



## COMMERCE COMMISSION

# Statement of Preliminary Issues

## Fletcher Building / Crane Group

20 January 2011

11.4/12610

### INTRODUCTION

1. On 22 December 2010, the Commerce Commission (Commission) received an application from Fletcher Building (Australia) Pty Limited (Fletcher Building) seeking clearance to acquire up to 100% of the ordinary shares in Crane Group Limited (Crane Group). The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/assets/Uploads/Fletcher-Building-Australia-PTY-Limited-Crane-Group-Limited-Clearance-Application-21-December-2010.pdf>

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

### RELEVANT PARTIES

#### **The Acquirer – Fletcher Building (Australia) Pty Limited**

4. Fletcher Building (Australia) Pty Limited is a wholly owned subsidiary of Fletcher Building Limited (together referred to as 'Fletcher Building'), a large New Zealand based building and infrastructure company. In New Zealand, Fletcher Building manufactures and distributes a range of building and construction products, including pre-cast and ready mix concrete, steel, wood panels and laminates, roofing, and general timber and hardware products.
5. Of relevance to this application is Fletcher Building's manufacturing of a range of concrete pipes through its subsidiary, Humes. Fletcher Building also manufactures plastic pipe systems via its interest in the Waters & Farr joint venture with Hynds Limited. Both its concrete and plastic pipes and pipe systems are supplied through Humes' nationwide network. In addition, Fletcher Building owns the Placemakers chain of stores.

## The Target – Crane Group

6. Crane Group is an Australian based manufacturer of building products. Crane Group manufactures a range of plastic pipes and pipe systems through its wholly owned business, Iplex Pipelines. Crane Group distributes pipes and pipe systems through its nationwide networks, MasterTrade and Mico Pipelines.

## ANALYTICAL FRAMEWORK

7. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's analytical framework<sup>1</sup> is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.
8. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
- with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.

9. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
- existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
  - potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
  - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
  - coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
10. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

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

## **PRELIMINARY ISSUES**

11. Of the factors outlined in the previous section, the Commission currently considers its focus in respect of the proposed acquisition will be on the following areas:

### **Market Definition**

12. In New Zealand, the main area of overlap between Fletcher Building and Crane Group are the manufacture and supply of pipes and pipe systems.

13. In assessing the relevant market in respect of pipes and pipe systems, the Commission will consider the following areas:

- The extent to which concrete pipes are substitutable for pipes made from plastic or other materials in respect of ‘large bore’ pipe systems (at this stage the Commission understands that ‘large bore’ pipes are those with an internal diameter of 350mm or greater).
- The Commission understands that in certain circumstances, different types of plastic pipes (polyvinylchloride, polyethylene or polypropylene) are able to be substituted for each other. The Commission will investigate the extent of any substitutability, and the ability of both suppliers and customers to switch between the different types of plastic pipes.
- The Commission will investigate whether the characteristics of various customer groups such as construction/civil engineering, and rural/irrigation customers are significantly different such that they may form discrete customer markets.
- The Commission understands that a significant proportion of pipes and pipe systems are supplied through Humes and Hynds pipe system outlets (Hynds is also a manufacturer and distributor of pipes and pipe systems). The Commission will investigate whether there are separate functional markets for the manufacture of pipe systems and the supply of pipe systems.

### **Existing Competition**

14. In its application, Fletcher Building focused its analysis on a specific area of overlap – the manufacture and distribution of pipes and pipe systems. In this context, Fletcher Building submitted that the merged entity would continue to face competition from large existing competitors such as Marley/RX Plastics group, Tyco and Hynds, and a number of smaller competitors such as PPI Corporation and Frank PKS as well as from imported pipes and pipe systems

15. The Commission will test whether potential entry would be likely, of sufficient extent and timely enough to constrain the combined entity if it sought to increase prices post acquisition.

### **Countervailing power**

16. The Commission will assess whether any of the main purchasers of pipes and pipe systems (predominantly construction, civil engineering and rural/irrigation customers) would be able to counteract any exercise of market power by the combined entity through the threat of switching or any other mechanism.

### Other Competition Factors

17. In its application, Fletcher Building stated that the proposed acquisition would not result in any new vertical integration. However, it stated that, post acquisition, the level of vertical integration would increase because Fletcher Building (via Humes) and Crane Group (via Mico Pipelines) both operate at the manufacturing as well as the supply levels. The Commission will assess whether the increase in vertical integration would result in Fletcher Building being able to exert market power at either of the affected functional levels post acquisition.

### NEXT STEPS

18. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz)), the Commission has established a draft timeframe for consideration of the issues and Fletcher Building's application for clearance. An extension of time was agreed to by the Applicant such that the Commission should make its final decision by **24 February 2011**. However, also in line with the Merger and Acquisitions Clearance Process Guidelines, this timeframe could change. To keep abreast of possible changes in relation to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

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

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

20. The Commission also invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference Fletcher Building / Crane in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **5pm on Friday 28 January 2011**. Please clearly identify any confidential information contained in the submission and provide contact details.