

EXECUTIVE SUMMARY

INTRODUCTION

This is an application by New Zealand Investment Holdings Limited (**NZIH**) (the owner of Marley New Zealand Limited - **Marley**) for clearance for it, or any of its interconnected bodies corporate, to acquire 100% of the shares, or assets and business, of RX Plastics Limited (**RX Plastics**).

The acquisition will result in horizontal aggregation between the polyvinylchloride (**PVC**) and polyethylene (**PE**) plastic pipes businesses of Marley and RX Plastics.

AFFECTED MARKETS

The issue of market definition was reviewed by the Commerce Commission in 2000 when Etex Holdings BV (the owner of Marley at that time) sought and obtained clearance to acquire Keyplas Limited (Decision No. 405, dated 11 September 2000). The Commission concluded that the appropriate market in that case (which only raised PVC pipe aggregation issues) was "the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand" (paras. 41 and 47). The Commission itself accepted in this Decision that its market definition was "conservative" and "narrow" (paras. 41 & 46). Nevertheless, if the Commission applies its market definition in Decision No. 405 in assessing market definition in this case, this would mean that there would be separate markets for the manufacture/wholesale supply of each of PVC and PE pipe systems in New Zealand.

NZIH considers there are good arguments for taking the view that the market is a wider one for the manufacture/wholesale supply of generic pipe systems in New Zealand (or at least a wider market for the manufacture/wholesale supply of plastic pipe systems in New Zealand). Such a wider market was contemplated by the Commission in Decision No. 405 (eg paras. 42-43). As a result, while NZIH provides information in this clearance application relating to the Commission's product market analysis in Decision No. 405, NZIH also provides relevant market information for a generic pipe systems market, and for a combined plastic pipe systems market as well.

NO SUBSTANTIAL LESSENING OF COMPETITION IN AFFECTED MARKETS

Following the acquisition, NZIH's (Marley's) post-acquisition share of the market for the manufacture/wholesale supply of generic pipe systems in New Zealand would only be around **[CONFIDENTIAL%]**, in a market where the three firm concentration ratio post-acquisition would be around **[CONFIDENTIAL%]**. NZIH's post-acquisition share of the market for the manufacture/wholesale supply of plastic pipe systems in New Zealand will be approximately **[CONFIDENTIAL%]** with a three firm concentration ratio of around **[CONFIDENTIAL%]**. If the market was narrower and involved separate markets for the manufacture/wholesale supply of each of PE & PVC pipe systems in New Zealand, then NZIH's share of each of these markets post-acquisition would be approximately **[CONFIDENTIAL%]** respectively.

Accordingly, if the Commission adopts a generic pipe systems market definition, then the acquisition would be within the safe harbours. Even if the Commission adopts a narrower market definition, NZIH submits that its level of market share post-acquisition in the plastic pipe systems or PVC/PE pipes markets does not evidence a substantial lessening of competition. In Decision No. 405 the Commission concluded that the merged Marley entity in that case would still be subject to significant constraints preventing it from initiating and maintaining an increase in prices, or reduction in the quality of service, as a result of

"existing competition in the generic pipe market and in particular by PE pipe systems; merchants' market power; the availability of imported PVC pipe systems; and low barriers to entry" (para. 82).

NZIH submits that these factors still remain the case today and indeed have strengthened since the 2000 clearance application. In particular:

Existing Competition:

- Marley will continue to face a significant competitive constraint from a similarly sized rival post-acquisition in the form of Crane. The market is already vigorously competitive, and real prices have continued to fall in recent years even after other acquisitions of market participants (for instance the acquisition of Keyplas by Crane in late 2003). **[CONFIDENTIAL]**
- There is significant spare capacity within the industry and room for suppliers individually and the market collectively to expand production. NZIH considers that typical use of machinery in the industry is currently around 65-85% of capacity levels, and this can be readily expanded to close to a 100% capacity level.
- While neither Marley nor RX Plastics are vertically integrated, Marley faces strong competition from a number of large vertically integrated companies who are not just competitors at the manufacturing/wholesale level but are also in a number of instances major customers. This includes large companies such as Crane, Tyco, Fletcher Building (which is also horizontally integrated into concrete, plastic and steel), and Hynds Pipelines.

Low Barriers to Entry:

- There are no significant barriers to new entry as accepted by the Commission in Decision No. 405 (para. 82). All piping systems of a specific material are supplied in compliance with a common Australasian standard. The raw materials for producing the different types of plastic pipe are a world commodity and all are readily available to any existing or potential participant from a number of sources. The cost of establishing extrusion or moulding plants is relatively low, and since 2000 the capital requirements for establishing such plants have reduced by up to 50%. Moreover pipe manufacturing technology is accessible and readily available from consultants or machinery suppliers.
- There are a number of identifiable new entrants which would be likely to enter in a constraining manner within a one year period should prices increase above competitive levels. This includes companies such as Vinidex (Australia's leading manufacturer of PVC and PE pipe). Such companies could expand productive capacity quickly (Vinidex for instance is around five times the size in PE/PVC pipe of Marley/RX Plastics combined).

Constraint from Imports:

- Importation of plastic piping systems from overseas is increasing, especially from Australia, South East Asia, India and China. Freight costs for imported product to a New Zealand port are often comparable with freight costs within New Zealand. The threat of increased importation of plastic pipe products acts as a substantial constraint on the market price for plastic pipes in New Zealand.

Merchants' Market Power:

- There is significant countervailing market power held by the merchants as accepted by the Commission in Decision No. 405 (para. 72). The merchants include large retailers such as Plumbing World, PGG Wrightsons, Placemakers, RD1, Bunning's and Mitre 10, together with companies such as Crane Wholesale, Tyco Wholesale and Humes which also compete with Marley at the manufacturing/wholesale level. The size of the merchant chains means they have the ability and resources to import alternative pipe systems from overseas should New Zealand wholesalers raise prices unreasonably (and indeed merchants such as Plumbing World, Mitre 10 and Crane already are doing so). Similarly, the merchants can switch suppliers easily and without significant cost.

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

Date: 7 February 2008

The Registrar
Market Structure Group
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

PART I: TRANSACTION DETAILS**1. What is the business acquisition for which clearance is sought?**

- 1.1** The business acquisition for which clearance is sought is the acquisition by New Zealand Investment Holdings Limited (**Applicant** or **NZIH**) or its nominee of 100% of the shares, or assets and business, of RX Plastics Limited (**RX Plastics**).
- 1.2** The timetable set by RX Plastics for the acquisition involved the release of an Information Memorandum on 21 January 2008, with indicative non-binding bids due by 15 February 2008, followed by the selection of appropriate parties who will be invited to undertake full due diligence and proceed to a binding offer stage.
- 1.3** NZIH intends to submit an indicative non-binding bid for RX Plastics by 15 February 2008. Any subsequent binding offer made will be subject to obtaining clearance from the Commerce Commission.

The Person Giving Notice**2. Who is the person giving this notice?**

- 2.1** This notice is given by:
- New Zealand Investment Holdings Limited
32 Mahia Road
Manurewa
AUCKLAND
Telephone: (09) 279 2750
Facsimile: (09) 279 2798
Attention: Colin Leach (Managing Director)
Email: colinl@marley.co.nz
- 2.2** All correspondence and notices in respect of this application should be directed in the first instance to:
- Simpson Grierson
88 Shortland Street
Private Bag 92518
AUCKLAND
Telephone: (09) 358 2222
Facsimile: (09) 307 0331
Attention: Robert McLean
Email: robert.mclean@simpsongrierson.com

Confidentiality**3. Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long, and why?**

- 3.1** The Applicant has provided two versions of the notice to the Commission:

- 3.1.1** one copy marked "Confidential Version", in which the confidential information the Applicant wishes the Commission to withhold is highlighted in square brackets in italics (ie [xxx]); and
- 3.1.2** one copy marked "Public Version", in which the confidential information has been deleted.
- 3.2** The foregoing request for confidentiality is made not only in relation to this application, but also for all additional information of a similar nature that the parties provide to the Commission.
- 3.3** The Applicant requests that the confidential information identified in the Confidential Version or any additional information provided be subject to a confidentiality order under section 100 of the Commerce Act 1986. After the expiry of such an order, confidentiality is sought under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:

 - 3.3.1** the information is commercially sensitive and its disclosure would be likely to unreasonably prejudice the commercial position of the parties;
 - 3.3.2** the Applicant believes that 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. Who are the participants?

- 4.1** The Acquirer is:

New Zealand Investment Holdings Limited
32 Mahia Road
Manurewa
AUCKLAND
Telephone: (09) 279 2750
Facsimile: (09) 279 2798
Attention: Colin Leach (Managing Director)
Email: colinl@marley.co.nz
- 4.2** The Vendor is:

RX Plastics Ltd
PO Box 360
Ashburton
New Zealand
Attention: Keith Goodall, Director
Mobile: 021 728 844
Direct Dial: 09 921 4634
Email: keith.goodall@kgal.co.nz

5. Who is interconnected to or associated with each participant?**5.1 Acquirer group/associates:**

Please refer to **Appendix I** for the Applicant's corporate structure.

5.2 Target company group/associates:

5.2.1 RX Plastics has advised that it does not own more than 10% of the shares in any other company. Nor does it have any subsidiaries.

5.2.2 RX Plastics has also advised that there is no company that currently owns over 10% of the shares in RX Plastics which will continue to do so after the proposed acquisition.

6. Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

6.1 The Applicant is not aware of either participant or any interconnected body corporate of either participant holding any beneficial interest in any other relevant market participants.

6.2 As set out in **Appendix I**, NZIH does own Dux Industries Limited which manufactures polybutylene pipe for the reticulation of potable hot and cold water in dwellings. However, neither Marley nor RX Plastics are involved in polybutylene or any alternative hot and cold water reticulation systems.

7. Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 The Applicant is not aware of any other links between either participant or any interconnected body corporate of either participant and any other relevant market participants.

8. Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

8.1 Apart from Marley New Zealand Limited and Dux Industries Limited, the directors of the Applicant are not directors in any other relevant companies that are involved in the markets in which RX Plastics operates.

9. What are the business activities of each participant?**NZIH**

- 9.1** The Applicant (formerly Marley New Zealand Holdings Limited) is the holding company for all Aliaxis Group subsidiaries in New Zealand, including Marley New Zealand Limited (**Marley**).
- 9.2** Marley is primarily a plastic manufacturer with some plastic wholesale/distribution. Marley commenced business in 1959 by manufacturing sheet flooring and tile products but soon expanded into the manufacture and marketing of a wide range of extruded and injection moulded plastic products for the rainwater, plumbing, drainage, rural, utilities, and cable management markets. Today, Marley employs about 220 people. Marley's ISO9001 and ISO14000 accredited manufacturing operation incorporates blending, extrusion, injection moulding, fabrication and warehouse facilities. The main manufacturing plant and head office is located at Manurewa, Auckland, while a second plant at Hornby, in Christchurch, provides a manufacturing and warehouse facility to service the South Island.
- 9.3** For the purposes of this acquisition, the key products that Marley produces are:
- 9.3.1** The manufacture and wholesale of polyvinylchloride (**PVC**) plastic pipes and PVC fittings;
- 9.3.2** The manufacture and wholesale of polyethylene (**PE**) plastic pipes, and the sale of a small amount of imported PE fittings. Marley does not manufacture PE fittings.

RX Plastics

- 9.4** RX Plastics was established in 1972 and is a manufacturer of plastic products including irrigation products, water storage tanks and effluent disposal systems. It is focused on the rural and irrigation markets, with a presence in plumbing and building. It distributes and in many cases manufactures piping systems, valves and fittings, septic and effluent systems, irrigation systems, tanks, materials handling, and pots/tubes and grids. In 2004 RX Plastics purchased the rotational moulding business of Skellerup Industries, and has an estimated 30% market share in the rotational moulding market in New Zealand. It has manufacturing plants in Ashburton and Hamilton.
- 9.5** For the purposes of this acquisition, RX Plastics' key products include:
- 9.5.1** The manufacture and wholesale of PVC plastic pipes. NZIH understands this does not include PVC fittings;
- 9.5.2** The manufacture and wholesale of PE plastic pipes and a limited range of PE fittings;
- 9.5.3** The manufacture and wholesale of rotational moulding and injection moulding products.

10. What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

10.1 [CONFIDENTIAL]

10.2 [CONFIDENTIAL]

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

11.1 Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 - 5.1.4), and

- the business to which the assets relate, or
- the 'target company' (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)

are both engaged?

11.1.1 RX Plastics has indicated to bidders that its current product range is as follows (figures based on current year split of gross revenues):

- (a) PE plastic pipes [CONFIDENTIAL%];
- (b) PVC plastic pipes [CONFIDENTIAL%];
- (c) Rotational moulding products [CONFIDENTIAL%];
- (d) Injection moulding and fittings [CONFIDENTIAL%].

11.1.2 The key products where aggregation issues will occur as a result of this acquisition are in respect of:

- (a) **PE plastic pipes:** RX Plastics manufactures PE pipe ranging from 4mm to 450mm in diameter. Marley manufactures PE pipe from 15mm to 630mm in diameter; and
- (b) **PVC plastic pipes:** RX Plastics manufactures PVC pipe ranging from 20mm to 500mm. Marley manufactures PVC plastic pipe from 15mm to 375mm in diameter.

The pipes conduct non-heated fluids (potable water, waste water), gases and services (such as electrical wiring and cables). The contents of the pipes can be pressurised or non-pressurised.

11.1.3 While aggregation will occur for PE and PVC plastic pipes, it will not occur throughout all segments of the relevant markets for these products. Assuming there are market segments for civil/infrastructure, rural/irrigation, building/plumbing, and telecommunications, RX Plastics' strengths are in the rural/irrigation market segment with only a small percentage of

the business in building/plumbing, civil/infrastructure and telecommunications/utilities.

- 11.1.4** Marley does not produce rotational moulding products (ie tanks etc) and therefore there will not be aggregation issues for such products following the acquisition of RX Plastics.
- 11.1.5** In addition, aggregation issues will not arise for plastic pipe fittings since, while Marley manufactures PVC fittings in New Zealand, RX Plastics does not; and, while RX Plastics manufactures a limited range of PE fittings in New Zealand, Marley does not. Although Marley does import PE fittings, the amount is minimal and NZIH does not consider it is material. (For the sake of completeness, NZIH notes that PVC fittings cannot be used with PE pipe and vice versa.)
- 11.1.6** In respect of the definition of the markets in which Marley and RX Plastics are both engaged in respect of PE and PVC plastic pipes, NZIH refers the Commission to the response to question 11.2 below for further detail.

11.2 Please identify for each market:

- **the product(s), functional level, geographical area and (where relevant) timeframe;**
- **the specific parties involved;**
- **the relationship of those parties to the acquirer or the target company as the case may be.**

- 11.2.1** Details of the relevant markets are set out below in this section. The specific parties involved and their ownership is dealt with in the response to question 16.

Product Market

- 11.2.2** The issue of product market definition was reviewed by the Commerce Commission in 2000 when Etex Holdings BV (the owner of Marley at that time) sought and obtained clearance to acquire Keyplas Limited (**Decision No. 405** dated 11 September 2000). The Commission concluded that the appropriate market in that case (which only raised PVC pipe aggregation issues) was:

"the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand" (paras. 41 and 47).

If the Commission applies its market definition in Decision No. 405 in assessing product market definition in this case, this would mean that there would be separate product markets for each of PVC and PE pipe systems.

- 11.2.3** For the reasons stated below, NZIH considers there are good arguments for taking the view that the product market is a wider combined product market for generic pipe systems (or at least a market for plastic pipe systems). As a result, while NZIH

provides information in this clearance application relating to the Commission's product market definition in Decision No. 405 (ie for PVC and PE pipe), NZIH also provides relevant market information for generic pipes systems and for plastic pipe systems as well.

Arguments in Favour of a Wider Product Market

11.2.4 In this sub-section, NZIH sets out the reasons why it submits that there are good arguments for taking the view that the product market is a combined product market for generic pipe systems (or at least a plastic pipe systems market).

11.2.5 The starting point is that the Commission itself accepted that its product market definition in Decision No. 405 was "conservative" (para. 41) and "narrow" (para. 46). The Commission was aware that PVC pipes competed directly with other generic types of pipe such as PE, concrete, steel and clay pipes in various instances (para. 42). As stated in para. 16:

"The Commission notes that PVC pipe systems compete in a broader generic pipe market which includes pipes constructed of PE, polybutylene ("PB"), polypropylene, concrete, iron, steel, clay and copper."

11.2.6 Some market players interviewed by the Commission argued that the relevant market was the market for the "manufacture/wholesale supply of pipe in New Zealand", or that it was the market for the "manufacture/wholesale supply of plastic pipe systems in New Zealand" (paras. 42-43). Paragraphs 42 & 43 of the Decision are worth setting out in full in this respect. They state:

"The Commission understands that in various instances PVC pipes compete directly with PE, concrete, steel and clay pipes. Anecdotal evidence suggests that to a certain extent choice between the various types of pipe is based on price, perceived customer preference and perceived structural advantages. For instance, PE is perceived to be less brittle than PVC. Consequently in some instances Councils will prefer PE pipe to PVC pipe – especially in earthquake prone areas. For this reason some of the market players have suggested the relevant market is simply the market for the "manufacture/wholesale supply of pipe in New Zealand".

Other parties spoken to suggested it would be more accurate to define the market as the "manufacture/wholesale supply of plastic pipe systems in New Zealand". Such a market would be dominated by PVC and PE but would also include PB and polypropylene. Lending credence to such a definition, the main PE manufacturers have confirmed that PE competes directly with PVC in all applications/segments of the overall pipe market (including pressured and non-pressured piping) with the (sole) exception of household plumbing."

11.2.7 The Commission noted that the New Zealand pipe market could be broken down for the purposes of analysis into segments being civil/infrastructure, rural/irrigation, building/plumbing, and telecommunications (para. 17). As noted by the Commission in Decision No. 405 (para. 43), PE competed directly with PVC in all these applications/segments of the overall pipe market at that time, apart from waste water plumbing of buildings where PVC pipes were used almost exclusively (para. 44). This was a key factor in the Commission adopting the narrower product market definition of PVC pipes.

- 11.2.8** To provide an update since the time of the Decision, the table at **Appendix II** shows the volume of different types of pipes sold into each of the market segments of civil, plumbing, rural and utilities (ie the segments adopted by the Commission in Decision No. 405). NZIH has also attached at **Appendix III** its assessment of which types of pipe are substitutable with one another.
- 11.2.9** It can be seen from these two Appendices that plastic pipe systems continue to face significant competition from other types of generic pipe systems. For instance, concrete pipes are the dominant type of pipe used in the civil segment of the market (eg stormwater etc), and are widely used in the rural market segment (eg for culverts). In addition, new technology has meant that hybrid pipe products now compete with PVC and PE pipes. For instance, Tyco has now developed a lighter grade ductile iron pipe which is lined with PE and competes directly with pressure PVC/PE pipes.
- 11.2.10** From the table in **Appendix II**, it is clear that PE and Other Plastics (ie polybutylene, polypropylene, ABS etc) remain a significant source of competition for PVC products in all four segments of the market. PE and PVC pipe are used in roughly equal percentages in all market segments apart from plumbing (eg **[CONFIDENTIAL%]** for civil, **[CONFIDENTIAL%]** for rural, and **[CONFIDENTIAL%]** for utilities). From this it can be seen that the Commission's observation in Decision No. 405 that PE competes directly with PVC in all applications/segments of the overall pipe market remains accurate. It is worth noting that there have been recent technological developments even amongst types of PVC pipes. For instance, Crane and Vinidex have access to oPVC pressure pipe technology which produces a lightweight PVC pressure pipe with a thinner wall which has been making significant inroads into sales of other types of PVC pressure pipe products in use in Australia (ie uPVC and mPVC) over the last 2-3 years (Marley and RX Plastics do not currently have this technology).
- 11.2.11** In respect of the Commission's assessment in Decision No. 405 that PE was not a substitute for PVC pipes for waste water plumbing of buildings (usually referred to as Drain Waste & Vent Systems or **DWV**), from the table it can be seen that PE pipes still make up only **[CONFIDENTIAL%]** of the plumbing segment. However, PVC at **[CONFIDENTIAL%]** market share does not have the plumbing segment to itself since Other Plastics at **[CONFIDENTIAL%]** and copper at **[CONFIDENTIAL%]** comprise significant market shares in their own right in this segment. Moreover, over the last five years there has been a trend in the development of PE and other non-PVC plastic pipe material in the DWV market segment. Examples of this include:
- (a) Up to early 2000 the DWV market segment was almost exclusively PVC and copper pipe, and to a lesser extent galvanised iron. Now product such as polypropylene pipe and fittings are becoming more

prevalent. This is due to environmental benefits such as acoustic performance, and the material's ability to contribute to a Green Star Building rating (PVC carries a negative rating). A Green Star rating is mandated by the New Zealand Government for their own buildings. Specialized PE DWV systems are also becoming more common in commercial buildings where improved performance in venting is required.

- (b) New product alternatives such as polypropylene are growing and there are now a number of companies importing polypropylene DWV systems such as:
 - (i) Wavin Plastic Ltd, a domestic and commercial pipe system imported by Cranes Distribution which has a technical supply agreement with Wavin (a large European pipe and fittings manufacturer);
 - (ii) Geberit, a European company which supplies a range of specialist PE and polypropylene DWV pipe. This business is represented in New Zealand by a wholesale and importing business called Franklin Plumbers;
 - (iii) Valsir, a European Company which manufactures and supplies a range of Polypropylene and PE DWV pipe. Valsir are represented in New Zealand by Waterware, a local importer/distribution company.

11.2.12 This shift in market demand underlines the interchangeability of products within the pipe market. PVC faces strong competition from other material based systems such as PE in pressure and non-pressure applications. In the pressure product range, cost of installation of PE is lower than PVC due to it being manufactured in longer lengths and in coils. PE is preferred by a number of local councils for earthquake survival reasons. In the non-pressure product range, twin walled corrugated PE and polypropylene pipes are capturing shares in the ducting and stormwater markets for the same reasons, and because they are considerably lower in cost. Neither Marley nor RX Plastics manufacture corrugated twinwall pipe in either PE or polypropylene.

11.2.13 As a result, NZIH submits that the product market is a market for generic pipe systems (or at least a plastic pipe systems market), rather than a market for each of PE and PVC pipes separately. In support of this, it notes that the ACCC, when deciding not to oppose Crane's proposed acquisition of Milnes Holdings Limited in Australia in 2003, adopted a wider market definition of "the national market for the manufacture and supply of plastic pipes and fittings".¹

Geographic Extent

¹ Refer to the ACCC website at "www.accc.gov.au/content/index.phtml/itemId/500402".

11.2.14 The Commission has previously accepted in Decision No. 405 that the geographic extent of the market is national, and the Applicant has no objection to the Commission proceeding on this basis for the purposes of this clearance application.

Functional Level

11.2.15 The Commission considered in Decision 405 that the functional level of the market was that for manufacture/wholesale (distribution) supply.

11.2.16 Again the Applicant has no objection to the Commission proceeding on this basis for the purposes of this application.

Conclusion On Market Definition

11.2.17 In summary, if the Commission applies its market definition in Decision No. 405 to this case, it would mean that there would be separate markets for the manufacture/wholesale supply of both PVC and PE pipe systems in New Zealand.

11.2.18 However, NZIH considers there are good arguments for taking the view that the market is a combined product market for the manufacture/wholesale supply of generic pipe systems in New Zealand (or at least a wider market for the manufacture/wholesale supply of plastic pipe systems in New Zealand).

Differentiated Product Markets

12. Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price)

12.1 If the market is one for each of PE and PVC pipes, then NZIH considers that each type of pipe is standardised so that buyers make their purchases largely on the basis of price. PVC and PE pipes are produced by an extrusion process to a common Australasian Standard. They are effectively interchangeable as between manufacturers, that is from an end user's perspective it is indifferent as to which manufacturer produces the pipes provided that they meet the relevant standard. Although pipes can be purchased as part of a manufacturer's "system", that need not be the case. Pipes can be (and usually are) acquired from different manufacturers and different merchants. (This is referred to at para. 14 of the Commission's Decision No. 405 (at least in respect of PVC pipes).)

12.2 If the market is a wider one for plastic pipe systems, while there is a mix of standardised and differentiated products in that market, NZIH still considers that buyers make their purchases largely on the basis of price.

12.3 In a wider generic pipe market, the Commission has previously noted that competition between the different types of pipe in that market was driven by price, although product characteristics would be relevant as well here. As stated in para. 68 of Decision No. 405, "PVC pipe systems operate within the generic pipe systems market which includes pipes of

various constructions. ... Competition is driven by price and customer preference" (see also the discussion at paras. 68-71). It also noted that:

"... in various instances PVC pipes compete directly with PE, concrete, steel and clay pipes. Anecdotal evidence suggests that to a certain extent choice between the various types of pipe is based on price, perceived customer preference and perceived inherent structural advantages." (para. 42)

- 12.4** The Commission accepted that existing competition in the generic pipe market was therefore a constraint on market activity in the PVC market in that case (para. 82).
- 12.5** NZIH submits that this remains the case. Its experience is that, if an end user chooses the piping material they intend to use first, then they will choose the cheapest type of pipe within that material choice. In many cases, the end user will be indifferent between materials and will choose the lowest price across a number of materials. More sophisticated end-users will look not only at the pipe price but at the cost (including installation and the economic life cost of the completed pipeline). This process is tempered by historic preferences by individual end-users for a particular type of piping material. This often tends to favour older products such as concrete, ductile iron and copper piping.

13. For differentiated product markets:

13.1 Please indicate the principal characteristics of products that cause them to be differentiated one from another.

- 13.1.1** Please refer to the response to question 12 above and paras. 68-71 of Decision No. 405.

13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?

- 13.2.1** Refer to the response to question 13.1.
- 13.2.2** **[CONFIDENTIAL]** This is because in significant market segments (for instance the civil and plumbing segments), pipe is not ordered by brand but rather by dimension and product description, with the final overriding criteria being price in the civil segment, and a combination of price tempered by convenience in the plumbing segment (eg location of a retailer).

13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?

13.3.1 Refer to the response to question 13.1.

13.4 Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

13.4.1 Refer to the response to question 13.1. As noted in the response to question 12, the Commission found in Decision No. 405 that existing competition in the generic pipe market was a constraint on market activity in the PVC market (para. 82). The Applicant submits that this would remain the case post-acquisition, and that the generic pipe market would continue to act as a significant constraint on the plastic pipes market and/or the PVC/PE markets.

Vertical Integration

14. Will the proposal result in vertical integration between firms involved at different functional levels?

14.1 Are the "acquirer" (or any interconnected or associated company identified in questions 5.1.1-5.1.4) and:

- **the business to which the assets relate, or**
- **the 'target company' (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2)**

engaged at different functional levels of the same product market(s)?

14.1.1 The Applicant does not believe that the proposed acquisition will result in any vertical integration between the firms at different functional levels.

14.1.2 Neither Marley nor RX Plastics is vertically integrated. Both companies differ in this respect from major competitors such as Crane, Tyco, Hynds and Fletcher Building which are vertically integrated and as a result have a stronger competitive position. This is expanded on below in the response to question 16.2.

14.2 Please identify for each market:

14.2.1 products(s), functional level(s), geographic area(s) and (where relevant) time frames;

14.2.2 the specific parties involved;

14.2.3 the relationship of those persons to the 'acquirer' or 'the target company' as the case may be.

Not applicable.

14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.

Not applicable.

15. In respect of each market identified in questions 11 and/or 14 identify briefly

15.1 All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case, the outcome of the notification (eg cleared, authorised, declined, withdrawn) and in each case the outcome of the notification and whether the proposed acquisition has occurred.

15.1.1 The Applicant is not aware of any occasion during the previous three years where NZIH or RX Plastics has formally notified the Commission of any proposed acquisition involving the relevant market(s).

15.1.2 As noted above, Marley was concerned in an application for clearance by Etex Holdings BV of Keyplas Limited to the Commission. The Commission cleared this acquisition on 11 September 2000 (Decision No. 405). However, the acquisition did not occur as Crane purchased Keyplas instead in late 2003. NZIH understands this was done without Crane having to seek clearance from the Commission.

15.2 Any other acquisition of assets of a business or shares in the last three years which either participant (or any interconnected body corporate) has undertaken in the last three years.

15.2.1 Except as set out below, the Applicant is not aware of any occasion during the previous three years where NZIH or RX Plastics proceeded with any acquisitions involving the relevant market(s).

15.2.2 In 2004, RX Plastics purchased the rotational moulding business of Skellerup. However, this does not relate to the markets identified above, and is outside the three year period in any event.

15.2.3 In 2006 NZIH bought Dux Industries Limited. However, as stated above, this related to a Polybutylene hot and cold water reticulation system for dwellings. Neither Marley nor RX Plastics are involved in Polybutylene or any alternative hot and cold water reticulation systems.

**PART III: CONSTRAINTS ON MARKET POWER BY
EXISTING COMPETITION**

Existing Competitors

16. In the market or markets, who are the suppliers of competing products, including imports?

The suppliers of competing products including imports are set out in the market share tables in **Appendix IV**. These tables have been prepared for pipes with diameters in the range of 15mm to 450mm which represents the key area of aggregation between Marley and RX Plastics.

16.1 Please identify the owners of those suppliers (including ultimate owner/s).

16.1.1 The owners of the main manufacturers named in **Appendix IV** are as follows:

| | Company Name | Owner |
|-----|---|--|
| (a) | Crane Manufacturing (Iplex) Crane Australia | |
| (b) | Tyco | Tyco International |
| (c) | Interpipe | Joint Ownership Fletcher Building and Hynds Pipeline |
| (d) | NZ Steel Australia | BlueScope Steel |
| (e) | Humes Industries | Fletcher Building |
| (f) | Hynds Pipelines | Private Ownership |
| (g) | Dux Industries | New Zealand Investment Holdings |
| (h) | Buteline Industries | Private Ownership |
| (i) | McKechnie (MCK Pacific Group) | MCK Group |
| (j) | PPI | Private Ownership |
| (k) | Auplex Industries | Private Ownership |

16.1.2 The owners of the main importers are as follows:

| | Company Name | Owner |
|-----|--|-------------------|
| (a) | Crane (including Crane Distribution & Manufacturing) | Crane Australia |
| (b) | Hume Industries | Fletcher Building |

| | | |
|-----|---------------------------------|--|
| (c) | Tyco | Tyco International |
| (d) | Plumbing World | Co-op (New Zealand Plumbers Merchants) |
| (e) | MM Kembla | MM Metal Manufactures Group (also own Vinindex) Private ownership |
| (f) | Pipes & Fittings (Invercargill) | Private Ownership |
| (g) | Aquafit (Auckland) | Private Ownership |
| (h) | The Mad Plumber (Auckland) | Private ownership |
| (i) | PPI Ownership | Private |
| (j) | Rehau AG & Co | International private ownership |

| | |
|-------------|---|
| 16.2 | What are their estimated market shares, both in terms of productive capacity and of sales? |
|-------------|---|

16.2.1 The Applicant estimates market shares in the tables set out in **Appendix IV**. Tables have been provided showing market shares for a combined generic pipe systems market, a plastic pipe systems market, and also for separate PE and PVC markets. In terms of productive capacity, NZIH considers there is significant spare productive capacity in the industry and refers the Commission to paragraphs 17.2.1 and 18 below for further information.

16.2.2 As can be seen in these tables, if the relevant market was the generic pipe market then the Applicant would have a post acquisition market share of approximately **[CONFIDENTIAL%]** in a market where the largest three participants (Crane, Marley and Humes) would have a combined market share of around **[CONFIDENTIAL%]**, which would fall well within the Commission's prescribed safe harbours. (While Dux would have around **[CONFIDENTIAL%]** share of this market, as stated above neither Marley nor RX Plastics are involved in the manufacture of the same polybutylene or alternative hot and cold water reticulation systems products as Dux.)

16.2.3 However, if the proposed acquisition is viewed in the context of the market(s) for each of PE/PVC pipes and/or plastic pipes systems, then the safe harbours would not be available. This is on the basis that:

- (a) In the plastic pipe systems market the largest three participants post acquisition (Crane, Marley and Interpipe) would have a combined market share of around **[CONFIDENTIAL%]**, and Marley would have a post-acquisition market share of around **[CONFIDENTIAL%]**. (Dux would have around a **[CONFIDENTIAL%]** share of this market.)

- (b) In the PE pipe market the largest three participants post acquisition (Crane, Marley and Interpipe) would have a combined market share of around **[CONFIDENTIAL%]**, and Marley would have a post-acquisition market share of **[CONFIDENTIAL%]**.
- (c) In the PVC pipe market the largest three participants post acquisition (Crane, Marley and Aquafit) would have a combined market share of around **[CONFIDENTIAL%]**, and Marley would have a post-acquisition market share of around **[CONFIDENTIAL%]**.

16.2.4 Notwithstanding that the prescribed safe harbours may not be available for the market(s) for each of PE/PVC pipes and/or plastic pipes systems, the Applicant believes that existing competition will nevertheless continue to provide a substantial constraint on its ability to exercise unilateral market power following the proposed acquisition. In Decision No. 405 the Commission assessed whether, leaving aside safe harbours issues, the merged Marley entity in that case would be able to initiate and maintain an increase in prices, or reduction in the quality of service. It concluded that "it would be constrained from doing so by: existing competition in the generic pipe market and in particular by PE pipe systems; merchants' market power; the availability of imported PVC pipe systems; and low barriers to entry" (para. 82). NZIH submits that this still remains the case today. Furthermore:

- (a) The Applicant would continue to face a significant competitive constraint from a similarly sized rival post-acquisition in the form of Crane. (It is worth noting that, apart from Crane's acquisition of Keyplas in late 2003, Crane has been involved in a number of recent acquisitions in New Zealand including that of Mastertrade (the subject of Decision No. 444 by the Commission in December 2001), Hydrotech Sanitar (an importer of plumbing products) in 2007, and currently the Tauranga outlet of Plumbing Plus (a multi-location retail plumbing buying group with independently-owned branches).);
- (b) The Applicant would continue to face competition from competitors who are vertically integrated in the market, meaning that they are not just competitors at the manufacturing/wholesale level but are also in a number of instances major customers of Marley. Such competitors include:
 - (i) **Crane:** This includes Crane Manufacturing (Iplex Pipelines and Key Plastics), and Crane's Wholesale/Merchant Groups (Mastertrade/Corys (Plumbing, Civil, Electrical) 51 branches; Micos (Plumbing, Civil, Rural) 39 branches; Corys (Electrical) 12 branches); and Hydrotech Sanitar (a plumbing products importer)).

- (ii) **Tyco:** This includes Tyco Manufacturing (Prebensens) and Tyco Wholesale (Tyco Water (Branches in main centres)).
 - (iii) **Fletcher Building:** At the manufacturing level this includes Interpipe (Fletcher Building joint venture with Hynds Pipelines), Humes Concrete, and Pacific Steel (Steel Pipes). At the Wholesale/Merchant level this includes Humes Industries (Civil & Rural) 21 branches and Placemakers (Plumbing, Building) 66 branches.
 - (iv) **Hynds Pipelines:** At the manufacturing level this includes Hynds Concrete Pipes and Interpipe (joint venture with Fletcher Building). At the wholesale/merchant level this includes Hynds Pipelines Civil & Rural (23 branches). It also has the importation company Hygrade (2 branches NZ).
- (c) The Applicant would continue to face a number of competitors which, although smaller in size, provide a significant competitive constraint given the low barriers to expansion in the industry. Please see the response to questions 17-18 below for further information on this.
- (d) Moreover, there are a number of large firms that are not currently producing the products in the market(s) but could enter the market quickly (refer for instance to the response to question 16.5 below).

16.2.5 It is appropriate to note in this respect that the ACCC did not oppose Crane/lplex's proposed acquisition of Milnes Holdings Limited in Australia in 2003, despite the fact that Crane/Milnes would have had 51% of the Australian market for the manufacture and supply of plastic pipes and fittings post-acquisition.² This was a result of the low barriers to entry, threat of imports, and availability of substitutes (ie the same factors that apply in the present acquisition). The ACCC's competition analysis was that:

"Based solely on Milnes' market share data, the Commission considered that Crane/Milnes would have 51% of the relevant market, with the next largest competitor, Vinidex, holding 34%, and a large number of smaller competitors sharing the remaining 14%.

Barriers to entry: The Commission considered that barriers are low, as access to the technology required to produce most types of plastic pipe is widely available, initial capital expenditure is relatively low, and the raw material, plastic resin, is widely obtainable. It did not appear that brand loyalty was strong in the market, given the homogeneity of the product, though price and quality remain factors. Low entry barriers are confirmed by the presence of about 14 plastic pipe and fittings manufacturers, each with annual revenue under \$10 million.

² Refer to the ACCC website at "www.accc.gov.au/content/index.phtml/itemId/500402".

Actual and potential imports: It was estimated that imports of plastic fittings are worth about \$17 million annually, or 14% of all such fittings sold in Australia.

Availability of Substitutes: There are a significant number of alternative domestic suppliers of plastic pipe and fittings and a large number of current and potential overseas suppliers.

Likely increases in prices or profits: On the grounds that barriers to entry are low and there are a significant number of alternative manufacturers and suppliers, it was considered that the proposed acquisition would not permit the merged entity to significantly increase its prices without losing market shares to competitors in the relevant market."

- 16.2.6** Similarly, the ACCC did not oppose Crane/lplex's proposed acquisition of Crevet Limited in 2000 which involved aggregation in pipes and fittings product lines in irrigation, civil, plumbing and building, and telecommunications market segments.³ It noted:

"The merger is unlikely to have detrimental effect on competition due to the presence of numerous other manufacturers and distributors of pipes and fittings in the market, and low barriers to entry for new plastic manufacturers. Market inquiries indicated that there is significant competition between different piping product materials.

It was also found that significant countervailing power can be exercised against manufacturers and distributors of pipes and fittings by customers such as government authorities, city councils, large civil contracting firms and telecommunications providers."

- 16.2.7** As set out in this application, these factors that influenced the ACCC in its decision not to oppose Crane's acquisitions in 2003 and 2000⁴ are applicable in the present acquisition. The Applicant therefore believes that existing market participants, near entrants and imports (due to low barriers to entry), and merchants currently provide a strong competitive constraint and would continue to do so following the proposed acquisition.
[CONFIDENTIAL]

16.3 Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

- 16.3.1** The source of the data in Appendix IV is Marley's own sales figures, together with publicly available information (for instance Crane's total sales from the Companies Office; and import statistics for suppliers of raw material and for finished product).
- 16.3.2** While the data is estimated, to the best of its knowledge NZIH considers it likely to be accurate.

16.4 Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

- 16.4.1** Historical market share data is not readily available. However NZIH has attached at **Appendix VI** data that Marley included

³ Refer to the ACCC website at "www.accc.gov.au/content/index.phtml/itemId/475978".

⁴ This is despite the fact the 2003 acquisition would lead to 51% market share in the Australian plastic pipes market post-acquisition – a significantly higher figure than that for Marley/RX Plastics in the plastic pipes market in New Zealand.

with its 2000 application for clearance to the Commission which formed the basis for Decision No. 405.

16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

16.5.1 There are a number of companies not currently producing PVC or PE pipes in New Zealand who could enter the market quickly in response to an attempt by existing manufacturers/wholesalers attempting to raise prices or reduce output or quality. These companies include:

Vinidex Pty Australia:

16.5.2 Vinidex Pty is one of two leading manufacturers in Australia of PVC and PE pipe product (the other being Iplex (Crane)), and is currently a supplier of some PVC fittings to Marley. Vinidex could secure supply partnerships almost immediately with a number of existing merchant wholesale companies servicing the plumbing and building markets such as Plumbing World, Plumbing Plus, Chester's, Mitre 10, and Bunning's. As in Australia, Vinidex could also secure supply agreements directly with large end user contractors and local authorities which would allow them to secure a portion of the civil segment. It could be expected that Vinidex through their Australian influence would begin trading directly with RD1, New Zealand's largest rural farm wholesaler. Vinidex's parent company also owns Kembla, a leading supplier of copper pipe systems in New Zealand, and could use this as a vehicle to enter the market.

16.5.3 All of the above could be achieved through visits by their Australian sales team complemented by product imported in containers within a 4 week period. Local manufacturing would take between 6-9 months to develop if new equipment was used. However if they shifted existing extrusion equipment directly from one of their plants in Australia then they could be manufacturing within 4-5 months

Australian Plastic Profiles (APP):

16.5.4 This is a privately owned PVC pipe and fitting manufacturer located in Sydney. It is currently the third largest supplier of PVC pipe and fittings in Australia behind Crane Manufacturing (Iplex) and Vinidex Pty.

16.5.5 This company currently exports quantities of DWV pipe and fittings into New Zealand supplying merchants such as Aquafit, Pipe and Fittings, Franklin Plumbers, and the Mad Plumber. Their current position has given them a captive customer base which could be significantly expanded to include national merchant groups such as Plumbing World and Plumbing Plus.

16.5.6 Like Vinidex APP could shift extrusion equipment from Australia to New Zealand and be manufacturing pipe within 4-5 months.

Snow Plastic Pipe (Splendour Corporation PTE Ltd):

- 16.5.7** This Singaporean company has shown a lot of interest in the New Zealand market over the past 4-5 years. It is currently supplying small amounts of PVC pipe directly to the trade. It has completed formal research on two occasions to determine an entry strategy into the New Zealand market. Their manufacturing operations are significant and product fits local standard requirements.
- 16.5.8** Snow could quickly gain a foothold in the New Zealand PVC drainage and pressure pipe markets through an aggressive strategy followed up by the introduction of a local manufacturing plant within 12 months.

Tubemakers and Roofmart Fiji

- 16.5.9** This Fijian pipe manufacturer produces a range of PVC non pressure, PVC pressure and small diameter PE pipes primarily for local Fijian and Pacific Island supply. All products are compliant with the local New Zealand/Australian standards, and in the 3rd and 4th quarters of 2007 it contacted merchants in New Zealand with the long term objective of securing supply contracts. Exporting to New Zealand would be a very simple process until such time as a local manufacturing operation could be set up. This business is linked through common shareholding to Tubemakers, a PVC manufacturer in Australia.

| | |
|-------------|--|
| 16.6 | Estimate the productive capacity that such near entrants potentially could bring to the market. |
|-------------|--|

- 16.6.1** As stated in the response to question 16.5, NZIH believes that each of these near entrants could expand productive capacity reasonably quickly.
- 16.6.2** By way of example, a single PVC line will produce in a 5 day week around 4,200 tonnes per annum, while a single PE line will produce in a 5 day week around 1,600 tonnes per annum. This compares with Marley's current total production of [CONFIDENTIAL] tonnes of PVC per annum and [CONFIDENTIAL] tonnes of PE per annum. From this it can be seen that a near entrant could rapidly bring significant productive capacity to the market by a single PVC or PE line, and even more with multiple lines. This would certainly be possible for a near entrant such as Vinindex which is around five times the size of Marley/RX Plastics combined in PE/PVC pipe.

| | |
|-------------|---|
| 16.7 | Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate? |
|-------------|---|

- 16.7.1** Importation of piping systems from overseas is increasing and has the potential to increase considerably more given the interchangeability of the Australasian standardised product and the growth in Asian production. Freight costs for imported

product to a New Zealand port are often comparable with freight costs within New Zealand, for example Auckland to Christchurch. For instance, the cost of shipping a 20' FCL container from Sydney or Melbourne to Christchurch would be around NZ\$1,944, while from Port Kelang, Malaysia, it would be around NZ\$2,147. This compares with the cost to rail a container from Auckland to Christchurch which would be around NZ\$2,050, and the cost of sending a container by road which would be around \$3,750.

16.7.2 In particular, there is an increasing flow of imported plastic pipe product coming into New Zealand from Australia, South East Asia, India and China. Some of this product is being imported by major end-users who are also selling it direct to other end users and bypassing the distribution chain. The most recent entrants to the market have been via imports sourced from Australia. An example of this is APP with their Pipeking brand (product from other Australian suppliers is also in New Zealand already), together with Aquafit and The Mad Plumber. The rate of growth is driven by access to distribution (something not affected by this acquisition).

16.7.3 While the market share of imports in the tables in **Appendix IV** is not large at present, the threat of increased importation of plastic pipe products still acts as a significant constraint on the market price for PE/PVC pipes in New Zealand. **[CONFIDENTIAL]** NZIH has available to it numerous advertisements and flyers from importers of PVC, PE and Other Plastics products showing the prices for imported products. It can provide examples in support of this point if that would be of assistance to the Commission. **[CONFIDENTIAL]**

16.7.4 **[CONFIDENTIAL]**

16.8 To what extent is the product exported?

16.8.1 Marley does export some PVC and PE pipes to the Pacific Islands, but this is minimal in volume.

16.8.2 NZIH understands that RX Plastics does not export PE or PVC pipes.

16.9 Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

16.9.1 RX Plastics has been a leader and innovator in rotary moulding (tanks, sewerage treatment systems etc). However, as stated above, there are no aggregation issues in respect of rotary moulding arising from the acquisition.

16.9.2 **[CONFIDENTIAL]**

Conditions of Expansion

17. The following listing gives different types of market conditions that may affect the ability of existing firms to expand:

- **Frontier entry conditions**
eg tariffs, quarantine requirements, international freight costs.
- **Legislative/regulatory conditions**
eg meat licensing, Resource Management Act requirements, health and safety standards.
- **Industrial/business**
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- **Other**
eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

17.1 There are a low level of constraints affecting the ability of existing firms to expand. NZIH does not consider that the conditions identified above would be likely to act as a barrier to the expansion of existing competitors.

17.2 The following factors are relevant when considering the low barriers to expansion:

17.2.1 Industry Capacity: There is significant spare capacity within the industry and room for suppliers individually and the market collectively to expand. For example, once the capital investment in machinery is made, operating time is potentially 24 hours a day, 7 days a week (by working weekends). However, typical use is 5 days per week due to demand. If a market opportunity is present, production can be readily expanded from the current 65-85% capacity levels to a figure closely approaching a 100% capacity level. See the response to question 18 below for more detail on this.

- 17.2.2 Common Product Standards:** All piping systems of a specific material are supplied in compliance with a common Australasian Standard. Therefore, any brand of PVC and PE pipe supplied within New Zealand is interchangeable. Further there is a large pool of potential suppliers from outside New Zealand (ie Australia and Asia) whose substitutable products which comply with this standard are readily available and immediately importable into New Zealand. These overseas products are becoming increasingly competitive and increasingly bypass the normal channels to market. For example, a competitor can purchase a container of competing products and sell them within New Zealand using its own distribution contacts and networks.
- 17.2.3 Raw Materials:** The raw materials for producing the different types of pipe are a world commodity and all readily available from a number of sources. Therefore there is no restriction on any existing or potential supplier of finished product as to their levels of production. The Commission referred to this at para. 78 of Decision No. 405, and noted that "The other manufacturers of PVC and PE universally accepted this statement".
- 17.2.4 Low Cost of Establishing Extrusion or Moulding Plants:** The cost of establishing extrusion or moulding plants is relatively low, and it is easy for manufacturers to use the same plant to manufacture both pressure and non-pressure pipes (the Commission noted at para. 80 of Decision No. 405 that "Both of these assertions have been verified by the other manufacturers of PVC and PE"). As stated by Marley in its application in 2000 for clearance, the capital requirements for establishing one of these plants at that time was in the range of \$1m-\$3m. That figure has now reduced by up to 50%. This is in part because plant can now be sourced from China and Taiwan, rather than from just the United States, Australia and Europe as used to be the case. Marley now buys all its moulders and virtually all its moulds from China. Its most recent PE extruder was sourced from China.
- 17.2.5 Accessible Technology:** Pipe manufacturing technology is generally open and accessible.⁵ Companies such as Tyco, Vinidex and Fletcher Building already possess it. In any event, such technology is readily available from consultants, machinery suppliers or by employing key staff from an existing manufacturer (as RX Plastics did when it first started).
- 17.2.6 Resource Management Issues:** Resource management issues in establishing plants are not major as the industry is not regarded as being "dirty" (for instance, Marley does not require air discharge consents for its Manurewa plant).
- 17.2.7 Manufacturing Interchangeability:** Another example of the low barriers to expansion is the ability of manufacturers of PVC and PE pipe systems to use the same plant to manufacture both pressure and non pressure pipe and fittings. As a result, if

⁵ As noted above, an exception to this currently is oPVC pipe where Crane and Vinidex have access to this technology but Marley and RX Plastics do not.

prices rise, there is the opportunity for competitors to switch production into that product type and hence increase supply and lower price.

17.3 In support of this point that there are low barriers to expansion for existing market participants, the Applicant refers to the following examples of expansion by market participants since 2000:

17.3.1 Crane Manufacturing: This company has seen expansion with new PE lines with increased diameters in both its Christchurch and Palmerston North plants; the introduction of a PVC pipe extrusion line in its Palmerston North plant; new PVC pressure pipe lines in its South Island plant; and a new structured wall non pressure PE extrusion line in its Palmerston North plant;

17.3.2 Tyco: It has moved to a new manufacturing site and has increased capacity and the size/range of its PE plant;

17.3.3 Interpipe: This joint venture between Fletcher Building and Hynds Pipelines, has been integrated with Waters & Farr Polyethylene Manufacturing which was acquired by Fletcher Building. Since the 2000 clearance application by Marley, they have added a corrugated twinwall polypropylene line to compete with PVC and PE pipe in non-pressure sizes ranging from 200-800mm in diameter;

17.3.4 PPI: It has expanded a New Zealand PE manufacturing operation in Christchurch;

17.3.5 Auplex: It has increased PE manufacturing capability and opened new wholesale Rural Direct stores;

17.3.6 Pipes & Fittings: It has increased its product range in the past 5 years and has expanded sales throughout the South Island

17.3.7 The Mad Plumber: This company has been active in the New Zealand market in the last year. It has introduced imported product from a mixture of Australia & India, and is also supplying product sourced from New Zealand directly to plumbing and other trade end users.

17.3.8 Aquafit: This company has been in the New Zealand market for around 3 years, importing pipe product from Australia and other sources.

17.3.9 APP: As noted above in paragraph 16.5, APP has commenced exporting pipe product into New Zealand. Refer to the response to question 16.5 for more detail.

18. Please name any business which already supplies the market – including overseas firms – which you consider could increase supply of the product concerned in the geographic market by any of the following means:

- **diverting production into the market (e.g. from exports)**
- **increasing utilisation of existing capacity**

- **expansion of existing capacity.**

Specify in each case which of the above three points applies.

18.1 The Applicant believes that all existing competitors which already supply the New Zealand market(s) are capable of increasing supply by expansion of existing capacity. It refers to its response to question 17 on this issue.

18.2 It notes in particular, the following companies in this respect which could increase utilisation of existing capacity or expand existing capacity:

Humes:

18.3 This Fletcher Building owned company is currently involved in a joint venture with Hynds Pipelines as a co-owner of Interpipe, a PE manufacturing plant developed to supply large diameter structured wall PE and Polypropylene 200-800mm non pressure pipes for the civil and rural market segments. Interpipe currently has manufacturing capability to supply solid wall PE pipes in smaller diameters from 20mm to 180mm.

18.4 PVC pipe manufacturing could be integrated into this operation with relative ease and product could be supplied to the New Zealand market initially via the Hynds Pipeline and Fletcher Building group of companies (Humes and Placemakers) within 6-9 months of an order being placed for manufacturing and downstream equipment.

PPI:

18.5 PPI are a very large Australian PE pipe manufacturer which supplies a significant portion of the rural and building merchant markets. In New Zealand they have a manufacturing operation in Christchurch supplying PE pipe from 15mm to 110mm to Crane Merchants and building merchants such as Mitre 10 and Bunning's.

18.6 An increase in capacity would be relatively seamless, particularly if they shifted existing manufacturing equipment from Australia to New Zealand which would ensure they had increased capacity within 3-4 months.

Plumbing World:

18.7 Plumbing World is one of New Zealand's largest wholesale plumbing supply merchants. It has the capability through their importing business MCD to source and supply PVC pipe product from Australia and or Asia. This company currently imports copper, polypropylene and polybutylene pipe. As a co-operative (shareholders are plumbing trade customers) with 52 stores, they have a captive customer base which could distribute large amounts of PVC pipe product.

19. Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

19.1 The Applicant refers the Commission to its response to question 17.

20. How long would you expect it to take for supply to increase in each case?

- 20.1** NZIH believes that expansion could take place rapidly and certainly in less than the one year timeframe referred to in the Commission's Guidelines. For further detail, please refer to the response to question 18.

21. In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?

- 21.1** The Applicant refers the Commission to its responses in questions 16 to 20 above and 22 below.

22. Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

- 22.1** The Applicant refers the Commission to its responses in sections 16 to 20. For the reasons set out in those responses, it considers that the merged entity would be significantly constrained in its actions by the conduct of existing competitors in the markets affected. In summary it will face significant constraints from:

22.1.1 Crane, which will still retain substantial market share and is vertically integrated in any event;

22.1.2 Other market participants which, while having smaller market share, remain vertically integrated and therefore have greater influence in the market than their market share would indicate;

22.1.3 The ability of large near entrants (particularly those based in Australia) to enter the New Zealand market within a short space of time;

22.1.4 Imports, particularly from Australia, South East Asia, India and China. A number of the major merchant customers of the merged entity are sufficiently large in size and already import many products directly and could expand their importation if necessary (refer for instance to the response to question 41 below);

22.1.5 The ability of existing market participants to increase capacity; and

22.1.6 The low barriers to entry or expansion into the market that exist.

Coordinated Market Power

23. Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.

- 23.1** As noted above, following the proposed acquisition there will be an increase in market concentration in the PE/PVC and/or plastic pipe

systems market(s). However the Applicant believes that the following market conditions exist which render coordination unlikely:

- (a) There is strong existing competition within the market(s) between the two main market players Crane and Marley.
[CONFIDENTIAL]
- (b) The low barriers to entry and expansion mean that new entrants can enter the market very quickly and can expand to take market share away from any existing competitors who engage in co-ordinated market behaviour;
- (c) There remains a constraint on market behaviour from the generic pipe market as a whole which provides competition to the PE/PVC markets and/or plastic pipe market; and
- (d) Customers are generally price conscious and have a high degree of countervailing power. Please refer to the response to questions 39-41 for more information on this.

24. Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

- 24.1** The Applicant considers that, because collusion is unlikely at the manufacturing/wholesaling functional level, it is not strictly necessary to address monitoring and enforcement. However the Applicant would be happy to provide further details on this if required.

25. Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participation.

- 25.1** The Applicant is not aware of price co-ordination, price matching or price following by any market participant. NZIH believes the market is extremely competitive.

- 25.2** New Zealand manufacturers buy their raw materials on a world commodity market. Due to the volatility of commodity prices the suppliers of raw materials are not prepared to give prices for deliveries further than three months out. This means that raw material price changes, up or down, tend to hit all New Zealand manufacturers at the same time. Buyers of raw materials for PVC and PE are price takers.

26. Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant market(s).

The Applicant refers the Commission to its response to question 23.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27. The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

- **Frontier entry conditions**
eg tariffs, import licensing, quarantine requirements.
- **Legislative/regulatory conditions**
eg meat licensing, Resource Management Act requirements, health and safety standards.
- **Industrial/business**
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs ie irrecoverable or exit costs (eg because of plant specificity), influence of branding, technical specifications.
- **Other**
eg responses to expansion by major firms.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

27.1 In Decision No. 405 the Commission concluded that there were "low barriers to entry" into the market for the manufacture/wholesale of PVC in New Zealand (para. 82).

27.2 NZIH considers this definitely remains the case for the market(s) in this case. It does not consider that the conditions identified above would be likely to act as a barrier to the entry of new competitors. As noted above in the response to question 17, the following factors are relevant:

27.2.1 Common Product Standards: All piping systems of a specific material are supplied in compliance with a common Australasian Standard. Plastic pipe products manufactured outside New Zealand typically comply with this standard in any event.

27.2.2 Raw Materials: The raw materials for producing the different types of pipe are a world commodity and all readily available from a number of sources. Therefore there is no restriction on any existing or potential supplier of finished product as to their levels of production.

27.2.3 Low Cost of Establishing Extrusion Capacity: The cost of establishing extrusion or moulding plants is relatively low, and it is easy for manufacturers to use the same plant to manufacture both pressure and non-pressure pipes

27.2.4 Accessible Technology: Pipe manufacturing technology is open and accessible. In any event, such technology is readily available from consultants or machinery suppliers.

27.2.5 Resource Management Issues: Resource management issues in establishing plants are not major as the industry is not regarded as being "dirty".

27.2.6 Ease of Importing: As set out above in the response to question 16.7, there are low barriers to entry into the New Zealand market for imported products. Hence, access to imported product will not be an issue for new competitors at the manufacturing/wholesale level (nor for that matter for customers at the retail level). The scale of importation referred to in the response to questions 16.7 and 41 clearly supports this.

27.3 For further detail on these points, please refer to the response to question 17.

28. Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:

- investing in new production facilities to produce the product;
- overseas companies diverting production to New Zealand;
- domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment)

Specify for each named business which of the above three might apply.

28.1 Please refer to the response to question 16.5 above.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

29.1 The Applicant does not believe there are any significant barriers to entry which would influence the business decision of any new entrant to enter. In the absence of any material conditions of entry, NZIH considers that price would be the ultimate determinant of new entry. Please refer to the response to question 27 for more information.

Likelihood, Sufficiency and Timeliness of Entry

30. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?

30.1 The Applicant believes new entry and increased market supply could occur well within a one year timeframe. If market prices rise, then importers in particular become more competitive and will seek to increase volume almost immediately.

30.2 As noted in the response to question 16.5 above, the Applicant considers for instance that:

30.2.1 Vinidex could commence imports into New Zealand within a 4 week period, with local manufacturing taking 6-9 months to develop if new equipment is used, or 4-5 months if existing extrusion equipment is shifted from existing plants in Australia;

30.2.2 APP is already importing pipes into New Zealand, but could shift extrusion equipment from Australia to New Zealand and be manufacturing pipe within 4-5 months;

30.2.3 Snow Plastic Pipe could increase the amount of existing imports within a matter of weeks, with local manufacturing taking around 12 months to develop;

30.2.4 Any one of a number of significant customers could import product directly from a number of sources.

31. Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?

31.1 NZIH considers that it is likely that a potential entrant would consider entry profitable at pre-acquisition prices. It believes Vinidex or APP for instance could enter profitably at present under pre-acquisition prices. In addition, new importers are emerging all the time. For instance, The Mad Plumber has been active in the New Zealand market in the last year focusing on supplying imported product.

32. Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?

32.1 The Applicant believes that the threat of new entry, as discussed in the response to question 16.5, means that it is likely to cause a significant reaction among existing participants.

33. What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie de novo entry?

33.1 The Applicant refers the Commission to its response at question 27. Price, being an indicator of margin, is likely to be the most important factor in a decision to enter.

34. How long would you expect it to take for de novo entry to occur?

34.1 Please refer to the response to question 30.

35. In your opinion, to what extent would the possibility of de novo entry constrain the merged entity?

35.1 The Applicant considers that the threat of de novo entry raised by the low entry barriers would provide a significant constraint on the ability of the merged entity to price above competitive levels.

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

| |
|--|
| 36. Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14? |
|--|

36.1 The current raw materials suppliers for RX Plastics and Marley are:

| | RX Plastics | Marley |
|-------------------------------|------------------------|---------------|
| Material Suppliers PE | | |
| ORICA NZ Limited | Yes | Yes |
| Chemiplas NZ Limited | Yes | No |
| Borouge | No | Yes |
| Interplas Agencies Limited | Yes | Yes |
| Material Suppliers PVC | | |
| Interplas Agencies Limited | Yes | Yes |
| Hunt Agencies Limited | Yes | Yes |
| Chemiplas NZ Limited | Yes | No |
| Capac International | No | Yes |
| Vinythai | No | Yes |

36.2 NZIH considers that these suppliers would continue to supply raw materials to the merged entity post-acquisition. Chemiplas NZ Limited is the only supplier in the table above that is not currently supplying Marley but is supplying RX Plastics. That said, Marley has historically purchased material from Chemiplas and therefore does have a trading relationship with them.

| |
|---------------------------|
| 37. Who owns them? |
|---------------------------|

37.1 Chemiplas, Interplas, Hunt Agencies and Capac International are all New Zealand private companies representing overseas principals as their "agent".

37.2 ORICA, Borouge and Vinythai are all overseas manufacturers of raw materials and sell into New Zealand using their own agents.

| |
|--|
| 38. In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each affected market? |
|--|

38.1 The Applicant considers that the suppliers of raw materials would provide a constraint on the merged entity in that Marley at present has little bargaining power with the suppliers in terms of prices for raw materials. This is reflected in the fact that the suppliers do not offer volume based discounts. NZIH expects this would remain the case post-acquisition.

38.2 That said, manufacturers/wholesalers in New Zealand are not constrained in obtaining raw materials from the suppliers. The raw materials are a world commodity and readily available.

Constraints on Market Power by the Conduct of Acquirers

39. Who would be the acquirers of goods or services supplied by the merged entity in each market identified in questions 11 and/or 14?

39.1 The key acquirers of plastic pipes supplied by Marley and RX Plastics between them at present include:

39.1.1 Non Pressure PE: Plumbing World; Crane Wholesale, Mastertrade/Mico; Plumbing Plus; Hynds Pipelines; Humes Industries; Reece; and Chesters.

39.1.2 Non Pressure PVC: Plumbing World; Crane Wholesale, Mastertrade/Mico; Plumbing Plus; Hynds Pipelines; Humes Industries; Reece; Chesters; Placemakers; and Bunnings.

39.1.3 Pressure PE: Plumbing World; Crane Wholesale, Mastertrade/Mico; Plumbing Plus; Hynds Pipelines; Humes Industries; Reece; Chesters; PGG Wrightsons; RD1; PGG/IPS; Water Force; Placemakers; Mitre 10; and Bunnings.

39.1.4 Pressure PVC: Plumbing World; Crane Wholesale, Mastertrade/Mico; Plumbing Plus; Hynds Pipelines; Humes Industries; Reece; Chesters; PGG Wrightsons; RD1; PGG/IPS; Water Force; Placemakers; Mitre 10; and Bunnings.

39.2 Post-acquisition, Marley would look to continue to supply these customers.

40. Who owns them (where appropriate)?

40.1 Ownership of relevant customers is as follows:

40.1.1 Plumbing World: Plumbing World is owned by NZ Plumbers Merchants Ltd, a co-operative owned investment company by plumbers throughout New Zealand. Plumbing World is the second largest plumbing wholesale business in New Zealand behind Crane Wholesale.

40.1.2 Crane Wholesale: Mastertrade/Corys & Micos is owned by the Crane Group a publicly listed company in Australia who also own competitors of Marley New Zealand being Iplex Pipelines and Key Plastics. Crane Wholesale is the largest plumbing wholesale company in New Zealand.

40.1.3 Plumbing Plus Group: This is a group of independent and privately owned plumbing/wholesale branches operating throughout New Zealand. The name Plumbing Plus (essentially a buying group) is derived from a similar group of independent companies who operate in Australia. Plumbing Plus New Zealand is the third largest group of plumbing merchants in New Zealand behind Crane Wholesale and Plumbing World.

- 40.1.4 Reece:** Reece New Zealand is a subsidiary of Reece Australia, a publicly listed company and the largest plumbing wholesale group in Australia.
- 40.1.5 Chester's:** Chester's is a privately owned plumbing wholesale business with stores throughout New Zealand.
- 40.1.6 Hynds Pipelines:** Hynds is a privately owned civil and rural wholesale company operating nationally throughout New Zealand. This group also owns New Zealand's second largest concrete pipe manufacturing business.
- 40.1.7 Humes Industries:** Humes is part of the Fletcher Building Group servicing the New Zealand markets with branches throughout the country. Humes is also the largest manufacturer and supplier of concrete pipes in New Zealand.
- 40.1.8 Placemakers:** Placemakers is also owned by the Fletcher Building Group and is New Zealand's largest building wholesale supply business.
- 40.1.9 PGG Wrightson Group:** PGG/Wrightson Group (New Zealand's largest farm wholesale group) is derived from the merger of Pyne Gould Guinness Ltd and Wrightsons in 2005. Williams and Kettle, a North Island rural supply company, is also part of this group. IPS/PGG, the largest irrigation contractor in the South Island, is a subsidiary of this company.
- 40.1.10 RD1:** RD1 is owned by Fonterra, and is New Zealand's second largest rural farm wholesale company.
- 40.1.11 Bunning's:** Bunning's New Zealand is owned by Bunning's Australia, and is currently ranked third in size behind Placemakers and MITRE 10.
- 40.1.12 MITRE 10:** MITRE 10 New Zealand is an independently owned co-operative and New Zealand's second largest wholesale and retail building wholesale company.

41. In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

- 41.1** The Applicant believes that acquirers have a significant degree of countervailing power. There are a number of substantial wholesale supply businesses such as Plumbing World, PGG Wrightsons, RD1, Placemakers, Mitre 10 and Bunning's, together with large vertically integrated companies such as Crane, Hynds and Humes.
- 41.2** The Applicant believes that acquirers provide a significant competitive constraint on market participants since:
- 41.2.1** The size of these merchant chains means they have the ability and resources to import alternative pipe systems from overseas should New Zealand wholesalers of the products endeavour to

raise prices unreasonably. They are already doing this. For instance, they include:

- (a) Plumbing World (52 stores) has the importation company MCD Ltd.
- (b) Mitre 10 (123 Stores) has its own importation company.
- (c) PGG/Wrightsons (20 stores with PGG/Wrightson Rural Farm outlets, and 10 stores with W & Kettle (W&K) Rural farm outlets) has the Contractor/Installer/Importer Irrigation & Pumping Services (IPS/PGG) in the South Island.
- (d) Placemakers (66 stores) via Fletcher Building has its own importation division.
- (e) Chesters is already importing plumbing pipe product from Asia.

41.2.2 Acquirers can switch suppliers easily and without significant cost. Indeed, Marley's experience is that acquirers generally deal with at least two manufacturers/wholesalers rather than just one, in order to ensure that competitive pressure is kept on their suppliers. While acquirers would not be able to use RX Plastics to keep competitive pressure on Crane and Marley post-acquisition, NZIH's expectation is that a third player would expand market share and be used by acquirers for this purpose. This is what happened when Keyplas was acquired by Crane in late 2003. Initially Crane's sales increased by the equivalent of Keyplas' turnover, but within 18 months most of this increase had been lost to competitors as customers realigned themselves.

41.2.3 Distribution is tightly held by groups such as Fletcher Building and Crane, both of whom are vertically integrated and in the case of Fletcher Building horizontally integrated into concrete, plastic and steel. These customers of the manufacturers/wholesalers are also in competition with them, and hence provide a constraint at the distribution level as well (for instance Crane Wholesale, Tyco Wholesale, Humes and Placemakers are all customers who directly or indirectly compete with Marley through Crane, Tyco and Humes at the manufacturing/wholesale level). Refer to the response at paragraph 16.2.4 above for more detail on this vertical integration.

41.2.4 [CONFIDENTIAL]

41.3 These points are supported by the findings of the Commission in Decision No. 405. The Commission noted at para. 72 that "There was a broad consensus amongst the other industry players (both major merchants and other manufacturers) that the large merchants do in fact hold substantial market power". At para. 75, it added that "The main way in which merchants felt they are able to exert this power is by going from "one supplier to the other" or importing PVC pipe systems themselves".

NZIH agrees with these findings and, for the above reasons, maintains they remain accurate.

THIS NOTICE is given by **NEW ZEALAND INVESTMENT HOLDINGS LIMITED**

New Zealand Investment Holdings Limited hereby confirms that:

- all information specified by the Commission has been supplied;
- all information known to the Applicant which is relevant to the consideration of this application/notice has been supplied;
- all information supplied is correct as at the date of this application/notice.

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

Dated this day of February 2008

Signed by New Zealand Investment Holdings Limited:

Colin David Leach
Director
New Zealand Investment Holdings Limited

I am a director of New Zealand Investment Holdings Limited and am duly authorised to make this application/notice.

APPENDIX I

Corporate Structure – New Zealand Investment Holdings Limited

| | |
|-------------|---|
| Belgium | Aliaxis SA 100% |
| France | Aliaxis Participations SA 100% |
| New Zealand | New Zealand Investment Holdings Ltd 100% |
| New Zealand | Marley New Zealand Ltd Dynex Extrusions Ltd Chemvin Plastics Ltd Dux Industries Ltd The Marley Company (NZ) Ltd |

APPENDIX II

Percentage of Market Segments Made Up of Different Types of Pipe

[CONFIDENTIAL]

APPENDIX III

Substitutability of Various Types of Pipe in the Generic Pipe Market

| | PVC | Polypropylene | PE | Copper | Concrete | Cast Iron | P-EX | Polybutylene | Steel | Clay |
|---|-----|---------------|----|--------|----------|-----------|------|--------------|-------|------|
| Non Pressure 32mm – 200mm | √ | √ | √ | √ | | | | | | |
| Non Pressure 225mm – 450mm | √ | √ | √ | | √ | √ | | | √ | √ |
| Pressure 15mm – 150mm | √ | | √ | √ | | √ | √ | √ | √ | |
| Pressure 180mm -450mm | √ | | √ | | | | | | √ | |
| Rural On Farm Water Supply 15mm 450mm | √ | | √ | | | | | | √ | |
| Culvert | √ | √ | √ | | √ | | | | √ | √ |

APPENDIX IV

Relevant Market Share Information Relating to This Clearance Application

[CONFIDENTIAL]

APPENDIX V

Real Returns for Marley After Raw Material Costs Per Tonne

[CONFIDENTIAL]

APPENDIX VI

Market Share Information Relating to the 2000 Clearance Application
(Decision No. 405)

[CONFIDENTIAL]

APPENDIX VII

[CONFIDENTIAL]