

Statement of Preliminary Issues

CSR / Brickworks

7 September 2012

Introduction

1. On 31 August 2012, the Commerce Commission (the Commission) received an application from CSR Building Products (NZ) Limited (CSR) and Brickworks Building Products (NZ) Pty Limited (Brickworks) seeking clearance to merge their respective clay bricks businesses in New Zealand. The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/detail/760>
2. This Statement of Preliminary Issues outlines the key competition issues that the Commission currently considers will be important in deciding whether or not to give 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 comment on the likely competitive effects of the proposed merger. The Commission requests that parties who wish to make a submission do so by **19 September 2012**.

The transaction

4. Under the terms of the proposed merger, a joint venture company would be formed which would acquire up to 100% of CSR's and Brickwork's respective clay bricks businesses. However, CSR's clay bricks manufacturing plant in New Lynn would not be included in the proposed joint venture.

Relevant parties

CSR

5. CSR manufactures clay bricks in New Zealand and also imports a range of clay bricks from its Australian-based subsidiaries. CSR supplies its clay bricks under the Monier brand.

Brickworks

6. Brickworks supplies a range of clay bricks in New Zealand. All of the clay bricks Brickworks sells in New Zealand from Brickworks imports from its manufacturing plants in Australia. Brickworks supplies its clay bricks under the Australbricks brand.

Analytical framework

7. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition in any market. Therefore, an important step in the Commission's analytical framework is to determine the relevant market or markets. To do this, the Commission identifies the areas of where the businesses of the acquirer and the target overlap. The Commission then considers the relevant products and geographic regions that may be close substitutes from both a customer's and a supplier's point of view.
8. The Commission uses forward looking 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, namely:
 - with the acquisition; and
 - without the acquisition.
9. The impact of the acquisition is then viewed as the difference in competition between those two scenarios.
10. The Commission analyses the extent of competition in each relevant market for both the with and without scenarios in terms of the following:
 - 10.1 Existing competition – the degree to which existing competitors compete and their ability to expand their operations in the event that the combined entity raises prices.
 - 10.2 Potential competition – the ability of businesses to enter the market on sufficient scale in order to provide competitive constraint.
 - 10.3 The countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchaser's ability to exert an influence on price, quality and/or terms of supply.
 - 10.4 Coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
11. 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 might lessen competition. If the lessening is substantial, the Commission may not give clearance to the proposed acquisition.

Preliminary issues

12. The Commission intends to focus the investigation on the following areas.

Market definition

13. In their application, CSR and Brickworks submitted that the joint venture would result in overlap for the supply of external cladding products. They submitted that there is a high degree of substitutability between clay bricks and other cladding materials such as timber weatherboards and fibre cement panels.
14. The Commission will consider whether clay bricks form a discrete product market, or form part of a wider differentiated product market comprising different cladding materials. The Commission will consider the:
 - 14.1 Extent to which clay bricks are substitutable for other types of exterior cladding in respect of price and customer preference.
 - 14.2 Viability of transporting clay bricks around the country as well as importing them from Australia.

Existing competition

15. CSR and Brickworks submitted that the proposed merger does not raise any competition concerns because:
 - 15.1 The next largest supplier of clay bricks, Midland Bricks, would continue to compete aggressively via its import model.
 - 15.2 There are numerous suppliers of a wide range of exterior cladding products including fibre cement from James Hardie, weatherboards from Carter Holt Harvey and concrete blocks from the Fletcher Building Group.
16. The Commission will consider the closeness of the competition between CSR and Brickworks. The Commission will then consider the degree of competitive constraint from both domestic manufacturers and importers of clay bricks, and other cladding materials, would place on the merged entity.
17. The Commission will also consider the extent to which other clay brick suppliers, particularly those based in Australia could easily expand their existing supply to New Zealand based customers taking into account their available capacity and transportation costs.

Potential competition

18. The Commission will consider the constraint that potential entry from Australian clay brick manufacturers not currently supplying New Zealand would place on the merged entity. Included in this will be consideration of whether the transportation costs of clay bricks imported from Australia are comparable to that of CSR and Brickworks.

Next steps

19. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission

has established a draft timeframe for consideration of CSR's and Brickwork's application. The current decision date is 14 September 2012. However, the Commission is seeking an extension to this date. To keep abreast of changes in relation to timing and to find relevant documents, visit the public Clearance Register on the Commission's website at:

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

20. The Commission will be contacting parties it believes will provide the best information to help it assess the preliminary issues identified above.
21. The Commission also invites submissions from any other parties that 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 with the reference CSR / Brickworks in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by 4pm **19 September 2012**. Please clearly identify any confidential information contained in the submission and provide contact details.