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30 May 2003

The Registrar
Business Acquisitions & Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

PUBLIC VERSION [confidential information deleted]

PURSUANT TO SECTION 66(1) OF THE COMMERCE ACT 1986 NOTICE IS HEREBY GIVEN SEEKING CLEARANCE OF A PROPOSED BUSINESS ACQUISITION.

PART 1 - TRANSACTION DETAILS

The Proposed Business Acquisition

1 The Business Acquisition for which clearance is sought

- 1.1 The acquisition for which clearance is sought is the acquisition by Wesfarmers Industrial & Safety NZ Limited (“WISNZ”) of all the assets of Paykel Limited (“Paykel”).
- 1.2 This application seeks clearance for the acquisition. Attached to this application is the Term Sheet reached between the parties prior to due diligence being commenced by WISNZ.

2 The person giving this notice

- 2.1 This notice is given by:

Wesfarmers Industrial & Safety NZ Limited
401 Great South Road
Penrose
Private Bag 92100
Auckland
Telephone: (09) 526 6702
Facsimile: (09) 526 6755
Attention: Mike Taylor
Email: mike.taylor@wisnz.co.nz

- 2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Quigg Partners
Level 7, 28 Brandon Street
PO Box 3035
Wellington
Telephone: (04) 472 7471
Facsimile: (04) 472 7871
Attention: John Horner/David Quigg
Email:johnhorner@quiggpartners.com/davidquigg@quiggpartners.com

Confidentiality

3 Requested Confidentiality

- 3.1 WISNZ does not require the fact of the proposed acquisition to be kept confidential.
- 3.2 WISNZ does request that specific information contained in or attached to the notice is kept confidential. WISNZ seeks confidentiality for the information in this application that is highlighted. We have provided a copy of this application with such confidential information deleted for the assistance of the Commission.
- 3.3 WISNZ requests that, on expiry of any confidentiality order that the Commission may make, the confidential information continues to be withheld under section 9 of the Official Information Act 1992. Confidentiality is sought on the grounds that:
- (a) The information is commercially sensitive and valuable and its disclosure is likely to unreasonably prejudice the commercial position of the parties; and
 - (b) There are confidentiality obligations in respect of some of the information for the purposes undertaking due diligence in relation to this acquisition. The disclosure of that information would prejudice the supply of similar information, or information from the same source; and
 - (c) There are no other considerations which render it desirable in the public interest to make the information available under the Official Information Act 1982.

Details of the Participants

4 The participants

- 4.1 The acquirer is:

Wesfarmers Industrial & Safety NZ Limited (“WISNZ”), details of which are set out in paragraph 2.1 above.

4.2 The owner of the business assets is:

Paykel Limited of 11 Dalgety Drive, Wiri, Auckland. The contact person and details for the owner is:

Mr Glenn Wallace
 c/o Tiri Group Limited
 Level One, 48 Market Place, Cnr Customs Street West
 PO Box 8402 Symonds Street
 Auckland
 Telephone: 09 356 9256
 Facsimile: 09 309 3186
 Email: glenn@tiri.co.nz

Paykel is 100% owned by Tiri Group Limited (“Tiri”) and shall continue to be so subsequent to the acquisition.

5 Inter-connected to or associated parties

5.1 WISNZ Group/Associates:

- (a) Wesfarmers Limited (“Wesfarmers”) is based in Perth Australia and is listed on the Australian Stock Exchange.
- (b) Wesfarmers indirectly owns 100% of Howard Smith Limited (“Howard Smith”) based in Australia which in turn indirectly owns Wesfarmers Industrial & Safety Holdings NZ Limited (“WISNZH”) and also Valley Investments Pty Limited (“Valley Investments”).
- (c) WISNZH is the sole shareholder in WISNZ which in turn is the sole shareholder in Packaging House Limited.
- (d) Valley Investments owns Benchmark Building Supplies Limited (“BBS”) in New Zealand. BBS owns J. Blackwood & Son (N.Z.) Limited (“Blackwoods”), Morris Black & Matheson (1994) Limited (“MBM”), Hardwarehouse Limited (“Hardwarehouse”) and BBC Hardware (NZ) Limited (“BBCH”).
- (e) The corporate wiring diagram of Wesfarmers in New Zealand is set out in Appendix 1.

5.2 Paykel Group/Associates:

- (a) Paykel has the following wholly owned subsidiaries and other shareholdings:
 - (i) Paykel Engineering Limited (wholly owned);
 - (ii) Kidd Garrett Limited (wholly owned);
 - (iii) PEL Limited (50% shareholder with Tiri (the 100% shareholder of Paykel) owning the other 50%).

- (b) WISNZ intends to acquire the business assets of Paykel. Tiri will continue to be the 100% owner of the shares in Paykel. No other company will continue to hold more than 10% of the shares of Paykel after the proposed acquisition.

6 Existing beneficial interests

- 6.1 No participant, nor any interconnected body corporate of a participant, has an existing beneficial interest in or is beneficially entitled to, any shares or other pecuniary interest in another participant.

7 Links between participants

- 7.1 There are no links, formal or informal, between any participants including interconnected bodies corporate or other persons identified at paragraph 5 and their existing competitors in the market other than intermittent arms length commercial dealings for the supply of certain products from the MRO product range.

8 Common Directorships

- 8.1 No director of WISNZ is also a director of any other company involved in the relevant markets other than companies directly or indirectly controlled by Wesfarmers (eg the Directors of WISNZ are also Directors of Blackwoods).

9 Business actives of the participants

- 9.1 WISNZ is the leading supplier of personal protective equipment, safety equipment and workwear in New Zealand. It operates under the brands NZ Safety, Protector Safety Supply and Packaging House. From an operational perspective Blackwoods is treated as a business within the WISNZ group of companies although legally it is a subsidiary of BBS (see Appendix 1 for legal wiring diagram).

- 9.2 **Wesfarmers:** Wesfarmers is one of Australia's largest public companies with operating revenue of \$7.4 billion in 2001/02 and profits after tax of \$414 million.

Headquartered in Perth, Western Australia, the company measures its success in terms of shareholder returns and strives to be ranked with the leading performers among Australia's listed companies.

In Australia Wesfarmers has interests in coal mining; gas processing and distribution; retailing of home and garden improvement products and building materials; provision of rural merchandise, services and insurance; fertilisers and chemicals manufacture; industrial and safety product distribution; rail transport; and forest products.

In New Zealand Wesfarmers has interests in retailing of home and garden improvement products and building materials as well as industrial and safety product distribution

Wesfarmers operates mainly in Australia and New Zealand and has significant export markets.

Since its public listing in 1984, Wesfarmers has recorded strong growth in assets and profits. At June 2002, the group employed about 18,000 people full-time and a further 11,000 on a casual basis. Wesfarmers has about 90,000 shareholders on its register including about 14,000 employees.

With a clear focus on shareholder value, Wesfarmers is actively expanding its existing businesses and assessing new opportunities throughout Australia and overseas.

- 9.3 **Paykel:** Paykel is a New Zealand based Engineering Supplies Company that has been operating in New Zealand since the 1920's.

Paykel has three operating divisions. These are:

- (a) **Paykels**, the largest division supplying engineering and related products and services to the New Zealand industry.
- (b) **Supply Solutions** provides integrated Maintenance, Repair & Operating Consumables ("MRO") Supply Chain Management solutions.
- (c) **Machine Tools** is a provider of high quality conventional and CNC machine tools to New Zealand industry.

- 9.4 **Tiri Group:** Tiri is an investment company owning various businesses in the industrial and engineering sector. It is understood that Tiri will continue to own the shares Paykel after the acquisition.

10 **Reasons for proposal and intentions in respect of the acquired business.**

- 10.1 The proposed acquisition has the purpose of furthering WISNZ's and Wesfarmers ongoing strategy of expanding its MRO distribution activities in New Zealand through a combination of organic growth and selective acquisitions.

- 10.2 [confidential information deleted]

PART 2: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 Markets where there would be an aggregation of business activities.

- 11.1 The acquisition of Paykel by WISNZ will result in aggregation in the market in which both businesses operate.
- 11.2 Following the reasoning in the decision of the Commission in the Mico Wakefield Limited / Mastertrade Limited¹ application, for the purposes of this

¹ Decision 444

application, we have defined the relevant market (where there is market aggregation) as “the regional supply of MRO products”.

- 11.3 Paykel is also a participant in the regional supply of electrical products market although only to a very limited extent. WISNZ has received legal advice that it is not necessary to seek clearance in respect of the market in the supply of electrical products.
- 11.4 **Product dimension:** MRO product lines where there will be aggregation include the following:
- (a) hand and power tools;
 - (b) cutting tools
 - (c) transmission;
 - (d) welding;
 - (e) materials handling;
 - (f) pumps;
 - (g) safety²;
 - (h) valves;
 - (i) fastenings;
 - (j) hoses and fittings;
 - (k) abrasives; and
 - (l) packings.
- 11.5 The **functional level** of the businesses of Blackwoods and Paykels is the supply of MRO products as opposed to the manufacture, retail sale or use of such products.³ Both Blackwoods and Paykel offer a wide range of MRO products and supply to a range of industries including agricultural, forestry, fishing, mining, manufacturing, utilities, construction, transport/logistics, government and defence segments. Customers also include trades people, and to a lesser extent, the “do it yourself” (“DIY”) customer.
- 11.6 **Geographic dimension:** In breaking down the regional aspects of the market we adopt the regional markets as specified by the Commission in the Fletcher Challenge Limited / New Zealand Forest Products Limited⁴ as follows:
- (a) Northland;

² Whilst Paykel advertises safety products on its website the reality is that the market share of Paykel in the supply of safety products is almost negligible.

³ The Commission has noted in Decision No. 433 and subsequently confirmed in Decision 444.

⁴ Decision 213 and confirmed in Decision 444.

- (b) Auckland;
- (c) Waikato;
- (d) Bay of Plenty;
- (e) Hawke's Bay (including Gisborne);
- (f) Taranaki;
- (g) Manawatu and Wanganui;
- (h) Wellington (including Wairarapa);
- (i) Marlborough and Nelson;
- (j) Canterbury;
- (k) Otago; and
- (l) Southland.

- 11.7 Blackwoods and Paykel supply MRO products in regional New Zealand. Paykel is a national supplier having 21 stores. Blackwoods have seven stores in Auckland, Christchurch, Dunedin, Hastings, New Plymouth, Rotorua, and Wellington. There is also some market aggregation in the 32 BBS stores and three Bunnings warehouses throughout the North Island⁵. Whilst BBS operates in the market for the supply of MRO products, its sales figures in respect MRO products are less than [confidential information deleted] of total annual turnover being approximately [confidential information deleted]
- 11.8 **Time dimension** is not relevant to the analysis of regional supply of MRO products as transactions are frequent and there are few long-term contracts between suppliers such as Paykel and Blackwoods and buyers.
- 11.9 This application adopts a market definition that is consistent with Commission precedent in the context of regional electrical and plumbing suppliers, namely a market for the regional supply of MRO products.
- 11.10 WISNZ notes that if the Commission adopts a narrower market definition and examined separate markets for the regional supply of electrical products⁶ and a national supply of safety products⁷ the acquisition would not raise competition concerns. If these narrower market definitions were adopted WISNZ believes that the acquisition would result in market aggregation well within the safe harbour guidelines for the markets identified.

⁵ See comments in 5.1 (d)

⁶ Decision 444 (Mico Wakefield and Mastertrade)

⁷ Decision 433 (Howard Smith and OPSM Protector)

Differentiated Product Markets

12 Standardised or Differentiated?

- 12.1 There is little differentiation in the product lines of MRO product suppliers other than branding, distribution networks, availability of product and range of product.

13 Characteristics of differentiation.

- 13.1 The main characteristics differentiating participants in the regional supply of MRO products is the range and quantity of MRO products offered. General MRO product suppliers offer a wide range of various product lines. Specialist suppliers can be considered as targeting specific market segments rather than the general wholesale and retail markets. For example some market participants specialise in the supply of fasteners, others tools and others janitorial and hygiene products typically targeting cleaning companies. Some specialist suppliers are able to offer a greater range of products in any one particular product line which services the requirements of those niche customers⁸. Specialist suppliers are also likely to have employees with more specific and technical knowledge of the narrower range of products offered and specific market segments.

Some competitors in the relevant market will have superior distribution networks than others. This is a point of difference between competitors.

There is further differentiation between suppliers of MRO products through brand image and a reputation for providing expert advice and quality service. Reputation can result from stocking higher quality products and specific brands (including own brands).

Location and geographic proximity of supply outlets are another differentiating factor.

- 13.2 In respect of a regional market for the supply of MRO products competitors may seek to differentiate themselves in a manner as described in 13.1 above. This will often be by way of marketing, choice of location and style of service. Specialisation in particular product lines may also be a means of targeting particular buyer groups or market niches.
- 13.3 On the basis of the product differentiation identified above the merged entity will be constrained in its actions by the presence of other suppliers in the regional supply of MRO products market to the extent that specialist suppliers can easily expand their range of products and pursue preferable locations for supply outlets as well as other marketing and branding efforts.

⁸ Eg bearings, transmissions hoses etc.

Vertical Integration

14 Vertical integration between firms at different functional levels.

- 14.1 The proposal will not result in vertical integration between firms involved at different functional levels other than as described in paragraph 7.1 above.

Previous involvement in Acquisitions

15 Previous involvement by WISNZ or Paykel (or interconnected body corporates)

- 15.1 No proposed acquisition of assets of a business or shares involving either participant, or any interconnected body corporate, has been undertaken in the last three years in respect of the regional supply of MRO products in New Zealand other than Tiri's acquisition of Viking Pacific Holdings Limited and as described in paragraph 15.2 below.
- 15.2 Howard Smith Limited ("Howard Smith") was purchased by Wesfarmers in August 2001. Prior to that acquisition Howard Smith acquired OPSM in respect of which the Commission made a determination dated 28 June 2001⁹ giving clearance in relation to the following:
- (a) The national market for the supply of safety products; and
 - (b) The national market for the supply of janitorial, hygiene and medical products.
- 15.3 Wesfarmers, either directly or indirectly, has not undertaken any other acquisitions involving businesses in New Zealand in the past three years other than the purchase of the Packaging House business (previously known as Carter Holt Harvey Distributors) in July 2000.

⁹ Decision No. 433

PART 3: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

16 Existing Competitors [confidential information deleted in tables]

16.1 The suppliers of competing products in the national supply of industrial products market are set out in Table 1 below. The figures in respect of Paykel exclude MRO Products supplied by Paykel through its Supply Solutions division, as inclusion of those figures would result in a double counting. This is because Paykel supplies the Supply Solutions division (and those supplies are included in the figures) and Supply Solution then supplies the end user. Also, the figures in respect of the Machine Tools division of Paykel are not included as this product line falls outside the ambit of the market definition – ie they are not MRO Products.

16.2 Estimated market shares in respect of sales of each supplier identified are also set out in the tables below.

Table 1: National MRO Distribution

Supplier	Turnover (\$M) ¹⁰	Market Share %
Paykel		
Blackwoods		
BOC Limited ¹¹		
BGH Group ¹²		
Trade Zone ¹³		
EDL ¹⁴		
Trade Tools ¹⁵		
Hylton Parker Fasteners ¹⁶		
Sulco Limited ¹⁷		
Waitemata Hydraulics & Engineering Supplies ¹⁸		
Würth ¹⁹		

¹⁰ Figures are sourced from Management estimates, Statutory Accounts and Statistics Department Annual Enterprise Survey 2001 Provisional

¹¹ Ultimately owned by BOC Holdings in the UK.

¹² BGH Group (“BGH”) is comprised of Bay Engineers Supplies Ltd, General Machinery Company Ltd, Maud Kirk Machinery Ltd and Hose Supplies NZ Ltd. BGH is owned by individuals in Tauranga and is the largest privately owned distribution company.

¹³ Nationwide cooperative group of independent businesses with 23 outlets. Members are Farrand & Mason, Bindon Auto Electrical, Auckland Engineering Supplies, Grossman Twigg Engineering Supplies, Hand Tool House, Total Trade Supplies, Workplace & Engineering Supply, Holster Supply, Stewart & Cavalier Engineering Supplies, Croucher & Croucher, Mc Donald Equipment, Techweld,, Engineering Supplies, Blenheim Engineering Supplies, George Henry & Co, CM Engineering, Timaru Engineering Supplies, Engineering Wholesalers, E Hayes & Sons

¹⁴ 100% owned by Würth (Germany)

¹⁵ Comprises 7 branches nationally

¹⁶ Subsidiary of ASX listed Coventry Group Limited

¹⁷ Owned by individuals in Auckland.

¹⁸ Owned by individuals in Auckland

Other Independent ²⁰		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 2: Estimated Market Share for Northland MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC		
Donovans Trade Supplies Limited ²¹		
BGH Group		
Trade Zone		
EDL		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

¹⁹ 100% owned by Wurth (Germany)

²⁰ Other independent suppliers include traditional MRO suppliers, retail outlets such as the Warehouse, Mitre 10, Stock and station agents, petrol stations etc)

²¹ Owned by individuals in Whangarei

Table 3: Estimated Market Share for Auckland MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Trade Tools		
Trade Zone		
Hylton Parker Fasteners		
Sulco Limited		
EDL		
Waitemata Hydraulics and Engineering Supplies Limited ²²		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 4: Estimated Market Share for Waikato MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
Trade Zone		
Trade Tools		
BGH Group		
EDL		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

²² Owned by individuals in Auckland

Table 5: Estimated Market Share for BOP MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Asmuss Brooking Limited ²³		
H.K Heaton		
Trade Zone		
EDL		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 6: Estimated Market Share for Hawke's Bay (including Gisborne) MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Trade Tools		
EDL		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

²³ Owned and by individuals in Rotoiti and Whakatane and H J Asmuss & Co Limited in Auckland

Table 7: Estimated Market Share for Taranaki MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Trade Zone		
EDL		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 8: Estimated Market Share for Manawatu/Wanganui MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
Trade Zone		
Trade Tools		
BGH Group		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 9: Estimated Market Share for Wellington (including Wairarapa) MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Trade Zone		
Trade Tools		
EDL		
Hylton Parker Fasteners		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 10: Estimated Market Share for Marlborough/Nelson MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
Nalder & Biddle (Nelson) Limited ²⁴		
Trade Zone		
Russet Engineering Sales Limited ²⁵		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

²⁴ Owned by Bertney (No. 12) Limited which in turn is owned by individuals in Nelson

²⁵ Owned by individuals in Dunedin

Table 11: Estimated Market Share for Canterbury MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
BGH Group		
Trade Zone		
Russet Engineering Sales Limited		
Trade Tools		
EDL		
Hylton Parker Fasteners		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

Table 12: Estimated Market Share for Otago MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC Limited		
Trade Zone		
Wilson Bros Limited ²⁶		
Russet Engineering Sales Limited		
Hylton Parker Fasteners		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

²⁶ Owned by Wilson Bros Holdings Limited which in turn is owned by individuals in Invercargill

Table 13: Estimated Market Share for Southland MRO Products Market

Company	Turnover (\$M)	Market Share %
Paykel		
Blackwoods		
BOC		
Wilson Brothers		
Trade Zone		
Other		
TOTAL		
Current 3-Firm Concentration Ratio		
Post-Merger 3-Firm Concentration Ratio		
Paykel/Blackwoods		

- 16.3 The data above is sourced from various sources as outlined below. There is no independent market survey data for the markets affected by the proposed acquisition.

Company	Source of Data	Expected Degree of Accuracy
Asmuss Brooking	Management Estimates	²⁷
Blackwoods	Financial Accounts YE 30/06/02	
BGH	Management Estimates	
BOC	Statutory Accounts YE 30/09/02	
Donovans	Management Estimates	
EDL	Statutory Accounts for YE 31/12/01	
Hylton Parker Fasteners	Statutory Accounts for YE 30/06/02	
Nalder & Biddle	Management Estimates	
Paykel	Financial Accounts YE 30/06/02	
Russet Engineering Sales	Management Estimates	
Sulco	Management Estimates	
Trade Tools	Former Employee	
Trade Zone	Management Estimates & Statutory Accounts	
Waitemata Hydraulics	Management Estimates	
Wilson Brothers	Management Estimates	
Wurth	Statutory Accounts for YE 31/12/01 & Web Site	

- 16.4 Figures for previous years have not been determined and would be subject to a low degree of accuracy.

Other considerations

- 16.5 There are various other firms that are not currently suppliers of MRO products, but could enter the market quickly using existing or additional capacity in

²⁷ [confidential information deleted]

response to an attempt by suppliers to raise prices or reduce output or quality and therefore can be considered as near entrants.

These include

- (a) Crane Distribution NZ Limited²⁸;
 - (b) Redeal Limited;
 - (c) Repco Limited²⁹;
 - (d) Hagemeyer Asia Pacific Electronics Pty Limited³⁰;
 - (e) Brake & Transmissions NZ Limited³¹ (“BNT”);
 - (f) Coventry Group Limited.³²
 - (g) More general supply stores that participate, at least in respect of certain product lines, in the regional supply of MRO products market include The Warehouse, Mitre 10, Carters, Placemakers and, various stock and station companies.³³
- 16.6 The productive capacity of the near entrants is difficult to estimate but, in the view of the applicant, is considerable given the wide range of product lines that form part of the MRO products market.
- 16.7 The Commission should note that the applicant considers that direct imports are generally not a viable form of competition for local supply in the market affected. The time delay and cost of transportation would often be prohibitive and could not usually be considered as a viable substitute to supply from domestic suppliers. There are circumstances however where large scale orders for particular customers can be sourced from overseas, particularly in certain industries³⁴.
- 16.8 Domestic suppliers do not export large volumes/values of MRO products. Manufacturers using MRO products generally undertake exports.
- 16.9 WISNZ does not consider Paykel to be a vigorous and effective competitor for the following reasons: [confidential information deleted]

Conditions of Expansion

17 Market conditions

²⁸ Ultimately owned by ASX listed Crane Group Limited

²⁹ Owned by Automotive Parts Group Holdings Pty Limited in Australia

³⁰ An Australian company ultimately owned by Hagemeyer NV, a company listed on the Amsterdam Stock Exchange.

³¹ Ultimately owned by Hellaby Holdings Limited, listed on the NZSE

³² Information obtained from filed Annual Report.

³³ eg Farmlands, Wrightsons, Combined Rural Traders, Pyne Gould Guinness.

³⁴ Eg Airlines, Oil Exploration and Fishing.

- 17.1 **Frontier entry conditions:** There are no frontier entry conditions which apply to the supply of MRO products in New Zealand (or regionally) other than duties in respect of certain MRO products.
- 17.2 **Legislative/regulatory conditions:** There are no substantial regulatory requirements to expansion or new entry into the regional market for the supply of MRO products. Where a new or near entrant or an existing competitor considers expansion requiring additional building capacity regional plans and zoning requirements would need to be considered. Other standard business regulations would also need to be considered such as health and safety regulations. Compliance would be relatively straight forward and would not amount to a barrier to entry.
- 17.3 **MRO/business:** Access to MRO products for supply is not considered difficult. Where there are exclusive distribution agreements in the relevant market such agreements are generally terminable on a short period of notice. Comparable products are generally readily available. House brands are also quite common (eg both Blackwoods and Paykels have house brands) which lessen the significance of “branded products”. There are no particular economies of scale that require critical mass in respect of any particular product line other than minimal quantity price breaks (the impact of which is not considered as high). Entrants can enter the market on any scale in respect of any range of product lines it chooses. Requisite technical knowledge is unlikely to be difficult to source.
- 17.4 **Other:** There are no other barriers to entry in the opinion of the applicant.

The barriers to entry in respect of the relevant market are considered to be very low by the applicant. This can be illustrated by the following examples of expansion in the market for the supply of MRO products:

- (a) Engineering Wholesale (“EWL”) of Dunedin was formed in 2001 when a previous manager from the AG Engineering Supplies/Paykel merger set up EWL in opposition, with another group of staff members. There is currently six to eight staff working for the business. It is involved in supplying engineering and MRO equipment throughout Otago and Southland with some minor exposure into Central South Island region. It also has (as part of the Tradezone Group) a Hose & Coupling Distributors arm under it and the ENZED hose doctor franchise for Dunedin (welding). The business is proactive with both radio and newspaper advertising in recent times.
- (b) Titan Marine Engineering Limited has a trade shop located at Henderson, Auckland which operates off the back of their engineering and manufacturing division. The business involves the distribution of engineering and MRO products specific to the marine/ boat building industry. Eg. Abrasives, tools, welding, drills, fasteners, packings & compounds.

18 Existing businesses which could expand

18.1 It is believed that all participants in the regional supply of MRO products could increase supply by either increasing utilisation of existing capacity or through the expansion of existing capacity.

19 Conditions influencing expansion

19.1 There are no market conditions that are considered likely to impede the business decision of any participant to increase supply other than prevailing economic conditions.

19.2 There is, however, a buying group in the form of a separate entity called Tradezone Industrial Group Limited (“Tradezone”) that may be considered likely to assist an increase in supply in certain circumstances. Marketing itself as a supplier of professional tools, equipment and consumables Tradezone appears to be a buying group of smaller participants in the MRO product supply market. The existence of this buying group provides a further incentive to new entrants, near entrants or existing competitors to compete where it can become a part of Tradezone.³⁵

20 Expected timeframe for supply to increase

20.1 Competitors and/or near entrants could enter the market quickly simply by expanding on existing product lines using existing capacity. Such expansion could occur in a matter of weeks. Even where there is no such existing capacity, additional capacity could be easily achieved by expanding existing premises, relocating or opening and operating an additional site. This could be expected to take approximately 3 – 6 months.

21 Extent to which the possible competitive response of existing suppliers would constrain WISNZ

21.1 Any competitive response would be a constraint on the merged WISNZ/Paykel entity depending on the nature of the competitive response.

22 Extent overall to which the conduct of existing suppliers would constrain WISNZ

22.1 The absence of barriers to expansion means that the merged entity would naturally be constrained by the conduct of existing competitors in the market. On the basis of the applicant’s calculations the Commissions safe harbours are satisfied, assuming the Commission accepts the market definition as proposed by the applicant.

³⁵ For example: Holster Engineering Co Limited (“Holsters”) were originally a General Engineering Company supplying engineering services/ manufacturing, who saw an opening to supply MRO products in conjunction with their engineering services to Paper Mill sites in the central north island area, some years ago.

Co-ordinated market power

23 Market characteristics that would facilitate or impede co-ordination effects.

23.1 The applicant submits that the proposed acquisition would not result in a change in the relevant market that will facilitate possible coordination between competitors. Rather, there are various characteristic that would impede coordination as follows:

- (a) The market share in the regional supply of MRO products is spread over a considerable number of market participants. As the Commission will have noted the market shares detailed in the tables 1 – 13 above are very low. It is understood that this is because the source of various MRO products can come from a vast range of supply outlets at what can be considered as both wholesale and retail levels. Coordination between such a large number of participants is considered as most improbable;
- (b) the range of different product lines carried by the participants are so varied and changeable that coordination would be piecemeal in relation to particular product lines and for that reason, ineffective.
- (c) a relatively low level of exclusive distribution arrangements with most manufacturers/suppliers appointing multiple distributors of their products
- (d) the relative ease and speed with which new and near entrants can enter the relevant market would impede coordination;
- (e) the presence of small and fringe competitors, including specialist product line suppliers, and the ability of those competitors to expand their product lines and open new supply outlets;
- (f) the absences of any history of price fixing or other collusive behaviour between participants in the relevant market, at least to the knowledge of the applicant; and
- (g) the low incidence of industry fairs and forums other than the buying group Tradezone (discussed in para 19.2 above) of which only certain smaller market participants are members.

24 Market characteristics facilitating or impeding monitoring and enforcement of co-ordinated behaviour

24.1 There are a number of market characteristics that would, post acquisition, facilitate the monitoring and enforcement of coordinated behaviour by market participants as follows:

- (a) Individual sales are small and frequent, providing a greater risk of detection³⁶;
- (b) There is little, if any, vertical integration which would prevent price cuts being concealed in upstream markets;
- (c) The low level of brand exclusivity as noted above in 23.1(c)
- (d) Growth in the relevant market is generally low although variable across different product lines, a deviating firm would general need to take market share from a competitor to achieve revenue growth;
- (e) Competitors in the relevant market are subject to similar cost structures, increasing the chances of detection of collusive behaviour; and
- (f) Price information is freely available, both from price lists and the Internet and by easily enquiring about prices from competitors.

24.2 The one market characteristic that may, post acquisition, impede the monitoring and enforcement of coordinated behaviour by market participants, is the absence of a high seller concentration. This means monitoring market participants is relatively difficult because there are many as opposed to a few.

25 Details of price co-ordination, price matching or price following by market participants

25.1 The applicant is not aware of any price co-ordination, price matching or price following by market participants other than in connection with Tradezone detailed in paragraph 19.2 above. In general, the supply of MRO products is a highly competitive market which results in some reaction to competitors' price movements. The applicant is not aware of any tacit collusion in the relevant market.

26 Why the acquisition of Paykel will not increase the risk of co-ordinated behaviour in the market place

26.1 The proposed acquisition will not increase the risk of co-ordinated behaviour because of the effect of the characteristics of the relevant market detailed in paragraphs 23.1 and 24.1 significantly outweigh the one aspect detailed in paragraph 24.2. Market participants would be unlikely to maintain the internal discipline that would be necessary to avoid detection of collusive behaviour in the circumstances of low barriers to entry and the relative ease with which near entrants to the market can expand product lines to directly compete.

26.2 In addition to this there is countervailing market power in respect of contracts with major customers. A large customer could procure a large proportion of its MRO products directly from manufacturers, without going through a supplier of MRO products. The applicant believes that the constraint imposed

³⁶ Where there are bulk orders of multiple products there is an average of three product lines per order and the average value of such order is within the range of \$100 - \$150.

by the conduct of existing competitors is sufficient to ensure that competition would not be substantially lessened in the relevant market.

THIS NOTICE is given by MIKE TAYLOR, General Manager, Wesfarmers Industrial & Safety NZ Limited

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to Wesfarmers Industrial & Safety NZ Limited which is relevant to the consideration of this notice has been supplied;
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 30 day of May 2003.

Signed by Wesfarmers Industrial & Safety NZ Limited

Mike Taylor

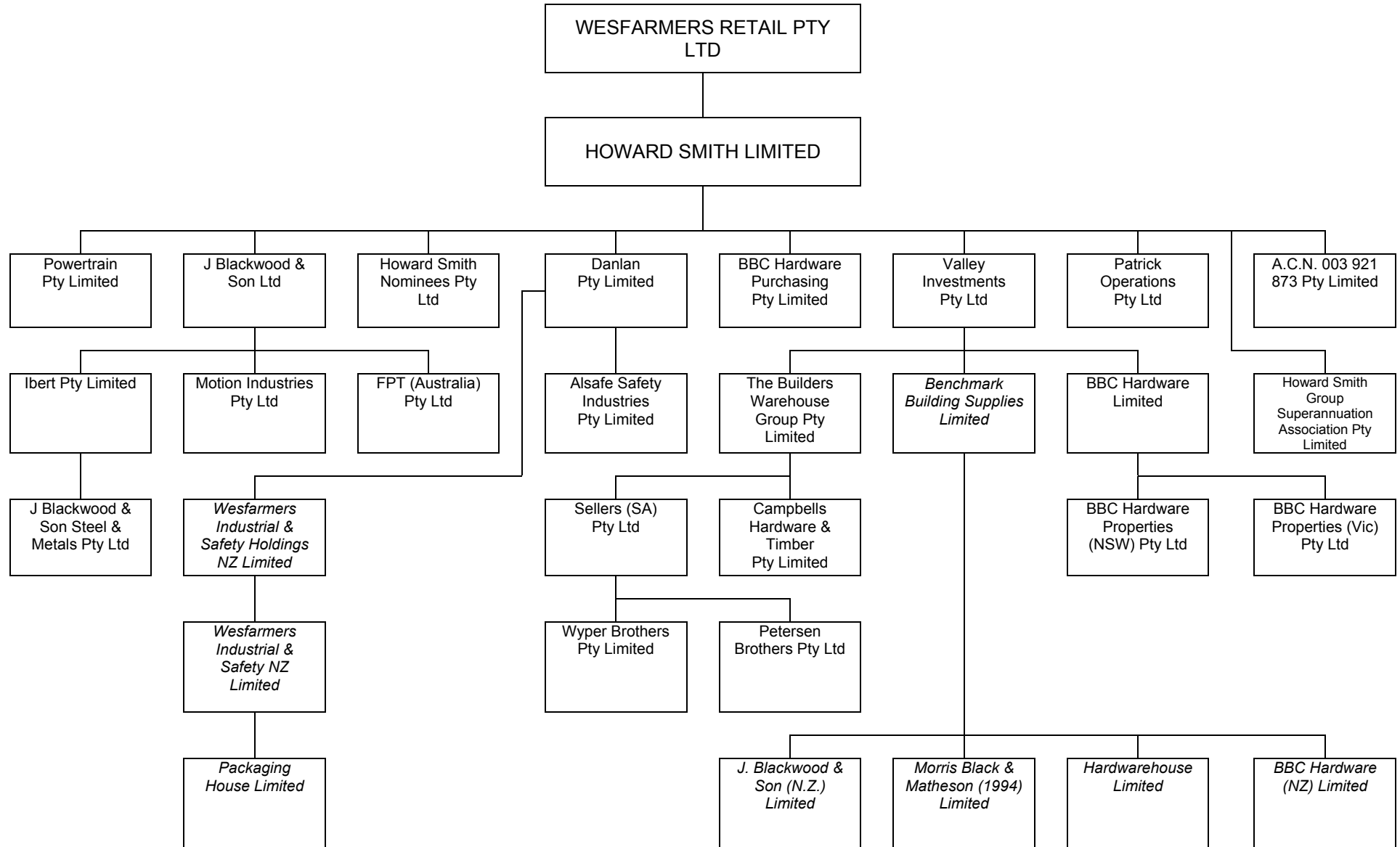
General Manager

I am an officer of the company and am duly authorised to make this notice.

APPENDIX 1

Corporate Structure diagram of Wesfarmers Retail Pty Limited (ultimately owned by Wesfarmers Limited)

Overseas & General Stevedoring Co Pty Limited 33.33..% owned by Howard Smith Limited NZ = Italics



APPENDIX 2

Terms Sheet

[confidential information deleted]