



COMMERCE COMMISSION

Decision No. 719

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

FLETCHER BUILDING AUSTRALIA (PTY) LIMITED

and

CRANE GROUP LIMITED

The Commission: Dr Mark Berry
Sue Begg
Dr Jill Walker

Summary of Application: The acquisition by Fletcher Building Limited, through its wholly owned subsidiary Fletcher Building (Australia) Pty Limited, to acquire up to 100% of the ordinary shares in Crane Group Limited.

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

Date of Determination: 24 February 2011

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THE PROPOSAL

1. A notice under s 66(1) of the Commerce Act 1986 (the Act) was registered on 23 December 2010. The Notice sought clearance for Fletcher Building Limited (Fletcher Building or the Applicant), through its wholly owned subsidiary Fletcher Building (Australia) Pty Limited, to acquire up to 100% of the ordinary shares in Crane Group Limited (Crane).

PROCEDURE

2. Section 66(3) of the Act requires the Commission to either clear or decline to clear 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 Fletcher Building. Accordingly, a decision on the application was required by 24 February 2011.
3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

ANALYTICAL FRAMEWORK

4. The Commission uses an analytical framework for assessing a substantial lessening of competition in the context of an acquisition. The first step is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target, and then considers what, if any, products and geographic regions, constitute relevant close substitutes from both a customer's and a supplier's point of view.
5. The Commission uses a forward-looking type of analysis to assess whether a substantial lessening of competition is likely, so 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).
6. In framing a suitable counterfactual, the Commission bases its view on a pragmatic and commercial assessment of what is likely to occur in the absence of the proposed acquisition.²
7. The High Court³ recently noted that:

Because "likely" means something less than "more likely than not", there may be more than one "likely" counterfactual.... We consider that where there is more than one real and substantial counterfactual it is not a case of choosing the one that we think has greater prospects of occurring.... We are to discard those possibilities that have only remote prospects of occurring. We are to consider each of the possibilities that are real and substantial possibilities. Each of these real and substantial possibilities become counterfactuals against which the factual is to be assessed.
8. The Court further noted that:⁴

If in the factual, as compared with any of the relevant counterfactuals competition is substantially lessened then the acquisition has a "likely" effect of substantially lessening competition in a market.

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

² *Decision No. 277: New Zealand Electricity Market*, 30 January 1996, p 16.

³ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 at 116, 118 and 122.

⁴ *Ibid* at 122.

9. Accordingly where there is more than one potential counterfactual, the Commission assesses the possibilities, discards those that have only remote prospects of occurring, and considers each of the real and substantial possibilities as counterfactuals against which the factual is to be assessed.
10. A comparison of the extent of competition in the relevant markets in the factual and counterfactual scenarios enables the Commission to assess the probable extent of the lessening of competition under the proposed acquisition, and whether that contemplated lessening is likely to be substantial.

KEY PARTIES

Fletcher Building / Humes

11. Fletcher Building is a large New Zealand based building and infrastructure company. In New Zealand, Fletcher Building manufactures and distributes a range of building and construction products, including pre-cast and ready mix concrete, steel, insulation, wood panels and laminates, roofing, and general timber and hardware products.
12. Of particular relevance to this application is Fletcher Building's manufacture of concrete pipes between 250mm and 3000mm in diameter through its subsidiary, Humes. Humes operates a nationwide network of supply outlets which supply both concrete and plastic pipes and pipe systems. In addition to its own concrete and plastic products, Humes supplies competing pipes and pipe system products from other manufacturers. In addition, Fletcher Building owns the Placemakers chain of building supply and hardware stores.
13. Fletcher Building also manufactures plastic pipes and pipe systems via Fletcher Concrete & Infrastructure Limited's (Fletcher Concrete) interest in a joint venture with Hynds Limited (Hynds). The joint venture is Interpipe Holdings Limited which trades as Waters & Farr (the Waters & Farr Joint Venture). The Waters and Farr Joint Venture manufactures polyethylene (PE) pipes and polypropylene (PP) pipes between 16mm and 450mm in diameter.

Crane

14. Crane is an Australian based manufacturer and distributor of building products. In New Zealand, Crane manufactures plastic pipes and pipe systems through its wholly owned business, Iplex Pipelines (Iplex). Iplex manufactures Polyvinylchloride (PVC) and PE plastic pipes between 15mm to 3000mm in diameter.
15. Crane distributes its pipes and pipe systems through its nationwide networks, MasterTrade and Mico Pipelines. Crane Distribution New Zealand Limited (Crane Distribution) arranges the supply of pipe systems at a nationwide level for large projects.
16. In addition to its pipes and pipe systems operations, Crane operates a range of plumbing, electrical and safety outlets under its Mico Bathrooms, MasterTrade, Corys and Equipsafety banners.

Hynds

17. Hynds is a privately owned manufacturer of concrete pipes and other precast concrete products. Hynds manufactures concrete pipes in a range of sizes between 250mm and 2100mm.
18. Similar to Humes, Hynds operates a nationwide network of supply outlets which supplies both concrete and plastic pipes and pipe systems. In addition to its own concrete and plastic

products, Hynds supplies competing pipes and pipe system products from other manufacturers.

19. Hynds also manufactures plastic pipes and pipe systems through its interest in the Waters & Farr Joint Venture with Humes.

Waters & Farr Joint Venture

20. The Waters & Farr Joint Venture is jointly owned by Fletcher Concrete and Hynds. It was established in 2005 []. The joint venture consists of:
 - Waters & Farr plastics PE pipe manufacturing facility (previously owned by Fletcher Concrete) which Fletcher Concrete transferred to the joint venture (the Plastic Pipe Business); and
 - a new twin walled plastic (TWP) machine transferred to the joint venture by Hynds (the TWP Business).
21. Waters & Farr Joint Venture sells around []% of its plastic pipes and pipe systems to its joint venture owners.

OTHER PARTIES

The Marley/RX Group

22. Marley New Zealand Limited (Marley) is a wholly owned subsidiary of New Zealand Investment Holdings Limited which in turn, is part of the Aliaxis Group of companies. Marley manufactures a range of plastic pipes and pipe systems products. Marley produces both PVC pipes and PE pipes in a range of sizes between 90mm to 630mm in diameter.
23. RX Plastics Limited (RX) is a manufacturer of plastic pipes and pipe systems. It is also part of the Aliaxis Group of Companies. RX specialises in the manufacture of pipe products for the rural and irrigation sectors. RX manufactures PE, PVC and PP plastic pipes between 13mm and 450mm in diameter.

PPI Corporation (NZ) Limited (PPI)

24. PPI is a small South Island manufacturer and supplier of products for irrigation, drainage, water supply and domestic watering. PPI makes PE pipes from 40mm to 250mm diameter.

Tyco Flow Control Pacific Pty Limited (Tyco)

25. Tyco is a manufacturer and supplier of plastic pipes and pipe system products. Tyco has a PE pipe and fittings manufacturing plant in Hamilton which produces pipes between 90mm to 1000mm in diameter.
26. Tyco operates a direct to customer sales model which has sales teams based in New Zealand's five main centres. These branches are responsible for the sales and marketing of Tyco's large bore plastic pipes and pipe systems to large civil and infrastructure customers. Tyco sells only []% of its product through pipe suppliers such as Humes and Hynds.

Frank PKS New Zealand Limited (Frank PKS)

27. Frank PKS is a manufacturer of large bore PE pipes from 500mm to 3500mm diameter based in Christchurch.

Absolute Concrete Limited (Absolute Concrete)

28. Absolute Concrete is a small precast concrete manufacturer based in Kaiwaka, north of Auckland. It manufactures concrete pipes between 225mm to 1050mm in diameter.

Plumbing World Limited (Plumbing World)

29. Plumbing World is a cooperative with a national chain of 42 retail and trade plumbing supply outlets. It also distributes pipes and pipe fittings and has recently established a dedicated team to grow its pipes and pipe systems business.

Large Civil Contractors

30. Large civil and infrastructure contractors use pipes and pipe systems as part of large civil construction projects. They account for around []% of all pipe and pipe systems purchases. The Commission spoke with and received submissions from a number of large civil contractors including Fulton Hogan Limited (Fulton Hogan), Downer EDI, HEB Construction Limited (HEB), City Care Limited (City Care) and Hick Brothers Civil Construction Limited (Hick Brothers).

BACKGROUND**Types of Pipes**

31. A pipe system consists of pipes and associated fittings which allow its connection to a range of services including pumping stations, treatment plants, outflows, sewerage and storm water drains. Pipes and pipe systems are made from a variety of different materials, each of which has advantages and disadvantages.

Concrete Pipes

32. Concrete pipes are used in gravity fed or low pressure applications, such as storm water reticulation. The main limitations of concrete pipes are their rigidity and susceptibility to corrosion, which makes them less suitable for applications where ground movement is likely, or for the carriage of sewage which gives off corrosive gas.

Plastic Pipes

33. Plastic pipe systems convey liquids and gases such as potable water, waste-water, liquid chemicals and natural gas. Plastic pipe systems are also used as conduit for cables and wiring. Plastic pipe is more flexible and resistant to ground movement than concrete pipe and can be manufactured in much longer lengths. Plastic pipe can also be pressurised.

Other Pipes

34. There are a number of other types of pipes available in New Zealand including steel, aluminium, ductile iron, fibreglass and vitrified clay. Due to their particular characteristics, these different pipe types are traditionally used for specialised or niche applications.

Uses and Users of Pipes

35. The Commission has previously considered an acquisition involving the supply of pipes and pipe systems in Decision 639⁵. Decision 639 involved the purchase of RX Plastics by New Zealand Investment Holdings.

⁵ Commerce Commission *Decision No. 639: NZ Investment Holdings and RX Plastics*, 2 April 2008.

36. In Decision 639, the Commission identified four key customer groups for plastic pipes. The Commission considers that these customer groupings remain relevant in this instance. They are:
- building / plumbing;
 - civil / infrastructure;
 - rural irrigation; and
 - telecommunications / utilities.

Building / Plumbing

37. Pipes are used within the boundary of buildings for the reticulation of both potable water and waste water. Building and plumbing customers are typically builders, plumbers and drain layers who purchase pipe products from plumbing merchants and building supply outlets. The pipes used for plumbing and building applications are predominantly smaller diameter (less than 250mm) and are usually plastic, although other materials are used in some applications.

Civil / Infrastructure

38. The main purchasers of this category of pipe are local authorities and civil engineering contractors who undertake major infrastructure projects such as water mains, storm water and sewerage piping. Pipes used for civil and infrastructure applications are typically larger in diameter (greater than 250mm) and are mostly concrete or plastic.
39. The majority of pipes supplied to this customer group are for large scale projects and are primarily supplied via competitive tenders. The projects are generally managed by a consulting engineer who designs and specifies the pipe needs of the project taking into account the overall price, ground conditions, what will be carried by the pipeline, the existing pipe networks and the preferences of the asset owner.

Rural Irrigation

40. Pipes used for rural irrigation are typically plastic because of the long pipe runs required and the need for easy transportation and installation, although concrete pipes are regularly used for large scale irrigation schemes. Irrigation pipe systems use a varying range of pipe diameters depending on the size of the scheme and the volume of water carried. Irrigation customers purchase product directly from the manufacturer or through rural supply outlets.

Utilities

41. Pipes required by utilities are used for the reticulation of gas and the housing of telecommunications and electrical cabling (conduit). Purchasers in this grouping are predominantly utilities companies and have exacting specifications as to the performance and design of the conduit used. Pipes used for conduit applications are mainly plastic and are usually less than 250mm in diameter although the diameter used will vary depending on the type and volume of services they are carrying.

Plumbing, Safety and Electrical Supplies

42. Plumbing, safety and electrical supplies are supplied through two main channels:
- retail focussed suppliers such as Placemakers, Mitre10 and Bunnings Warehouse, who supply a relatively limited range of these products predominantly to the DIY market; and

- trade focussed outlets such as Ideal Electrical, Equip Safety and Plumbing World which supply a greater range of products to the plumbing, drain laying and electrical trades.

MARKET DEFINITION

43. The Act defines a market as:⁶

a market in New Zealand for goods or services as well as other goods or services that as a matter of fact and commercial common sense, are substitutable for them.

44. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit maximising, sole supplier of a good or service, not constrained by the threat of entry would impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of the market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.
45. Fletcher Building submitted that consistent with Decision 639, the markets affected by the proposed acquisition are the national markets for the manufacture of:
- PE pipe systems under 250mm; and
 - Large bore pipes over 250mm
46. In addition, Fletcher Building submitted that the regional / local markets for the distribution of pipes and pipe systems and the regional markets for the supply of plumbing, safety and electrical products are relevant to the consideration of this acquisition.

Product Dimension

Pipe Material

Pipes below 250mm

47. No concrete pipes are manufactured below 250mm in diameter in New Zealand. In Decision 639, the Commission considered that for pipes less than 250mm in diameter, different types of plastic pipes are in discrete markets. The Commission considers that while use and preference may dictate that a certain material is used (for example PE pipes for the carriage of hot water), generally different plastic materials are substitutable. For example, both PE and PVC are used by utilities and telecommunications customers for conduit.
48. The Commission considers that for the purposes of considering this application the market for pipes under 250mm includes all types of plastic pipes.

Pipes above 250mm

49. In Decision 639, the Commission concluded that concrete, plastic and other pipes are regular substitutes in the sizes above 250mm. In general, the Commission was informed by market participants that there is regular substitution between concrete and plastic pipes in the majority of applications and that plastic is making significant inroads into areas such as civil/infrastructure applications which were traditionally the domain of concrete pipes.

⁶ Section 3(1A) of the Act.

50. Traditionally, irrigation systems have been predominantly plastic but concrete is used for larger scale schemes. However, [] with its concrete pipe products and considers that it will be highly competitive.
51. Market participants advised the Commission that the material chosen depends on a range of factors including the pipe quality, physical properties of the pipe, suitability for end use, and price. These factors are given varying weight by different users and are often job dependent⁷. For example, a rural irrigation customer may be willing to accept a lower quality concrete pipe at a lower price if the physical demands on the pipe system are less. In contrast, a civil/infrastructure customer looking for a pipe system to go under a highway may place a higher weight on pipe quality and robustness.
52. However, where price is given a higher weight customers advised the Commission that they take the whole of life cost or installed cost into account and not just the pipe price. The Commission understands that while plastic pipe is generally more expensive than concrete, whole of life costs have converged over time such that this is now neutral between plastic and concrete pipes.
53. [] informed the Commission that it routinely bids directly against concrete in large tenders⁸. The Commission also notes that []
54. Market participants provided examples of switching from both concrete pipes to plastic pipes and from plastic pipes to concrete pipes. In the mid 2000s, Timaru District Council embarked on an upgrade of its main trunk sewer line (originally concrete). It conducted studies as to which material it should use and large bore PE pipe was chosen. In addition, Timaru District Council stated at the Ingenium Conference, June 2010 that the use of PE pipe had a cost advantage over concrete and provided significant value for money over concrete in the long term⁹.
55. [], advised the Commission that he had recently recommended 900mm PE pipe for a large roading project due to possible corrosion and abrasion issues. However, the client preferred to use concrete probably because of a preference for the material. [] informed the Commission that the whole of life costs of plastic and concrete are now roughly the same and that the utilisation of concrete pipe over plastic in this project was by his estimation close to cost neutral. This was because while the concrete pipes were cheaper than the plastic pipes, concrete pipes had “a lot more construction cost”.
56. In conclusion, there appears to be evidence of a significant degree of demand-side substitution between concrete and plastic pipes at diameters above 250mm. Accordingly, for the purposes of this analysis, the Commission considers that concrete and plastic pipes are in the same market.

Pipe Size

57. In Decision 639, the Commission defined separate markets for pipes below 250mm and pipes above 250mm. This was because of frequent substitution between pipe materials in

⁷ Interview with [], 1 February 2011

⁸ Interview with [], 14 January 2011

⁹ Interview with [], 14 January 2011

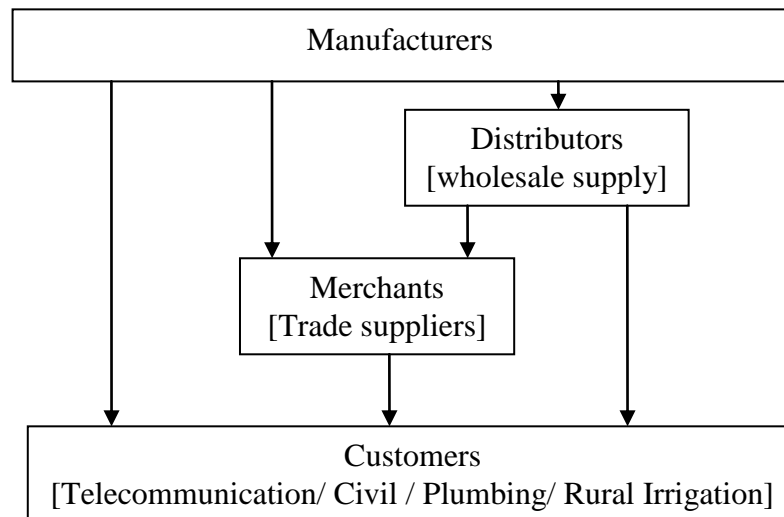
large pipes and pipe systems and limited substitution between pipe materials in pipe systems below 250mm.

58. Market participants spoken to by the Commission were broadly in agreement with a market differentiation based on size. However, the majority of parties indicated that it was more appropriate to have a further delineation between different sizes of pipes above 250mm, namely:
 - pipe diameter under 250mm (small);
 - pipe diameter between 250mm and 450mm (medium); and
 - pipe diameter over 450mm (large).
59. From the demand-side, different pipe sizes are generally not substitutable—a small pipe used for potable water is not suitable for a large irrigation system, although some substitutability is possible between pipes of a similar size range. However, pipe manufacturing plants for small pipes may be able to manufacture medium pipe sizes (and vice versa), switching their existing production facilities at little cost within a short timeframe, if the commercial opportunity arises—for example, if the price of a pipe size they are currently not producing increases by 5–10%. This indicates some degree of supply-side substitutability.
60. It is possible to increase (or decrease) the size of plastic pipe manufactured on a machine by adding different tooling and cooling mechanisms. However, this is only possible within a certain size range and to go beyond this range requires a different machine and significant cost. This indicates that large and medium/small pipe systems may be considered as discrete markets based on supply-side considerations.
61. Further, the Commission notes that pipes and pipe systems below 250mm are restricted to plastic. From a demand side perspective, purchasers in this size market tend to favour particular types of plastic pipe for particular applications although generally the different types of plastic pipe are substitutable.
62. Despite the degree of supply-side substitutability between small and medium pipes and pipe systems, for the purposes of this analysis, the Commission proposes to adopt a conservative view and define discrete product markets for small, medium and large pipes, on the basis that if there are no competition concerns identified in the narrower markets then there are unlikely to be any in a broader market. To this extent, the Commission considers that small, medium and large pipes are likely to be in discrete markets.
63. The Commission considers that for the purposes of considering this application it is appropriate to delineate pipes and pipe systems by size according to the ranges identified in paragraph 58. The Commission considers that this delineation is likely to highlight the key competition implications of the proposed acquisition.

Functional dimension

64. A general outline of the structure of the pipe and pipe systems industry is set out in Figure 1.

Figure 1: Industry Structure



65. The distribution of pipes and pipe systems is generally effected through the following channels:
- distributors or wholesale supply;
 - trade suppliers; and
 - directly to customers or contractors.
66. Most large sales are tender based and are made through the distributors or wholesale supply channel (or in some cases direct by the manufacturer). A large proportion of the distributors' revenue is from contract specific quotes. A number of distributors will have quoted for the particular job and behind those quotes are contract specific quotes from manufacturers for some or all of the job's pipe system requirements. Both Fletcher Building and Crane are involved in this distribution level.
67. The trade supply level is effectively a retail channel which supplies smaller volumes of pipe systems and plumbing, electrical and safety supplies to trades people.
68. The Commission considers the relevant functional dimensions to be:
- the manufacturing of pipes and pipe systems;
 - the wholesale supply or distribution of pipes and pipe systems; and
 - the trade supply of pipe systems and plumbing, electrical and safety products.

Geographic dimension

Manufacturing of pipes

69. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

70. In Decision 639, the Commission found that the geographic scope of the manufacturing market was national for small, medium and large pipes.
71. All the relevant manufacturers of plastic and concrete pipes and pipe systems distribute their products nationally. In particular, evidence indicates that moving pipes around the country is common to meet the needs of large tenders. For example, Frank PKS (based in Christchurch) and Tyco (based in Hamilton), supply medium and large pipes throughout the country.
72. Accordingly, the Commission considers that the geographic dimension of the manufacturing market is national for small, medium and large pipes and pipe systems.

Distribution of pipes

73. Fletcher Building submitted that this market is regional/local in scope. The Commission found that around []% of customers procure pipes and pipe systems on a national basis and the balance are smaller customers purchasing more on a local level who are likely to be less willing to travel greater distances.
74. To this extent, the market is likely to be local, regional or national in scope. However, for purposes of the proposed transaction, the Commission does not consider it necessary to form a definitive view regarding the geographic scope of the market. The likely competitive constraints would be the same if a series of narrower markets or a wider national market is adopted. For this reason, the Commission will conduct its analysis on the basis that this market is national in scope.

Supply of plumbing, electrical and safety products

75. The Commission has previously considered an acquisition relevant to these products in Decision 444¹⁰. That Decision involved an application by Mico Wakefield Limited to acquire up to 100% of the shares in MasterTrade Limited. Both parties were suppliers of plumbing and electrical products.
76. In Decision 444 the Commission considered that the supply of electrical and plumbing products is likely to be regional in nature due to the unwillingness of the majority of purchasers to travel long distances. The Commission considers that the supply of safety products is also likely to be limited by the distances that purchasers have to travel.

Conclusion on the relevant market

77. The Commission recognises that the relevant market defined represents a conservative approach to assessing the competitive impact of the proposed acquisition. The Commission considers that the markets affected by the proposed acquisition are:
- The national markets for the manufacture of:
 - pipes and pipe systems, under 250mm (small pipes market);
 - pipes and pipe systems, 250mm to 450mm (medium pipes market); and
 - pipes and pipe systems, over 450mm (large pipes market).
 - The national market for the wholesale supply or distribution of pipes and pipe systems.
 - The regional markets for the supply of plumbing, electrical and safety products.

¹⁰ Commerce Commission, *Decision No 444: Mico Wakefield Limited and Mastertrade Limited*, 6 December 2001.

INTER-FIRM RELATIONSHIPS

78. A preliminary question the Commission must determine is whether the Applicant is associated with any other parties in the relevant market. Section 47(1) of the Act refers to an acquisition by a person. Person is defined as including two or more persons that are interconnected or associated under s47(2) of the Act.
79. Sections 47(3) and (4) of the Act set out when two or more persons are associated. Two corporate entities are associated if one, either directly or indirectly, is able to exert a “substantial degree of influence” over the activities of the other. The Commission is of the view that, in this context, a substantial degree of influence means being able to bring real pressure to bear on the decision making process of the other, even if that pressure falls short of control.¹¹
80. In determining whether parties are associated, each case must be considered in light of its particular facts. Typically, the Commission takes into account the:
- nature and extent of ownership links between the companies;
 - presence of overlapping directorships;
 - rights of one company to appoint directors of another; and
 - nature of other shareholder agreements and links between the companies concerned.
81. The Commission also considers the interaction between these various factors. For example, the Commission assesses the nature and extent of the communications between those persons, and the apparent influence of one person on the key strategic decisions of the other.¹² The question the Commission has to answer is whether two enterprises can, for the purposes of commerce and competition, be regarded as one.¹³
82. Fletcher Building’s subsidiary, Fletcher Concrete, is party to a joint venture with Hynds that operates under the trading name Waters & Farr. Fletchers and Hynds each have a 50% share in the Waters & Farr Joint Venture. There are four directors of the company, with each shareholder appointing two directors.
83. While Fletcher Building may not have overall control of the Waters & Farr Joint Venture, its 50% share gives it the ability to influence its direction.
84. In addition, it is likely that Fletcher Building (via its subsidiary) has access to information relating to the Waters & Farr Joint Venture’s strategic planning, marketing, substantial or long-term contracts and short-term competitive plans. The availability of strategic information may enable Fletcher Building to alter its competitive behaviour.
85. Fletcher Building and Hynds informed the Commission that the Waters & Farr Joint Venture operates as a separate entity, manufacturing a range of plastic pipes (in the 0-250mm and 250-450 mm diameter ranges) for sale through the Hynds and Humes sales channels (amongst others). However, the Commission considers that the joint venture’s links with Fletcher Building are such that they are likely to be associated.
86. For the same reasons outlined above, Hynds is also likely to be associated with the Waters & Farr Joint Venture. However, there is no evidence to suggest that Fletcher Building and

¹¹ Commerce Commission, *Decision No.278: Air New Zealand/Ansett Holdings Ltd/Bodas Pty Ltd*, 3 April 1996.

¹² Commerce Commission Decision No. 388: *New Zealand Seafood Investments Ltd/Basuto Investments Ltd*, 23 March 2000.

¹³ Commerce Commission Decision No. 278: *Air New Zealand Ltd/Ansett Holdings Ltd/Bodas Pty Ltd*, 3 April 1996, paragraphs 180-182.

Hynds themselves are associated. Fletcher Building has no shareholding in Hynds or board representation. Likewise, Hynds has no shareholding in Fletcher Building or board representation.

87. For the purposes of the present application, the Commission will proceed on the basis that Fletcher Building and the Waters & Farr Joint Venture are associated and should be considered as one head in the market.

FACTUAL / COUNTERFACTUAL

Related transactions

The Waters & Farr Joint Venture Application

88. [

] As a

result, the parties entered into the RCP Option Agreement.

89. The RCP Option Agreement gives the Waters & Farr Joint Venture the option of acquiring the RCP plant from Fletcher Concrete. [

]

90. Should this option be exercised, [

]

91. On 8 February 2011, the Commission registered an application for clearance from the Waters & Farr Joint Venture [] to acquire Fletcher Concrete's RCP plant. At that time, the Commission was already considering the current application.

92. The Commission last considered parallel applications in the Schering-Plough/Merck & Pfizer/Wyeth applications in 2009¹⁴. In these decisions, the Commission considered it appropriate to take the Pfizer/Wyeth application into account in determining the relevant factual and counterfactual scenarios in the Schering-Plough/Merck acquisition because each of the acquisitions was likely.

93. In this instance, the Commission intends to adopt the same approach and factor the proposed acquisitions into its analysis of each of the applications on the basis that each of the acquisitions is likely.

Factual

[] of the Joint Venture Agreement

94. The Joint Venture Agreement contains several [

].

95. The Commission has analysed a number of permutations in the factual that could arise from the exercise of the [] and the RCP Option Agreement. The Commission

¹⁴ Decision No. 678 Pfizer & Wyeth Corp, 20 August 2009.

has also considered whether each permutation is likely. The Commission's analysis has identified that the exercise of the RCP option and the various [] could lead to a broad spectrum of market outcomes, each with varying degrees of aggregation and market concentration. For example, [

].

96. For the purpose of analysing this application, the Commission will use as its starting point the factual scenario that would give rise to the greatest competition concerns when compared to the counterfactual. It does so on the basis that if that comparison does not result in a substantial lessening of competition then it is unlikely any of the other factual scenarios would result in the same.
97. The Commission considers that in this worst case factual scenario, Fletcher Building would acquire Crane and the Waters & Farr Joint Venture would exercise the RCP option and acquire Fletcher's RCP plant. In addition, [

].

98. To this extent, the factual scenario the Commission intends to adopt in this instance is:
- the Waters & Farr Joint Venture acquires Fletcher Building's RCP plant;
 - Fletcher Building [];
 - Hynds []; and
 - Crane is removed as an independent competitor.

Counterfactual

99. Similarly, without the acquisition, the Commission considers that the RCP option is likely to be exercised. The Waters & Farr Joint Venture would acquire Fletcher's RCP plant. [

].

100. Absent the acquisition, Crane would remain an independent competitor in all of the relevant markets.

101. To this extent, the counterfactual scenario the Commission intends to adopt in this instance is:

- the Waters & Farr Joint Venture acquires Fletcher Building's RCP plant;
- Fletcher Building [];
- Hynds []; and
- Crane remains an independent competitor.

COMPETITION ANALYSIS

102. Fletcher Building submitted that it would continue to face constraint from existing competition in respect of all diameter pipes and pipe systems from:
- the two largest competitors, Marley/RX and Tyco, as well as smaller competitors;
 - the ability of large customers to switch between existing competitors;

- existing spare capacity in the market; and
- the ease of imports.

Medium Pipes Market¹⁵

Table 1 provides estimated market shares for the major firms in the medium pipes market.

Table 1. Estimated Market Shares for Medium Pipes Market¹⁶

	2008/2009 (\$000)	%	2009/2010 (\$000)	%
Crane (Iplex)	[]	[]%	[]	[]%
Fletcher Building (Humes)	[]	[]%	[]	[]%
Waters & Farr Joint Venture []	[]	[]%	[]	[]%
Combined Entity	[]	[]%	[]	[]%
Tyco	[]	[]%	[]	[]%
Marley/RX	[]	[]%	[]	[]%
Total	[51,864]	100%	[]	100%

Source: Industry Participants.

103. Table 1 shows that post acquisition, the combined entity would have a market share of []% and the three-firm concentration ratio would increase from []% to []%. In addition, the acquisition will result in the removal of the [] competitor.

104. In the factual, []. While Tyco has a []% share of this market, it is much stronger in the large pipes market with []%.

105. All of the large civil contractors cited Tyco as a competitive alternative to Hynds and Humes for all sizes of pipes and pipe systems. For example, [] approaches Humes, Hynds and Tyco for all tenders worth more than \$[]. [] noted that it deals with Humes, Hynds and Tyco and that the three will “all haggle” to give [] the lowest pricing.

106. Tyco’s manufacturing plant has the ability to produce [] metric tonnes of pipes and pipe systems per annum. Tyco informed the Commission that its plant’s current annualised utilisation is []%.

107. []

]

Nevertheless, Tyco stated:

[]

108. The Commission considers that Tyco provides a degree of constraint on the merged entity in the factual due to the willingness and ability of large civil contractors to easily switch to Tyco and its ability to [].

¹⁵ A diagram outlining the structure of the three pipe markets pre and post acquisition is attached as Appendix 1.

¹⁶ Table 1 outlines the main competitors in this market. The Commission notes that there are a number of other very small competitors in this market. They have not been included because their market share would be negligible compared with the main participants.

109. Marley is the [] competitor in this market. However, similar to [], it is [] in the [] pipes market with []%. Marley advised the Commission that its manufacturing facilities for all pipes and pipe systems is currently [] and operating at about []% capacity.
110. Marley advised the Commission that, given the opportunity, [] The Commission considers that Marley would provide a degree of constraint on the merged entity in the factual due to its significant presence in the [] market and its [].
111. As discussed earlier, most manufacturers of pipe and pipe systems sell their products via the Humes and Hynds supply channels. Large civil contractors make up the largest group of buyers in the supply of pipe and pipe systems (around []% of all purchases). Large civil contractors prefer to purchase from either Humes or Hynds due to the one stop shop service offered by both.
112. Most large civil contractors are informally aligned with either Humes or Hynds. In some cases, these alliances are based on historical relationships, while other alliances offer discounts and preferential rates. However, large civil contractors always seek pricing from at least two independent suppliers.
113. Large civil contractors advised the Commission that they regularly switch between Humes, Hynds, Mico and Tyco. [] stated that they “were not constrained in any way from switching between suppliers,” and that this would not change in the factual. Similarly, [] advised the Commission that it deals with Hynds, Humes, Crane and Tyco and will continue to do so post acquisition. []
[]
[]
114. The Commission considers that large civil contractors are well informed in respect of alternative supply and would be able to readily switch between suppliers in the factual.
115. The Applicant submitted that imports form a significant proportion of the relevant market and would continue to act as a constraint post-acquisition. Most industry participants canvassed by the Commission disagreed because they consider:
- pipes are not practical to import due to the “air” in the pipes, and importing would only be economic for extremely large one-off projects;
 - while pipes can be “nested” into each other to fill up a container, most large projects do not lend themselves to nesting and suppliers would not want to bear the cost of storing unused pipes of varying sizes;
 - large one-off projects are rare and mostly relate to niche pipes (for example very large bore concrete pipes from Thailand for the Christchurch ocean outfall projects); and
 - the current economic climate does not support imports.
116. Accordingly, the Commission considers that imports, or the threat of imports, would provide limited constraint on the combined entity post acquisition.
117. The Commission considers that although the acquisition would remove the second largest rival from the market, in the event that the combined entity attempted to exercise any market power, Tyco and Marley as the next largest competitors would provide significant constraint through [].

Potential Competition – Requirements for Entry

118. The Applicant submitted that conditions of entry and expansion in the PE pipe systems market identified by the Commission in Decision 639¹⁷ are still relevant. Namely that:

- a PE production plant could be established at comparatively low cost;
- the technical ability required to operate manufacturing equipment is not high; and
- the availability and low cost of imported PE fittings to complement PE pipe produced in New Zealand allows manufacturers to readily offer a full pipe system without incurring the increased costs of manufacturing fittings.

119. The Commission considers that the key requirements for entry for the manufacture of concrete and plastic pipes and pipe systems in relation to all sizes are plant, expertise and land. Access to a supply network is not considered to be a necessary requirement for entry at the manufacturing level as Tyco has demonstrated successful entry without it.

120. []¹⁸ informed the Commission that it is easy to obtain the skills and technology to set up PE and PP pipe manufacturing facilities. Tyco's expansion demonstrates that it is possible to enter without the need for a downstream supply arrangement. In addition, [] advised that it imported [] PE plant in 2005 specifically for two large projects at the cost of \$[].

121. []

]

122. []

]

123. []

]

124. []

]

125. Overall, evidence from industry participants supports the contention that the requirements for entry are straightforward. Furthermore, both Tyco and Frank PKS have established significant manufacturing capabilities over the past five to ten years. The Commission also notes that Frank PKS has been able to gain a not insignificant market share of [] in the large pipes market in a relatively short timeframe (5 years). This appears to indicate that customers are willing to support new entrants without a proven track record. [] informed the Commission that they could obtain concrete pipes from suppliers other than Humes and Hynds and would if need be.¹⁹

126. While the requirements of entry are straightforward, industry participants informed the Commission that due to the adverse economic climate and the significant excess capacity in the market, entry is unlikely in the short term. Despite this, the Commission considers

¹⁷ Decision 639, New Zealand Investment Holdings Limited & RX Plastics Limited, 3 April 2008.

¹⁸ []

¹⁹ [] written response, 17 February 2011.

should the excess capacity in the market be fully utilised in the future, the threat of entry would be likely to constrain the merged entity in the factual.

Countervailing Power

127. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
128. In addition to the ease of switching, large civil contractors design the tender process to drive down prices in respect of large projects.
129. Initially, large civil contractors approach the pipe and pipe system suppliers to obtain pricing for the pipes component of a large project. After receiving pricing, the large civil contractor will select the most competitive bid. Once the large civil contractor has won the contract, it will seek a second quote from the original winning supplier. But it will also contact the other suppliers to obtain new quotes. The aim of this second round of requests for pricing is to drive prices down and improve the “bottom line”.
130. The Commission was advised that this process is undertaken by most of the large civil contractors in the industry. For example, [] stated that:

We tend to run a process of pre-bid and then post award if we get the job and the prices will invariably come down again after we are awarded the job so we are keen to have one more go.
131. Similarly, [] advised the Commission that it has recently won a project that contains \$1 million worth of pipe. [] used pipe prices from [] to secure the project, [].
132. A two-stage tender process does have some drawbacks in that it may allow tendering parties to submit inflated preliminary bids in the knowledge that they will have the opportunity to revise these down in the second round. However, the Commission considers that in doing so parties run the risk of precluding themselves from the second round or from future tenders if initial pricing is unrealistic.
133. The Applicant provided the Commission with a representative listing of major civil/infrastructure pipe tenders awarded since 2007. Of the thirteen projects, Hynds and Humes won [] with Tyco and Iplex winning []. This would indicate that no one party obtains a lion’s share of the tenders. The Commission also notes that market share can (and does) fluctuate appreciably due to parties winning and losing these large tenders.
134. As discussed above, Tyco supplies direct rather than through the Humes or Hynds supply channel. While most large civil contractors purchase from either Humes or Hynds, they frequently by-pass the Humes and Hynds one-stop shop supply model to purchase from Tyco. [] all price check and purchase from Tyco.
135. Overall, the Commission considers that large civil contractors would have sufficient countervailing power to constrain the combined entity from exercising market power in the factual due to:
 - the ability of large civil contractors to design the tender process in order to drive down end prices; and
 - the ability to by-pass the traditional Humes or Hynds supply channel and seek supply directly from Tyco.

Co-ordinated Effects

136. In the factual, the removal of Crane would lead to increased concentration in the market as the number of competitors would decrease from five to three. This could potentially enhance the potential for co-ordination in the market. The Commission considers that the presence of strong existing competition, an active competitive tender process run by strong, informed customers and the relative ease of new entry would constrain any enhanced potential for co-ordination. The Commission also considers that the [] of Tyco and Marley/RX would incentivise them to expand and compete vigorously with the merged entity, which would further constrain the exercise of co-ordinated behaviour.

Overall Conclusion on Medium Pipes Market

137. The Commission has considered the impact the acquisition would have in the medium pipes market.

138. In the counterfactual, Crane would continue to operate as an independent competitor. In comparison, the factual scenario would result in Crane being removed as a competitor. While this would lead to a lessening of competition in the market, the lessening is unlikely to be substantial because the combined entity would be constrained by a combination of:

- two strong existing competitors, Tyco and Marley who each have the ability and incentive to expand;
- the straightforward requirements for entry; and
- the countervailing power of large civil contractors.

Small Pipes Market

139. Table 2 provides estimated market shares for the firms that manufacture and distribute small pipes.

Table 2. Estimated Market Shares for Small Pipes Market²⁰

	2008/2009 (\$000)	%	2009/2010 (\$000)	%
Crane (Iplex)	[]	[]%	[]	[]%
Waters & Farr Joint Venture	[]	[]%	[]	[]%
Combined Entity	[]	[]%	[]	[]%
Marley/RX	[]	[]%	[]	[]%
Tyco	[]	[]%	[]	[]%
PPI	[]	[]%	[]	[]%
Total	[]	100%	[]	100%

Source: Industry Participants.

140. Table 2 shows that post acquisition, the combined entity would have a market share of []%, an increase of []%, and the three-firm concentration ratio would increase from []% to []%. Marley/RX, the [] in the counterfactual, would remain the [] in the factual with a market share of []%. Marley sells a large amount of small pipes through the plumbing merchants such as Plumbing World and Plumbing Plus. It also sells its small pipes through the Humes, Hynds and Mico supply channels. As discussed earlier, Marley's

²⁰ Table 2 outlines the main competitors in this market. The Commission notes that there are a number of other very small competitors in this market. They have not been included because their market share would be negligible compared with the main participants.

manufacturing facilities for all pipes and pipe systems is currently [] and is operating at about []% capacity.

141. PPI does not produce a full range of pipes and pipe systems in the small pipes market, and its small market share reflects the fact that it is a niche player. The Commission therefore considers that would only be of limited constraint to the merged entity post acquisition.
142. As noted above, the Commission is of the view that requirements for entry are likely to be straightforward for pipe and pipe systems at the manufacturing level. The Commission considers that should the excess capacity in the market be fully utilised in the future, the threat of entry would be likely to constrain the merged entity in the factual.
143. The Commission considers that Marley/RX's strong position and its [] would provide significant competitive constraint on the merged entity. While Tyco has []% in the small pipes market, it is much stronger in the medium pipes market ([]%) and large pipes markets ([]%). Tyco has the ability to increase its market share across all the pipe and pipe systems markets. The Commission considers that [] would provide competitive constraint for the merged entity in the factual.
144. As noted above, the Commission considers that large civil contractors would have sufficient countervailing power to constrain the combined entity from exercising market power.

Co-ordinated Effects

145. In the factual, the removal of Crane will lead to increased concentration in the market as the number of competitors will decrease from five to four. This could potentially enhance the potential for co-ordination in the market. The Commission considers that the presence of strong existing competition by competitors with the incentive to expand and compete vigorously, an active competitive tender process run by strong, informed customers and the relative ease of new entry is likely to inhibit any enhanced potential for co-ordination.

Overall Conclusion on Small Pipes Market

146. The Commission has considered what impact the acquisition would have in the small pipes market.
147. In the counterfactual, Crane would continue to operate as an independent competitor. In comparison, the factual scenario would result in Crane being removed as a competitor. While this would lead to a lessening of competition in the market, the lessening is unlikely to be substantial due to the minimal increase in market share and because the combined entity would be constrained by a combination of:
 - two strong existing competitors, Tyco and Marley [];
 - the straightforward requirements for entry; and
 - the countervailing power of large civil contractors
148. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the small pipes market.

Large Pipes Market

149. Table 3 provides estimated market shares for the large pipes market.

Table 3. Estimated Market Shares for Large Pipes Market²¹

	2008/2009 (\$000)	%	2009/2010 (\$000)	%
Crane (Iplex)	[]	[]%	[]	[]%
Fletcher Building (Humes)	[]	[]%	[]	[]%
Combined Entity	[]	[]%	[]	[]%
Hynds	[]	[]%	[]	[]%
Tyco	[]	[]%	[]	[]%
Frank PKS	[]	[]%	[]	[]%
Marley/RX	[]	[]%	[]	[]%
Total	[]	100%	[]	100%

Source: Industry Participants.

150. Table 3 shows that post acquisition, the combined entity would have a market share of []%, an increase of []%, and the three-firm concentration ratio would increase from []% to []%. In the factual, Tyco would be []. Hynds would be [].

151. Market shares are likely to alter from year to year depending on which competitor wins large one-off projects. []

[]. This reflects the fact that the large players routinely win and lose major projects through the competitive tender process used by the large civil contractors. Fletcher Building also provided the Commission with evidence of a range of very large one-off projects won by different suppliers over the last five years. While in the counterfactual there would be five bidders for contracts, there would still be four post acquisition.

152. Frank PKS entered this market in 2005 in order to provide large bore PE pipes for the Christchurch and Dunedin ocean outfall projects. It has grown its market share to []% in five years. Frank PKS considers that []

[]

153. In the pipe markets discussed above, large civil contractors regularly switch between suppliers, price check, and play off suppliers at various stages of the tender process in order to drive prices down.

154. The Commission is of the view that requirements for entry are likely to be straightforward for pipe and pipe systems at the manufacturing level. The Commission considers that should the excess capacity in the market be fully utilised in the future, the threat of entry would be likely to constrain the merged entity in the factual.

²¹ Table 3 outlines the main competitors in this market. The Commission notes that there are a number of other very small competitors in this market. They have not been included because their market share would be negligible compared with the main participants.

155. The Commission also considers that large civil contractors would have sufficient countervailing power to constrain the combined entity from exercising market power in the factual.

Co-ordinated Effects

156. In the factual, the removal of Crane will lead to increased concentration in the market as the number of competitors will decrease from six to five. This could potentially enhance the potential for co-ordination in the market. The Commission considers that the presence of strong existing competition, an active competitive tender process run by strong, informed customers and the relative ease of new entry would likely inhibit any enhanced potential for co-ordination.

Overall Conclusion on Large Pipes Market

157. The Commission has considered the impact the acquisition would have in the large pipes market.

158. In the counterfactual, Crane would continue to operate as an independent competitor. In comparison, the factual scenario would result in Crane being removed as a competitor which would lead to a lessening of competition in the market. However, the lessening of competition is unlikely to be substantial due to the minimal increase in market share and because the combined entity would continue to be constrained in the factual by a combination of:

- strong existing competition from Tyco and Hynds;
- the fact that large one-off projects can be won or lost by any of the large existing competitors;
- the ability of Tyco, Hynds and Frank PKS to expand;
- the straightforward requirements for entry; and
- the countervailing power of large civil contractors.

159. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in large pipes market.

Wholesale Supply of Pipe and Pipe System Market

Existing Competition

160. Table 4 provides estimated market shares for the firms that supply pipes and pipe systems.

Table 4. Estimated Market Shares for the Wholesale Supply of Pipe and Pipe Systems Market

	2008/2009 (\$000)	%	2009/2010 (\$000)	%
Crane (Mico Pipelines)	[]	[]%	[]	[]%
Fletcher Building (Humes)	[]	[]%	[]	[]%
Combined Entity	[]	[]%	[]	[]%
Hynds Pipe Systems	[]	[]%	[]	[]%
Plumbing World	[]	[]%	[]	[]%
Total	[]	100%	[]	100%

Source: Industry Participants.

161. Table 4 shows that post acquisition, the combined entity would have a market share of []% and the three-firm concentration ratio would increase from []% to []%. Hynds has 28 branches nationwide that offer a one-stop supply of pipes and pipe systems. Post acquisition, Hynds would be the [] competitor with []%. Large customers such as [] cited Hynds as the main alternative to the combined entity. [] advised the Commission that it had no concerns with the proposed acquisition and stated that:

[] has individual supply agreements with both Humes (Fletcher Concrete) and Hynds and we use the tender process to appoint market competitive suppliers on most contract works and we can obtain concrete pipe from other suppliers in the NZ Market.

162. Post acquisition, the Commission considers that Hynds would provide constraint to the combined entity due to its:

- reputation as one of the leading suppliers;
- long established relationships with large civil contractors such as []; and
- equivalent nationwide branch network to the combined entity.

163. Plumbing World is a leading supplier of plumbing supplies in New Zealand, but to date, has a small presence in the supply of pipes and pipe systems. [

]. It has a large network of nationwide branches and has the potential to match the combined entity's and Hynds Pipe Systems presence in the market.

164. As discussed above, Tyco chooses to supply direct to the market rather than adopt Humes, Hynds and Crane's supply model. Large civil contractors advised the Commission that they regularly purchase from Tyco and will continue to do so post acquisition. The Commission considers that the merged entity would be constrained by existing competition due to:

- strong existing competition from Hynds;
- the ability of large civil contractors to switch between suppliers;
- Tyco's direct supply model; and
- the ability of Plumbing World to expand its presence.

Countervailing Power

165. As noted above, the Commission considers that large civil contractors would have sufficient countervailing power to constrain the combined entity from exercising market power in the factual due to:

- the ability of large civil contractors to design the tender process in order to drive down end prices; and
- the ability to by-pass the traditional Humes or Hynds supply channel and seek supply directly from Tyco.

Scope for the Exercise of Co-ordinated Behaviour

166. Post acquisition, Crane would be removed as the third competitor in the supply market. This would leave Hynds as the only other competitor remaining in the market.

167. While seller concentration would increase, Tyco would continue to have the ability to supply direct to the market. Plumbing World, currently a fringe aggregator, would be

willing and able to leverage its national coverage and strength in respect of plumbing supplies to expand its aggregator role. In addition, other fringe manufacturers such as Frank PKS and PPI could follow Tyco's model and supply direct to customers.

168. Accordingly, Tyco's direct supply model and the presence of a strong fringe competitor and fringe manufacturers would be likely to negate any enhanced ability for Humes and Hynds to coordinate through higher seller concentration.
169. The predominance and size of large tenders would make co-ordination via the joint venture vehicle difficult. This is because the supply of pipes and pipe systems is dominated by tender based contracts for civil/infrastructure applications. The tenders exhibit a number of characteristics that would be likely to counteract coordinated behaviour including:
- the varying size, value and unpredictability of the tenders;
 - the large assortment of different pipes and fittings of varying materials, diameters and length; and
 - the countervailing power of large civil engineering customers which enables them to seek competitive prices at several points in the tender process which, in turn, removes any price transparency which may exist at the initial tender stage.
170. Overall, the Commission concludes that the scope for coordination of pricing in the supply of pipes and pipe systems would not be significantly enhanced by the proposed acquisition.

Overall Conclusion on Pipe & Pipe System Wholesale Supply Market

171. The Commission has considered the impact the acquisition would likely have in the national market for the supply of pipe and pipe systems.
172. In the counterfactual, Crane (via Mico Pipelines) would continue to operate as an independent competitor. In comparison, the factual scenario would result in Crane being removed as a competitor which would lead to a lessening of competition in the market. However, the lessening of competition is unlikely to be substantial because the combined entity would continue to be constrained in the factual by a combination of:
- existing competitors, Hynds and Tyco (via its direct supply model);
 - the ability of Plumbing World to expand; and
 - the countervailing power of large civil contractors.
173. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the supply of pipe and pipe system market.

Supply of Plumbing Supplies Market

174. Post acquisition there would be some aggregation in respect of plumbing supplies. This is because Crane, (via its Mico and MasterTrade outlets) supply plumbing supplies and Fletcher Building (via Placemakers) also supplies some plumbing supplies.
175. Fletcher Building submitted that there are a number of large, well-resourced competitors with national representation, along with local merchants that will continue to constrain the merged entity post acquisition. The Commission agrees, and notes that the aggregation is likely to be negligible.
176. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the supply of plumbing supplies market.

Supply of Electrical Products Market

177. Post acquisition there would be some aggregation in respect of the supply of electrical products. This is because Crane, (via its Corys Electrical outlets) supply electrical products and Fletcher Building (via Placemakers) also supplies some basic electrical supplies.
178. Fletcher Building submitted that there are a number of large, well-resourced competitors with national representation, along with local merchants that will continue to constrain the merged entity post acquisition. The Commission agrees, and notes that the aggregation is likely to be negligible.
179. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the supply of electrical products market.

Supply of Safety Equipment Market

180. Post acquisition there would be some aggregation in respect of the supply of safety equipment. This is because Crane, (via its Equipsafety outlets) supply safety equipment and Fletcher Building (via Placemakers) also supplies some basic safety equipment.
181. Fletcher Building submitted that there are a number of large, well-resourced competitors with national representation, along with local merchants that will continue to constrain the merged entity post acquisition. The Commission agrees, and notes that the aggregation is likely to be negligible.
182. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the supply of safety equipment market.

Vertical Integration

183. [] were concerned that the acquisition would lead to increased vertical integration which would hinder their access to the downstream supply market because Humes and Hynds, although being independent at the supply level post-merger, have the ability to discriminate in favour of their own upstream manufacturers.
184. [

]

185. The Commission considers that the resulting increase in vertical integration would be unlikely to result in a substantial lessening of competition as substantial market power would be unlikely to exist at any of the affected functional levels. While the combined entity would have the largest market share in each of the affected markets, the threat of expansion by existing competition and the countervailing power of the major purchasers would prevent the exercise of any market power that might exist.

OVERALL CONCLUSION

186. Having considered the competition effects of the proposed acquisition, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the relevant markets.

DETERMINATION ON NOTICE OF CLEARANCE

187. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to grant clearance for Fletcher Building Limited, through its wholly owned subsidiary Fletcher Building (Australia) Pty Limited, to acquire up to 100% of the ordinary shares in Crane Group Limited.

Dated this 24th day of February 2011

Dr Mark Berry
Chair

Appendix 1
[Confidential]