

13 October 2022

By email: Richard Johnson, Richard.Johnson@comcom.govt.nz
Evidence Systems Co-ordinator

Oliver Meech, oliver.meech@comcom.govt.nz
Manager, Residential Building Supplies Market Study
Commerce Commission New Zealand

Dear Oliver

Residential building supplies market study: Fletcher Building's cross submission

Fletcher Building thanks the Commission for the opportunity to participate in the Commission's consultation conference and to provide this cross-submission.

We have made several prior submissions during this Market Study which have been accompanied by supporting material. Having read the various submissions on the Commission's Draft Report and attended the consultation conference, we believe our submissions remain valid and do not need supplementing. No issue has arisen which, to our understanding, requires us to respond or submit differently.

To date, the Commission has identified some potential or theoretical issues that could be affecting competition for a relatively small set of building products in New Zealand.

However, we agree with the Commission that good regulatory practice requires any conclusions about the matters reviewed in the Study, and recommendations made in response, are based on what the practical market evidence demonstrates.¹

Therefore, we encourage the Commission to continue to focus on the practical evidence available to it. We have observed that some submitters have expressed opinions, repeated anecdotes, proffered speculations, or made assertions (particularly about us) that are not supported by practical evidence. The absence of corroborating practical evidence must affect the weight – if any – that the Commission places on them.

This question of evidential support (or lack of it) was particularly acute in three topics, namely:

- vertical integration;
- rebates; and
- the speed and extent of innovation.

Vertical Integration: Nothing in the submissions on the Draft Report or the discussion at the conference brings into doubt the Commission's conclusion that vertical integration "does not appear to make it harder for suppliers to compete"² and "does not appear to be necessary for merchants to compete effectively".³ While some submitters raised their own misgivings about "vertical integration", those personal misgivings were not substantiated by evidence.⁴ Moreover, insofar as those misgivings applied to us, they were based on a misunderstanding of how we actually operate across the levels of the supply chain.

¹ A focus on the practical evidence is also consistent with the way Courts have described how the Commission should undertake its tasks in other competition contexts. See *Commerce Commission v Woolworths* [2008] NZCA 276 at [191].

² Draft Report, para 5.112.4.

³ Draft Report, para 6.71.2.

⁴ See, for example T (Day 2): 734.

Rebates: We have provided you with our view on rebates in our submission on the Draft Report.⁵ Again, nothing we have seen in other parties' submissions or heard at the consultation conference causes us to change our views. In our view, those other submissions do not support – with evidence – a contrary view. We continue to agree with the Commission that there is no justification for legislative changes to prohibit certain types of rebates.⁶ We disagree with the Commission's public statements that some discriminatory, or differential, enforcement approach to rebates may be warranted. If the Commission was to continue to hold that view, we expect it to follow best practice and explain that position very clearly and in a timely fashion to enable participants in the market – and not just the building products markets – to at least understand that position as a legal and commercial matter.

It is uncontroversial that rebates lower prices, which is good for consumers and good for competition. And, as was explained to the Commission during the conference by parties who receive rebates, there are cogent explanations as to why certain rebates are structured the way they are.⁷ True, less efficient suppliers may find lower prices challenging, but no evidence has been produced to show that rebates in the building products sector harm the competitive process to the detriment of consumers. The evidence is, in fact, the opposite, as demonstrated by ITM and Mitre 10's statements:

- ITM stated on record that “rebates, while we have an understanding of the impact of it, it doesn't form part of our decision criteria”⁸ and further that “if builders in a local town are clamouring for [Elephant Board], there's no impediment to that.”⁹
- Mitre 10 stated on record that “these types of rebates are relatively common and not just with suppliers that have concentrated market share/market power. So, our experience is we don't necessarily see them as limiting the ability or discouraging us from looking to bring other suppliers to the market and looking to introduce innovation, particularly if there's that consumer demand for it.”¹⁰

Finally on rebates, we believe that the Commission's decision to label rebates with certain features as “quantity-forcing” is unnecessarily pejorative. It incorrectly implies that rebates with these features are designed to harm competition. The evidence shows that's not correct. The Commission heard evidence that merchants want to be paying less for more volume and both sides want the certainty that periodic true-ups provide. We respectfully suggest the Commission should refrain from using the term in its final report. If a New Zealand specific label is to be adopted for this globally ubiquitous pricing tool, we suggest “quantity recognising”.

Innovation: Throughout the Study, we feel that the speed and extent of innovation in our sector and in our businesses – especially in relation to climate change – has been understated. Indeed, there were submissions from some submitters (not actually active in the industry) to the effect that innovation or use of off-site manufacturing is something that is not happening in New Zealand and that industry responses to climate change are “25 years” away. That's simply not true.

We are proud of the leadership role we're playing – and playing now – in adapting our products and systems, helping our customers, investing in our community, and assisting the industry and all its participants to see and agree on much needed changes to the way the New Zealand building sector responds to climate change. With the disruption that climate change will cause to the built environment will come new demands and new ways of competing, right up and down the supply chain. That (the competition, not the climate change) can only be

⁵ Fletcher Building submission on Draft Report, paras 4.1-4.9.

⁶ Draft Report, para 9.89.

⁷ See, for example ITM's comments on Day 2 of the Conference: “it creates a known environment, a less volatile environment” (T: 1224); “Part of the problem is the build process occurs over a 12 month period, so certainty of pricing that's needed by builders is over that period of time. If we would have that level of fluctuation in volatility in our pricing month to month, it would be extraordinarily difficult to manage costs and margins effectively onto a building job” (T: 1378), and “a small component of it does end up funding the central support office in our environment, in a co-operative environment, which all it does is avoid the levy we would otherwise charge members for being part of our co-operative” (T: 1590).

⁸ T (Day 2): 1795.

⁹ T (Day 2): 1828.

¹⁰ T (Day 2): 1454. See also Mitre 10's comments that “when it comes to rebates, actually we don't really see them as being determinative or overly material in overall assessment regarding dealing with suppliers and product stock and choices.” (T (Day 2): 1832-1845).

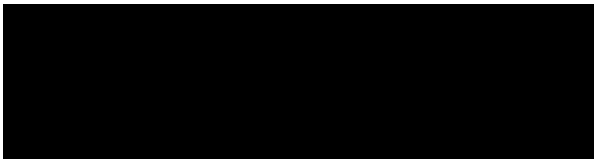
good for New Zealand. For examples of our leadership and the competitive impacts we are bringing, please refer to our prior submissions, particularly the outlines regarding our:

- investment in low carbon concrete;
- adoption of tyre-derived fuel as an energy source for Golden Bay Cement's cement kiln;
- innovative insulation product mix, not just to meet regulatory changes but, more importantly, to satisfy changing customer expectations;
- 1.5 degree home project, a 3-bedroom house that will generate only 39 tonnes of CO₂ equivalent over its life, compared to an estimated 270 tonnes of CO₂ equivalent for today's comparable build; and
- ongoing investment in Clever Core, which is already producing the core structural components of homes – walls, floors, and roof panels – in a factory environment, for onsite construction in as little as a day.

In relation to the OSM industry, we believe buyers, suppliers and regulators have work to do to make it the success New Zealand needs it to be, but we think all three groups are responding and we expect that to continue at pace. Unlike some of the submitters on this topic, we don't think that this is best solved by having the Government pick winners and underwrite the demand side without more, but we do support the Commission making recommendations that will promote activity by all three stakeholder groups which, in turn, will stimulate competition.

We trust these comments have been helpful, and we remain available to engage with the Commission over the balance of this process.

Yours sincerely



Andrew Clarke
General Counsel and Company Secretary