



COMMERCE COMMISSION

Decision No. 648

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

CSR BUILDING PRODUCTS (NZ) LIMITED

and

ROSS ROOFING LIMITED, ROSSCRETE ROOFING TILES LIMITED, and ROSS BRICK & PAVERS LIMITED

The Commission: Paula Rebstock
Denese Bates QC
Gowan Pickering

Summary of Application: CSR Building Products (NZ) Limited has applied for clearance to acquire 100 per cent of the shares in, or assets of: Ross Roofing Limited; Roscrete Roofing Tiles Limited; and Ross Brick & Pavers Limited (together, Ross Roofing) from the Ross group of businesses.

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

Date of Determination: 27 August 2008

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EXECUTIVE SUMMARY

- E1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 2 July 2008. The notice sought clearance for CSR Building Products (NZ) Limited (CSR) to acquire 100 per cent of the shares in, or assets of: Ross Roofing Limited; Roscrete Roofing Tiles Limited; and Ross Brick & Pavers Limited (together, Ross Roofing) from the Ross Group of businesses.
- E2. For the purpose of considering this Application, the Commission considers the relevant markets to be:
- the North Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the North Island roofing tile market); and
 - the South Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the South Island roofing tile market).
- E3. The Commission considers the likely counterfactual scenario to be that Ross Roofing would be sold to an independent third party.
- E4. In the factual, the combined entity would be the only manufacturer and supplier of concrete tiles. However, the Commission considers that the combined entity would continue to face constraint from existing competitors in the form of metal tile manufacturers and suppliers, such as AHI, Metalcraft, and Stratco. Furthermore, the Commission considers that due to the excess capacity in the market, these metal tile manufacturers could easily expand their output to meet an increased demand for metal tiles.
- E5. The Commission considers that it is unlikely that imports of concrete tiles would provide any notable degree of competition in either the factual or the counterfactual.
- E6. The Commission is satisfied that due to the constraint provided by existing competitors, the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the relevant markets.
- E7. Accordingly, the Commission determines to give clearance to the proposed acquisition of Ross Roofing Limited, Roscrete Roofing Tiles Limited, and Ross Brick & Pavers Limited by CSR Building Products (NZ) Limited.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 2 July 2008. The notice (the Application) sought clearance for the acquisition by CSR Building Products (NZ) Limited (CSR or the Applicant) of 100 per cent of the shares in, or assets of: Ross Roofing Limited; Roscrete Roofing Tiles Limited; and Ross Brick & Pavers Limited (together, Ross Roofing) from the Ross group of businesses.
2. The proposed acquisition would result in horizontal aggregation in respect of the manufacture and supply of concrete roofing tiles, the manufacture and supply of clay tiles, and the manufacture and supply of bricks.

PROCEDURE

3. Section 66(3) of the Act requires the Commission either to give clearance or to decline to give clearance, to the acquisition referred to in a s 66(1) notice, within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 27 August 2008.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's *Mergers and Acquisitions Guidelines*.¹

STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal would not be likely to substantially lessen competition then it is required to grant clearance to the application. Conversely if the Commission is not satisfied it must decline the application. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²
6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgement is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.³

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-721.

³ *Air New Zealand & Qantas Airways Limited v Commerce Commission* (2004) 11 TCLR 347, Para 42.

7. In determining whether there is a change along the spectrum which is significant, the Commission must identify a real lessening of competition that is more than nominal and not minimal.⁴ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.
8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

ANALYTICAL FRAMEWORK

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual, and may variously consider:
 - existing competition;
 - potential competition;
 - the countervailing market power of buyers; and
 - the ability of suppliers to co-ordinate their pricing in the market.

⁴ *Fisher & Paykel Limited v Commerce Commission* (1990) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554, 563.

THE PARTIES

Key Parties

CSR Building Products (NZ) Limited (CSR)

12. CSR is ultimately a wholly-owned subsidiary of CSR Limited (which is an Australian company). Its building products division is involved in the manufacture and supply of concrete roofing tiles and clay bricks under the Monier banner, on a nationwide basis.
13. CSR manufactures concrete tiles at its plants in Auckland and Christchurch.

Ross Roofing

14. The Ross group is a group of privately-owned companies. The companies subject to this acquisition are:
 - Ross Roofing Limited: a roofing contracting business, which installs Rosscrete concrete tiles, Italian clay tiles and metal tiles manufactured by the Ross Group throughout the greater Auckland area and in the Waikato region. Ross Roofing Limited is also involved with roof restoration;
 - Rosscrete Roofing Tiles Limited: a wholly-owned subsidiary of Ross Roofing Limited, which manufactures concrete tiles at its plant in Auckland. It supplies these tiles to Ross Roofing Limited and external sales agents across New Zealand; and
 - Ross Brick & Pavers Limited: a wholly-owned subsidiary of Ross Roofing Limited, which sells and distributes clay bricks in the greater Auckland area.
15. The proposed acquisition does not include other companies in the Ross Group. In particular, the Ross Group would continue to manufacture metal roofing tiles through its subsidiary Metrotile (NZ) Limited (Metrotile).

Other Relevant Parties

16. A complete list of relevant parties that were interviewed by, or provided information to, the Commission is attached as Appendix 1.

PREVIOUS DECISIONS

Commerce Commission

17. The Commission most recently considered the manufacture and distribution of roofing products in Decision 376.⁵ The proposed acquisition related to a range of different steel products. In respect of the roofing products market, the Commission noted that it had received conflicting evidence as to whether domestic and industrial roofing may be properly considered as one market, and so took the approach that if no competition concerns arose in a narrow, domestic roofing market, then it would be unlikely that competition concerns would arise in a wider roofing products

⁵ Decision 376, *Fletcher Challenge Steel Products Limited and Steel and Tube Holdings Limited*, 4 November 1999.

market. The Commission concluded the relevant market to be the national market for the manufacture and distribution of domestic roofing products.

18. The Commission assessed this Application under the dominance test, and concluded that, in the domestic roofing products market, the combined entity would have a market share that would likely fall within the Commission's safe harbour guidelines in the factual. Further, the combined entity would face competition from existing competitors, and would face constraint from the threat of new entry, expansion of existing players, and the countervailing power of a major customer.⁶
19. In Decision 376, aggregation occurred in respect of steel products, and so the scope of the investigation focussed on steel roofing materials, as opposed to other roofing materials such as concrete tiles. The Commission specifically considered concrete roofing tiles in *Monier/Humes*⁷ and *Monier/Lifestyle*.⁸
20. In *Monier/Humes*, the Commission considered aggregation in respect of the only two concrete tile manufacturers in New Zealand under the dominance test. The Commission considered that concrete tiles and steel products (metal tiles, coloured steel, and galvanized iron) fell within the same market, and gave clearance on the basis of the competitive constraint provided by metal roofing materials.
21. In *Monier/Lifestyle*, the Commission again considered aggregation in respect of the only two concrete tile manufacturers in New Zealand under the dominance test. Lifestyle was a recent entrant into the market, having entered after Monier acquired Humes. At the time of this proposal, Lifestyle was in receivership and its assets were being sold by the receiver.
22. The Commission considered the relevant market to be the North Island market for the manufacture and supply of pitched roofing materials, and concluded that the market would remain competitive post-acquisition due to the competition provided by manufacturers and suppliers of metal roofing materials and, to a lesser extent, other roofing materials such as shingles and Butynol. The Commission also considered that entry conditions into concrete tile production would not be such that it would inhibit potential competitors, and identified Ross Roofing as a possible new entrant. Accordingly, the Commission concluded that the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

⁶ The proposed acquisition also related to a number of other markets. The majority of the Division of the Commission declined to give clearance for the proposed acquisition, due to concerns relating specifically to the merchant steel products market and the distribution and processing of steel plate market. The Deputy Chairman dissented from the majority decision. The merger was re-considered by the Commission and subsequently granted Clearance in 2001 (Decision 421, *Fletcher Steel Limited and Steel & Tube Holdings Limited*, 21 March 2001, and Decision 427, *Steel & Tube Holdings Limited and Fletcher Steel Limited*, 27 April 2001).

⁷ *Monier Brickmakers Limited / Humes Industries Limited*, 1989.

⁸ *Monier Brickmakers Limited (CSR Limited/Redland International Limited) / Lifestyle Roofing Limited*, 19 July 1990.

Other Jurisdictions

23. The United States Federal Trade Commission (FTC) examined the merger of the two largest manufacturers of concrete tiles, Redland and Boral, in *Boral and Redland/Monier Lifetile*.⁹ The FTC considered the relevant markets to be the standard weight concrete roofing tile markets in South-Western United States and Florida. The FTC concluded that the merger gave rise to a substantial lessening of competition, as the remaining competitors were small, the cost of entry was high relative to potential sales revenue, and the threat of entry had not deterred price increases in the past.
24. In *CSR/Karreman*¹⁰ the Australian Competition and Consumer Commission (ACCC) examined the aggregation between two manufacturers of concrete tiles, and considered the relevant markets to be the markets for roof tiles in Queensland and New South Wales. The ACCC did not oppose the acquisition as it considered that the combined entity would continue to face constraint from existing competition.
25. The FTC noted in *Boral and Redland/Monier Lifetile* that the majority of new homes in the United States are built with concrete tile roofs. Similarly, industry participants have informed the Commission that concrete tiles are the most popular roofing system in Australia. The Commission has taken this into account when considering these cases and their context in respect of the current Application.

INDUSTRY BACKGROUND

Roofing Systems in New Zealand

26. Concrete tile, metal tile and long-run metal are the three most common types of roofing systems used on pitched residential roofs in New Zealand.¹¹ The proportion of roofs made of concrete tile, vis-à-vis metal tile or long-run metal, varies regionally throughout New Zealand. For example, concrete tile has historically been the most popular roofing system for pitched residential roofs in Auckland, whereas in rural areas, it is long-run metal.
27. As discussed, CSR and Ross Roofing are the only two manufacturers of concrete tiles in New Zealand, with the only South Island plant being a small plant owned by CSR. Presently there are very little volumes of concrete tiles imported. On the other hand there are six manufacturers of metal tiles, evenly distributed throughout both Islands. No metal tiles are imported.
28. Builders interviewed by the Commission advised that rubber membrane and Butynol are not commonly used on pitched residential roofs, as aesthetically, they

⁹ 127 F.T.C. 751, 1999 WL 33913006 (F.T.C.) *Boral Limited and Redland PLC / Monier Lifetile LLC*, 19 May 1999.

¹⁰ ACCC C2005/153, *CSR Limited / Karreman Roof Tiles*, 8 March 2005.

¹¹ Concrete tiles are not suitable for roofs with a pitch of less than 18°, for reasons of weather tightness. Concrete tiles become increasingly less competitive with metal tiles as roof pitches increase and the intricacy of the roof shape increases. Neither concrete or metal tiles are used to roof commercial buildings which either have flat roofs covered with butynol or long run metal roofs. Thus this case focuses on roofs for residential houses.

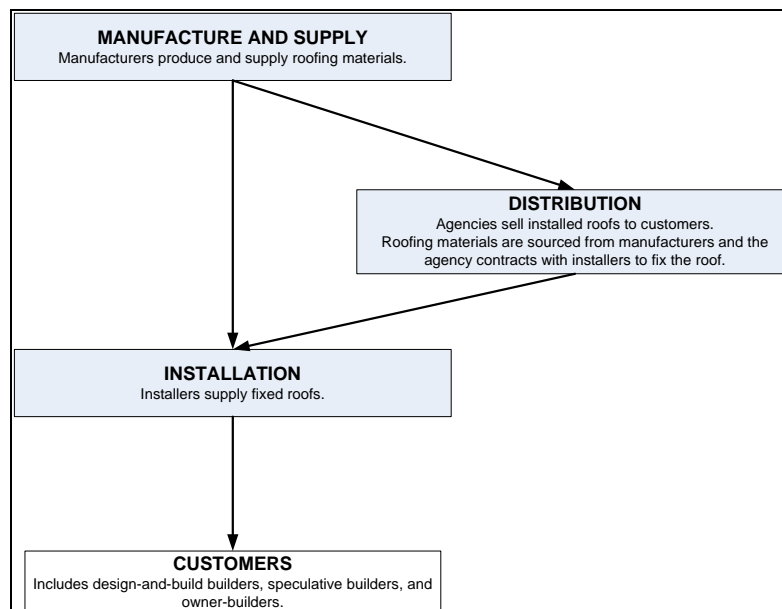
are incongruous with the look of a residential home. Other roofing materials, such as clay tile, copper tile and cedar shakes are also less commonly used, as they are much more expensive than the standard concrete tile, metal tile, and long-run metal roofing materials.

29. Traditionally, concrete tile has been perceived to be a more durable than metal roofing products, and therefore a low maintenance roofing option. However, in recent years, there have been significant technological advances made in the manufacture of metal roofing products. Zinalume-coated steel has replaced galvanised iron, which has improved the durability and lifespan of metal roofs such that manufacturers of metal tile roofs are now prepared to offer a 50-year guarantee.
30. Metal tile product offerings have changed significantly too. Many designs of metal tiles mimic concrete tiles such that aesthetically, the two are indistinguishable from a distance to the uninformed eye. There are also metal tile products that mimic other, premium roofing materials, such as shakes, shingles, and clay tiles.
31. The customer, or decision-maker as to which type of roof will be installed, varies depending on who is commissioning the house. Spec builders, such as Fletcher Residential, acquire land and design and build houses. A house is sold as a finished product, and so in this instance it is the builder which is the decision-maker as to the roof type and material. Conversely, for homes that are architecturally designed, or are built by design-and-build builders (e.g., Platinum Homes and Golden Homes) it is primarily the home-owner that is the decision-maker. Golden Homes, one of the largest home builders in the Auckland area advised that in its experience it is “the wife who decides on the roof material to be used in the couple’s new home and that decision is based on aesthetics rather price.”

The Roofing Industry

32. Figure 1 depicts the roofing products supply chain in New Zealand.

Figure 1. The Roofing Supply Chain in New Zealand



33. Many manufacturers and suppliers of roofing materials in New Zealand, including CSR, sell their products through distributors. Often distributors have showrooms to showcase products to customers. The distributor sources roofing materials from the manufacturer and supplier, which is delivered directly to the building site. The distributor also contracts with an installer to fix a roof.
34. Others, such as Stratco, do not supply roofing materials to distributors. Instead, these manufacturers and suppliers sell roofs to customers directly. In this instance, it is the manufacturer and supplier that contracts with an installer to fix a roof.
35. None of the manufacturers and suppliers interviewed by the Commission supply roofing materials to the customer directly. This is because installing a roof is complex and can be dangerous. It is also important to ensure that the roof is fixed correctly by a trained installer in order to maintain quality.

MARKET DEFINITION

36. In considering this Application the Commission must identify the relevant markets in which competition would be impacted by the proposed acquisition. The Applicant submitted that the relevant markets are:
 - the national market for the manufacture and distribution of domestic roofing products;
 - the Auckland domestic roof installation market; and
 - the Waikato domestic roof installation market.
37. The proposed acquisition involves aggregation in respect of the supply of clay tiles and clay bricks, and the manufacture and supply of concrete tiles. The Applicant submitted that aggregation in respect of the supply of clay tiles and clay bricks is relatively minor. This view was echoed by industry participants canvassed by the Commission, who advised that clay tiles are a premium roofing product that may cost more than twice the price of a roof made from standard materials, and account for only a minor proportion of pitched residential roofs in New Zealand. Further, there is no manufacture of clay tiles within New Zealand, all are imported. Given there are a number of importers and suppliers of clay tiles, the Commission does not consider competition issues would arise from the merger and has not considered this matter further in these reasons.
38. Similarly, there are a number of importers and suppliers of clay bricks. Boral and Australbricks are two large Australian-based suppliers to New Zealand whose landed prices are competitive with CSR's locally-made prices. In addition there are other New Zealand clay brick manufacturers. Ross Roofing supplies a relatively small volume of clay bricks, which it presently sources from Australbricks.¹²

¹² Industry participants estimated that Australbricks supplies approximately one-quarter of all bricks in New Zealand. Data supplied to the Commission by Australbricks shows that of the bricks it supplies throughout New Zealand, [] is sold through Ross Roofing.

39. Again, for the purposes of this Application, the Commission does not consider that competition issues would arise in respect of the manufacture and supply of clay bricks, and has not considered the matter further in these reasons. The Decision and the reasons instead focus on the analysis of the aggregation of the manufacture and supply of concrete tiles.

Functional Level

40. The proposed acquisition would result in horizontal aggregation in respect of the manufacture and supply of concrete tiles.
41. While Ross Roofing does have a small number of concrete roof tile installation teams on its staff (mainly for training purposes), CSR does not have its own staff installation teams (“wage gangs”). CSR relies entirely on contract gangs. Therefore, there is no horizontal aggregation in respect of the installation of concrete tile roofs.

Product Dimension

42. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought or supplied in the same market.
43. The question is whether metal tiles and other roofing materials are such close substitutes for concrete tiles that the sale and purchase of some or all of the various roofing materials occurs within the context of a single market. This may be answered by determining whether, in response to a SSNIP for concrete tiles:
- a significant proportion of buyers of concrete tiles would switch to one or more of the other various roofing materials; and
 - suppliers of non-concrete tile roofing materials could easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs.
44. The Applicant submitted that the product market is that which was defined in Decision 376 – a market for domestic roofing products, including concrete tiles, roll-formed steel products, metal tiles, shingles, and in some cases, rubber membrane products.
45. In both *Monier/Humes* and *Monier/Lifestyle* the Commission considered that whilst concrete tiles have a number of characteristics that distinguish them from other types of roofs, concrete tiles have no special functional advantage over other roofing materials. Concrete tiles compete with a range of roofing systems with the final choice depending on a range of factors, including the appearance and price of each material.
46. In respect of the current Application, industry participants canvassed by the Commission advised that, on the demand-side, in addition to price, there are a range of important factors which influence a customer’s choice of roof type, including the style and design of house, fashion and aesthetics, and customer preference for a particular roofing system.

Concrete Tile and Metal Tiles

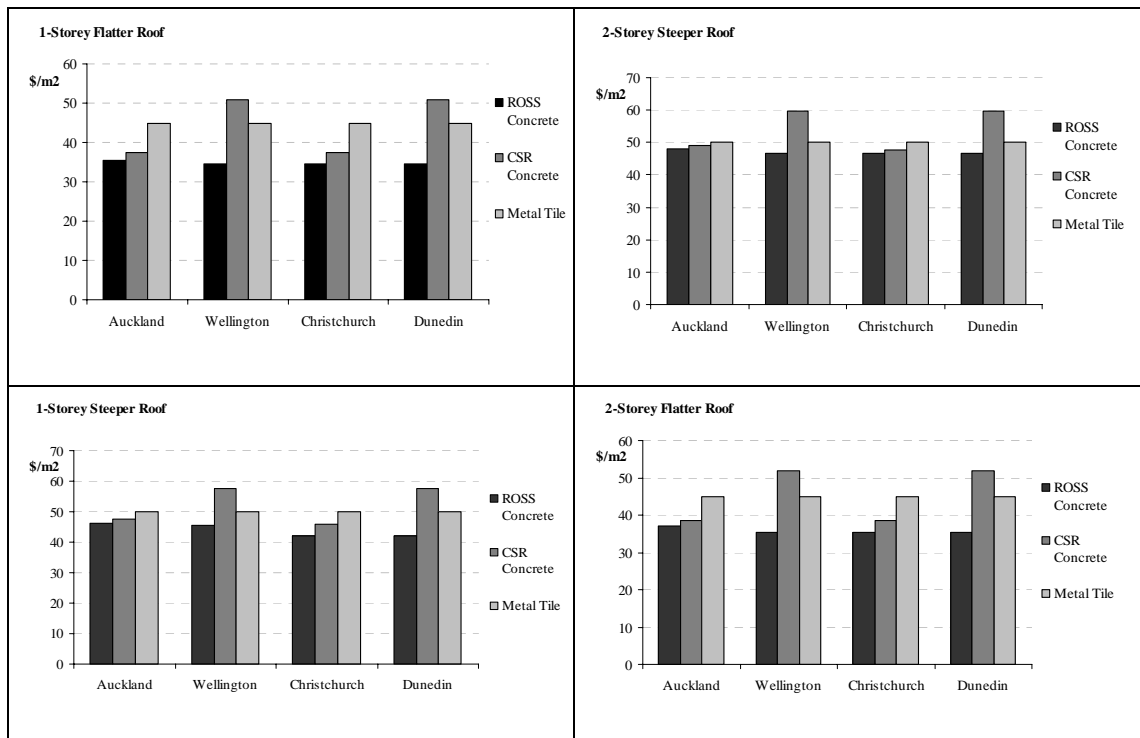
Aesthetics

47. The style and design of a house reflects the particular aesthetic or fashion trend desired by the customer. Some house styles are not designed for tile roofs, e.g., houses with mono-pitch roofs or roof pitches of less than 18°. However, there are many house styles with pitched roofs that can accommodate a variety of different roofing systems. Industry participants advised the Commission that in these circumstances it is customer preference for a particular tile appearance that dictates the decision process.

SSNIP

48. The majority of industry participants canvassed by the Commission, including Platinum Homes and Fletcher Residential, advised that there is little difference between the functionality of concrete tiles and modern metal tiles, and did not consider any functional difference to be a barrier to switching. In contrast, some industry participants advised the Commission that there may be some customers that would not switch from concrete tile to metal tile, even in the event of a SSNIP. For example, Gateway Homes stated that given a price increase some customers would still prefer concrete tiles due to the perception that concrete tiles are more durable and lower maintenance.
49. AHI advised the Commission that technological advances, including using zincalume and modern acrylic paints, has vastly improved the quality of metal tiles, such that the durability of modern metal tiles is comparable to that of concrete tiles. Metalcraft was of the view that if a customer has determined to have a tile roof, they would be likely to take into consideration overall price and appearance than whether the tile is made of concrete or metal.
50. Industry participants informed the Commission that the price differential between a concrete tile roof and a metal tile roof varies. This is because the price of a roof depends on a range of factors: roof pitch, complexity of the roof (number of hips and valleys), number of storeys on the house, and for concrete tiles, and the location of the house (i.e., distance from where concrete tiles are manufactured).
51. Figure 2 depicts information derived from the Rawlinsons New Zealand Construction Handbook 2007, and indicates the relative average price differentials of CSR standard pattern concrete tiles, Ross Roofing concrete tiles ('Hacienda' and 'Villa' profiles) and various metal tile options (Dimond 'DimondTile', AHI 'ColorTile', Decrabond, and Metrotile 'Metrocolour'), for single and double storey constructions, over a range of roofing gradients and for four geographic areas – Auckland, Wellington, Christchurch and Dunedin. Prices are for hip and valley roofs and include hip and valley cuts, ridge and barge tiles, bedding and pointing, valley and other flashings and 50mm x 50mm timber battens. Prices are also based on minimum quantity of 150m².

Figure 2. Comparison of CSR and Ross Roofing Concrete Tiles and Metal Tiles (\$/m²)



Source: Rawlinsons New Zealand Construction Handbook 2007

Note: Inconsistent categorisation of roof pitch boundaries in pricing data meant that exact pitch comparisons were not possible. For the above, flatter roofs are defined as follows: Ross Roofing - roofs of less than 29° pitch; CSR - roofs of less than 35° pitch; metal tiles - roofs of less than 30° pitch. Steeper prices are for quotes on roofs above these respective pitch cut-offs.

52. Figure 2 shows that the price per square metre for concrete tiles and metal tiles is similar, and the relative price differential between CSR concrete tiles, Ross Roofing concrete tiles, and the metal tiles surveyed depends upon the type of building and the proximity to the concrete tile plants located in Auckland and Christchurch.
53. Industry participants informed the Commission that recent steel price increases have affected the cost of the manufacture and supply of metal tiles. Some builders considered that these steel price increases may widen any price differential between metal tiles and concrete tiles, and so a SSNIP for concrete tiles may not be sufficient to induce customers to switch to metal tiles. Metal tile manufacturers, in general, did not consider steel price increases would be likely to diminish the substitutability of metal tiles. For example:
- Metalcraft noted that the price of cement is also increasing, and so concrete tiles are likely to be subject to similar price increases;
 - steel accounts for []% of the final ex-factory price of Metrotile's metal tiles. Metrotile advised that it [], and its reason for doing so was to remain competitive; and
 - AHI advised that although steel price has increased, it is conscious of implementing price increases because of the competition it faces from manufacturers and suppliers of concrete tiles. Whilst AHI incurred a []%

increase in the price of its steel input, the increase to customers was 4-6%. This is compared with a standard price increase of 3-5% per annum.

Evidence of Switching

54. A number of design-and-build builders, who predominantly build houses with concrete tile roofs, advised the Commission that they have over the past few years increased their product offerings to include metal tile roofs. For example, Gateway Homes, Platinum Homes, Jennian Homes, and Golden Homes all stated that the option for a metal tile roof was introduced in order to meet a growing customer demand for metal tile roofs.
55. Similarly, Fletcher Residential, a spec builder in Auckland, exclusively provides metal roofing tiles. This is despite the Auckland region traditionally has favoured concrete tiles. Fletcher Residential advised that metal tiles are now an accepted product in the market, and in its view, using metal tile roofs does not inhibit its ability to sell its houses.
56. Fletcher Residential provided data to the Commission for its developments during six-monthly periods from 2004 – 2007.¹³ The data shows that the proportion of concrete tile roofs provided by Fletcher Residential [].

Figure 3. Roof Types Provided by Fletcher Residential 2004-2007

[]

Source: Fletcher Residential

57. Industry participants had mixed views as to other additional costs which may affect the overall cost of a concrete tile roof. The weight of a concrete roof is considerably greater than that of a metal tile roof.¹⁴ Metalcraft was of the view that the lighter weight of a metal tile roof could result in cost savings for the customer. On the other hand, Golden Homes advised the Commission that all of its houses are designed based on the specifications required for a concrete tile roof, and so there would be no reduction in the structural cost of a house if the customer selected a metal tile roof.
58. Based on the evidence before it, the Commission considers that sufficient numbers of customers would be likely to switch from concrete to metal tiles in the event of a SSNIP, such that the two fall within the same market.

Roofing Tiles and Long-Run Metal and Other Roofing Systems

59. The Commission notes that [] for some customers, long-run metal may be a viable substitute for tile roofs. AHI advised the Commission advised that long-run metal has increased in popularity in recent years with the advent of mono-pitch roofs.
60. Metalcraft is of the view that a customer wanting a house with a tile roof would be unlikely to consider long-run metal as a viable substitute to concrete tiles, because the aesthetic offered by roofing tiles is quite different to that of long-run metal.¹⁵

¹³ [].

¹⁴ A concrete tile roof weighs approximately 14t, whereas a metal tile roof weighs approximately 1t.

¹⁵ [].

Rather, a customer would be more likely to switch to another product that offers a similar aesthetic, such as metal tiles.¹⁶ AHI and Stratco shared similar views.

61. As discussed in the Industry Background section of this Decision, there are a range of other roofing systems available to residential customers, including Butynol, rubber membrane, clay tiles, copper tiles, and cedar shakes. However, these roofing systems account for a minimal proportion of pitched residential roofs in New Zealand.

Supply-Side Substitution

62. On the supply-side, industry participants were uniform in their view that it would not be possible for a manufacturer and supplier of either metal tiles or long-run metal to switch to manufacturing and supplying concrete tiles within one year and without substantially investing in additional plant and equipment. The Commission is therefore of the view that there is limited supply-side substitutability.

Conclusion on Product Market

63. Despite the limited degree of substitutability on the supply-side, the Commission considers that on the demand-side, sufficient numbers of customers would be likely to switch from concrete tiles to metal tiles in the event of a SSNIP, such that the two fall within the same market.
64. It may be that some customers consider long-run metal as a viable substitute. However, in defining a narrower market of concrete and metal tiles, the Commission takes a conservative approach in assessing this acquisition. A narrow market definition will better highlight any competition concerns of the proposed acquisition, and if there are no competition concerns that arise within the narrow market, none are likely to arise within a wider market.
65. Accordingly, the Commission considers the relevant product market to be the market for roofing tiles for residential roofs with a pitch of greater than 18°.

Geographic Dimension

66. The Applicant submitted that the relevant market is national in scope, as was defined by the Commission in Decision 376. The Applicant stated that Ross Roofing, CSR and a number of other firms that manufacture and distribute roofing materials, do so nationally.
67. In *Monier/Lifestyle*, the Commission considered there to be separate North Island and South Island markets. The Commission noted that due to the high cost of transporting concrete tiles, it is not standard practice to transport concrete tiles across Cook Strait.
68. In respect of this Application, like most other roofing manufacturers interviewed by the Commission, the Applicant does not transport roofing tiles across Cook Strait. CSR advised the Commission that it established a concrete tile plant in

¹⁶ Many designs of modern metal tiles mimic concrete tiles such that aesthetically, the two are indistinguishable.

Christchurch 15 years ago, as it determined this to be a more economical option than distributing concrete tiles to its South Island customers from its plant in Auckland.

69. There are some manufacturers that currently transport roofing tiles between the North and South Island; however, these volumes are not significant.
70. Ross Roofing transports a small proportion of its total concrete tile output from its Auckland plant to the South Island.¹⁷ Ross Roofing advised the Commission that [].
71. Metalcraft is a recent entrant that manufactures and supplies metal tiles nationally from its plant at Tauranga. Metalcraft advised the Commission that [].
72. Stratco is also a recent entrant. It manufactures and supplies metal tiles nationally from its plant in Christchurch. Stratco advised the Commission that [].
73. Based on the evidence before it, the Commission considers that the North Island and the South Island comprise separate geographic markets.

Conclusion on Market Definition

74. The Commission concludes the markets relevant to the consideration of this Application are:
 - the North Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the North Island roofing tile market); and
 - the South Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the South Island roofing tile market).

FACTUAL AND COUNTERFACTUAL

The Factual

75. When assessing the competitive impacts of a merger, the Commission compares the likely situation with the merger (the factual) with the likely situation without the merger (the counterfactual).
76. In the factual, CSR would own and operate Ross Roofing's businesses that relate to the manufacture of concrete roofing tiles and accessories in New Zealand, the distribution and installation of concrete and clay roofing tiles and accessories, the distribution of clay bricks, and the distribution and installation of metal tiles.
77. In respect of concrete tiles, [].
78. Presently, Ross Roofing distributes clay bricks sourced from Australbricks. [].
79. Regarding metal tiles, the Ross Group would continue to manufacture metal roofing tiles through its subsidiary Metrotile (NZ) Limited in the factual scenario. [].

¹⁷ Data supplied to the Commission by Ross Roofing shows that only approximately []% of the concrete tiles manufactured at its Auckland plant were supplied to the South Island in the last three financial years.

The Counterfactual

80. [].
81. [].
82. Accordingly, the Commission considers the likely counterfactual to be that Ross Roofing would be sold to an independent third party.

COMPETITION ANALYSIS

Existing Competition

83. The Commission's analytical framework is to assess the impact of the merger by analysing whether the proposed acquisition would lead to a substantial lessening of competition (SLC) in the affected markets.
84. The Applicant has submitted that there are unlikely to be competition concerns arising due to the acquisition, as the combined entity would face constraint from existing competitors. In addition, these existing competitors could quickly and easily expand their output. The Applicant also submitted that it would face constraint from imports of concrete tiles, and that importers could also expand the volume of concrete tiles brought into New Zealand.
85. In summary, the competition analysis carried out by the Commission assesses whether the potential for exercising unilateral or co-ordinated market power is enhanced in the factual when compared to the counterfactual by analysing existing and potential competition and other possible competitive constraints.
86. The Commission has assessed the degree of existing competition in:
- the North Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the North Island roofing tile market); and
 - the South Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the South Island roofing tile market).
87. The estimated market shares for the North Island and South Island roofing tiles markets (concrete and metal tiles) are set out in Table 1 below. These figures are based on the number of square metres of roofing tiles manufactured and supplied in the 2007/08 financial year.

Table 1. Estimated Market Shares for Manufacturers and Suppliers of Roofing Tiles in the 2007/08 Financial Year.

Manufacturer	Roofing Type	m ² of Material Supplied	
		North Island	South Island
CSR	concrete tile	[]%	[]%
Ross Roofing	concrete tile	[]%	[]%
<i>Combined Entity</i>	<i>concrete tile</i>	<i>[]%</i>	<i>[]%</i>
AHI	metal tile	[]%	[]%
Other	metal tile	[]%*	[]%*
TOTAL		100%	100%
CR3		[]%	[]%
CR3 Post-Acquisition		[]%	[]%

Source: Industry Participants

* Based on estimates provided by AHI.

88. Table 1 shows in the North Island roofing tiles market, CSR currently has a market share of []%, which would increase to []% in the factual. The three-firm concentration ratio would be []% in both the factual and the counterfactual. This is inside of the Commission's safe harbours.
89. In the South Island roofing tiles market, CSR's present market share of []% would increase to []% in the factual. The three firm concentration ratio would be []% in both the factual and the counterfactual. This falls within the Commission's safe harbours.
90. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.
91. In the factual, AHI would be the combined entity's greatest competitor in both of the North Island and the South Island markets.
92. There are a number of other metal tile manufacturers and suppliers that are in the North Island market (i.e., Stratco, Metalcraft, Megami, and Dimond), and the South Island market (i.e., Stratco and Metalcraft). The Commission was unable to obtain accurate market share information from these parties; and so the combined market shares for these competitors were based on estimates furnished to the Commission by AHI.
93. All builders interviewed by the Commission compare prices for metal tiles and concrete tiles on a regular basis. Golden Homes and Gateway Homes, for example, emphasised that many customers want to keep building costs low, particularly given the current economic climate.
94. It is for this reason that many builders, including those which predominantly build houses with concrete tile roofs, advised the Commission that they would offer metal

tiles as their standard roofing option in the event of a price increase for concrete tiles in the factual.¹⁸ As noted in the Market Definition section of this Decision, the price of a concrete tile roof and a metal tile roof is generally similar, and the relative price differential depends upon a range of factors: roof pitch, complexity of the roof (number of hips and valleys), number of storeys on the house, and for concrete tiles, the distance of the house from where concrete tiles are manufactured.

95. And although many respondents stated that some customers have a belief that concrete tiles are a longer lasting product in comparison to metal tiles, builders such as Platinum Homes and Fletcher Residential did not consider it to be particularly difficult to market metal tiles as a standard roofing option, given the advances in technology and durability of modern metal tiles.
96. [] operating at approximately 50% capacity, and could easily expand to meet an increased demand for metal tiles.
97. This is particularly the case for [] incentivised to specifically compete against the combined entity in the factual scenario.
98. In addition, Metrotile advised the Commission that [].

Imports of Concrete Tiles

99. The Commission notes that there are some concrete tiles currently imported from Australia. Both Australbricks and Midland advised the Commission that [].¹⁹ [] the concrete tile imported by Australbricks is a flat profile concrete tile, of which there is no domestically-manufactured equivalent.
100. The Commission considers that imported concrete tiles are unlikely to comprise a significant constraint in either the factual or counterfactual scenarios.

Conclusion on Existing Competition

101. The Commission considers that in the factual, the combined entity will continue to face constraint from existing competitors in the form of metal tile manufacturers and suppliers.

¹⁸ These builders, including Golden Homes and Platinum Homes, advised that a customer could still choose to have a concrete tile roof; however, it would be a concrete tile roof would be an “upgrade” option that the customer would pay extra for.

¹⁹ Australbricks have estimated that [] of imported concrete tiles are lost due to breakages incurred in transit.

OVERALL CONCLUSION

102. The Commission is therefore satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in:

- the North Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the North Island roofing tile market); and
- the South Island market for the manufacture and supply of roofing tiles for residential roofs with a pitch of greater than 18° (the South Island roofing tile market).

DETERMINATION ON NOTICE OF CLEARANCE

103. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by CSR Building Products (NZ) Limited (CSR) to acquire 100 per cent of the shares in, or assets of: Ross Roofing Limited; Roscrete Roofing Tiles Limited; and Ross Brick & Pavers Limited (together, Ross Roofing) from the Ross group of businesses.

Dated this 27th day of August 2008

Paula Rebstock
Chair
Commerce Commission

APPENDIX 1. RELEVANT PARTIES

Key Parties		
CSR Building Products (NZ) Limited t/a/ Monier Bricks & Roofing	CSR	The Applicant
Ross Roofing Limited; Roscrete Roofing Tiles Limited; and Ross Brick & Pavers Limited	Ross Roofing	The Target
Manufacturers and Suppliers of Roofing Products		
AHI Roofing Limited	AHI	Manufacturer/Supplier of Metal Tiles
United Industries Limited t/a Metalcraft	Metalcraft	Manufacturer/Supplier of Metal Tiles and Long-Run Metal
Steel & Tube Holdings Limited	Steel & Tube	Manufacturer/Supplier of Long-Run Metal
Stratco (N.Z.) Limited	Stratco	Manufacturer/Supplier of Metal Tiles and Long-Run Metal
Megami Holdings Limited	Megami	Manufacturer/Supplier of Metal Tiles
	Australbricks	Importer of Concrete Tiles and Clay Bricks
Boral Building Products (NZ) Limited t/a Midland Brick NZ	Midland	Importer of Concrete Tiles and Clay Bricks
Customers		
Golden Homes Holdings Limited	Golden Homes	Design-and-Build Builder
Platinum Homes Limited	Platinum Homes	Design-and-Build Builder
Fletcher Residential Limited t/a Fyfe, Spaceline, Ashton Marsh, Fletcher Living, Sierra, Kingsley Homes, Dempsey Morton	Fletcher Residential	Spec Builder
	G J Gardner Homes	Design-and-Build Builder
Jennian Holdings Limited	Jennian Homes	Design-and-Build Builder
Gateway Homes Limited	Gateway Homes	Design-and-Build Builder
Generation Homes Limited	Generation Homes	Design-and-Build Builder
Other Industry Participants		
O'Donnell Brick & Tile Limited		Distributor of Concrete Tiles
Top Cat Roof and Brick		Distributor of Concrete Tiles
Edwards and Hardy (Hamilton) Limited; and Edwards & Hardy AK Limited		Roofing Maintenance Firm
Rawlinsons Media Limited	Rawlinsons	Quantity Surveyor and Construction Consultant