

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

18 February 2004

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

1 What is the business acquisition for which clearance is sought?

- 1.1 Clearance is sought for Niro A/S or a wholly owned subsidiary of Niro A/S (Niro) to acquire 100% of the shares of Colby Systems Limited (Colby) from Siemens Dematic AG.
- 1.2 The acquisition of Colby is part of the global acquisition by Niro of the Colby Powder Systems group from Siemens Dematic AG. The Colby Powder Systems group has offices based in Australia, New Zealand, Europe and the United States.
- 1.3 The agreement for sale and purchase relating to the transaction has yet to be finalised.

2 Who is the person giving notice?

2.1 This notice is given by:

Avalon Engineering Limited
on behalf of Niro A/S

12 – 18 Foreman Road
Te Rapa
Hamilton

Telephone: (07) 849 3413

Facsimile: (07) 849 3494

Attention: Gary Stannard

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Chapman Tripp Sheffield Young
Level 35
ANZ Tower
23-29 Albert Street
Auckland

Telephone: (09) 357 9020

Facsimile: (09) 357 9099

Attention: Lindsey Jones

3 Confidentiality

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No, confidentiality is not sought for the fact of the proposed acquisition.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long? Why?

Confidentiality is sought in respect of the information deleted in the "Public Copy" of this Notice until Niro confirms in writing to the Commission that the particular information is no longer confidential. Confidentiality is sought under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- (a) the information is commercially sensitive and contains valuable information which is confidential to the participants and their customers; and
- (b) disclosure of it is likely to give an unfair advantage to the participants' competitors and unreasonably prejudice the commercial positions of the participants and their customers.

The information deleted in the public copy of the Notice is as follows:

- the restraint period in paragraph 7.1(a);
- the market share estimates in paragraph 16.2;
- the numbers and dollar value of systems sold in paragraph 16.3; and
- the content of Schedules 2 and 3.

4 Who are the participants (ie the parties involved)?

4.1 The Acquirer is:

Niro A/S or a wholly owned subsidiary

C/o Avalon Engineering Limited
12 – 18 Foreman Road
Te Rapa
Hamilton

Telephone: (07) 849 3413

Facsimile: (07) 849 3494

Attention: Gary Stannard

4.2 The Target is:

Colby Systems Limited
30 Sir William Avenue
East Tamaki
Auckland

Telephone: (09) 274 9554

Facsimile: (09) 274 6488

Attention: Brendon Mannix

4.3 All correspondence and notices in respect of this application should be directed in first instance to:

Chapman Tripp
23-29 Albert Street
Auckland

Telephone: (09) 357 9020

Facsimile: (09) 357 9099

Attention: Lindsey Jones

5 Who is interconnected to or associated with each participant?**Acquirer group/associates**

- 5.1 Niro is part of the GEA group, a global technology group comprising more than 200 operating companies in some 50 countries around the world. GEA companies specialise in the manufacture of components, systems and complete process lines for process and thermal engineering activities and air treatment and dairy farm systems. In addition to providing standardized products, GEA companies produce customised solutions tailored to specific client needs.
- 5.2 GEA is headquartered in Germany but, presently, 60% of the group's 15,000 staff are employed outside Germany. The holding company of the group, GEA AG is a public company listed on stock exchanges in Germany. Further information about GEA is contained in Appendix 1.
- 5.3 GEA is part of the mg technologies Group, one of Germany's large industrial enterprises focused on engineering and chemicals. (The chemical division of mg technologies is soon to be divested.) mg technologies stock is traded over Xetra, as well as on several stock markets in Germany. Further information about mg technologies is contained in Appendix 2.
- 5.4 With its worldwide subsidiaries, Niro forms the Powder Technology Division of the GEA Group. Further information about Niro is contained in Appendix 3.
- 5.5 Niro is represented in New Zealand by:
- ❑ Niro (NZ) Limited, which is 100% owned by Niro A/S; and
 - ❑ Avalon Engineering Limited (Avalon) which is 100% owned by Niro (NZ) Limited. Further information about Avalon is contained in Appendix 4.
- 5.6 A diagram showing the ownership structure of the Niro group (insofar as it affects the New Zealand companies) is set out in Schedule 1.

Target company group/associates

- 5.7 Colby Systems Limited is 100% owned by Siemens Dematic AG. Siemens Dematic AG was created by the merger of Siemens and Mannesmann Dematic. Siemens Dematic AG consists of four major divisions: Airport Logistics, Distribution and Industry, Electronic Assembly Systems and Postal Automation. The company has about 11,000 employees worldwide and a turnover of around 2.6 billion Euros. Further information about Siemens Demantic AG is contained in Appendix 5.

- 5.8 Siemens Dematic AG is part of the Siemens group, a global electrical engineering and electronics group with more than 410,000 employees in over 190 countries. The parent company, Siemens AG, is listed on stock exchanges in Germany, Switzerland, London, Paris and New York. Further information about Siemens is contained in Appendix 6.
- 5.9 In New Zealand, Siemens companies presently employ over 600 people. Other operating areas in New Zealand are information and communications; business services and e-processing; industrial equipment and services; transportation and energy and medical solutions.

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 Niro is not aware:

- (a) that Niro or any of its interconnected bodies corporate has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in another participant; or
- (b) that Siemens or any of its interconnected bodies corporate has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in another participant.

6.2 However, as Siemens, GEA and mg technologies are public companies, listed on various stock exchanges it is conceivable that Siemens may have a shareholding interest in GEA or mg technologies and that GEA or mg technologies may have a shareholding interest in Siemens. However, were it the case that any such shareholding by Siemens was such that Siemens were able to exert any influence over the activities of Niro, Niro would have been aware of it.

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 Other than the following, there are no 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:
- (a) the agreement for sale and purchase relating to the transaction, although yet to be finalised, will include a restraint of trade provision under which companies within the Siemens group will (possibly with some exceptions) be prevented, for a period of [] years from settlement of the transaction, from engaging in any business activity that is in competition with the design, development, manufacture, distribution and servicing of integrated powder handling and packaging systems;
 - (b) Niro has, on occasion, entered into contracts to purchase powder packing lines, or elements of them, from Colby in New Zealand. This has occurred where the powder packing line (or element of it) has been part of a larger contract for the supply of processing plant. An example of this is a contract in November 2002 between Niro and Dairy Goat Co-operative for the supply of a powder transport system and bulk bin filling line. Niro purchased the bulk filling line from Colby, rather than its own subsidiary Avalon, and on supplied it to Dairy Goat Co-operative as part of the wider contract; and
 - (c) representatives of Avalon and Colby are members of 'Export Waikato', a body which represents the interests of exporters located in the Waikato region.

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 None of the directors of any company in the Niro group holds directorships in any other companies which are involved in the markets in which Colby operates.

9 What are the business activities of each participant?
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GEA

- 9.1 The GEA group of companies specialise in the manufacture of components, systems and complete process lines for process and thermal engineering activities and air treatment and dairy farm systems.

Niro

- 9.2 Globally, the Niro group specialises in the design and supply of spray dryers, fluid bed dryers, membrane filtration, extraction, heating and cooling plants for processing liquid, particulate and solid materials.
- 9.3 Niro also has special activities within environmental engineering, where Niro's core technology is used in air pollution control and waste management.
- 9.4 Niro's New Zealand operations comprise:
- Liquid Technologies NZ, a division of Niro (NZ), which supplies liquid processing and membrane technologies for the food, dairy and beverage industry within and outside of New Zealand; and
 - Avalon Engineering Limited which, operating under the brand name 'AVAPAC', designs, engineers and supplies systems for packing a wide range of food, dairy and pharmaceutical powders into industrial sized (10 – 25kg) bags. It is in this area that the acquisition of Colby results in the aggregation of business activity.

Siemens

- 9.5 Siemens is a global electrical engineering and electronics group. The Siemens Group's business portfolio comprises the following business areas: Information and Communication; Automation and Control; Power; Transportation; Medical; Lighting; Financing and Real Estate.

Colby Powder Systems

- 9.6 Colby Powder Systems is part of the materials handling automation group of Siemens Dematic AG. Further information about Colby Powder Systems is contained in Appendix 7. Its major focus is the supply of equipment and integrated systems for handling and filling a broad range of powdered products, most notably foods.
- 9.7 'Handling' and 'filling' (or 'packing') are two distinct functions. (The difference between the two processes is illustrated by the separate brochures for powder handling equipment and powder filling systems contained in Appendix 7).

- 9.8 The New Zealand based operations of Colby do not include the design and engineering of powder 'handling' equipment. To the extent that Colby Powder Systems supplies powder 'handling' equipment into the New Zealand market, it is supplied from its operations in Australia.
- 9.9 Proprietary technologies include high speed rotary fillers, high accuracy intermittent fillers, powder gassing technology, reliable spoon/scoop dispensing machinery and technically advanced powder conveying systems.
- 9.10 In New Zealand, Colby designs, engineers and supplies systems for packing powders into industrial sized (10 – 25kg) bags for a wide range of food, dairy and pharmaceutical powders.

10 **What are the reasons for the proposal and the intentions in respect of the acquired or merged business?**

Worldwide Niro does not have a powder handling operation and it is for this aspect that Niro is seeking to acquire Colby Powder Systems. The powder handling operation is not available for sale as a separate operation from the powder filling business. Consequently, in acquiring Colby's powder handling business, Niro will also acquire its powder filling/packing business.

PART II: IDENTIFICATION OF MARKETS AFFECTED

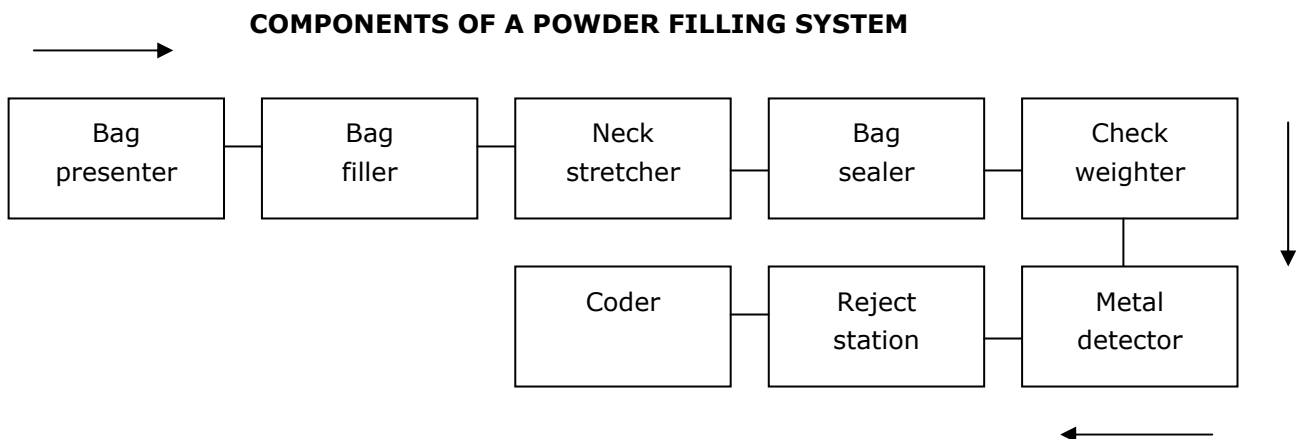
11 Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

Area of aggregation

- 11.1 The only area of aggregation between the business activities of Niro and Colby in New Zealand is in the design and supply (including installation and commissioning) of systems for packing powders into industrial sized (10 – 25kg) bags.
- 11.2 From their New Zealand operations, both Niro (through its subsidiary Avalon) and Colby supply on a national basis throughout New Zealand but around 90% of their output is exported.

Background

- 11.3 Systems for packing powders into industrial sized bags comprise a series of components designed to carry out different steps in the process of bag filling from the point where the powder enters the inlet flange of the filling machine (prior to which the powders are handled by powder ‘handling’ equipment) through to the point at which the bags are in a state ready for despatch from the processing facility.
- 11.4 These systems differ in their design from the systems and technologies used to pack products such as liquids and other non-powder solids or systems for packing powders into smaller sized bags or other types of containers, such as drums.
- 11.5 The various steps, and component parts of the bag filling system from start to finish are represented by the following diagram:



- 11.6 A video showing an AVAPAC powder packing line in operation accompanies this notice.

- 11.7 In New Zealand, both Avalon and Colby operate on a similar basis in that both design the filling systems, outsource the manufacture of the component parts, then assemble the components. Metal detectors and check weighers are sourced as discrete products from third party manufacturers (that is, neither Niro nor Colby has any role in the design or assembly of them).
- 11.8 Copies of Avalon and Colby's brochures for this equipment is included with this application at Appendices 4 and 7 respectively.
- 11.9 The various component parts of the system serve different functions, and while from time to time both Avalon and Colby will sell an individual component, for the most part, they supply the complete packing system.

Powder range

- 11.10 The range of products packed using industrial powder packing systems include:
- ❑ food (eg whey protein concentrate, bakery mixes, cocoa powders, soya bean bases, tomato powders, soup bases, fat filled whey, caseinates, lactate, hydrolysed yeast calcium, permeates, baby food, hydrolysed whey proteins, functional food compounds, coffee whitener and hydrolysed corn starch);
 - ❑ dairy (whole milk, skim milk and butter milk);
 - ❑ pharmaceutical;
 - ❑ fertilisers; and
 - ❑ chemicals (stearic acids and acrylic resins).
- 11.11 Depending on the type of powder, the requirements of the customers may differ. For example:
- ❑ a higher degree of accuracy may be required for some types of powders, particularly high value powders where inaccurate filling could result in significant financial loss to the supplier or to the customer; or
 - ❑ with foods, food ingredients and pharmaceuticals, the bag filling systems need to use higher specification materials in order to meet hygiene requirements.
- 11.12 Both Niro and Colby have focused on supplying local and global customers with high calibre systems that meet these high accuracy and hygiene requirements. (We have referred to these from here on as 'high spec' systems.)

11.13 However, from the point of view of the system supplier, the systems are similar in their functionality and in the fundamentals of technical design and engineering, regardless of the powder that is being packed. It is only in the finer points of precision and finish that these high spec systems differ from other industrial powder packing systems.

Packing speeds

11.14 Systems for packing powders into industrial sized bags range in packing speeds from 3 tonnes per hour to over 15 tonnes per hour. Avalon is presently the only company in the world with the technology for packing powders at over 15 tonnes per hour.

Market definition

11.15 Based on the above, Niro believes that the market against which it is most appropriate to assess the competition implications of its acquisition of Colby is:

the market in New Zealand for the design and supply (including installation and commissioning) of systems for packing powders into industrial sized (10 – 25kg) bags.

11.16 For ease of reference, we have referred to this as the market for industrial powder packing systems.

Differentiated Product Markets

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).**

- 12.1 Depending on the type of powder for which a packing system is required, a higher degree of specification may be required to ensure accuracy and that more exacting standards of hygiene are met.
- 12.2 Where these higher levels of specification are required, customers may not be satisfied with the lower levels of precision and finish that might be sufficient, for example, for packing systems for fertilisers or building materials. This is the case for certain pharmaceutical and food products, and particularly so for dairy powders. Avalon and Colby have established international reputations for meeting the exacting standards required by the dairy powder industry.
- 12.3 However, as noted earlier, from the point of view of the system supplier, the systems are similar in their functionality and in the fundamentals of technical design and engineering, regardless of the powder that is being packed.

13 **For differentiated product markets:**

- ❑ **Please indicate the principle 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?**

13.1 The principle characteristics of high spec systems that differentiates them from other systems are:

- ❑ better quality materials and finishes (eg the use of stainless steel rather than lesser quality steels);
- ❑ greater precision in the engineering; and
- ❑ a higher degree of connectivity between the packing system and the customers' other systems and equipment.

13.2 Demand from the dairy powders industry is a key driver of the development of 'high-spec systems'. Avalon and Colby have tended to tailor and market their products to the dairy powders industry and continually strive to improve the quality and performance of their systems. As a consequence, they have created a demand for systems with increasingly higher specifications and have become core suppliers to this sector. Avalon, for example, in conjunction with research and development projects for Fonterra, has developed the technology that enables bag filling systems to operate at over 15 tonnes per hour.

13.3 However, industrial packing equipment for dairy powders are at the top end of a quality continuum of packing systems. Like motor vehicles, all industrial powder packing systems have the same core functionality, the same core components, and are required to meet the same safety and engineering standards – yet differ in terms of quality and performance between different models. The differences between different models of

motor vehicle on the quality continuum are, in fact, greater than the differences between different industrial powder packing systems.

- 13.4 Purchasers of high spec systems are able to choose between a number of suppliers. Niro believes that most, if not all, of the suppliers of industrial powder packing systems (see list at paragraph 16.1) can supply the full range of systems.

Vertical Integration

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

No.

15 **In respect of each market identified in questions 11 and/or 14 identify briefly:**

- **all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,**
 - **the outcome of the notification (eg cleared, authorised, declined, withdrawn)**
 - **whether the proposed acquisition has occurred.**
- **any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

15.1 No participant has notified the Commission of a proposed acquisition of assets of a business or shares in the relevant market in the last three years.

15.2 No participant has undertaken any other acquisition of assets of a business or shares in the relevant market in the last three years.

15.3 For information only,

in November 2002 Niro purchased the business and assets of Liquid Technologies from private ownership.

**PART III: CONSTRAINTS ON MARKET POWER BY EXISTING
COMPETITION**

16 Existing Competitors: In the market or markets, who are the suppliers of competing products, including imports?

16.1 Other suppliers of systems for packing powders into industrial sized bags are:

- Innopak (also operating under the separate brand 'Zeropak') is based in New Zealand. Innopak was started around 5 years ago by the former General Manager of Colby in New Zealand.
- BTR Chronos Richardson, a UK company founded in 1881. Chronos Richardson is one of the world's leading manufacturers of packaging systems and equipment for powders and granular material. Further information about Chronos Richardson is contained in Appendix 8.
- Bud-Pak Pty Limited, an Australian manufacturer of weighing and packing machinery. Further information about Bud-Pak Pty Limited is contained in Appendix 9.
- Design Engineering Limited, an Australian manufacturer of weighing and bagging systems under the brand name 'DENDY'. Further information about Design Engineering Limited is contained in Appendix 10.
- BTH (Bag Treatment Holland BV), an international supplier based in Holland but supplying companies throughout Europe. Further information about BTH is contained in Appendix 11.
- Behn + Bates, an international supplier with its headquarters in Germany and a subsidiary in the United States. Further information about Behn + Bates is contained in Appendix 12.
- Slidell, a US based supplier of packaging equipment with a European subsidiary in the Netherlands. Further information about Slidell is contained in Appendix 13.
- Arodo, a UK supplier of sack handling and filling systems. Further information about Arodo is contained in Appendix 14.
- Galick Packaging Equipment Limited, a US based supplier of packaging, filling and other equipment under the "Beamis" and other brands. Further information about Galick Packaging Equipment Limited is contained in Appendix 15.

- ❑ Vollenda, an international supplier based in Germany. A small amount of information about Vollenda is contained in Appendix 16. However, much of the information on this company's website is in German.
- 16.2 In terms of market shares in New Zealand, Niro estimates that Avalon and Colby combined would have made around []% (by dollar value) of the sales of industrial powder packing equipment in the New Zealand market over the last 2 to 3 years, equating to about [] of the sales of high-spec systems.
- 16.3 However, on an annual basis, there is very limited New Zealand demand for industrial powder packing systems. Only a small number of contracts are let in any year. The high-spec segment is even smaller. Over the past 5 years, between [] and [] high-spec systems have been sold in New Zealand per year, giving this segment an annual value of between \$[] and \$[] million approximately.
- 16.4 This is demonstrated by the list in Schedule 2 which details purchases of high-spec systems (or components of them) by New Zealand firms over the past 2.5 years that Avalon and Colby are aware of.

Other Considerations

- ❑ **Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').**
- ❑ **Estimate the productive capacity that such near entrants potentially could bring to the market.**

- 16.5 In principle, any local firm that is involved with the design and engineering of industrial or manufacturing equipment could enter the market for the supply of industrial powder packing systems. There is ample capacity in the New Zealand market for existing engineering firms to expand into this market. However, Niro is not aware of any firm planning to do so.

- ❑ **To what extent do imports provide a constraint on domestic suppliers? What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?**
- ❑ **Estimate the productive capacity that such near entrants potentially could bring to the market.**

- 16.6 Imports represent a significant constraint on domestic suppliers. With the exception of Avalon, Colby and Innopak, all the major suppliers of industrial powder packing systems are off-shore suppliers. This is typical of industrial processing systems generally as New Zealand does not have the local demand sufficient to sustain local manufacture. In this regard, it is pertinent that around 90% of Avalon and Colby's New Zealand production is exported.
- 16.7 Naturally, off-shore suppliers incur transportation costs, but these are frequently off-set by lower employment and overhead costs. Powder packing systems range in price from \$250,000 to \$3million, depending on the size and speed required. Transportation costs would comprise less than 1 – 2% of the cost.
- 16.8 The domestic price of imports is sensitive to exchange rate fluctuations. Under present circumstances, imported systems will be attractive to local buyers who purchase on price alone.

To what extent is the product exported?

- 16.9 As noted earlier, around 90% of Avalon and Colby's New Zealand production is exported. Niro is not aware of the extent to which Innopak/Zeropak product is exported.

Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

- 16.10 Avalon does recognise Colby as a competitor but Avalon considers that its own record of innovation is better, as demonstrated by its development of its high speed systems unmatched by any local or international supplier.

17 **The following listing gives different types of market conditions that may effect the ability of existing firms to expand: frontier entry conditions, legislative/regulatory conditions, industrial/business, other.**

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of 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?

- 17.1 There are few practical barriers to entry or expansion into the industrial powder packing systems market. There are no regulatory barriers or restrictions; commercial premises and key inputs are readily available; the manufacture of component parts can be outsourced; and there is no shortage of engineering design skills.
- 17.2 The size of the New Zealand market could be seen as a deterrent to potential entrants. However, having said that, the presence of Fonterra could be seen as an incentive. While the New Zealand market is small, combined with other international opportunities that it may present, Fonterra could represent an opportunity for lucrative entry for a potential competitor.
- 17.3 Fonterra has also shown a willingness to invest in system suppliers. It has, for example, contracted with both Avalon and with Innopak for the development of new products, which, after a particular period of time, the companies are able to supply to third parties.
- 17.4 In any event, as in many manufacturing and processing industries in New Zealand, the plant and equipment needs of local customers can be met by several leading off-shore firms that have access to immense financial and human resources.
- 17.5 Avalon and Colby have both been very successful in winning local contracts over the last few years. However, both are keenly aware that they will lose contracts to off-shore suppliers unless their pricing is competitive and they continue to deliver high quality systems.

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

- 17.6 Innopak, a company started by the former General Manager of Colby in New Zealand, entered the market around five years ago.

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:

- **diverting production into the market (eg from exports)**
- **increasing utilisation of existing capacity**
- **expansion of existing capacity.**

18.1 Given the very small demand for industrial powder packing systems in New Zealand, it is likely that any firm presently supplying systems internationally would have sufficient existing capacity to meet New Zealand demand.

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 For the reasons noted in paragraph 18.1, this is not applicable.

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

20.1 For the reasons noted in paragraph 18.1, this is not applicable.

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

21.1 Niro speculates that a possible response to the merger of Avalon and Colby in New Zealand will be an increased focus by local and international competitors on those segments of the industrial powder packing systems markets where the reputations of Avalon and Colby are the strongest. Both supply predominantly into the dairy powders segment and, as with most industries, customers like to ensure they have more than one reliable supplier.

21.2 Accordingly, the merger represents an opportunity for companies such as Innopak locally, and the international suppliers listed at paragraph 16.1 to develop strategic relationships with Avalon and Colby's key customers in New Zealand.

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?

- 22.1 The most important factor relevant to the ongoing constraint of the merged entity from existing competitors is the nature of the customer base of Avalon and Colby.
- 22.2 Fonterra is the major customer for high-tech systems, being the segment of the market into which Avalon and Colby primarily supply. Niro believes that Fonterra has in excess of 95% of the dairy powders market in New Zealand and is the most significant processor of food based powders in New Zealand. This makes Fonterra the single most significant purchaser of powder packing equipment.
- 22.3 If the merged entity were to attempt to raise its prices above a competitive level, Fonterra could look overseas to meet its demand or could invest in another company to develop the technology as it is doing with Innopak. (See para 17.3.)
- 22.4 Furthermore, Fonterra works with suppliers of powder filling systems on turnkey projects which involve the sale of other equipment that can be supplied by a number of suppliers. The merged entity could stand to lose these lucrative projects to competitors if they attempt to price powder filling equipment uncompetitively.

Coordinated Market Power

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

- 23.1 Niro does not consider that the market for the supply of industrial powder packing systems is one that would be susceptible to collusion between competitors.
- 23.2 This conclusion is based on the market realities, the actual behaviour of the market participants and the application of the factors listed in the Commission's Business Acquisition Guidelines as being factors which the Commission considers may be conducive to collusion.
- 23.3 Features of the industrial powder packing systems market which indicate a market not susceptible to collusion areas follows.
- There are a significant number of suppliers and they are located in a variety of different countries.
 - Production technology is not static. The market, particularly the high-tech segment in which Avalon and Colby are involved, is characterised by demand for innovation and product improvement, driven by the needs of the customers such as Fonterra to remain competitive in international markets.
 - New entry, if it were to occur, could happen within relatively short time-frames. Suppliers in the low-tech segment are near entrants to the high-tech segment.
 - While Colby is clearly a competitor to Avalon, Colby could not truly be described as 'maverick'.
 - The market is not characterised by excess capacity.
 - Market demand is not price inelastic. By comparison with the number of systems sold in New Zealand, there have been a relatively high number of invitations to tender issued which have resulted in no system being purchased. Schedule 3 lists instances that Avalon and Colby are aware of in the last two and half years. Avalon believes these are instances where management have sought to install new systems but have had their capital expenditure proposal turned down by their Boards of Directors.
 - There is no history of anti-competitive behaviour.

- Avalon and Colby's customers have immense countervailing power (refer para 22).

23.4 In summary, Niro considers that collusion is highly unlikely.

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

24.1 The following table applies, to the industrial powder packing systems market, the factors which the Commission has indicated in its Business Acquisition Guidelines as being factors which enhance the ability of competitors to monitor deviation from tacit or expressly collusive behaviour.

Supply of industrial powder packing systems	
High seller concentration	No
Frequent sales	No
Lack of vertical integration	Yes
Stable/slow growth in demand	Yes
Cost similarities between businesses	Yes
Multi-market contact	Yes
Price transparency	No

24.2 While there appear to be a number of conditions in the market that might enable competitor deviation from tacit or expressly collusive arrangements, this is an academic analysis given the conclusion that co-ordination effects are unlikely.

24.3 Furthermore, it is highly unlikely that any market participant would respond to competitor threats or attempts to retaliate or punish. The small number of contracts that there are in this market are jealously regarded and the winning of a contract relies in large part on excellent customer service, innovation, wider supply relationships and working closely with customers on research and development activities.

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

25.1 No, there is no evidence of price coordination, price matching or price following by market participants. This market is characterised by a small number of client specific contracts.

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

26.1 Refer paragraphs 23 – 25.

NIRO CONSIDERS THAT THE CONSTRAINTS REPRESENTED BY EXISTING COMPETITION ARE SUFFICIENT TO CONSTRAIN THE MERGED ENTITY AND ACCORDINGLY HAS ELECTED NOT TO ANSWER PARTS IV AND V. SHOULD THE COMMISSION REQUIRE ANY FURTHER INFORMATION, NIRO WILL BE HAPPY TO PROVIDE IT.

THIS NOTICE is given by Avalon Engineering Limited on behalf of Niro A/S

The company 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 notice has been supplied;
- All information supplied is correct as at the date of this notice;
- The company undertakes to advise the Commission immediately of any material change in circumstances relating to the notice.

Dated this day of 2004

Signed for Niro A/S:

Gary Stannard, Managing Director, Avalon Engineering Limited

I am duly authorised to make this notice.

Schedule 1 Structure of Niro Group

