

**COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE**

The Registrar
Mergers and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Date: 4 May 2011

PART 1: TRANSACTION DETAILS

1 Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for giving the notice.

1.1 This notice is given by New Zealand Comfort Group Limited, a company incorporated in New Zealand under registered number 244650 (**The Comfort Group**). Details of The Comfort Group are as follows:

Registered office: 41-71 Great South Road, Otahuhu, Auckland

Postal address: See above

Physical address: See above

Telephone: +64 9 270 3223

Fax: +64 9 270 6593

Website: www.sleepyhead.co.nz

Individual responsible: Craig Turner
Director, The Comfort Group
Telephone: +64 9 270 3223 ext 305
email: craigt@sleepyhead.co.nz

Contact person: All correspondence in respect of this application should be directed in the first instance to:

Simpson Grierson
Level 27, 88 Shortland Street
Private Bag 92518
Auckland
Telephone: +649 358 2222
Fax: +649 977 5067

Attention: Peter Hinton/Mark Tan
Telephone: +64 9 977 5056 / 5148
email: peter.hinton@simpsongrierson.com/ mark.tan@simpsongrierson.com

2 Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties.

2.1 The seller of the assets the subject matter of this application is Dunlop Living Limited, a company incorporated in New Zealand under registered number 1191918 (**Dunlop**). Details of Dunlop are as follows:

Registered office: 670 Rosebank Road, Avondale, Auckland

Postal address: See above

Physical address: See above

Telephone: +64 9 828 5169

Fax: + 64 9 828 7709

Website: www.dunlopliving.co.nz

Individual responsible Michael Sexton
Director, Dunlop Living Limited
Telephone: +64 9 828 5169
email: sexton@amlh.co.nz

Contact person See above

3 With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. If relevant, identify any other links, formal or informal, between the merger parties (including interconnected bodies corporate and other persons identified in the foregoing sentence) and its/their existing competitors in each market.

3.1 The Comfort Group

The Comfort Group is a wholly owned subsidiary of The Comfort Group Limited, a company incorporated in New Zealand under registered number 943258, which in turn is owned by interests associated with Graeme Roy Turner and Lynn Craig Turner (**Turner Family**).

- The only formal or informal link between The Comfort Group/the Turner Family and its/their competitors in the markets relevant to this application is that [

]

3.2 Dunlop

Dunlop is:

- (a) 70% owned by Rangatira Limited, a company incorporated in New Zealand under registered number 3508, which in turn is 51% owned by interests associated with the J R McKenzie Trust, 15% owned by other community and charitable

organisations and 34% owned by various individuals;

- (b) 15% owned by interests associated with Michael John Sexton; and
- (c) 15% owned by interests associated with Richard Barton Adams.

Dunlop sells foam to competitors in the bed manufacturing and furniture manufacturing industries, but other than this, as far as The Comfort Group is aware, none of Dunlop, its shareholders or persons interconnected or associated with any of them has any formal or informal links with competitors which are of relevance to this application.

4 Provide details on what is to be acquired.

The Comfort Group is proposing to acquire all of Dunlop's business assets, including:

- (a) the bed manufacturing business carried on by Dunlop together with all assets owned by Dunlop and used in connection with that business;
- (b) the polyurethane foam and polyester fibre manufacturing business carried on by Dunlop together with all assets owned by Dunlop and used in connection with that business; and
- (c) the foam underlay business carried on by Dunlop together with all assets owned by Dunlop and used in connection with that business.

5 Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.

[

The proposed acquisition is not part of an international merger.

]

6 Provide copies of the final or the most recent versions of any documents bringing about the proposed merger (e.g. contracts, sale and purchase agreements, or offer documents if it is a public bid).

Please see attached at Appendix 1. Confidentiality is claimed over the entire contents of Appendix 1 in the terms set out in paragraph 31 below.

7 If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification. Please indicate whether you would be willing to provide the Commission with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the proposed merger.

The Comfort Group has not notified, and will not be notifying, any competition agency in any other jurisdiction of the proposed merger.

PART 2: THE INDUSTRY

8 Describe the relevant goods or services supplied by the merger parties.

8.1 The Comfort Group is a vertically integrated bed manufacturer. Its core business is the manufacture and wholesale supply of box-style bed bases and associated mattresses (**box base beds**). It manufactures across a broad spectrum of qualities and technologies from entry-level beds with inner sprung mattresses to premium beds made using The Comfort Group's Sensorzone technology.

The Comfort Group conducts a number of business operations as an adjunct to its core bed manufacturing business including:

- a vertically integrated foam manufacturing capability. The Comfort Group installed a horizontal continuous slabstock foam manufacturing plant at its bed manufacturing facility in Auckland in 2008 which manufactures foam virtually exclusively for use in the manufacture of its own beds. [

Prior to the installation of its foam manufacturing plant, The Comfort Group purchased its foam requirements from external foam manufacturers, including Dunlop. Prior to that, The Comfort Group manufactured its own foam using a box foaming plant;

- an underlay business which uses the offcut foam from the foam manufacturing plant, together with imported offcut foam, to manufacture foam carpet underlay for supply to flooring providers; and
- a latex foam manufacturing business which converts latex rubber slurry to a solid latex rubber slab by mixing additives and heating in a conversion mould. The slab rubber is converted and included in mattresses as comfort layers.

8.2 Dunlop

Dunlop is a manufacturer and wholesale distributor of box base beds across a broad spectrum of qualities and technologies. Dunlop also manufactures other furniture, including upholstered sofa beds, lounge suites, recliners and bean bags – there is no aggregation in relation to these non-bedding products.

Dunlop also operates horizontal continuous slabstock foam manufacturing plants in Auckland and Christchurch. Dunlop manufactures foam for use in the manufacture of its own beds and other furniture but, unlike The Comfort Group, Dunlop also manufactures and converts foam for supply to external customers, including competing bed manufacturers and furniture manufacturers.

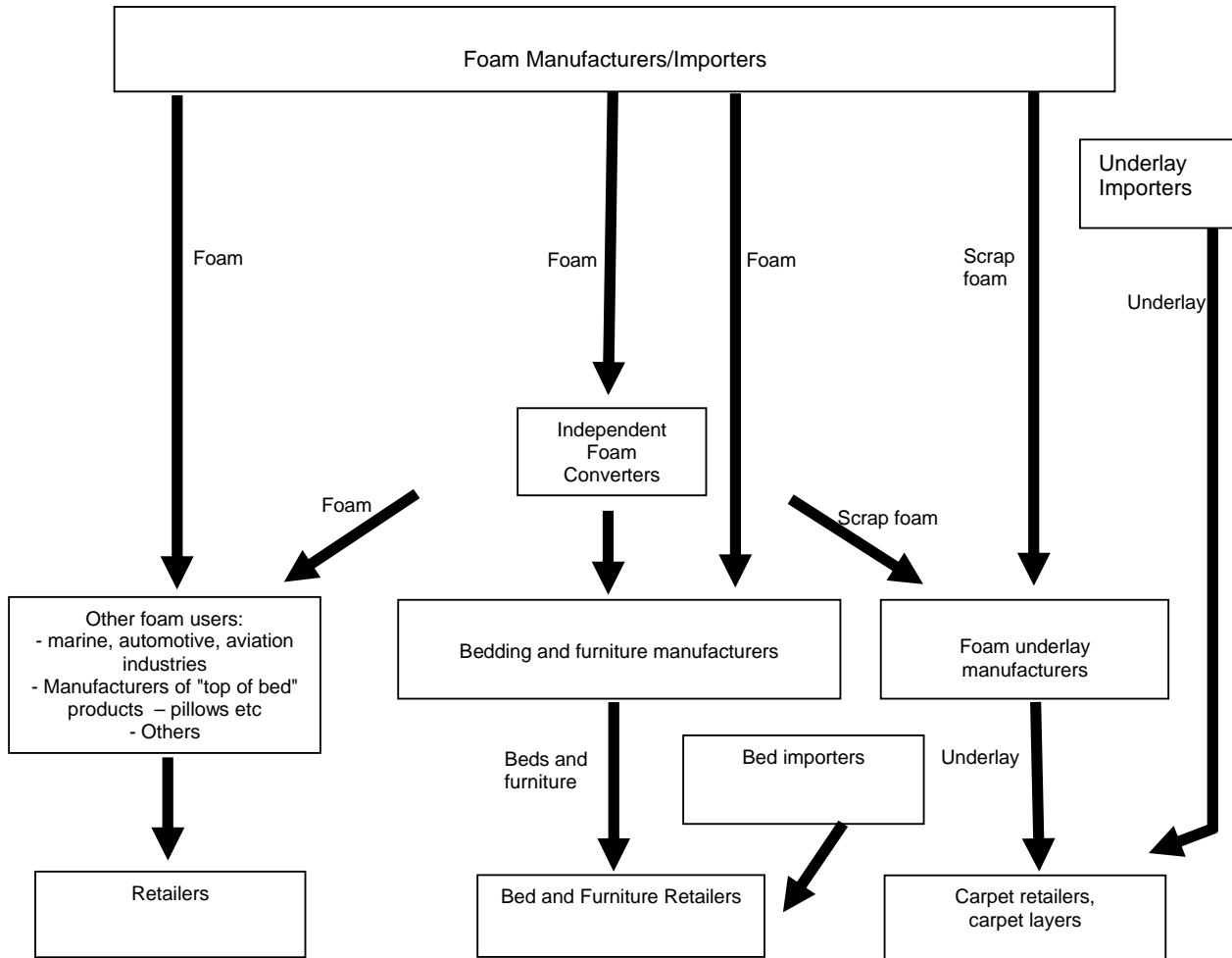
Dunlop is also a manufacturer and wholesale distributor of foam carpet underlay.

Dunlop also manufactures various fillings and fibre, as well as a number of products incorporating these materials, such as pillows, duvet inners, continental blankets, sleeping bags etc. There is no aggregation in relation to these products.

9 Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process.

9.1 Industry supply chain

Set out below is a simplified representation of the supply chain affected by the proposed acquisition.



9.2 Beds

Foam, latex, fibres, fabrics, springs and other inputs are used in various combinations to manufacture box base beds. The manufacturing process includes applying comfort layers (generally foam or latex) onto a support system (generally springs) and enveloping these combined structures with fabrics.

Bed manufacturers will sometimes sell directly to customers, in particular to commercial customers like hotels, but will typically sell their products to retailers for on-sale to consumers. Retail channels to market include:

- national or regional furniture chains such as Farmers, Harvey Norman, Furniture City, Smiths City, Big Save, Redpaths, Freedom Furniture etc;
- national or regional specialist bed retailers such as Bed Post, Bed Stop, Beds R Us, Waitemata Sleep Solutions etc;
- independent furniture or specialist bedding retailers; and
- direct sales (a number of smaller local bed manufacturers such as Brownies and Bed Rumours sell direct to the public).

9.3 Foam

Foam is produced using either a continuous slabstock machine foaming method or a box foaming method. The continuous slabstock machine can be horizontal or vertical and involves pouring the chemical mixture into a partially enclosed conveyor belt and allowing it to expand as it travels down the conveyor belt. The box foaming method involves pouring the chemical mixture into a box, mixing it and allowing the foam to expand in the box. Different foam manufacturers face different sets of economic variables depending on the production technique employed. Some manufacturers' plants have high output but low flexibility, whereas others have high flexibility but low output. Furthermore, it is difficult to reconfigure foam manufacturing plants to produce different outputs.

Once expanded, all foam blocks are converted, or cut into usable shapes and sizes, for use in downstream industries. Conversion can either be done by the manufacturer, if it has the appropriate cutting equipment, or by dedicated foam converters who acquire foam from manufacturers for conversion and on-sale, or by customers, such as Para Rubber, Freedom Furniture or smaller furniture manufacturers, who have their own foam conversion facilities.

Customer requirements are diverse, with each customer having different requirements as to the quality, grade and conversion requirements. Foam customers include:

- bed manufacturers, which are the largest single group of users of foam in New Zealand. Bed manufacturers require only a limited range of foam in terms of quality and grade, and only simple cuts of slab foam in terms of conversion requirements;
- furniture manufacturers. Furniture manufacturers require a much wider range of foam in terms of quality and grade, and have complex conversion requirements;
- other manufacturers, including manufacturers in the marine, automotive and aviation industries, which require specialist foam, and manufacturers of "top-of-bed" products (pillows etc).

Typically these customers will use foam as an intermediate product for incorporation into another product for supply in turn to the end user.

9.4 Underlay

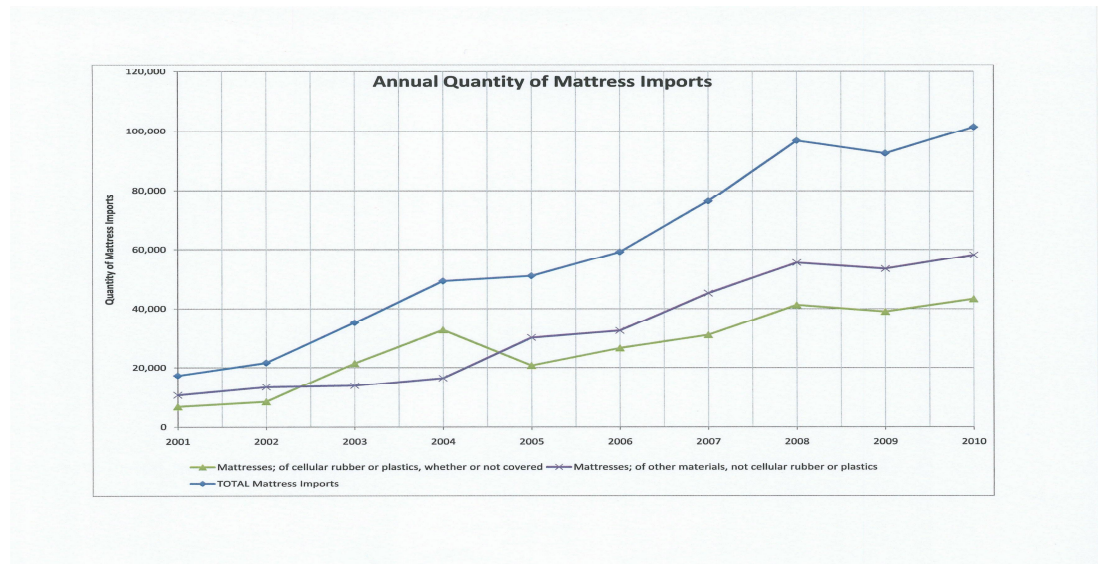
Underlay is a thin layer of cushioning that is laid beneath carpet. In New Zealand it is generally manufactured from either rubber or foam. Foam underlay is made from offcut foam. The Comfort Group and Dunlop use offcut foam from their local manufacturing plants in producing underlay but the vast majority of offcut foam used is imported into New Zealand – The Comfort Group itself imports approximately 90% of its offcut foam requirements. The offcut foam is ground into crumbs and mixed with a binder. The resulting mix is then put into a block mould and heated, creating a solid block of rebonded foam (rebonded foam is similar in principle to particle board made from sawmill waste). The blocks are then peeled into sheets and cut and wrapped into the final product.

Underlay manufacturers will typically sell their products to carpet retailers and carpet layers for use in laying carpets.

- 10 Describe the current industry trends and developments including the role of imports and exports, emerging technologies and/or changes in supply and demand dynamics.

10.1 Beds

Bed manufacturers have been under considerable pressure from imports for a number of years and this is expected to increase in the foreseeable future. Imports have been growing at a strong annualised rate since 2005 and imported beds now account for at least 10% of the box base bed sector. The recent growth of mattress imports is illustrated below:



Source: Statistics New Zealand data

Significant volumes of beds are imported into New Zealand by independent importers, from the lower to medium end of the quality range (where imported beds are retailing at prices up to 40% lower than locally manufactured beds) through to the premium end of the quality range. Importers sell through normal retail channels, including Harvey Norman, Bed Post, Smith & Caughey, Big Save, Target Furniture, Best Buys, Redpaths, Freedom Furniture, Hunters Furniture and Early Settler.

Quite apart from the pressure locally based manufacturers face from imports, the bedding market has been characterised by intense rivalry for a number of years. This has resulted in wholesale prices remaining static or falling in nominal terms since 2005 despite significant increases in input costs over the same period.¹ Retail prices have followed a similar trend with average retail prices for mattresses having reduced in nominal terms over the last four years as retailers compete for sales in a shrinking market.

¹ By way of illustration, cotton prices have increased from just over US\$0.50 per pound in March 2009 to over \$1.60 per pound in December 2010, polyester staple fibre prices have increased from just over US\$1.40 per kilogram in January 2010 to over \$1.80 per kilogram in January 2011, polyol prices have increased from just under US\$1.30 per kilogram in March 2009 to around \$1.90 per kilogram in March 2011 and latex prices have increased from under US\$1,000 per tonne in December 2008 to over US\$3,500 per tonne in February 2011.

Finally, The Comfort Group has been experiencing a steady loss of market share to smaller bed manufacturers since at least 2008 despite pricing remaining static (and would expect a significant loss of market share should it attempt to raise prices). The Comfort Group believes that Dunlop is undergoing a similar experience.

10.2 Foam

Foam manufacturers are under considerable pressure from imports and this is expected to continue in the foreseeable future. Imports have been a feature of the foam industry for a number of years. Although the Commission did question in Decision 641 the extent to which imports competitively constrain locally based foam manufacturers for bedding and furniture grades of foam, there can no longer be any serious doubt that this is the case. The importing of bedding and furniture grades of foam is now a proven business case, especially with Australian foam manufacturer Joyce Foam Products (**Joyce**) having secured an exclusive supply arrangement with both Sealy New Zealand Limited (**Sealy**) and A H Beard, and now supplying nearly one tenth of all foam used in New Zealand, accounting for nearly a quarter of all third party foam sales in New Zealand (despite the unfavourable exchange rate).

Foam manufacturers are also increasingly being constrained by the competitive pressures facing their customers. The vast majority of foam used in New Zealand is used by bed manufacturers and furniture manufacturers. Intense rivalry in the bedding market has caused a steady erosion of margin for bed manufacturers over a number of years. Local furniture manufacturers have fared even worse, with imports pricing many local furniture manufacturers out of the market² and remaining local manufacturers now being essentially price takers with the price set by import pricing. In these circumstances, the ability of bedding and furniture manufacturers to absorb increases in component pricing has become extremely limited. As a result, foam manufacturers have limited discretion in relation to pricing to substantial numbers of customers. Foam manufacturers have to price at a level that allows the customer to manufacture and sell competitively with imported products, and for many foam customers, that level has already been reached – even a monopoly foam supplier would face that reality.

In 2000, approximately 4,700 metric tonnes of foam was used in New Zealand per annum but that is now down to just over 3,000, due largely to the increase in imports of fully built up beds and furniture. As imports of fully assembled beds and furniture continue to grow and volumes of locally manufactured beds and furniture continue to shrink, as they are fully expected to do, the volume of local foam demand will fall even more, and the level of local excess capacity will rise, further increasing pressure on local foam manufacturers.

Finally, The Comfort Group has installed a horizontal continuous slabstock foam manufacturing plant as it previously told the Commerce Commission it would. Although its foam manufacturing plant had always been intended primarily to supply The Comfort Group's internal foam requirements, and had been configured accordingly, The Comfort Group had been hopeful, at or around the time this plant was installed, that it would be able to supplement this with external sales. For this reason, The Comfort Group established a formal sales and marketing division in 2009 which pursued every possible opportunity. However, these efforts failed, the sales and marketing division was closed, and virtually all of The Comfort Group's [

² As an example, sofa imports now make up approximately 80 to 90% of all sofas sold in New Zealand, compared to the situation as recently as 2005 when they made up approximately 10 to 20%.

tonne annual foam production is used in its bed manufacturing business.]

The reasons The Comfort Group failed to secure external customers are as follows:

- (a) The Comfort Group's foam manufacturing plant was commissioned specifically to provide a secure supply of foam to its bed manufacturing plant and was therefore configured with high output and low flexibility in mind. The plant manufactures long blocks of foam (30 metre blocks) and only has the capability of manufacturing [] grades of bedding grade foam. By contrast Dunlop's foam manufacturing plants were configured with low output and high flexibility in mind. Dunlop's plants manufacture short blocks of foam and have the capability of manufacturing [] grades of foam. Appendix 2 shows a comparison of the grades of foam produced by Dunlop and those produced by The Comfort Group (confidentiality is claimed over the entire contents of Appendix 2 in the terms set out in paragraph 31). Appendix 2 illustrates the limited extent of actual overlap between The Comfort Group and Dunlop's foam manufacturing capabilities and therefore the minimal aggregation that will in fact occur in the foam manufacturing industry post-acquisition.
- (b) The set-up around The Comfort Group's foam manufacturing plant was similarly designed having regard to the fact that its primary purpose was to provide foam to The Comfort Group's bed manufacturing plant. Storage at the plant was designed with a just-in-time inventory system in mind and was never designed for holding stock – the absolute maximum foam storage capacity of "hot" or "curing" blocks at the plant is [] metre blocks. And The Comfort Group's foam conversion capability is limited to converting foam for use in bed manufacturing and, unlike for Dunlop, does not extend to converting foam for use in non bedding applications, which requires very different conversion equipment and capabilities.
- (c) A supplier wishing to supply furniture foam or specialist foam to the New Zealand market needs a low output and high flexibility plant because external customers require a relatively high number of different grades of foam in relatively low quantities. The Comfort Group's foam manufacturing plant cannot produce the relevant grades of foam and cannot be reconfigured to do so. Even if it could, no furniture manufacturer or specialty foam customer can place a single order for a 30 metre block of a particular grade of foam, and it would not be economic or feasible for The Comfort Group to produce a 30 metre block of a particular grade of foam and use its limited foam storage to store it, let alone various blocks of different grades, to satisfy periodic orders from customers. And even if this were not the case, The Comfort Group does not have the conversion equipment necessary to cut foam into usable shapes and sizes for supply to furniture customers or specialty customers. Put simply, The Comfort Group does not have the skills or the technology to supply foam to the furniture customers or speciality customers.
- (d) This effectively means that the only potential customers that might be available to The Comfort Group are other bed manufacturers but sales to these entities remain problematic. The foam The Comfort Group produces at its foam manufacturing plant for internal use is quite different from foam used by other bed manufacturers in New Zealand and is more expensive to produce. Other bed manufacturers would need to redesign their beds in order to use The Comfort Group-produced foam which they have been reluctant to do especially given the higher cost.
- (e) Even if this were not the case, the vast majority of foam used in the bedding industry in New Zealand is used by The Comfort Group, Dunlop, Sealy and A H Beard which means that the only significant potential customers for bedding grade foam in New

Zealand who do not currently manufacture their own foam are Sealy and A H Beard. Neither appears to view The Comfort Group as a viable source of foam [

Both Sealy and A H Beard could manufacture their own foam if they wished, or support a new entrant, which they have done recently by committing to acquire their foam from Joyce through Nexus.]

10.3 Underlay

Currently the only local manufacturers of underlay in New Zealand are The Comfort Group, Dunlop and two small niche producers who provide a limited amount of competitive constraint on The Comfort Group or Dunlop. Imports are viable, and have historically been a feature of the market, as they are now. For example, prior to the acquisition by Vita of Pacific Brands in New Zealand in 2008 (*Decision 641*), Pacific Brands imported a substantial proportion of New Zealand's total underlay requirements from Australia. Customers regularly switch between locally manufactured product and imported product, and this is expected to continue in the future – one current example being Greig & Easternman Flooring Chch Limited, which The Comfort Group understands is in the process of securing supply of underlay from China.

11 Please highlight any relevant mergers that have occurred in this industry over the past three years. Include any acquisition of assets of a business or shares which the merger parties (or any interconnected or associated businesses) have undertaken in the last three years.

Dunlop acquired all of the foam, flooring and Sleepmaker bedding assets of Pacific Brands Holdings (NZ) Limited in 2008 – please refer to Decision 641.

The Comfort Group is in the process of acquiring all of the bedding and foam assets of Pacific Brands in Australia.

Other than the above, none of The Comfort Group, Dunlop and their respective interconnected or associated businesses have acquired any assets of a business or shares in the last three years which might be of relevance to this application.

PART 3: MARKET DEFINITION

12 For each area of aggregation of market shares, please define the relevant market(s) for the products or services; functional level; geographic area; and customer dimension and timeframe (if relevant).

12.1 Beds

Taking each dimension in turn:

(a) Product

There are a number of sleep solutions available to consumers including box base beds, slat beds, sofa beds, futons, water beds and air beds. The Comfort Group and Dunlop overlap only in the manufacture of box base beds and, although all

sleep solutions are believed to be in the same market, The Comfort Group will proceed on the conservative assumption that the relevant product market is limited to box base beds rather than encompassing the broader spectrum of available sleep solutions.

There are beds of varying qualities and which use different technologies within the broader box base bed market. For example, The Comfort Group produces inner sprung and pocket spring mattresses at the lower to medium end of the market as well as premium beds using its Sensorzone technology. Dunlop, Sealy, A H Beard and others have similar offerings. However, while not sensitive to this for the purposes of this application, The Comfort Group does not believe it necessary or appropriate to define narrower product markets based on the varying type or quality of bed within the broader box base bed market, given:

- the absence of any bright line distinction, or break in the chain of substitution, across the range of beds in the box base bed category; and
- the absence of any marked difference between the competitive environment for box base beds in general as opposed to any particular segment, with the four major market participants operating across segments, and various smaller bed manufacturers (as well as importers) operating in each individual segment as well.

(b) Functional level

Both The Comfort Group and Dunlop operate at the manufacturing and/or import and wholesale distribution level, and the market should be defined accordingly.

(c) Geographic

There are no material impediments preventing any manufacturer from supplying on a national basis and the fact that The Comfort Group, Dunlop, Sealy and A H Beard operate nationally, as well as the presence of a significant level of overseas imports, tends to support this proposition. As such, The Comfort Group believes a national market is appropriate.

The Comfort Group therefore proposes a **national market for the manufacture and/or importation and wholesale supply of box base beds.**

12.2 Foam

The Commerce Commission considered the issue of market definition in the foam industry in Decision 641 and found there to be a national market for the manufacture and wholesale supply of polyurethane foam. The Comfort Group agrees with this determination of market definition save that The Comfort Group believes it should be expanded slightly to a **national market for the manufacture and/or importation and wholesale supply of polyurethane foam**, to reflect that imported products are now very much a part of the market as discussed in paragraph 10.2 above.

12.3 Underlay

The Commerce Commission considered the issue of market definition for carpet underlay in Decision 641 and found there to be a **national market for the manufacture and/or importation for wholesale supply of carpet underlay.** The Comfort Group agrees with this

determination of market definition.

- 13 Where relevant, please explain how products or services are differentiated within the market(s).

There is a significant degree of product differentiation in the bed market, where there is a spectrum of varying types and qualities of bed within the broader box base bed sector. Please see paragraph 12.1 for further details.

Foam is produced in various grades and qualities depending on intended end use (and suitability for purpose in terms of grade and quality is of critical importance to customers) but other than that, there is little differentiation within individual grades.

Underlay can be made out of foam or rubber. Both rubber and foam underlay perform the same functions and, there is little, if any, differentiation between the two forms of underlay.

- 14 Provide details of any creation or strengthening of vertical integration that would result from the proposed merger.

Both The Comfort Group and Dunlop are vertically integrated businesses with both having operations in bed manufacture, foam manufacture and underlay manufacture and the proposed acquisition, and the proposed acquisition would result in the aggregation of these two vertically integrated businesses, although as stated elsewhere in this application, the merged entity will continue to face competition (and potential competition) at each relevant level in the supply chain.

[

]

PART 4: COUNTERFACTUAL

- 15 In the event that the proposed acquisition does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry

If the proposed acquisition does not take place The Comfort Group will continue to operate its vertically integrated business as it does at present. It will continue to operate its core bedding business as it has in the past. [

although it will continue to come under pricing pressure and market share pressure, particularly from imports. It will continue to manufacture foam virtually exclusively for its own use. And it will, for as long as it remains profitable to do so, continue to compete in underlay although it may lose significant levels of market share should an increased level of imports enter the market as The Comfort Group expects, and/or other local manufacturers increase their market presence and/or a new independent start-up operation be developed.

Similarly The Comfort Group expects Dunlop to continue to operate its vertically integrated

business as it does at present in the short to medium term, although Dunlop's longer term prospects under its present private equity funding model are not as clear. It will continue to manufacture foam partly for its own use within its bedding and furniture businesses. It will continue to compete in the bedding business [

] and will also continue to come under pricing pressure and market share pressure in the ordinary course. And it will, for as long as it remains profitable to do so, continue to compete in underlay although, again, it may lose significant levels of market share should an increased level of imports enter the market as The Comfort Group expects, and/or other local manufacturers increase their market presence and/or a new independent start-up operation be developed.

PART 5: COMPETITION ANALYSIS

16 Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).

16.1 Beds

Current competitors of Dunlop and The Comfort Group include:

(a) Sealy

Sealy is a local bed manufacturer which is part of Sealy Australia, a major bed manufacturing company with operations in Australia, Asia and the South Pacific and links, through its licensor in the United States, to the world's largest bedding operation. Since Sealy Australia acquired the New Zealand business, it has been particularly aggressive and successful in New Zealand and is able to draw on the vast world wide resources of Sealy's bedding operations, which is material in terms of the resources Sealy can bring to bear in the future.

Sealy manufactures beds across the various quality segments within the box base bed category. Sealy has established retail channels through which it brings its beds to market including nationwide chains Harvey Norman, Bed Post, Bed Stop and Big Save.

(b) A H Beard Limited

A H Beard Limited (**A H Beard**) is a local bed manufacturer which is owned by A H Beard Holdings Pty Limited in Australia. It manufactures beds across the various quality segments within the box base bed category. A H Beard has established retail channels, including Harvey Norman, Waitemata Sleep Solutions and independent retailers.

(c) Brownies

Brownies is a local manufacturer and importer of beds which has been operating in New Zealand since 1939. Brownies has retail store fronts and sells direct to consumers under a licensed US brand "Thera-pedic". It sells across a range of segments in the box base bed category and have built their market position around direct to consumer wholesale pricing.

(d) Wellington Beds

Wellington Beds is a New Zealand manufacturer of beds which also has retail stores and sells direct to consumers, under the "Natural Rest" brand. It manufactures across a range of segments from lower end specification to mid to premium end product in the box base bed category.

(e) Tempur

Tempur is an importer of predominantly standard polyurethane foam and memory foam constructed mattresses and pillows, together with box style bases. Tempur is an internationally sold brand with significant scale and distribution. In a relatively short time operating in New Zealand, Tempur is already a significant competitor at the premium end of the market, and has established distribution channels through Harvey Norman, Bed Post and Smith & Caughey.

(f) Bed Rumours

Bed Rumours manufactures and assembles a range of beds covering popular technologies such as pocket spring and Bonnell, and supply many of the independent furniture stores nationally. Bed Rumours supply the Target Furniture chain of furniture stores nationally and have a strong floor presence. They also sell direct, specialising in the commercial sector, supplying motels and hotels nationally.

(g) Sapphire Furniture

Sapphire Furniture manufactures and assembles mattresses and bases in New Zealand. It has a fast growing distribution network, selling through major national retailers such as Big Save, Furniture Court, North South Furnishing Group and major independents such as Forlongs of Hamilton. Sapphire Furniture supplies mainstream spring technologies such as pocket spring and Bonnell, aggressively targeting entry to mid market price points.

(h) Rest

Rest has been manufacturing beds and operating in New Zealand for 20 years, and sell direct to the public through their own retail store fronts. Rest manufactures beds under the "Thera-pedic" international license.

(i) Imports

Significant volumes of beds at the lower to medium end of the quality range are imported into New Zealand by independent importers and sold through normal retail channels (including Big Save, Target Furniture, Best Buys, Freedom Furniture, Redpaths, Hunters Furniture and Early Settler) at prices up to 40% lower than locally manufactured equivalent products. Beds at the higher end of the quality range, are also imported, most notably by Tempur as discussed above.

(j) Other NZ manufacturers

There are several other New Zealand manufacturers who have their own local manufacturing operations and sell through their own stores to the public and commercial customers. These include Waikato Bedding, Nelson Bedding and The Bed Barn.

16.2 Foam

Current foam manufacturers/importers (or near entrants) other than The Comfort Group and Dunlop are:

(a) Auckland & Mainland Foams

Auckland & Mainland Foams, formerly Enviro-foam, manufactures a wide range of foam grades, from high end foams to low-end, low density foams, using the box foaming method of production. Auckland & Mainland Foams currently supplies foam to both bedding and furniture manufacturers. The Comfort Group estimates its productive capacity at over [] tonnes per annum and its current utilisation at under [] tonnes per annum, giving Auckland & Mainland Foams excess capacity of approximately [] tonnes per annum. To put this in context, the total amount of third party foam sales in New Zealand is estimated to be 1,500 tonnes per annum.

(b) Joyce

Joyce is Australia's second largest foam producer, the largest supplier to external users of foam in Australasia and is widely recognised as having high technical capabilities. Like The Comfort Group and Dunlop, it uses the horizontal continuous slabstock foam manufacturing method of production. It already has a proven path to market in New Zealand through Nexus, which converts the imported foam and on-supplies it to end users including Sealy and A H Beard. Joyce's estimated excess capacity is approximately [] tonnes per annum, more than sufficient to supply all of the foam currently used in New Zealand.

(c) Foamco

Foamco is a foam manufacturer based in Australia. It operates vertical continuous slabstock and box foaming plants. It does not currently import foam into New Zealand but could start doing so either by providing a fully converted product or by using the same model as Joyce i.e. exporting to a locally based foam converter in New Zealand, like Greenpark Products Limited (**Greenpark**), which would convert the imported foam and on-supply it to end users. Foamco's estimated excess capacity is approximately [] tonnes per annum, sufficient to supply all of the foam currently used in New Zealand.

16.3 Underlay

Current local manufacturers of underlay other than The Comfort Group and Dunlop are:

(a) Padco Limited

Padco Limited (**Padco**) is a foam underlay manufacturer operating out of Taupo. Padco is a small niche provider specialising in high end underlay products.

(b) Pinnacle Underlay Limited

Pinnacle Underlay Limited (**Pinnacle**) is a rubber underlay manufacturer operating out of Hamilton. It manufactures rubber underlay out of reconstituted tyres and specialises in high end underlay products.

There are also a number of entities who either currently import or could easily start importing underlay including:

(a) Godfrey Hirst

Godfrey Hirst is a large carpet manufacturer which could import underlay and bundle this with carpet. The Comfort Group understands that Godfrey Hirst has started doing this in Australia and there is no reason why it could not do the same in New Zealand.

(b) Cavalier Bremworth

Cavalier Bremworth is a large carpet manufacturer which could import underlay and bundle this with carpet.

(c) Foamco

Foamco recently acquired the Airstep (formerly known as Bridgestone) rubber underlay business in Australia, which produces a range of rubber and recycled textile underlay. Airstep imports underlay into New Zealand through Jacobsen Creative Surfaces Limited. [

]

(d) Gilt Edge Industries Limited

Gilt Edge Industries Limited is a wholesale distributor to the flooring preparation and installation industry. It imports rubber underlay from RLA Polymers in Australia.

(e) Real Value Marketing Services Limited

Real Value Marketing Services Limited is a specialist importer of carpet and vinyl flooring. They currently import underlay from China in container-loads, and service a number of carpet wholesalers.

(f) James Halstead Flooring New Zealand Limited

James Halstead Flooring New Zealand Limited is a flooring supplier. It has imported foam underlay in the past but currently sources supply from Dunlop and The Comfort Group. It could easily start importing again.

(g) Greig & Easterman Flooring Chch Limited

Greig & Easterman Flooring Chch Limited have imported foam underlay in the past but currently source supply from Dunlop. It could easily start importing again and are actively looking to China for a new supplier.

(h) Flooring Wholesale Limited

Flooring Wholesale Limited is a wholesale supplier of a range of flooring accessories and supplies including foam and rubber underlay. Flooring Wholesale Limited currently sources underlay from Dunlop, but has, in the past, sourced underlay from China.

(i) InterfaceNZ Limited

InterfaceNZ Limited is the distributor of InterfaceFLOR carpet tiles in New Zealand. It does not currently supply underlay but could easily import it and bundle it with its carpet tile offering.

- (j) Tauranga Floor Coverings Limited
- Tauranga Floor Coverings Limited is a flooring supplier and installer, who currently imports underlay from China and has done so for a number of years.
- (k) CBD Carpet Mill
- CBD Carpet Mill is a retail flooring chain which currently imports underlay through Real Value Marketing Services Limited (see above).
- (l) Carpet Court
- Carpet Court is a major retail flooring chain which does not currently import underlay but could easily start doing so for supply through its distribution network.
- (m) Carpet One
- Carpet One is a major retail flooring chain which does not currently import underlay but could easily start doing so for supply through its distribution network.
- (n) Flooring Extra
- Flooring Extra is a major retail flooring chain which does not currently import underlay but could easily start doing so for supply through its distribution network.

17 Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include the estimated total value of the domestic market; and the source of the data provided.

17.1 Beds

Rank	Competitors	Estimated Revenue (NZ\$m)*	% of Market Share by Revenue*
1	The Comfort Group	[]	[]
2	Dunlop	[]	[]
3	Sealy	[]	[]
4	A H Beard	[]	[]
5	Brownies	[]	[]
6	Sapphire Furniture	[]	[]
7	Wellington Beds	[]	[]
8	Tempur (Imports)	[]	[]
9	Rest	[]	[]
10	Bed Rumours	[]	[]
11	Other – NZ made	[]	[]
12	Other – imports	[]	[]
	Total	[]	100

*Data based on estimates of The Comfort Group and Dunlop. Estimate of value of imports based on Statistics New Zealand data.

17.2 Foam

Rank	Competitors	Estimated volume manufactured/imported*	% of volume manufactured/imported*	Estimated volume of external sales*	% of volume sold*
1	Dunlop	[] tpa	[]	[] tpa	[]
2	The Comfort Group	[] tpa	[]	[] tpa	[]
3	Auckland & Mainland Foams	[] tpa	[]	[] tpa	[]
4	Joyce	[] tpa	[]	[] tpa	[]
	Total	[] tpa	100	[] tpa	100

*Data based on estimates of The Comfort Group and Dunlop. Total value of market for external sales is estimated at \$14 million per annum.

17.3 Underlay

Rank	Competitors	Estimated Revenue (NZ\$m)*	Estimated % of Market Share by Revenue
1	Dunlop	[]	[]
2	The Comfort Group	[]	[]
3	Padco	[]	[]
4	Pinnacle	[]	[]
5	Imports	[]	[]
	Total	[]	100

*Data based on estimates of The Comfort Group and Dunlop based on net value after rebates.

18 To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

18.1 Beds

As discussed in paragraph 10.1, the bedding market has been characterised by intense rivalry for a number of years and is expected to become even more so in future. Clearly, The Comfort Group and Dunlop currently provide a competitive constraint against each other, but following the proposed acquisition, the merged entity will face no less significant constraint from existing competitors:

- Sealy is a major international bedding company with capacity to increase production in response to any attempt by the merged entity to increase prices. Indeed, it has expanded and taken market share over recent years even without the impetus of a price rise. It has established retail channels, including nationwide chains Harvey Norman, Bed Post, Bed Stop and Big Save, through which it can bring any increased volume to market.
- A H Beard is in the same position, being part of a substantial Australian bed manufacturing business, and with capacity to increase production in response to any attempt by the merged entity to increase prices. Like Sealy, it has expanded and taken market share over recent years even without the impetus of a price rise. It also has established retail channels, including Harvey Norman, Waitemata Sleep

Solutions and independent retailers, through which it can bring any increased volume to market.

- Sealy and A H Beard are the most high profile competitors of The Comfort Group and Dunlop in the bed market but even if they were not present in their present contexts, The Comfort Group believes other competitors and dynamics would still constrain the merged entity. Other bed manufacturers may not have the same brand presence but this is not an impediment to their ability to provide a competitive constraint as branding is generally not influential in consumer choice when it comes to beds. Market research conducted for The Comfort Group suggests that customers have weak attraction to brands (in the sense that customers have little commitment to buying a particular brand or from a particular retailer), are confused by the bed-shopping experience, are easily influenced in their decision to purchase any particular product by sales staff and often do not remember the brand they purchased.³ The lack of a strong brand presence has not prevented suppliers from establishing distribution channels with even major retailers. All bed manufacturers provide material competitive constraints now and will continue to do so post-merger. All compete aggressively. All could increase production in response to any attempt by the merged entity to increase prices, and all have, or can readily access, established retail channels through which they can bring any increased volume to market.
- Significant volumes are already imported into New Zealand by independent importers and these importers can and would readily increase volumes imported in response to any attempt by local manufacturers to increase prices. A number of chains, including Harvey Norman, Big Save Furniture, Brownies Retail, Target Furniture, Best Buys, Freedom Furniture, Redpaths, Hunters Furniture, and Early Settler, currently stock imported beds. Some may already be importing, but even if they are not, other retailers, including nationwide chains such as Bedpost and Bed Stop, and regional chains such as Waitemata Sleep Solutions and Furniture City, could easily start distributing imports and many are expected to do so. In addition, there would be nothing preventing an importer (or other new or existing competitor for that matter) from establishing their own distribution channels [

].

So, existing and potential channels to market are available for importers to bring any such increased volume to market.

- There are no impediments that would prevent a retailer from switching suppliers in response to any attempt by their current supplier to increase prices and retailers would have no hesitation in doing so. Some retailers like Harvey Norman maintain a stable of bed suppliers and actively play them off against each other. Others, like Farmers, Smiths City and Beds R Us, will enter into substantially exclusive supply agreements with wholesale suppliers but this will not provide any impediment to switching.⁴ Yet other retailers are not exclusively tied to any manufacturer or group of manufacturers. Some already offer multiple brands. All can change their offerings at any time. At the end-user level, as noted above, there is weak attraction to brands, and nothing that would put a consumer off shopping around different brands (and the evidence is that consumers almost always do shop around when shopping for a bed).

³ A copy of this market research is attached at Appendix 3. Confidentiality is claimed over the entire contents of Appendix 3 per paragraph 31 below.

⁴ For example The Comfort Group has substantially exclusive supply arrangements with Farmers, Smiths City and Beds R Us, but the arrangements with Farmers and Smiths City are terminable on short notice[

].

18.2 Foam

The merged entity will face significant constraints from existing competitors in the foam market:

- Joyce has sufficient excess capacity to supply all of the foam currently used in New Zealand and could easily increase the level of imports to New Zealand in response to any attempt by local manufacturers to increase prices – indeed Joyce has recently done just this even without the impetus of an increase in price and despite the Australian dollar being at historical highs against the New Zealand dollar. Joyce currently supplies through a locally based foam converter, but has sufficient resources and expertise to supply direct to end users in New Zealand should it wish to do so.
- Auckland & Mainland Foams has sufficient excess capacity to cover all third party foam sales in New Zealand and could easily increase production in response to any attempt by the merged entity to increase prices. Its box foaming technology means they are particularly suited to supplying to furniture and specialty foam customers (even more so than Dunlop).
- Foamco does not presently supply foam to New Zealand but could easily and quickly commence importing into New Zealand either by providing a fully converted product direct to end users in New Zealand or by using the same model as Joyce in response to any attempt by local manufacturers to increase prices. Foamco has sufficient excess capacity to supply all the foam currently used in New Zealand.
- There are no material impediments which would prevent a foam customer from switching suppliers in response to any attempt by their current supplier to increase prices.
- The vast majority of foam in New Zealand is supplied to bed and furniture manufacturers for whom foam is a significant component cost. Bed and furniture manufacturers would have no hesitation in switching suppliers in response to any attempt by their current supplier to increase prices by say 5% (although, for the reasons noted above, there are substantial constraints upon raising foam prices to customers who, in turn, compete with fully built up imported product).

While The Comfort Group hopes the information above is helpful to the Commerce Commission, it should not detract from the key point that, on a strict counterfactual analysis, the proposed acquisition will have only a minimal effect on the state of competition in the foam market.

The proposed acquisition will result in a significant degree of aggregation in the foam market if market shares based on volumes manufactured and/or imported are used but the use of these market shares is inappropriate and misleading because they attribute competitive relevance to The Comfort Group's foam manufacturing capabilities that is entirely unjustified.

The reality is that The Comfort Group is not a competitor now, nor is it even a potential competitor. The Comfort Group's internal consumption plays no part in the demand/supply dynamics that set market prices (nor, for the same reason, is Dunlop's internally consumed foam of competitive relevance). Even if The Comfort Group sought to compete, the only two significant prospects are large bedding manufacturers who have significant countervailing power, who have already rejected obtaining foam from The Comfort Group out of hand, who have already committed to obtaining their foam from Joyce and who have the greatest capability, out of any potential foam customers in New Zealand, to set up their own vertically integrated foam manufacturing plant.

The Comfort Group therefore does not believe that it presently provides, or will in the foreseeable future provide, a significant degree of competitive constraint in the foam market. The Comfort Group, therefore, does not believe that the foam market will be any less competitive under the factual than under the counterfactual.

18.3 Underlay

Although the merged entity would have a market share of around 88% following the proposed acquisition, it will continue to face significant constraints from existing competitors in the foam market:

- As noted in Decision 641, importing of underlay is relatively easy and there are a number importers and potential importers of finished underlay, listed in paragraph 16.3, which could easily start importing, or increase the level of imports to New Zealand in response to any attempt by local manufacturers to increase prices.
- The merged entity will continue to face potentially enhanced competition from local manufacturers Padco and Pinnacle which, although small, could expand production in response to any attempt by the merged entity to increase prices.
- There are no impediments which would prevent an underlay customer from switching suppliers should their current supplier seek to exercise market power, and customers would have no hesitation in switching should their current supplier seek to raise prices by say 5%. Indeed, underlay customers can and regularly do switch supplies and in particular between local manufactured product and imported product, driven largely by price. One current example of such a customer switch is Greig & Easterman Flooring Chch Limited, which we understand is in the process of securing supplies of underlay from China.

19 Please explain the requirements for new entry and/or importers in the relevant market(s), including a breakdown of the estimated costs; anticipated timeframes; regulatory requirements; frontier requirements (e.g. tariffs, import licensing, quarantine requirements); and business requirements involved. Please provide the source for any data used.

19.1 Beds

New entry into the bedding market can be effected either by importing beds into New Zealand or by establishing a local bed manufacturing capability.

(a) Imports

There are very few requirements for potential importers to effect new entry into the New Zealand market:

- Costs would largely be limited to the costs of transporting beds to New Zealand. The costs of shipping beds to New Zealand are in the range between \$9 and \$46 per standard queen size unit from Australia. Frontier requirements are limited to an import tariff of 1.3% for beds imported from China. This import tariff will be removed in January 2012 following which all imports will be duty free. It is important to note that the production costs facing importers are so much lower than those applying in New Zealand

that, even with these additional costs, they are able to sell beds in New Zealand at prices up to 40% lower than equivalent locally manufactured beds.

- In terms of business requirements, the key requirement is to establish a distribution channel, although as discussed at paragraph 18.1, access to distribution channels has not proved to be a barrier to imports in the past, and is not expected to be a barrier following the proposed acquisition.

Given the above, an overseas manufacturer could start importing beds into New Zealand almost immediately upon receiving an order from a retailer.

(b) Local manufacture

Establishing a local manufacturing capability is equally viable. The main consideration is the initial establishment cost for establishing a local manufacturing capability, which would primarily be the cost of acquiring and installing the plant. A box base bed manufacturing plant could be acquired and installed for under NZ\$500,000.00. A new entrant with access to an established site could set up a plant and start production within 6 months of ordering the plant.

19.2 Foam

New entry into the foam market can be effected either by importing foam into New Zealand or by establishing a local foam manufacturing capability.

(a) Imports

There are very few requirements for overseas suppliers to effect new entry into the New Zealand market (or equally for a locally based foam converter to secure supply from an overseas supplier and profitably sell it in New Zealand):

- Costs would largely be limited to the costs of transporting foam to New Zealand. Recent improvements in compression technologies have increased the ability of foam to be compressed, lowering the costs of transportation, and the costs of shipping foam to New Zealand are in the range of \$800 per tonne from Australia and \$2,550 per tonne from Asia. To put these amounts in context, current market price in New Zealand for bedding grade foam is approximately \$8,800 per tonne.
- In terms of business requirements, Joyce has demonstrated that the importation of bedding and furniture grade foam can be successfully achieved by a partnership between an overseas foam manufacturer and a locally based foam converter. There are locally based foam converters which would be able to facilitate an importer entering the market including Greenpark and Nexus (and importers could also set up their own conversion facilities in New Zealand), and equally there are overseas foam manufacturers who could supply locally based foam converters wishing to expand.

Given the above, foam can be imported into New Zealand very quickly – essentially the timeframe for new entry would be dictated by the time it takes for an overseas foam manufacturer to engage a locally based foam converter or *vice versa*, load a container and ship it to New Zealand.

(b) Local manufacture

Establishing a local manufacturing capability is equally viable:

- The initial establishment cost for establishing a local manufacturing capability would primarily be the cost of acquiring and installing the plant. A box foaming plant could be acquired and installed for under NZ\$550,000 (including the cost of the machine, installation and cutting equipment). Either of these plants would have sufficient capacity on its own to supply at least all third party sales of foam in New Zealand. Conversion equipment suitable for cutting foam for the furniture industry or specialist industries could be acquired for under NZ\$100,000 (note this is included within the costings for a box foaming plant above) or the new entrant could partner with a foam converter as Joyce has done.
- Regulatory requirements would be limited to the requirement to obtain an air discharge consent under the Resource Management Act 1991 and the requirement for building consent if a new entrant wished to develop a new site for its plant.
- Business requirements would be limited to appropriate distribution arrangements being made to transport foam to customers, which should not be problematic.

A new entrant with access to an established site could set up a plant and start production within 6 to 12 months.

19.3 Underlay

New entry into the underlay market can be effected either by importing underlay into New Zealand or by establishing a local underlay manufacturing capability.

(a) Imports

There are very few requirements for potential importers to effect new entry into the New Zealand market:

Costs would largely be limited to the costs of transporting underlay to New Zealand, which are in the range of \$8.14 per roll from Australia and \$16.85 per roll from Asia⁵. Frontier requirements are limited to an import tariff of 1.3% when importing from China. This import tariff will be removed in January 2012 following which all imports will be duty free. Importation is cost effective at these rates given the relatively high value of underlay in New Zealand, as evidenced by the level of underlay imports currently being made – one example being Greig & Easterman Flooring Chch Limited, which we understand is in the process of securing supplies of underlay from China.

- An importer would also need warehousing space, as it is common for the importer to hold stock for distribution to customers on a just-in-time basis. Obtaining appropriate warehouse space should not be problematic.

Given the above, an overseas manufacturer could start importing foam into New Zealand very quickly.

⁵ These freight rates are based 40 foot container loads, and assuming each roll is 0.33 cubic metres.

(b) Local manufacture

Establishing a local manufacturing capability is a little more involved but the requirements are by no means prohibitive or even significant:

- The initial establishment cost for establishing a local manufacturing capability would primarily be the cost of acquiring and installing the plant. A foam underlay manufacturing plant could be acquired and installed for approximately NZ\$965,000.
- A local manufacturer will require access to offcut foam as this is a critical production input. Offcut foam can easily be imported, and the use of imported offcut foam would not place a standalone manufacturer at a material disadvantage to the merged entity. Even with access to locally manufactured offcut foam, for example, The Comfort Group itself imports approximately 90% of its offcut foam requirements.
- As for importers, warehousing space will also be required for local manufacturers.

A new entrant with access to an established site could set up a plant and start production within six months.

20 Include a full discussion on any factors that could impede entry; and what might prompt new entry post-merger.

20.1 Beds

The only factor that would impede entry by a new local manufacturer is the current level of pricing and margin and the industry expectation that these are expected to continue to be eroded as retailers continue to squeeze suppliers and as imports (and with it, excess local manufacturing capacity) continue to grow. New entry could be prompted by an increase in prices to uncompetitive levels by current competitors. There are no material factors impeding entry by importers.

20.2 Foam

The only factors that would impede entry are that the market is already at overcapacity (and excess capacity is expected to grow as bed manufacturers and foam manufacturers continue to lose volume to fully assembled imports) and that prices are low and are not expected to rise given the inability of customers to absorb increases in component pricing. New entry could be prompted if a major customer like Sealy or A H Beard decides to set up its own foam manufacturing plant like The Comfort Group has done, or support a new entrant into the market.

20.3 Underlay

The Comfort Group is not aware of any factors that could impede entry into the underlay market by a new local manufacturer [

].

21 Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.

21.1 Bedding

The Comfort Group is not aware of any businesses which are likely to establish a local bed manufacturing facility in New Zealand for the reasons stated in paragraph 20.1, but any bed manufacturer in Australasia could start importing into New Zealand very easily, and a number currently do.

21.2 Foam

As discussed previously, Foamco does not currently import foam into New Zealand but could start doing so either by providing a fully converted product or by using the same model as Joyce. The Comfort Group considers Foamco to be a likely entrant if a major customer like Sealy or A H Beard supports its entry in the same way that they have done for Joyce or if other bedding and furniture manufacturers wish to pursue other supply options.

21.3 Underlay

There are a number of other entities which, if they do not import underlay now, could easily start. A number of these are described in paragraph 16.3. There are also a number of Chinese underlay producers that no doubt have excess capacity that could seek customers in New Zealand, which could open the way for entry into the New Zealand underlay market. Such companies include Shanghai Baji, Kangton Industry Inc. and Shine Holdings Corporation Limited. This process is happening now. By way of illustration, as mentioned in paragraph 16.3, Greig & Easterman Flooring Chch Limited is actively looking to China for a new underlay supplier.

22 To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

22.1 Bedding

The rivalry among existing competitors has been a sufficient competitive constraint on The Comfort Group and Dunlop, and will continue to provide a sufficient competitive constraint on the merged entity, without even considering the threat of potential entry. However, given the absence of any barriers, the threat of further entry from imports would suffice, of itself, to constrain the merged entity.

22.2 Foam

Again existing competition has been a sufficient competitive constraint in the industry, and will continue to provide a competitive constraint on the merged entity, without even considering the threat of potential entry. However, the threat of further entry from imports in particular would be more than sufficient of itself to constrain the merged entity.

22.3 Underlay

Imports currently represent approximately 8% of the market for underlay but the relative ease of importing underlay, and the low transportation costs relative to its value, means that they would provide a significant constraint on the ability of the merged entity to raise prices.

23 How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above? Provide reasons for your estimates.

See paragraph 19.

24 To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected? Where relevant, please include a full discussion on the ability of buyers to self supply or import, and the alternative sources of supply available to buyers; and evidence of buyers seeking alternative supply and/or switching suppliers.

24.1 Beds

Large retailing chains have a great degree of countervailing power given the choice available to them at all ends of the spectrum and given that bed suppliers are highly incentivised to supply to them given their volumes. These retailing chains have no hesitation in exercising their countervailing power to place pricing pressure on bed suppliers. Harvey Norman is publicly seen as being very aggressive in its dealings with suppliers, maintaining a stable of bed suppliers (including local manufacturers and importers), regularly playing them off against each other and threatening to drop those who underperform. However, all other substantial retailers have and exercise similar levels of control over their bedding suppliers.

Smaller retailers will of course need to remain competitive with the larger retailing chains and if their current supplier does not give them a price which allows them to compete effectively with the larger retailers they will seek out other suppliers who will. By way of illustration:

- Big Save Furniture changed their bedding supplier mix last year when they found they were struggling to compete against other retail chains. They switched floor space into Sealy branded product to reach a more competitive pocket spring price point;
- Target Furniture altered their bedding supplier mix by introducing Sealy and Dunlop Living product to complement their import product and compete against other retail chains; and
- Forlongs Furnishings are a large regional retailer who have sought alternative supply by bringing in Sapphire Furniture beds for competitive price reasons.

24.2 Foam

Sealy and A H Beard have a great degree of countervailing power given the volume of foam that they consume. They have only recently demonstrated their ability to arrange a secure supply of imported product to meet their foam needs, and just as The Comfort Group has done, they could both vertically integrate into foam manufacture.

Foam manufacturers are also increasingly being constrained by the competitive pressures

facing their customers, as discussed in paragraph 10.2. Foam manufacturers have to price at a level that allows the customer to manufacture and sell competitively with imported products, and for many foam customers, that level has already been reached. Even a monopoly foam supplier would face that reality.

24.3 Underlay

As noted in paragraph 16.3, there are a number of current purchasers of locally manufactured underlay which could self-supply through imports (including a number who have done so in the past) should local manufacturers seek to exercise market power. There are a number of established nation-wide carpet retail chains (such as Carpet Court) who could exercise significant countervailing power on the merged entity post-acquisition. Carpet retail chains are sophisticated purchasers who have experience in importing and distributing products for retail. They have nation-wide logistics systems that could easily be used to facilitate the distribution of imported underlay. Equally, these purchasers could support a smaller local manufacturer such as Padco or Pinnacle, or a new local manufacturer, should the merged entity seek to exercise market power. As noted in paragraph 18.3, these buyers can and regularly do switch suppliers, and in particular between local manufacturers and imports. As such, there is a significant degree of purchaser power which would constrain the merged entity following the proposed acquisition. The intense competition in the retail flooring market makes underlay purchasers particularly sensitive to price increases.

25 If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of the buyers please provide details for five medium and five small buyers.

25.1 Beds

On The Comfort Group's estimates, the top five retailers by sales in New Zealand are:

- Harvey Norman;
- Farmers;
- Beds R Us;
- Smith City; and
- Big Save.

25.2 Foam

On The Comfort Group's estimates, the top five foam customers in New Zealand by volume excluding The Comfort Group and Dunlop are:

- Greenpark;
- Sealy;
- A H Beard;
- Nexus; and
- Pararubber.

25.3 Underlay

On The Comfort Group's estimates, the top five underlay customers in New Zealand by volume are:

- Carpet One;
- Carpet Court;
- Flooring First;
- Flooring Xtra; and
- Gilt Edge Industries.

26 Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

26.1 Beds

The bedding market is characterised by the following factors which would make co-ordinated effects unlikely:

- antagonism between local manufacturers and importers;
- low barriers to entry and expansion;
- asymmetry of market shares and a variety of cost structures;
- a relatively fragmented market with a large number of fringe competitors, in the form of importers and potential importers, who would be able to increase supply to New Zealand should local manufacturers attempt to raise prices in a co-ordinated manner;
- highly differentiated products which would make it difficult for market participants to reach agreement on pricing; and
- buyers with countervailing power as discussed above.

26.2 Foam

The foam market is characterised by the following factors which would make co-ordinated effects unlikely:

- low barriers to entry and expansion including by importers;
- asymmetry of market shares and a variety of cost structures; and
- countervailing power of acquirers.

26.3 Underlay

The underlay market is characterised by the following factors which would make co-ordinated effects unlikely:

- low barriers to entry and expansion;
- countervailing power of acquirers.

- 27 If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition? Please include a full discussion on:
- how the merger would facilitate the realisation of efficiency improvements. Specify the steps the combined entity anticipates it would take, and the timeframe needed, to achieve the efficiencies. Where relevant, include a discussion of the risks and costs involved;
 - the magnitude of the efficiencies, whether the impact would be on fixed, variable or other costs, and generally how the cost structure of the merged entity would change;
 - whether such efficiencies could be realised without the merger, or over a longer timeframe; and
 - whether, and the extent to which, such efficiencies would be passed on to the customers of the merged entity.

[

]

- 28 Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

N/A

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

- 29 Provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants in the form of the example table shown below.

29.1 Beds

	Name of Company <i>Both legal and trading names</i>	Contact Details <i>Postal and physical address, telephone and fax, website</i>	Relevant Contact Person <i>Name, position and contact details including telephone, fax, e-mail</i>
Competitors	Sealy New Zealand Limited	Physical: 24-30 Lake Road Northcote Auckland 0627 Postal: PO Box 36-565	Glen Wahlstrom, General Manager

Northcote
Auckland 0748

Phone: 09 481 0700
Fax: 09 419 0777
Website: www.sealy.co.nz

A H Beard

19 Rawson Way
Takanini
Auckland

Gary Beard,
Chief
Executive

Phone: 09 268 4300

Fax: 09 268 4388

Brownies
Mattress
Service Ltd

C/- Duns Ltd
Level 16
Pricewaterhouse Coopers
Centre
119 Armagh Street
Christchurch
Website:
www.browniesdirect.co.nz

Dean Brownie,
Director

Wellington
Beds Ltd

C/- Naylor Lawrence &
Associates
200 Broadway Avenue
Palmerston North 4410

Paul Bary,
Director

Phone: 0800 289 2233

Website:
www.wellingtonbeds.co.nz

Tempur New
Zealand Ltd

Physical: Level 7
The Bayleys Building
28 Brandon Street
Wellington

Simon Walsh
General
Manager

Postal: PO Box 106530
Auckland City
Auckland 1143

Phone: 0800 4836787

Fax: 0800 876 870

Website: www.tempur.co.nz

Bed Rumours
Ltd

Physical: 18 Tauiri Street
Rotorua

Philip Griffith
Director

Postal: PO Box 1278
Rotorua

Robyn Hamill,
Manager

Phone: 0800 11 55 77

Fax: 07 357 5234

Website:
www.bedrumours.co.nz

Sapphire
Furniture Ltd

3 Mahunga Drive
Mangere
Auckland

Not available

Phone: 09 634 2648

Fax: 09 634 2640

Rest Ltd

25 Copsey Place
Avondale
New Zealand

Stuart Reed
Managing
Director

Phone: 09 828 2159

Fax: 09 828 3551

Website:
www.restbed.co.nz

Buyers

Beds R Us Ltd

Physical: 41-71 Great South
Road
Otahuhu
Auckland 2110

Nick Bowes
National
Franchise
Manager

Postal Private Bag 93315
Auckland 1062

Phone: 09 259 9357

Fax: 09 259 0080

Website:
www.bedsrus.co.nz

Farmers

Physical: 21 Laidlaw Way
Flat Bush
Auckland

Rob
McDermott,
CEO

Postal: Private Bag 94060
Manukau 2241

Helen Northey
GM
Merchandise

Phone: 09 272 6996

Website: www.farmers.co.nz

Smiths City
(Southern) Ltd

PO Box 2343
Colombo Street

Rick Hellings,
CEO

Christchurch

Phone: 03 983 3000

Fax: 03 983 3031

Website:

www.smithscity.co.nz

Big Save
Furniture Ltd

PO Box 12235
Ahuriri
Napier

Ray McKimm,
Director

www.bigsave.co.nz

Target
Furniture

PO Box 41467
St Lukes
Auckland

Kevin Roberts
Franchise
Manager

Phone: 09 969 1671

Fax: 09 573 1442

Website:

www.targetfurniture.co.nz

Best Buys
Furniture
Discounters
Ltd

1 Crosbie Road
Pukekohe

Dave Peck
General
Manager

Phone: 09 238 7341

Fax: 09 238 9800

Website:

www.bestbuysfurniture.co.nz

Freedom
Furniture New
Zealand Ltd

Physical: 49 Station Road
Papatoetoe
Auckland

Neil Richie

Postal: PO Box 200-014
Papatoetoe Central
Auckland 2156

Phone: 0800 469 327

Website:

www.freedomfurniture.co.nz

Redpaths
Furniture Ltd

44b Dalgety Drive
Manukau Wiri
Auckland

Not available

Phone: 0800 FURNITURE

Website:
www.redpathsfurniture.co.nz

Hunter Furniture	220 Moorhouse Ave Christchurch	Matt Roberts General Manager
------------------	-----------------------------------	------------------------------------

Phone: 03 982 4815

Fax: 03 982 4815

Website:
www.furniture.co.nz

Harvey Norman	Physical: Cnr Ronwood Ave and Lambie Drive Manukau City Auckland	Joanne Volpato Bedding General Manager
---------------	---	--

Postal: Private Bag 34 035
Manukau 2241
Auckland

Phone: 0508 46 4278

Website:
www.harveynorman.co.nz

Bedpost (New Zealand) Ltd	Level 1 Bedpost House 34-41 East Tamaki Road Hunter's Corner Papatoetoe Auckland	Robert Fowler, Director
---------------------------	---	----------------------------

Phone: 09 278 1010

Website:
www.bedpost.co.nz

Bed Stop NZ Ltd	C/- Robertson Bixley Ltd 33 Coles Crescent Papakura 2110	Allan Miles General Manager
-----------------	--	-----------------------------------

Phone: 09 442 5025

Website:
www.bedstop.co.nz

Bedscene Ltd trading as	Unit F, 12 Link Drive Wairau Park	Mike Erskine, Director
-------------------------	--------------------------------------	---------------------------

Waitemata Auckland
 Sleep Solutions www.sleepsolutions.net.nz

Furniture City 19 Chipping Dale Roger Butcher
 Ltd Mangere Bridge Director
 Auckland
 Phone: 09 259 3910

29.2 Foam

	Name of Company <i>Both legal and trading names</i>	Contact Details <i>Postal and physical address, telephone and fax, website</i>	Relevant Contact Person <i>Name, position and contact details including telephone, fax, e-mail</i>
Competitors	Auckland and Mainland Foams	Physical: 419 Rosebank Road Avondale Auckland Postal: PO Box 19-311 Avondale Auckland 1230 Phone: 09 828 6733 Fax: 03 828 4718 253 Hereford Street Christchurch	Sharleen Eastmure Manager
	Joyce	5-9 Bridges Road Moorebank NSW 2170 Australia Phone: 0061 1800 021 304 Fax: 0061 1800 807 168 Website: www.joyce.com.au	Not available
Buyers	See paragraph 29.1	See paragraph 29.1	See paragraph 29.1

Buyers	Green Park	20 Greenpark Road Penrose	Allen John Miller Director
		09 5793169 Website: www.greenpark.co.nz	
	Para Rubber	Unit 1 / 2 Amera Place Unit 1 Huntington Centre East Tamaki Auckland	Not available

29.3 Underlay

	Name of Company <i>Both legal and trading names</i>	Contact Details <i>Postal and physical address, telephone and fax, website</i>	Relevant Contact Person <i>Name, position and contact details including telephone, fax, e-mail</i>
Competitors	Padco Limited	PO Box 2017 Taupo 07 3772188	Russell Morgan Director
	Pinnacle Underlay Limited	47 Northway Street Te Rapa Hamilton	Roger Brady Managing Director
	Gilt Edge Industries Limited	37 Fairfax Avenue Penrose	Nick Richardson 09 5797067
	Jacobsen Creative Surfaces Ltd	41 Morrin Road Mt Wellington	Mark Von Batenburg Managing Director 09 5241471
	Real Value Marketing Services Ltd	42 Simon Ellice Drive Glenfield, Auckland,	Carlton Aleraes 0211059124
Buyers	James Halstead Flooring New Zealand Ltd	100 Plunket Avenue Manukau	Glenn Richardson Sales Director 0800 425703

Greig & Easterman Flooring Chch Ltd	Unit 1, 251 Blenheim Road Christchurch 03 3431917	Bill Jolly 033431917
Flooring Wholesale Ltd	9 Industry Road Penrose 09 5250652	Wendy Keams
Tauranga Floor Coverings Limited	33 Burrow Street Tauranga	Ian Taylor Owner/Operator
InterfaceNZ	52 B Arren Way Drive North Shore City, Auckland	Rob Donze 094419850 or 021725977
Carpet One	1/157-159 Hurstmere Road Takapuna 09 9123806	Mike Dean Managing Director
Carpet Court	PWC Building Level 26, 188 Quay Street Auckland	Rodney Martin
Flooring First	Composite Retail Group PO Box 10242 North Shore	Terry Thomson

- 30 Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

Please refer to the attached annual reports. Confidentiality is claimed over the entirety of the contents in each annual report.

PART 7: CONFIDENTIALITY

- 31 If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

- 31.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets and highlighted in green. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- a) the information is commercially sensitive and contains valuable information which is

confidential to the merger parties; and

- b) disclosure of it is likely to give an unfair advantage to competitors of the merger parties and/or unreasonably prejudice the commercial position of the merger parties.

31.2 The Comfort Group and Dunlop request that they be notified of any request made to the Commission under the Official Information Act 1982 for release of their own confidential information, and that the Commission seeks their views as to whether the information remains confidential and commercially sensitive at the time responses to those requests are being considered.

31.3 The foregoing applies equally in respect of any additional information provided to the Commission that is expressed to be confidential.

32 Provide a separate schedule of all confidential information claimed in the application

32.1 Please refer to the attached schedule of all confidential information (which is the same as the information in this application contained in square brackets).

33 Provide two copies of the application. One copy must be a confidential version and the other a public version.

33.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].

33.2 In the public version the confidential information should be removed from within the square brackets, with the brackets remaining, thus [].

33.1 A confidential version and a public version have been provided.

33.2 In the confidential version of the application confidential information is highlighted contained in square brackets and highlighted in green.

THIS NOTICE is given by New Zealand Comfort Group Limited

New Zealand Comfort Group Limited hereby confirms that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

New Zealand Comfort Group Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of

2011

Signed by New Zealand Comfort Group Limited:

Craig Turner
Managing Director

I am a director of the company and am duly authorised to make this application/notice.
