxter Health are able to completely bypass manufacturers by engaging in direct imports (which are readily available at competitive prices), and/or by sponsoring new entry or expansion.
- 67.5 Alternatively, large customers are likely to consider (or threaten) setting up in-house manufacturing operations (see discussion in paragraph 44.3).

## MARKET FOR THE SUPPLY OF CLOSURES

### EXISTING COMPETITORS

**68 In the market or markets, who are the suppliers of competing products, including imports?**

- 68.1 VIP estimates that market participation levels prior to the Proposed Acquisition taking place are as described in the table below.

Rank	Supplier	Owner(s) of supplier	Estimated % of market sales <sup>54</sup>
1	Amtor Packaging (New Zealand) Limited	Amtor Investments Pty Limited (Aust)	[ ]
2	Vertex/Alto	Mastheads Equities Limited	[ ]
3	VIP	VIH	[ ]
4	Tube-pack	GADC Limited	[ ]
5	Portola Packaging (ANZ)	Portola Packaging Incorporated, California	[ ]
6	Pharmapac Limited	Pharma Pac Management Limited	[ ]
7	Spotless Services (NZ) Limited	Spotless Services Australia Limited	[ ]
8	Premier Plastics Limited	Privately owned	[ ]

<sup>53</sup> Plaspak Group Limited Annual Report 2005, at 1.

<sup>54</sup> Calculated on the basis of sales revenue.

9	Optoplas New Zealand Limited	Privately owned	[ ]
10	Blow Moulders Limited	Privately owned	[ ]
11	Others	Various	[ ]
12	Imports	Various	[ ]

Source: Data supplied by VIP.

- 68.2 VIP estimates that imports of closures represent approximately [ ] of the total size of the relevant market. The high level of imports provides a significant constraint in the behaviour of New Zealand suppliers of closures, as New Zealand firms find it difficult to compete with imported closures on price (overseas manufacturers often have worldwide operations and benefit from significant economies of scale and scope).
- 68.3 Post-transaction, concentration levels for the three largest market participants would be [ ] and the market share of the merged entity would be [ ]. These figures are within the Commission's safe harbour for acquisitions that are unlikely to substantially lessen competition in a market (ie, the three firm concentration ratio is below 70% and the market share of the merged entity is below 40%).
- 68.4 Taking into account that post-merger concentration levels will be within the Commission's safe harbour for transactions that are unlikely to substantially lessen competition and the very high level of imports, VIP submits that the Proposed Acquisition will not result in a substantial lessening of competition in the market for the supply of closures.
- 68.5 Therefore no further information is provided at this stage in relation to this market (but VIP would be happy to provide any additional information the Commission may require).

**THIS NOTICE** is given by Visy Industrial Plastics (NZ) Limited

Visy Industrial Plastics (NZ) Limited hereby confirms that:

- all information specified by the Commission has been supplied;
- all information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
- all information supplied is correct as at the date of this application/notice.

Visy Industrial Plastics (NZ) Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this            day of                            2006

**Signed** by Visy Industrial Plastics (NZ)  
Limited:

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Nick Perkins  
General Counsel  
Visy Industrial Plastics (NZ) Limited

I am the General Counsel of Visy Industrial Plastics (NZ) Limited and am duly authorised to make this application/notice.

---

Nick Perkins  
General Counsel  
Visy Industrial Plastics (NZ) Limited



## APPENDIX A: RESINS AND MANUFACTURING PROCESSES<sup>55</sup>

### PLASTIC RESINS

Low Density Polyethylene (“**LDPE**” and “**LLDPE**”) is a semi-rigid, translucent, very tough, weatherproof polymer with good chemical resistance and low water absorption. It is easily processed by most methods at low cost. It is used to manufacture squeeze bottles, glad wrap, garbage bags and bins, toys, carrier bags, high frequency insulation, chemical tank linings, heavy duty sacks, general packaging, gas and water pipes.

General Purpose Polystyrene (“**GPPS**”) is a brittle, rigid, transparent, low shrinkage, low cost polymer, with excellent X-ray resistance, free from odour and taste and easy to process. It is used to manufacture toys and novelties, rigid packaging, garment hangers, refrigerator trays and boxes, cosmetic packs and costume jewellery, lighting diffusers, audiocassette and CD cases.

High Impact Polystyrene (“**HIPS**”) is a hard, rigid, translucent polymer, with impact strength up to seven times that of GPPS (but otherwise similar to GPPS). It is used to manufacture yoghurt tubs, refrigerator linings, vending cups, bathroom cabinets, toilet seats and tanks, closures, instrument control knobs.

### MANUFACTURING PROCESSES

#### Injection moulding

It involves putting plastic material into a hopper which feeds into a heated injection unit. A reciprocating screw pushes the plastic through a long heating chamber, where the material is softened to a fluid state. At the end of this chamber there is a nozzle which abuts firmly against an opening into a cool, closed mould. The fluid plastic is forced at high pressure through this nozzle into the cold mould. A system of clamps hold the mould halves shut. As soon as the plastic cools to a solid state, the mould opens and the finished plastic is ejected from the press.

#### Blow moulding

It is a method of forming hollow articles out of thermoplastic materials. Blow moulding involves first forming a molten tube of thermoplastic material, then with the use of compressed air, blowing up the tube to conform to the interior of a chilled blow mould. The most common methods of blow moulding include EBM, IBM and ISBM. The continuous-extrusion method uses a continuously running extruder with a tuned die head that forms the molten plastic tube. The tube is then pinched between two mould halves. A blow pin or needle is inserted into the tube and compressed air is used to blow up the part to conform to the chilled mould interior. Accumulator-extrusion is similar, however, the molten plastic material is accumulated in a chamber prior to being forced through a die to form the tube. Injection blow moulding is a process of injection moulding a preform (similar to a test tube), then taking the tempered preform to a blow mould to be filled with compressed air to conform to the interior of the blow mould. Injection-stretch blow moulding can be a single-stage process similar to standard injection blow moulding, by adding the element of stretch prior to blow forming. Also, a two-step process is possible, where a preform is made in an injection moulding machine, then taken to a reheat-stretch blow moulding machine for preform reheating and final blow forming in a blow mould.

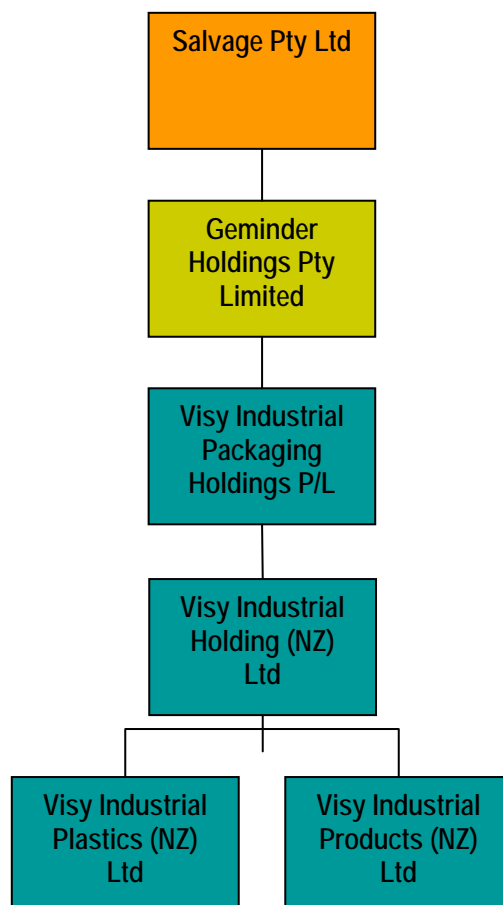
<sup>55</sup> From the Society of Plastics Industry <http://www.plasticsindustry.org/industry/process.htm>, viewed 7 March 2006.

## **Extrusion moulding**

Extrusion moulding is the method employed to form thermoplastic materials into continuous sheeting, film, tubes, rods, profile shapes, and filaments, and to coat wire, cable and cord. In extrusion, dry plastic material is first loaded into a hopper, then fed into a long heating chamber through which it is moved by the action of a continuously revolving screw. At the end of the heating chamber the molten plastic is forced out through a small opening or die with the shape desired in the finished product. As the plastic extrusion comes from the die, it is fed onto a conveyor belt where it is cooled, most frequently by blowers or by immersion in water. In the case of wire and cable coating, the thermoplastic is extruded around a continuing length of wire or cable which, like the plastic, passes through the extruder die. The coated wire is wound on drums after cooling. In the production of wide film or sheeting, the plastic is extruded in the form of a tube. This tube may be split as it comes from the die and then stretched and thinned to the dimensions desired in the finished film. In a different process, the extruded tubing is inflated as it comes from the die, the degree of inflation of the tubing regulating the thickness of the final film.

## APPENDIX B

### Structure diagram for Salvage Group



APPENDIX C

