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## COMMERCE COMMISSION

### **Decision No. 430**

Determination pursuant to the Commerce Act 1986 in the matter of an application involving:

**FLETCHER BUILDING PRODUCTS LIMITED**

**and**

**CARTER HOLT HARVEY DOORS**

**The Commission:** M J Belgrave  
Dr M N Berry  
P J M Taylor

**Summary of Application:** The acquisition by Fletcher Building Products Limited of those business assets of Carter Holt Harvey Doors which relate to the manufacture of wooden doors.

**Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

**Date of Determination:** 31 May 2001

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BRACKETS**

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## **THE PROPOSAL**

1. In a notice to the Commission dated 4 May 2001, pursuant to section 66(1) of the Commerce Act 1986 (“the Act”), Fletcher Building Products Limited (“FBP”) sought clearance to acquire those business assets of the Carter Holt Harvey Limited (“CHH”) division – Carter Holt Harvey Doors (“CHH Doors”), which relate to the manufacture of wooden doors.

## **THE PROCEDURES**

2. The application was received on 4 May 2001. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period.
3. The Applicant agreed to an extension to a decision date of 1 June 2001.
4. In the application, FBP requested confidentiality for specific information contained in or attached to the notice. It considers that disclosure of that information could result in “material financial loss and prejudice to the competitive nature of the parties”. A confidentiality order was subsequently made in respect of that information for a period of 20 working days from the Commission’s determination of the notice. When that order expires, the provisions of the Official Information Act 1982 will apply to the information.
5. As this application was lodged prior to 26 May 2001, the date on which a change in threshold was enacted by the Commerce Amendment Act 2001, the repealed dominance test applies in this instance.
6. The Commission’s decision is based on an investigation conducted by its staff, and their subsequent advice to the Commission. In the course of this investigation, the Commission discussed the application with a large number of parties including:
  - Fletcher Building Products
  - Plyco
  - Placemakers
  - Carter Holt Harvey Panels
  - Carter Holt Harvey Decorative Products
  - Carters
  - Masonite
  - Superior Doors
  - Nationwide Prehung Doors
  - Best Doors
  - NZ Fire Doors
  - Allenson Doors
  - Renall Doors
  - Corinthian Doors – Timber and Door Supplies

- Hume Doors and Timber
- Benchmark Building Supplies
- Independent Timber Merchants (ITM)
- Western Woodcraft
- Doors Plus (North Shore)
- Designer Doors

## **THE PARTIES**

### **Fletcher Building Products Limited**

7. Fletcher Building Limited is involved in the manufacture and distribution of concrete, steel, building products (including plasterboard, wood-based panel products and aluminium extrusion), and related distribution and construction activities. FBP is the subsidiary of Fletcher Building Limited that is involved in, among other things, wood-based panel products.
8. Plyco Doors (“Plyco”) is the trading division of FBP responsible for the manufacture and distribution of doors and door systems, including glazing and finishing. Plyco operates a door manufacturing plant and a distribution centre at Penrose, and a warehouse at Christchurch.
9. FBP also operates four pre-hanging plants: Doorways – Total Doors in Auckland, J & G Doors in Christchurch, Door Jamb Systems in Tauranga, and Door Styles in Hamilton. Typically, pre-hanging companies are small joinery shops specialising in job-lot assembly of doors into frames for use in a building.

### **Carter Holt Harvey Doors**

10. CHH is listed on the New Zealand Stock Exchange and is involved in forestry, wood products, panels, pulp and paper, and tissue. CHH Doors is part of the Decorative Products business of CHH and is responsible for the manufacture and distribution of doors. CHH Doors operates from CHH’s Decorative Products facility at Wiri. The facility has three lines, one of which manufactures doors.
11. CHH Doors sells doors under the Bestwood brand. This brand name along with the current CHH customer base will not be acquired by FBP under the proposal.

### **Other Parties**

#### *Hume Doors & Timber (NZ) Pty Ltd*

12. Hume Doors & Timber (Aust) Pty. Ltd (“Hume”) is a privately owned Australian company which manufactures and supplies that market with a range of products including: interior and exterior doors, door frames, jambs and architraves. Hume is the second largest manufacturer and supplier of doors in Australia, controlling [ ] of that market. In addition, Hume is a supplier to the Australian market of timber, timber mouldings, medium density fibreboard (MDF) and various sheet products.
13. Hume Doors & Timber (NZ) Pty Ltd (“Hume NZ”) is Hume’s New Zealand subsidiary which imports doors from Hume and distributes them in the New Zealand market.

*Corinthian Doors Pty Limited*

14. Corinthian Doors Pty Limited (“Corinthian”) is Australia’s largest manufacturer and supplier of wooden doors, holding approximately a [ ] share of that market. Corinthian has exported doors to New Zealand over a number of years through arrangements with various parties in New Zealand. Currently, Corinthian distributes its doors in New Zealand through its agent, Timber and Door Supplies Limited in Auckland.

*Superior Doors Limited*

15. Superior Doors is a manufacturer and supplier of wooden doors in New Zealand that produces two types of doors; pressed panel hollow core doors and flush panel hollow core doors.

*Best Doors Limited*

16. Best Doors is a manufacturer and supplier of wooden doors, the majority of which are used in commercial buildings. [ ]

*Pre-Hangers*

17. The Commission during the course of this investigation consulted a number of pre-hanging companies. Pre-hangers source raw door leaves from manufacturers and suppliers, then add value to the door by framing the door and possibly drilling holes for the later fitting of hardware. The intermediate step of pre-hanging significantly reduces the time required to fit a door in a building. Approximately half of the doors manufactured or imported in New Zealand are distributed to pre-hanging companies.

*Merchant Supply Chains*

18. The remainder of manufactured and imported doors are supplied to merchant supply chains such as Placemakers, Carters, Benchmark, ITM and Mitre 10.

**BACKGROUND****The Manufacture of Wooden Doors**

19. The majority of wooden doors used in the interior of residential buildings are hollow core, with external doors generally being made of solid timber. As would be expected, interior doors comprise 90% of the total market for wooden doors. Some doors used in residential buildings may also be used in commercial buildings, however, a significant number of doors used in commercial buildings have unique specifications such as fire ratings or special dimensions, and are therefore manufactured by specialist companies.
20. The manufacture of wooden doors involves construction of a frame, a core is then placed in the frame (this can be hollow or solid) and glue is applied to the surface. Doorskins are then adhered to each side of the door, which is put through a press to cure and set the glue. The door is then trimmed and may be sanded. Options include open topping (cutting out panels for glazing) and bi-folds (hinging two doors together etc), which work is often outsourced - usually to pre-hangers and other joiners.
21. Typically, the manufacture of commercial doors involves more complex processes, often using non-standard sizes and varying raw materials. Accordingly, a number of

commercial doors are produced in one-off runs and are consequently priced, on average, well above a standard door used in a residential situation.

22. Door types and styles include:

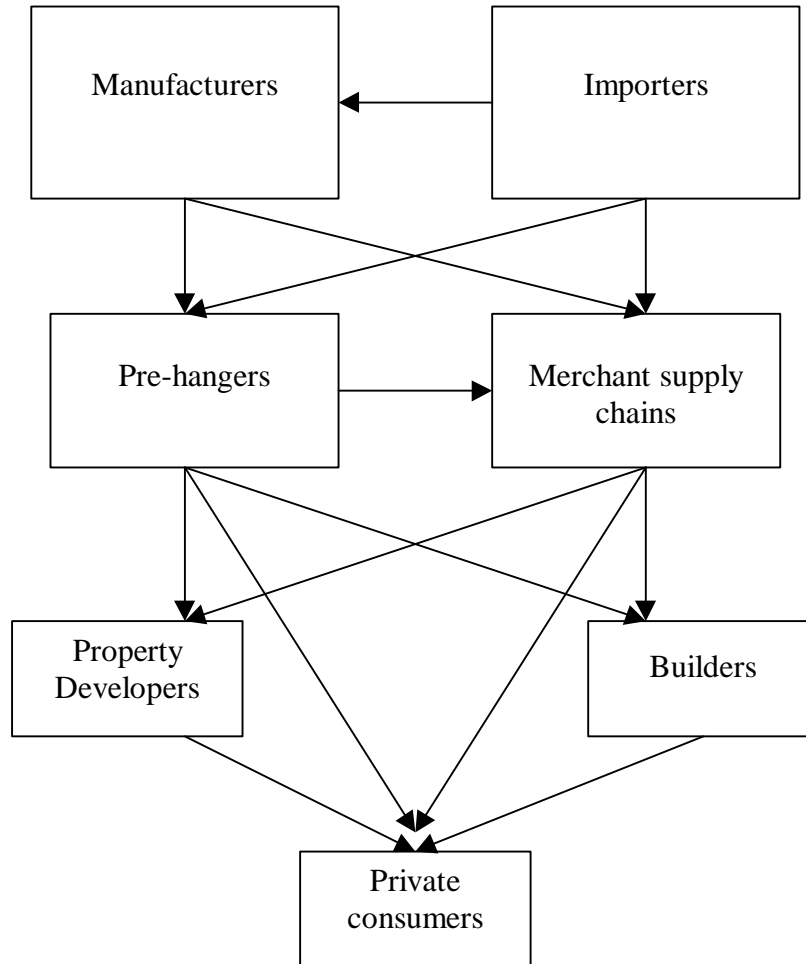
- MDF faced paint quality or flush panel;
- hardboard;
- veneer faced;
- moulded or pressed panel;
- timber;
- steel;
- fibreglass;
- glass; and
- designer (one-off special designs).

### **Imported Wooden Doors**

23. Over the past 10 years, various New Zealand parties, including some manufacturers and merchant supply chains, have entered into arrangements with offshore door manufacturers, particularly Australian manufacturers, in relation to the supply of wooden doors in the New Zealand market. As the standard height and width of Australian doors varies from its New Zealand counterpart, Australian manufacturers conduct special runs in order to produce doors for export to New Zealand.

### **Distribution of Wooden Doors**

24. As previously mentioned, in New Zealand there are several distribution channels through which wooden doors may flow. In general, large construction or property development companies purchase doors from either pre-hanging companies, or through one of the merchant chains. Pre-hanging companies may also sell value-added pre-hung doors to the merchant chain. Diagram 1 below, illustrates those channels:

**Diagram 1: Flow of Doors through Distribution Channels**

## MARKET DEFINITION

### Introduction

25. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in any market in terms of section 47(1) of the Act.
26. Section 3(1A) of the Act provides that:

“... the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”

27. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,<sup>1</sup> *Commerce Commission v Carter Holt Harvey Building Products Limited*,<sup>2</sup> and in the Commission's *Business Acquisitions Guidelines* ("the Guidelines").<sup>3</sup> A brief outline of the principles follows.
28. Markets are defined in relation to three dimensions, namely product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
29. A properly defined market includes products which are regarded by buyers or sellers as being not too different ('product' dimension), and not too far away ('geographical' dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a "small yet significant and non-transitory increase in price" (the "*ssnip*" test), assuming that other terms of sale remain unchanged.
30. Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products takes place through a series of stages, which may be visualised as being arranged vertically, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence, the functional market level affected by the application has to be determined as part of the market definition. For example, that between manufacturers and wholesalers might be called the "manufacturing market", while that between wholesalers and retailers is usually known as the "wholesaling market".

### Relevant Markets

31. The Applicant submits that there are two markets relevant to the proposed acquisition. These are:
- i. the national market for the manufacture or importation of doors (the manufacture / importation market); and
  - ii. the national market for the distribution of doors to merchants and pre-hangers (the distribution market).

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<sup>1</sup> (1991) 4 TCLR 473.

<sup>2</sup> Williams J, 18 April 2000, HC, yet to be reported.

<sup>3</sup> Commerce Commission, *Business Acquisitions Guidelines*, 1999, pp. 11-16.



## Product Dimension

### *Doors*

32. In the application it is contended that the most appropriate product market is that for the supply of doors. As noted previously, a number of different raw materials can be used in the construction of doors.
33. The Applicant further argues that the use and characteristics of doors ensures that doors constructed from different raw materials are generally substitutable in terms of demand and supply. Price, changing consumer preference and fashion are said to dictate trends in demand for different styles of doors. Further, it is argued that there is little difference in the assembly of doors regardless of the raw material used, or the use for which the door is manufactured, and suppliers are able to convert to different material should the demand dictate.
34. After arguing that doors constructed from different raw materials are generally substitutable on both the demand and supply sides, the Applicant has provided market share figures in respect of the wooden door industry only.
35. It is apparent from discussions with those in the industry, that steel and fibreglass doors could be a substitute for wooden doors. However, use of such doors generally is limited to exterior applications. Neither steel nor fibreglass doors are manufactured by Plyco or CHH Doors. Plyco imports all its steel and fibreglass door requirements while CHH Doors no longer distributes such doors. No aggregation will arise from the proposal in respect of steel and fibreglass doors. While demand side substitution by steel or fibreglass doors for wooden doors would be possible, the Commission believes that such a possibility is unlikely, given the higher price of the former.
36. Commission inquiries show that aluminium doors are used almost entirely for exterior applications and are considered by those in the door industry not to be substitutes for the vast majority of wooden doors.
37. Interior applications comprise 90% of the usage for wooden doors. In addition, a significant number of doors used in residential buildings are also used in commercial situations. Although there are commercial applications where an internal door is required which is heavier or of non-standard dimensions, such as in security and fire rated situations, for most residential and commercial installations a general purpose wooden door can be used.
38. Given the degree of overlap in usage, the Commission believes that there is no need to identify separate markets for commercial and residential doors. However, when assessing market share, the Commission recognised that a substantial number of commercial doors are specialty doors and therefore are likely to be used exclusively in commercial installations. Such doors may include but are not limited to, fire rated doors for installation in hospitals and other commercial/industrial applications and strengthened doors for installation in prisons.
39. While those specialty doors and doors made from materials other than wood products, may be substitutable, there does not appear any reason to consider those substitutes given that the only aggregation which might occur is in the market for general purpose

wooden doors. If no concerns arise in such a narrow product market, then there should be no issues in a wider door market.

40. The Commission also addressed the possibility that there might be further differentiation of the product in terms of particular styles of general purpose wooden doors, and that the market definition should therefore be even narrower. The two categories of general purpose wooden doors identified in discussions with parties were smooth finish pressed panel doors, and veneer faced doors.
41. Some parties consulted by the Commission expressed doubt as to whether other doors might be reasonable substitutes for the smooth finish pressed panel, and veneer-faced doors, particularly from the demand side. On the supply side, the parties questioned whether any other manufacturer or importer would be able to obtain the raw materials to supply such doors. However, the Commission is satisfied that other sources of the raw materials are available and that the consumer demand for such doors could be satisfied by parties other than Plyco or CHH Doors. Therefore, the Commission does not believe that differentiation on the basis of particular style or finish of wooden door is warranted. This issue is discussed more fully in the competition analysis under potential competition.
42. Accordingly, the Commission concludes that the scope of the relevant product market should be for general purpose wooden doors.

#### **Functional Dimension**

43. Once manufactured, doors are distributed predominantly to merchants and pre-hangers. The Applicant indicates that Plyco and CHH Doors supply each of these in roughly equal proportions.
44. The Applicant suggests, to assist the assessment of CHH Doors' decision to retain its distribution operations while exiting the manufacturing level, that this application for clearance be considered on the basis of separate functional markets for manufacturing / importation and distribution.
45. The Commission agrees with this approach.

#### **Geographical Dimension**

46. The Applicant contends that there is national distribution of both domestically manufactured and imported doors. Commission enquiries indicate that whilst the majority of doors are manufactured in or imported into Auckland, they are distributed nationally. Therefore, the Commission concurs that these are national markets.

#### **Conclusion on Markets**

47. The Commission has concluded that the markets relevant to the consideration of the application are as follows:
  - the national market for the manufacture or importation of general purpose wooden doors; and
  - the national market for the distribution of general purpose wooden doors.

## COMPETITION ANALYSIS

### Introduction

48. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of dominance.

49. Competition in a market is a broad concept. It is defined in section 3(1) of the Commerce Act as meaning “workable or effective competition”. In referring to this definition the Court of Appeal said:<sup>4</sup>

“That encompasses a market framework which participants may enter and in which they may engage in rivalrous behaviour with the expectation of deriving advantage from greater efficiency.”

50. Section 3(9) of the Commerce Act states:

“For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-

- (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
- (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
- (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

### *The Dominance Test*

51. Section 47(1) of the Commerce Act prohibits certain business acquisitions:

“No person shall acquire assets of a business or shares if, as a result of the acquisition, -

- (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
- (b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”

52. The test for dominance has been considered by the High Court. McGechan J stated:<sup>5</sup>

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”

...

“Dominance includes a qualitative assessment of market power. It involves more than ‘high’ market power; more than mere ability to behave ‘largely’ independently of competitors; and more than power to effect ‘appreciable’ changes in terms of trading. It involves a *high degree of market control*.”

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<sup>4</sup> *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554, 564-565

<sup>5</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

53. Both McGechan J and the Court of Appeal, which approved this test,<sup>6</sup> stated that a lower standard than “a high degree of market control” was unacceptable.<sup>7</sup> The Commission has acknowledged this test:<sup>8</sup>
- “A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.”
54. The Commission’s *Business Acquisitions Guidelines* state:
- “A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor {or} customer reaction.”
- “A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.” (p21)
55. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined.
56. The Commission applies the dominance test in the following competition analysis.

## **The National Market for the Manufacture or Importation of General Purpose Wooden Doors**

### *Market Concentration*

57. The level of concentration in a market is an indicator of whether a merged firm may or may not be constrained by others participating in the market, and thus the extent to which it may be able to exercise market power.
58. The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of section 47 of the Act -
- “In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
- the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.” (p 17)
59. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged firm and its rivals are relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Commission went on to state that:

<sup>6</sup> *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>7</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>8</sup> *Business Acquisition Guidelines*, Section 7

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”

60. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by section 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided through possible market entry, also typically need to be considered and assessed.
61. Market shares have been assessed in Table 1 below. Market shares have been estimated on the basis of turnover relating specifically to the manufacture/importation of general purpose wooden doors. During its investigation, the Commission attempted to gain estimates of production/importation volumes, in order to address the disparity between the relative pricing of commercial and residential doors and to take into account the previously mentioned degree of product differentiation in relation to the majority of commercial doors. However, not all parties were able to supply accurate production volume estimates. Accordingly, the Commission has relied on the estimates of the parties interviewed, as to the proportion of their turnover that relates to the market for general purpose wooden doors in which Plyco and CHH Doors more correctly compete.

**Table 1:**  
**Estimated Market Share of the National Market for the Manufacture or Importation of  
General Purpose Wooden Doors**

<b>Participant</b>	<b>Value \$000's (est)</b>	<b>% market share (est)</b>
Plyco	[ ]	[ ]
CHH Doors	[ ]	[ ]
<i>Combined entity (as to manufacturing only)</i>	<i>[ ]</i>	<i>[ ]</i>
Corinthian Doors	[ ]	[ ]
Hume Doors	[ ]	[ ]
<i>Total Australian imports</i>	<i>[ ]</i>	<i>[ ]</i>
Other imports	[ ]	[ ]
Superior Doors	[ ]	[ ]
Renall Doors†	[ ]	[ ]
Allenson Doors†	[ ]	[ ]
Best Doors*	[ ]	[ ]
New Zealand Fire Doors*	[ ]	[ ]
Pacific Doors*	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100.0%</b>

† predominantly manufacture and distribute solid exterior doors

\* predominantly manufacture and distribute commercial doors

62. The proposed acquisition would therefore result in the merged entity having a [ ] market share with its closest competitor that manufactures in New Zealand having a [ ] market share, and the closest importing competitor having a market share of [ ]. These levels of market share are outside the Commission's safe harbour guidelines.
63. However, as mentioned above, market share is but one indicator of market power and other factors must be considered before conclusions are reached.

#### *Existing Competition*

64. Over the past three years, Hume has been actively participating in the New Zealand market with imports from Australia. In that time, it has acquired a market share of [ ]. Comments from industry participants suggest that Hume has the potential further to increase its market share. The Commission is aware that [ ]

] The Commission notes that the price of doors has decreased since Hume's entry into the New Zealand market, and to that extent it would provide considerable constraint on the pricing behaviour of the merged entity.

65. In addition, Superior Doors has grown its market share since it began manufacturing doors in earnest, seven years ago. [

Doors [ ]]. The Commission is of the opinion that Superior

].

66. It is the Commission's view that the merged entity would face effective competition from existing competitors.

#### *Potential Competition*

67. A business acquisition is unlikely to result in the acquisition or strengthening of dominance if there is a credible threat of market entry. Potential competition can act as a constraint on market power, and so an examination of the nature and extent of this constraint is part of the Commission's assessment of competition.

68. Entry conditions, including the nature and height of any entry barriers, must be considered before the threat of new entry, which might constrain the conduct of a merged entity, can be evaluated.

69. The view of industry participants is that it would be possible for a new entrant to commence the manufacture of general purpose wooden doors, however it is unlikely, given the cost of the equipment required to produce economies of scale sufficient to make the new entrant's product price competitive. Nevertheless, as previously mentioned, [

]. Industry participants also pointed out that if it resolved to enter the New Zealand market on a larger scale, Corinthian Doors would have the potential to substantially increase its share of the market for general purpose wooden doors.

70. In addition, given the ease with which Hume entered the New Zealand market, it is possible that another global company, such as Premdor, one of the world's largest manufacturers of doors, could also enter and compete effectively if the merged entity imposed a *ssnip* and/or decreased the quality of its doors. Such a potential entrant has both the capital resources and the economies of scale to enter in a reasonably short timeframe and would therefore provide an effective constraint on the merged entity.

71. [

].

72. The availability of raw materials to existing competitors post-merger, particularly smooth finish pressed panel and veneer-faced door skins, was raised by manufacturers, importers and purchasers as a potential issue. Concern was expressed that those materials would also be difficult for a new entrant to obtain.
73. Plyco and CHH Doors currently source skins for smooth finish pressed panel doors from Masonite in the United States. Masonite is a subsidiary of International Paper Company (“IPC”), of which company CHH is also a subsidiary. The Commission understands that Premdor is in the process of acquiring Masonite from IPC. Discussions with the New Zealand representative of Masonite have satisfied the Commission that skins for such doors are currently supplied to Hume, and are potentially available to other door manufacturers. In addition, Jeld-Wen, another large international door manufacturer and 50% owner of Corinthian Doors in Australia, is now producing skins of similar specification and quality for supply.
74. Similarly, in respect of veneer doors, which make up 5-10% of the manufacture or importation market, the Commission is satisfied that CHH’s veneer production facility will not be included in the proposed sale of the assets of CHH Doors, and that CHH will continue to produce veneer products. Further, the Commission understands that door manufacturers could source alternative supplies of veneer, including that made from New Zealand Rimu.
75. The Commission is satisfied that new entrants could source the raw materials required to produce a range of general purpose doors. Accordingly, it is the Commission’s view that the merged entity could face effective competition from potential competitors.

#### *Countervailing Power of Buyers*

76. A firm may be constrained by any countervailing power possessed by its customers. Buyer power is likely to be high when there is a concentration of buyers and the volume purchases of the buyers are high.<sup>9</sup>
77. There are two major purchasers of doors: pre-hanging companies, and merchant supply chains, which include Placemakers, Carters, Benchmark, ITM, and Mitre 10. The Commission understands that apart from the four pre-hanging companies owned by FBP, other pre-hanging companies are independent operators (CHH does not have a financial interest in any pre-hanging companies).
78. There are a large number of pre-hanging companies throughout New Zealand. The startup costs and expertise required in order to pre-hang doors are minimal, and accordingly, should FBP increase the number of pre-hanging companies in its portfolio, it is likely that new operators would enter the pre-hanging business.
79. Generally, the pre-hanging companies contacted by the Commission during its investigation source their doors from a number of suppliers. Although in some cases, preferred supplier agreements exist between the manufacturer/importer and the pre-hanging company, these typically relate to volume rebates, and do not legally bind either party to supply or purchase from the other.
80. To this extent, any attempt by the merged entity to increase prices and/or reduce quality would cause the pre-hanging customer to switch suppliers. Given that there is no legal bind between the parties, this would be a simple matter.

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<sup>9</sup> G Johnson, K Scholes, *Exploring Corporate Strategy* (4<sup>th</sup> ed, Prentice Hall, Europe, 1997) 111



81. Similarly with regard to the merchant supply chains, despite the fact that FBP owns 51% of the Placemakers chain and CHH owns 100% of the Carters chain, Placemakers and Carters advised the Commission that any attempt by the merged entity to increase prices and/or decrease quality would see those chains switching to alternative suppliers.

82. [ ]

83. All of the other merchant chains interviewed by the Commission said that they would have no hesitation in either switching local suppliers or importing directly, if the merged entity applied pressure to the chains' profit margins by increasing prices.

84. The Commission notes that [ ] is presently buying a substantial number of its doors from [ ], and that [ ]. The Commission understands however, that the quality of [ ].

*Conclusion on National Market for the Manufacture or Importation of General Purpose Wooden Doors*

85. The proposed acquisition would result in the merged entity obtaining a [ ] market share, which falls outside the Commission's safe harbour guidelines. However, the merged entity would be constrained by existing competitors, potential competitors and the countervailing power of pre-hanging companies and the merchant supply chains.

86. The Commission therefore is satisfied that the merged entity would not acquire or strengthen a dominant position in the national market for the manufacture or importation of general purpose wooden doors.

**The National Market for the Distribution of General Purpose Wooden Doors**

87. The proposed acquisition is for the assets only of CHH Doors and does not include CHH's Bestwood brand. The Applicant submits that it will toll manufacture for CHH, all of CHH's door requirements, and that CHH will continue to distribute its Bestwood brand doors to pre-hanging companies and merchant supply chains.

88. The Applicant submits that a supply agreement between itself and CHH Doors, would maintain an alternative distributor of general purpose wooden doors, and that as such, no aggregation would result in the distribution market. [ ]

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89. The Commission is satisfied that [ ], no aggregation will occur in the distribution market.

*Conclusion on National Market for the Distribution of General Purpose Wooden Doors*

90. The Commission therefore is satisfied that the merged entity would not acquire or strengthen a dominant position in the national market for the distribution of general purpose wooden doors.

**OVERALL CONCLUSION**

91. The Commission has considered the likely impact of the proposal in the following markets:
- the national market for the manufacture or importation of general purpose wooden doors; and
  - the national market for the distribution of general purpose wooden doors.
92. Having regard to the various elements of section 3(9) of the Act, and all the other relevant factors, the Commission is satisfied that implementation of the proposed acquisition, would not result or be likely to result in any person acquiring or strengthening a dominant position in either of the above mentioned markets.

**DETERMINATION ON NOTICE OF CLEARANCE**

93. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by Fletcher Building Products Limited of those business assets of the Carter Holt Harvey Limited division – Carter Holt Harvey Doors, which relate to the manufacture of general purpose wooden doors.

Dated this 31st day of May 2001

M J Belgrave

Chair