

NOTICE SEEKING CLEARANCE UNDER SECTION 66 OF THE
COMMERCE ACT 1986 FOR THE ACQUISITION BY GEA
PROCESS ENGINEERING A/S OF SHARES IN NU-CON LTD

July 2011

[PUBLIC VERSION]

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EXECUTIVE SUMMARY

1. This is an application by GEA Process Engineering A/S (**GEA**), a company headquartered in Copenhagen, Denmark. The application is for clearance for GEA, or any of its interconnected bodies corporate, to acquire 100% of the shares in Nu-Con Limited (**Nu-Con**), including its subsidiaries Nu-Con Engineering Limited, Nu-Con Australia Pty Limited (Australia), Nu-Con Systems Pte Limited (Singapore), Nu-Con Systems Sdn Bhd (Malaysia), and Nu-Con (Shanghai) Trading Co Limited (China) (the **Nu-Con Subsidiaries**).

THE PARTIES

2. The applicant is a company within the Process Engineering Segment of the GEA Group. The Process Engineering Segment specialises in the design and development of process solutions for the dairy, brewery, food, pharmaceutical and chemical industries. GEA's New Zealand operations comprise GEA Process Engineering Limited, GEA Avapac Limited, GEA Westfalia Separator NZ Limited, and GEA Farm Technologies Limited.
3. Nu-Con is a New Zealand registered company with its headquarters in Auckland. It has manufacturing facilities in New Zealand, Australia and Singapore and established agency relationships in Japan, Indonesia, the Philippines, India, Chile, the Netherlands and Brazil that provide in-market sales and marketing representation. Nu-Con has also established strategic alliances with leading fabricators based in Europe, Asia and the USA. Nu-Con specialises in the design, engineering, manufacture and supply of pneumatic conveying and bulk solids material handling systems. Pneumatic conveying systems transfer materials in powder form by means of air currents. Bulk solids material handling systems transfer bulk quantities of powder and granular products in loose form.

AFFECTED MARKETS

4. The relevant industry is that for designing and manufacturing powder handling and filling systems. Such systems comprise a series of components designed to carry out different steps in the process of filling industrial-sized bags from the point where the powders are handled by powder "handling" equipment, followed by the powder entering the inlet flange of the filling machine, through to the point at which the filled bags are in a state ready for despatch from the processing facility.
5. There are three relevant areas in New Zealand where either GEA or Nu-Con operate in supplying equipment for powder handling and filling systems, being:
 - 5.1 components;
 - 5.2 handling equipment; and
 - 5.3 packing powder equipment (the separate high output rate market for packing powder and low output rate market for packing powder were the subject of previous analysis by the Commission in **Decision No. 519** in 2004).
6. However, the only area of overlap between the business of GEA and Nu-Con in New Zealand is for handling equipment. In particular:

- 6.1 the business of GEA and Nu-Con does not overlap for components, and there will be no aggregation here as a result of the acquisition;
 - 6.2 for packing powder, assuming there is a separate high output rate market for packing powder (as previously found by the Commission), Nu-Con is not present in this market (although GEA is); and
 - 6.3 conversely, in the low output rate market for packing powder, GEA has not supplied machinery into this market over the last three years and therefore has no market share. Nu-Con does now have a limited number of orders in this market.
7. Therefore, GEA just focuses in this application on issues relating to handling equipment where there is overlap between the business of GEA and that of Nu-Con.
 8. GEA believes handling equipment itself can be further sub-divided into separate products for each of dairy handling equipment and non-dairy food handling equipment (eg non-dairy powder foods such as grain, flour, sugar etc). In GEA's experience non-dairy handling equipment is cheaper, less sophisticated and has less hygiene requirements than dairy handling equipment. Due to these factors, GEA believes it is unlikely that non-dairy food handling equipment would be substitutable with dairy handling equipment. GEA has no orders and therefore no market presence in non-dairy food handling equipment. As a result the acquisition should have no impact on the level of competition in this market. The area where there will be aggregation from the acquisition is for dairy handling equipment.
 9. As a result, for the purposes of this clearance application, GEA proceeds on the basis that the market where aggregation issues arise post-acquisition is that for the **supply in New Zealand of dairy handling equipment for powder handling and filling systems**.

COUNTERFACTUAL

10. If the proposed acquisition does not take place, the counterfactual is likely to be the acquisition of Nu-Con by a rival bidder. Most likely the acquirer will be a multinational company based outside New Zealand. Nu-Con will be best placed to expand on this.

NO SUBSTANTIAL LESSENING OF COMPETITION IN AFFECTED MARKET

11. GEA submits that the acquisition will not substantially lessen competition in the dairy handling equipment market for the reasons set out below.
12. **Existing Competition:** Across the last five years, the average combined market share of GEA (Colby)/Nu-Con following the acquisition is around [redacted]. While this is outside the relevant safe harbour threshold of 20%, GEA's assessment of Nu-Con's share in this market is only in the range of [redacted] across the last five years. Nu-Con's maximum market share over that period was in 2010 when its share was around [redacted]. As a result, there is a minimal increase in market share for GEA as a result of the proposed acquisition.
13. Moreover, post-acquisition GEA will still continue to face strong competition from Tetra Pak and Powder Projects. As can be seen in the five year average market share data, Tetra Pak will be of equivalent size to GEA/Nu-Con post-acquisition.

While in the last two years GEA has had greater market share than Tetra Pak, the position can change quickly based on the outcome of tenders – in 2008 GEA estimates that Tetra Pak had around [redacted] market share at that time.

14. **Potential Competition:** GEA believes there are low barriers to entry into the dairy handling market. Imports represent a significant constraint on domestic suppliers (and there have been significant imports in recent years from Chinese suppliers). The major suppliers of industrial handling equipment are overseas suppliers. This is typical of industrial processing systems generally as New Zealand does not have the local demand sufficient to make local manufacture attractive. Around [redacted] of GEA and Nu-Con's New Zealand production of handling equipment is exported, although they both supply to the New Zealand market as well.
15. GEA believes that firms that are not currently producing dairy handling equipment in the market could enter the market quickly if existing suppliers were to raise prices. Fresco Systems and Grintec both supply non-dairy handling equipment in the New Zealand market already, and it would be relatively simple for them to switch to providing dairy handling equipment within around a three month period. In addition, there are a number of multinational companies outside New Zealand with the capability to enter the New Zealand dairy handling market within 1-2 years, given the appropriate price incentives to do so. This is especially so with the high New Zealand dollar, and the booming dairy industry generally where there is strong interest for new capacity from current and new entrants.
16. **Countervailing Buyer Power:** GEA believes the merged entity would be constrained in its actions by the conduct of buyers in the relevant markets. In **Decision No. 519** it was noted by the Commission at paras. 163ff that sales of packing equipment were infrequent, of high value and won through a tender process which placed incentives on suppliers to price as competitively as possible. This applies equally for handling equipment. The technology is generally known globally. Price competition between suppliers is intense, and is based on open tenders. In addition, the major buyers are in a position to self-import, providing the buyer has the capacity to service the component or system or come to an agreement with the original equipment manufacturer. For instance, around five years ago Fonterra self-managed a major build in a cheese plant.
17. For the above reasons, GEA therefore submits that the proposed acquisition will not have the effect of substantially lessening competition in any market in New Zealand.

PART 1: TRANSACTION DETAILS

1. Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice. Please include the:
 - registered office address, postal address and physical address of the acquirer;
 - telephone and fax numbers and website of the acquirer; and
 - email address, telephone number and position of the contact person

The Acquirer

1.1 The acquirer is GEA Process Engineering A/S (**Applicant** or **GEA**), or any of its interconnected bodies corporate.

1.2 This notice is given by:

GEA Process Engineering A/S
Gladsaxevej 305, PO Box 45
DK/2860 Søborg
DENMARK

Telephone: +45 3954 5454
Fax: +3954 5800
Website: www.geap.com

Attention: Niels E Olsen
Telephone: +45 395 45527
Email: niels.e.olsen@geagroup.com

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

Simpson Grierson
Lumley Centre
88 Shortland Street
Private Bag 92518
Auckland

Telephone: (09) 977 5125
Facsimile: (09) 977 5046
Email: james.craig@simpsongrierson.com
Attention: James Craig

2. Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties. For each merger party, please include the:

- **registered office address, postal address and physical address;**
- **telephone and fax number and website; and**
- **email address, telephone number and position of the contact person.**

2.1 The target business is Nu-Con Limited (**Nu-Con**). Their contact details are:

Nu-Con Ltd
20 Fairfax Avenue
Penrose
Auckland 1061
NEW ZEALAND

Telephone: +64 9 579 2044
Facsimile: +64 9 579 1121
Website: www.nucon.com

Contact Person: Neil Simmons
Telephone: +6495261847
Email: neils@nucon.co.nz

3. With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.

3.1 Please see the **attached** organisational chart for GEA at **Appendix One**, and the list of interconnected companies.

3.2 For Nu-Con, please see the **attached** organisational chart at **Appendix Two**, which lists the various interconnected and subsidiary companies.

3.3 Apart from the companies listed in these organisational charts, as far as the applicant is aware neither GEA nor the Target (or any interconnected body corporate of either participant) holds any beneficial interest or has other links in any other relevant market participants.

4. Provide details on what is to be acquired.

4.1 The business acquisition for which clearance is sought is the acquisition by GEA (or any of its interconnected bodies corporate) of 100% of the shares in Nu-Con. This includes its subsidiaries Nu-Con Engineering Limited, Nu-Con Australia Pty Limited (Australia), Nu-Con Systems Pte

Limited (Singapore), Nu-Con Systems Sdn Bhd (Malaysia), and Nu-Con (Shanghai) Trading Co Limited (China) (the **Nu-Con Subsidiaries**). The only company from the Nu-Con Subsidiaries which is based in New Zealand is Nu-Con Engineering Limited.

- 4.2 The acquisition will include all the business activities conducted by Nu-Con and its Subsidiaries including those in the United States under a distribution agreement entered into between Nu-Con and Boedecker Ltd. Boedecker has the exclusive right to market Nu-Con systems and componentry in the USA, Mexico and Canada. Under the distribution agreement, Nu-Con receives royalty payments on system sales and supplies Boedecker with componentry and equipment at an agreed margin.
- 4.3 The documents bringing about the merger are attached in **Appendix Three**. [redacted]

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

- 5.1 GEA believes that the integration of Nu-Con as a new business unit within GEA Process Engineering under the brand name GEA Nu-Con would be beneficial to both parties. The integration would involve GEA building and expanding on the reputation and goodwill of the Nu-Con brand.
- 5.2 The acquisition would achieve synergies in the respective operations of both GEA and Nu-Con. These include:
- (a) for packing powder, assuming there is a high output rate market for packing (as previously found by the Commission), Nu-Con is not present in this market (although GEA is);
 - (b) conversely, in the low output rate market for packing, GEA has not supplied machinery into this market over the last 3 years and therefore has no market share. Nu-Con does now have [redacted] orders in this market for New Zealand, [redacted];
 - (c) GEA has no orders and therefore no market presence in the non-dairy food handling equipment market. Nu-Con has a broader market presence across these sectors compared to GEA;
 - (d) for powder handling, GEA currently has no core components. The sum of the core components in the Nu-Con portfolio have a strong branded image, are viewed as high quality in the market place, and offer a very strong entry into new food markets and aftermarket activity.
- 5.3 As noted above, this acquisition is part of an international merger between GEA and Nu-Con. Nu-Con has developed a strong position in China and South East Asia in particular, and this is also part of the business rationale for the acquisition.

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

6.1 Please find attached at **Appendix Three** copies of the following documents:

(a) [redacted];

(b) [redacted];

(c) [redacted]; and

(d) [redacted].

7. If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

7.1 GEA does not believe the acquisition raises material issues in any other jurisdictions. As a result, it is not proposing to notify any other competition agencies overseas.

Please indicate whether you would be willing to provide the Commission with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the proposed merger.

7.2 Not applicable.

PART 2: THE INDUSTRY

8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

General Information about GEA

- 8.1** The applicant, GEA, is a subsidiary of GEA Group Aktiengesellschaft (**GEA Group**). It is a global technology group comprising more than 300 operating companies in some 50 countries around the world. GEA Group companies specialise in the manufacture of components, systems and complete process lines for process and thermal engineering activities, and for air treatment and dairy farm systems.
- 8.2** The applicant is a company within the Process Engineering Segment of the GEA Group. The Process Engineering Segment specialises in the design and development of process solutions for the dairy, brewery, food, pharmaceutical and chemical industries. It is recognised as a world leader within liquid processing, concentration, industrial drying, powder processing and handling, emission control, solid dosage processing and aseptic packaging. Today, GEA employs just under 4,500 people in this segment (out of 20,000 employees overall), and the business is represented by 50 companies in more than 40 countries across the world.
- 8.3** GEA's New Zealand operations comprise:
- (a)** GEA Process Engineering Limited (previously known as Niro (NZ) Ltd and Liquid Technologies NZ), which offers project solutions for turnkey liquid processing and powder plants to the dairy, food, biotechnology, chemical and pharmaceutical industries. The company specialises in the design and supply of spray driers, fluid bed driers, evaporators, membrane filtration, extraction, general liquid process, heating and cooling, powder transport and packing;
 - (b)** GEA Avapac Limited (previously known as Avalon Engineering Limited), which designs and manufactures a range of bag filling machines and packing lines. The company also supplies hygienic packing systems for a wide range of powders;
 - (c)** GEA Westfalia Separator NZ Limited (previously known as Westfalia Separator (NZ) Limited), which manufactures and distributes separators, decanters and clarifiers to the dairy, food, beverage, pharmaceutical, chemical, waste treatment, biotechnology and mineral oil industries; and
 - (d)** GEA Farm Technologies Limited, which is the marketing company for Farm Technologies Inc., which distributes, installs, and services Dairy Milking sheds and systems.

- 8.4 For further information, we refer to the most recent annual report of GEA Group (the 2010 report), which is included in **Appendix 4**. Other background information can be accessed from the GEA Group website at "www.geagroup.com".

General Information about Nu-Con

- 8.5 Nu-Con is a New Zealand registered company with its headquarters in Auckland. It has manufacturing facilities in New Zealand, Australia and Singapore and established agency relationships in Japan, Indonesia, the Philippines, India, Chile, the Netherlands and Brazil that provide in-market sales and marketing representation. Nu-Con has also established strategic alliances with leading fabricators based in Europe, Asia and the USA. When required, Nu-Con sub-contracts certain fabrication work to alliance partners.
- 8.6 Nu-Con was established in 1966 to provide the processing industry with innovative engineering solutions. Over the years, Nu-Con has established a strong international reputation. Today approximately 95% of its contracts are with large multi-national companies.
- 8.7 Nu-Con specialises in the design, engineering, manufacture and supply of pneumatic conveying and bulk solids material handling systems. Pneumatic conveying systems transfer materials in powder form by means of air currents. Bulk solids material handling systems transfer bulk quantities of powder and granular products in loose form.
- 8.8 As at the date of this application, Nu-Con's manufacturing divisions are as follows:
- (a) *Packing division*: this is located at 20 Fairfax Avenue, Penrose, Auckland, and manufactures the SmartFil range of 25kg and Bulk Bag filling systems. This facility includes full design and engineering capability, as well as extensive test facilities to enable the trialling of complete packing lines and associated equipment;
 - (b) *Foundry division (Industrial Alloys Ltd)*: this division operates facilities for both sand casting and investment casting and provides high quality castings in ferrous and non-ferrous materials, including cast iron, SG iron, carbon steel alloys, stainless steels, Ni-Hard, Ni-Resist, Aluminium, Bronze. This division of Nu-Con is **not** being acquired by GEA in the present acquisition;
 - (c) *Machine division*: Nu-Con Engineering Ltd (located in Mairangi Bay, Auckland) is the division which produces final componentry from cast and bar materials and is equipped with the most modern turning, milling, boring, drilling and profiling equipment necessary to produce the close tolerances and quality finishes required;

(d) *International divisions:* Engineering Design Services, Project Management and Customer Support are provided worldwide by Nu-Con offices in the following locations:

- Auckland, New Zealand (Head Office);
- Sydney, Australia;
- Singapore;
- Kuala Lumpur, Malaysia;
- Cork, Ireland;
- Shanghai, China; and
- Yogyakarta, Indonesia.

8.9 For further information, we refer the Commission to Nu-Con's website at "www.nucon.com".

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

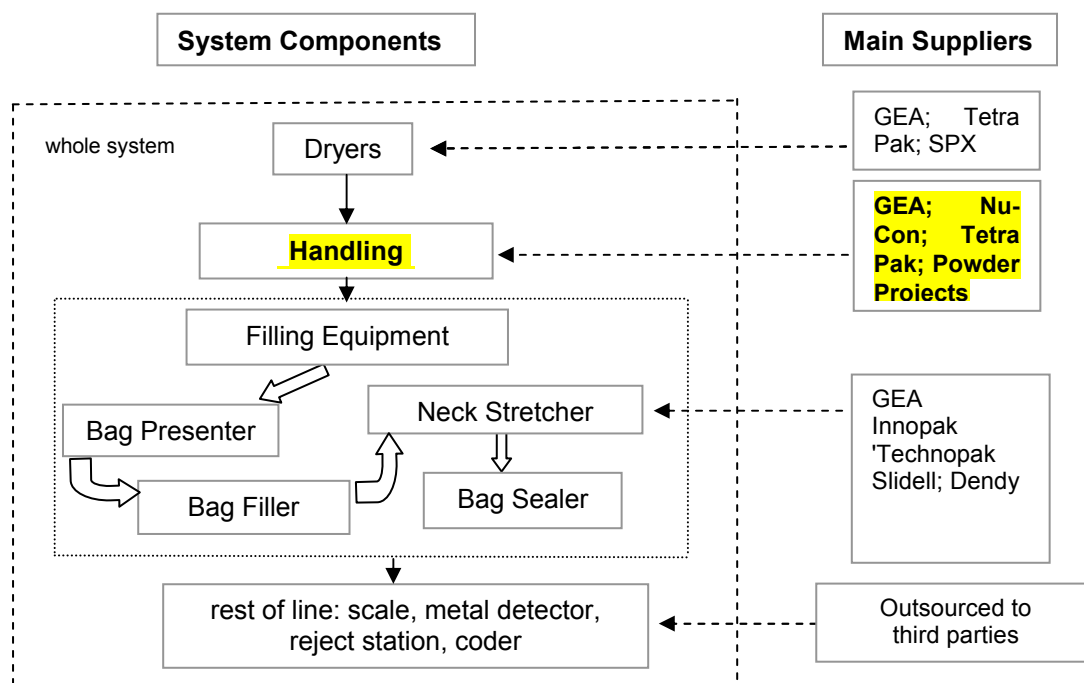
9.1 The industry background has most recently been summarised by the Commission in **Decision No. 519** (Niro A/S and Colby Systems Limited dated 30 March 2004) at paras. 53-58.

9.2 The relevant industry is that for designing and manufacturing powder handling and filling systems. Such systems comprise a series of components designed to carry out different steps in the process of filling industrial-sized bags from the point where the powders are handled by powder "handling" equipment, followed by the powder entering the inlet flange of the filling machine, through to the point at which the filled bags are in a state ready for despatch from the processing facility.

9.3 The various steps of a powder handling and filling system, and the related steps involved in the production of a filled bag ready for sale, are represented in the following diagram referred to at para. 55 of the Commission's **Decision No. 519** (handling equipment is highlighted in bold with yellow shading):

Diagram 1

Components of a Powder Handling and Filling System



9.4 The range of products packed, or conveyed, using industrial powder handling and filling systems include:

- (a) food (eg whey protein concentrate, bakery mixes, cocoa powders, soya bean bases, tomato powders, soup bases, fat filled whey, caseinates, lactate, hydrolysed yeast, calcium, permeates, baby food, hydrolysed whey proteins, functional food compounds, coffee whitener, and hydrolysed corn starch);
- (b) dairy (whole milk, skim milk and butter milk);
- (c) pharmaceutical;
- (d) fertilisers; and
- (e) chemicals (stearic acids and acrylic resins).

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

10.1 The dairy industry in particular has seen extended growth over the past five years, and all forecasts see this trend continuing in the near to medium future. The demand is driven from the growth in middle class income globally, but in particular in the Chinese and Asian regions. The large population base there has sustainable middle class growth, and a

percentage of this new income is being spent on the buying of protein (dairy based) as a new and high quality food source for these developing regions. The need for a safer source of product is also driving capacity increases outside of Asian countries, though the end product is consumed locally.

10.2 The more general food industry is also seeing similar trends. With rising income and population levels, food volume requirements are increasing, and the discerning buyer is also looking for safer and higher quality products. The trend to more convenience foods and marketing initiatives is also driving new production and packaging formats.

10.3 All the above factors create opportunities for New Zealand exporters. However a significant proportion of the business (either stand-alone or combined) comes through projects in Europe, North America, South East Asia or South America with further growth opportunities in India as well.

11. Please highlight any relevant mergers that have occurred in this industry over the past three years.

11.1 As far as GEA is aware, there have been no relevant mergers in this industry over the last three years.

11.2 The most relevant merger prior to this timeframe was the acquisition by Niro A/S of Colby Systems Ltd in 2004 (Niro being the same entity as the applicant). This was cleared by the Commission in **Decision No. 519** dated 30 March 2004.

PART 3: MARKET DEFINITION

HORIZONTAL AGGREGATION

12. For each area of aggregation of market shares, please define the relevant market(s) for the:

- product(s) or service(s);
- functional level;
- geographic area; and
- customer dimension and timeframe (if relevant).

12.1 There are three relevant areas in New Zealand where either GEA or Nu-Con operate in supplying equipment for powder handling and filling systems, being:

- (a) components;
- (b) handling equipment; and
- (c) packing powder equipment (the high output rate market for packing powder and the low output rate market for packing powder were the subject of previous analysis by the Commission in **Decision No. 519** in 2004).

12.2 The only area of overlap between the business of GEA and Nu-Con in New Zealand is for handling equipment. In particular:

- (a) the business of GEA and Nu-Con does not overlap for components, and there will be no aggregation here as a result of the acquisition;
- (b) for packing powder, assuming there is a high output rate market for packing (as previously found by the Commission), Nu-Con is not present in this market (although GEA is); and
- (c) conversely, in the low output rate market for packing powder, GEA has not supplied machinery into this market over the last 3 years and therefore has no market share. Nu-Con does now have [redacted] orders in this market for NZ, [redacted].

12.3 Therefore, GEA just focuses in the application below on issues relating to handling equipment where there is overlap between the business of GEA and that of Nu-Con.

Product Level

- 12.4** The relevant product level where aggregation issues will arise as a result of the acquisition is handling equipment for powder filling systems.
- 12.5** There is an issue as to whether the product is a wider product involving handling equipment for powder filling systems generally, or whether it can be further sub-divided into separate products for:
- (a)** dairy handling equipment; and
 - (b)** non-dairy food handling equipment. This involves other powder foods such as grain, flour, sugar etc.
- 12.6** In GEA's experience non-dairy handling equipment is cheaper, less sophisticated and has less hygiene requirements than dairy handling equipment. Due to these factors, GEA believes it is unlikely that non-dairy food handling equipment would be substitutable with dairy handling equipment. As a result, in GEA's view it is likely that there would be separate products for dairy handling equipment and non dairy handling equipment.
- 12.7** GEA has no orders and therefore no market presence in non-dairy food handling equipment. As a result the acquisition should have no impact on the level of competition in this market. The area where there will be aggregation from the acquisition is for dairy handling equipment, and this is the focus of the discussion below.

Functional Level

- 12.8** Similar to the Commission's approach in **Decision No. 519** at paras. 85-87, GEA submits that the relevant functional level is that for the supply of dairy handling equipment for powder handling and filling systems.

Geographic Area

- 12.9** In **Decision No. 519** at para. 84, the Commission considered that the geographic dimension of the market was national. GEA submits that this will remain the same in the present case.
- 12.10** Although GEA, Nu-Con and other suppliers supply handling equipment internationally as well, the Commission only has jurisdiction to consider markets in New Zealand for goods or services.

Summary

- 12.11** In summary, for the purposes of this clearance application, GEA proceeds on the basis that the market where aggregation issues arise post-acquisition is that for the **supply in New Zealand of dairy handling equipment for powder handling and filling systems**.
- 12.12** As noted above, there is no aggregation for non-dairy food handling equipment for powder filling systems. Nor is there aggregation for components, and packing powder (as divided into the high output rate

market for packing powder, and the low output rate market for packing powder).

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

13.1 As noted above, handling equipment for powder filling systems can be differentiated between dairy and non-dairy handling equipment.

13.2 Non-dairy handling equipment is cheaper, less sophisticated and has less hygiene requirements than dairy handling equipment. GEA believes it is unlikely that non-dairy food handling equipment would be substitutable with dairy handling equipment.

14. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

14.1 The acquisition will mean that GEA is involved at a number of different levels for supply of powder handling and filling systems. As noted in the diagram above, this includes dryers, handling equipment, and packing equipment.

PART 4: COUNTERFACTUAL

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

15.1 If the proposed acquisition does not take place, the counterfactual is likely to be the acquisition of Nu-Con by a rival bidder. Most likely the acquirer will be a multinational company based outside New Zealand. Nu-Con will be best placed to expand on this.

PART 5: COMPETITION ANALYSIS

EXISTING COMPETITORS

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

- 16.1** In **Appendix Five**, GEA has set out the suppliers of competing products in the market share table for the supply of dairy handling equipment for powder handling and filling systems.
- 16.2** The main competitors for the supply of dairy handling equipment are as follows:
- (a) *Tetra Pak*: Tetra Pak is a leading international food processing and packaging solutions company. It comprises 41 market companies, 78 sales offices and 42 plants for packaging material and closures. Tetra Pak New Zealand Ltd provides packaging systems, processing equipment, dairy processing equipment, cheese processing equipment and beverage processing equipment. For more information see "www.tetrapak.com";
 - (b) *Powder Projects Ltd*: Powder Projects is a New Zealand registered company based in Hamilton. They are concerned with small dairy modifications and powder handling projects in New Zealand only. They are very close to the market, in particular Fonterra. They have also over the last few years been involved with the dairy majors as a development team in some niche powder handling applications;
 - (c) *Chinese suppliers*: GEA does not know much about who these Chinese suppliers of dairy handling equipment are. However it understands that they have supplied significant orders in New Zealand over the last five years following successful tenders to Naturies Limited, and GMP Pharmaceuticals Pty Limited. This was especially the case in 2009 when GEA understands they had around [redacted] market share.
- 16.3** GEA understands that a new competitor has recently entered the dairy handling equipment market in late 2010 called Techno Links New Zealand Limited. It has a registered office in Auckland. This company markets DMN Westinghouse equipment. DMN Westinghouse rotary valves (part of an overall powder handling and filling system) are already being used by a number of New Zealand companies including CAS Enterprises Limited, Fonterra, Downer, and even GEA itself.
- 16.4** Additional competitors for the supply of handling equipment generally, with a focus on non-dairy handling equipment, include:

- (a) *Fresco Systems*: Fresco's focus is on the design, manufacture and installation of Bulk Materials Handling and Processing Equipment. Fresco Systems Australasia offers single items through to turnkey projects engineered and manufactured in-house. It has offices in Auckland, Melbourne and Sydney which provide local support throughout the Australasian region with personnel dedicated to customer needs, offering support in sales, project engineering and installation. Fresco's website is at "www.frescosystems.co.nz";
- (b) *Graintec Engineering Limited*: this company manufactures and supplies an extensive range of proprietary processing equipment to suit agro-processing, industrial, chemical, and food industry applications from raw material intake through to finished product packing out. Design, manufacture and installation for specialist processing requirements are provided for, as are complete re-modelling and process extensions. Their website is at "www.graintech.co.nz".

17. Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include:

- 17.1 the estimated total value of the domestic market; and**
- 17.2 the source of the data provided.**

17.1 GEA's estimates of shares in the New Zealand market for the supply of dairy handling equipment for powder handling and filling systems are set out in the tables in **Appendix Five**. The market shares are based on the outcomes of large tenders over the last five years, and can therefore change from year to year based on the results of those tenders. GEA's understanding of those tenders over the last five years is also set out in **Appendix Five**.

17.2 Adopting the average market share from the outcome of tenders known to GEA across the last five years, the market share data shows that the leading three players in the dairy handling market post acquisition (Tetra Pak, Powder Projects and GEA (Colby)/Nu-Con) will have around [redacted] market share. The safe harbour in this market will therefore be 20%, and GEA/Target will be outside this post-acquisition at around [redacted]. That said, it is important to note that:

- (a) GEA's assessment of Nu-Con's share in this market is only in the range of [redacted] across the last five years. Nu-Con's maximum market share in a particular year over the last five years was in 2010 and this was only around [redacted]. As a result, there is only a minimal increase in GEA/Colby's market share as a result of the acquisition;
- (b) post-acquisition GEA will still continue to face strong competition from Tetra Pak and Powder Projects. As can be seen in the five year average market share data, Tetra Pak will be of equivalent size to GEA/Nu-Con post-acquisition. While in

the last two years GEA has had greater market share than Tetra Pak, the position can change quickly based on the outcome of tenders – in 2008 GEA estimates that Tetra Pak had around [redacted] market share at that time. This is expanded on below.

- 17.3** The source of the data in **Appendix Five** is GEA's own calculations, and represents GEA's best estimate of current market conditions based on the outcomes of large tenders over the last five years.

18. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected? Where relevant please include a full discussion and examples of:

18.1 the ease with which customers may switch between suppliers, and, if so, how readily;

18.2 any local or overseas firms that are not currently producing the product, or providing the service in the market, but could enter the market quickly (using essentially their existing productive capacity) in a response to an attempt by suppliers to raise prices or reduce output or quality (near competitors and importers); and

18.3 the extent to which existing competitors, near competitors and importers could expand in the market, and any difficulties that they might face in doing so.

18.1 GEA considers that it will remain constrained in its actions post-acquisition by the conduct of existing competitors. In particular:

- (a) Nu-Con only forms around [redacted] of a dairy handling market over the last five years. Nu-Con's maximum market share in a particular year over the last five years was in 2010 and this was only around [redacted]. As a result, the acquisition will make a minimal difference to the current level of competition in this market;
- (b) there will remain strong competition from Tetra Pak, and also from Powder Projects, post-acquisition (as noted above);
- (c) there are low barriers to entry into the dairy handling market;
- (d) imports represent a significant constraint on domestic suppliers. This can be seen for instance in the impact of Chinese suppliers of dairy handling equipment – as set out in the market share tables, GEA estimates that in 2009 Chinese suppliers were the main source of dairy handling equipment in New Zealand following their

successful tender to supply this equipment to GMP Pharmaceuticals Pty Limited.

- (e) the major suppliers of industrial handling equipment are overseas suppliers. This is typical of industrial processing systems generally as New Zealand does not have the local demand sufficient to make local manufacture attractive. Around [redacted] of GEA and Nu-Con's New Zealand production of handling equipment is exported, although they both supply to the New Zealand market as well.

18.2 In particular, Tetra Pak will remain a major competitor post-acquisition with around [redacted] market share for the supply of dairy handling equipment in New Zealand over the last five years. In 2008 GEA estimates that Tetra Pak had around [redacted] market share at that time and was the market leader, based on its successful tender on a large project for Fonterra.

18.3 The dairy handling equipment market is competitive. The technology is not so special (unlike the filling lines) so price is the main driver and there is strong competition on pricing through tenders to supply dairy handling equipment to customers.

18.4 The big issue is which company wins the drier orders from major customers such as Fonterra, Synlait, Open Country and Westland. Tetra Pak is vertically integrated, and GEA understands it purchases dairy handling equipment itself. They have historically had the ability to provide large dairy handling installations within their contracts. In contrast, when GEA wins a project there is usually a mix of suppliers between GEA, Nu-Con and Powder Projects, as in general GEA is the expensive supplier in the market. This means that market shares can change in any one year dependent on the successful drier head contractor from the tender process carried out.

18.5 Expanding on this, GEA notes that:

- (a) the tender process that Fonterra, and independents undertake is based upon a specific scope of supply for equipment and solutions, with key inputs and outputs required to meet the acceptance criteria for the final supply;
- (b) from the tender process, the various lead companies (GEA, Tetra Pak and Anhydro) then present their particular solutions based upon the inputs from the customer, and providing guarantees to the customer on the final outputs. Underpinning the solutions are various mandatory directives for hygiene, safety and building, as well as internal Fonterra standards (FES) for hygiene, safety, engineering, maintenance and operational requirements. Further there are requirements around the building interface;
- (c) the two main preferred suppliers for turnkey (ie complete) supply are GEA and Tetra Pak. Each of these companies has access to internal company technology, which allows them to put together a complete solution to the customer. In some instances outsourced solutions and services are required (i.e. boilers, buildings etc);

- (d) in the case of powder handling, Tetra Pak through their in-house team based in Hamilton, and GEA through the GEA Colby powder handling company based in Australia, provide solutions for the parent;
- (e) historically, GEA believes Tetra Pak has exclusively used its own in-house team for handling equipment. However, GEA still requires competitive tendering of powder handling equipment. GEA looks to have competitive quotes from GEA Colby as well as other suppliers such as Powder Projects.

18.6 Due to the generally low technology demands, and the know-how being well distributed in all participating powder handling companies, entry barriers into the market are low.

18.7 GEA believes that firms that are not currently producing dairy handling equipment in the market could enter the market quickly if existing suppliers were to raise prices. As noted above, Fresco Systems and Grintec both supply non-dairy handling equipment in the New Zealand market already, and it would be relatively simple for them to switch to providing dairy handling equipment. In addition, there are a number of companies outside New Zealand with the capability to enter the New Zealand dairy handling market. This is expanded upon in the next section.

POTENTIAL COMPETITION

CONDITIONS OF ENTRY

19. Please explain the requirements for new entry and/or importers in the relevant market(s), including:

- **a breakdown of the estimated costs; anticipated timeframes;**
- **regulatory requirements;**
- **frontier requirements (e.g. tariffs, import licensing, quarantine requirements); and**
- **business requirements involved.**

20. Include a full discussion on:

20.1 any factors that could impede entry; and

20.2 what might prompt new entry post-merger.

20.1 As noted above in the response to Question 18, the barriers for new entry in terms of know-how and technology for power handling are not high. This compares with the entry requirements for powder filling equipment which have been previously examined by the Commission – the entry requirements there are much higher than for powder handling due to the financial requirements for development being substantial, the small potential market, and the high tech, high accuracy, strict engineering and safety requirements.

- 20.2** Probably the main barrier to entry for powder handling is the distance to New Zealand from the new entrant's home market outside this country. This is on the basis that the most likely new entrants are based in Europe. That said, while having a local presence to support the sales process, service and spares is important, it does not create a major barrier to entry. Powder Projects is a good example of a small player (5 employees) which has a reasonable position in the market, and is a respected competitor. Any new entry would not need therefore to make a substantial financial investment. Obtaining key personnel and developing references etc to enter the market would be the major requirements.
- 20.3** In terms of regulatory and frontier requirements, the only major such requirement is that the powder handling equipment must meet strict MAF directives for hygiene. However, these MAF directives are similar to USDA requirements and therefore do not create major issues for the likely new entrants identified from Europe.
- 20.4** Another factor worth noting is that the New Zealand dollar has significantly appreciated recently against other currencies. This means that the exchange rate is now less of a barrier for a new entrant as the strength of the NZ\$ compared to the Euro and US\$ makes the proposition of importing into New Zealand more attractive.

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

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

- 21.1** As noted above, GEA understands that a new competitor has recently entered the market called Techno Links New Zealand Limited. It was incorporated in August 2010, and has a registered office in Auckland. This company markets DMN Westinghouse equipment. DMN Westinghouse rotary valves (part of an overall powder handling and filling system) are already being used by a number of New Zealand companies including CAS Enterprises Limited, Fonterra, Downer, and even GEA itself. As a result, new entry is certainly possible.
- 21.2** In terms of additional new entrants not currently supplying the market, Fresco Systems and Grintec both supply non-dairy handling equipment in the New Zealand market already, and it would be relatively simple for them to switch to providing dairy handling equipment. GEA believes they could do so within a period of around three months.
- 21.3** Other suppliers of dairy handling equipment that are not yet in the New Zealand market but which GEA believes could easily enter within 1-2 years if the existing market participants raised prices include:

- (a) Guerin from France (part of the Tetra group), which specialises in all aspects of powder transportation in the food production industry (www.guerinsystems.com);
- (b) AZO from Germany, which specialises in automatic systems to store, unload, sieve, transport, and meter raw materials (www.azo.de);
- (c) Gericke from Switzerland, which supplies total packages for conveying, feeding and mixing projects for the processing of bulk materials (www.gericke.net);
- (d) Baumer from Germany, which manufactures and supplies a wide range of machines, production lines and entire turnkey plants for the cutting and converting of foam and other similar materials (www.baumer.de/en/home.html); and
- (e) further Chinese suppliers of dairy handling equipment.

21.4 GEA believes that entry by any of these companies into the powder handling markets would be likely given the appropriate price incentives to do so. This is especially so with the high New Zealand dollar, and the booming dairy industry generally where there is strong interest for new capacity from current and new entrants.

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

22.1 Potential entry into the category will remain a significant constraint in the markets affected post-acquisition.

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

23.1 GEA believes potential entry could well occur within 1-2 years (with entry for Fresco Systems and/or Grintec likely taking around 3 months). On large projects in the dairy industry the initial need for handling equipment will be based upon the timing of conforming to tender bids. Usually in the case of large or turnkey factories these could be 1 to 2 years prior to the contract breaking dirt. On upgrades and modifications it is a case of having people on the ground to explore the market, understand the customer base, establish contacts, and then present solutions.

COUNTERVAILING POWER OF BUYERS

24. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected? Where relevant, please include:

24.1 a full discussion on the ability of buyers to self supply or import, and the alternative sources of supply available to buyers; and

24.2 evidence of buyers seeking alternative supply and/or switching suppliers.

24.1 GEA believes the merged entity would be constrained in its actions by the conduct of buyers in the relevant markets.

24.2 In **Decision No. 519** it was noted by the Commission at paras. 163ff that sales of packing equipment were infrequent, of high value and won through a tender process which placed incentives on suppliers to price as competitively as possible.

24.3 This applies equally for handling equipment. The technology is generally known globally. Price competition between suppliers is intense, and is based on open tenders. In addition, the major buyers are in a position to self-import. This is not unknown providing the buyer has the capacity to service the component or system, or come to an agreement with the original equipment manufacturer. For instance, around five years ago Fonterra self-managed a major build in a cheese plant.

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

25.1 The top customers for GEA and Nu-Con for dairy handling in descending order by sales are currently:

(a) Westland Co-operative Dairy Company Limited (Westland Milk Products NZ), an independent dairy co-operative company which produces dairy ingredients for nutritional, food or beverage applications which include milk powders, milk fat and milk protein products (www.westland.co.nz);

(b) Open Country Dairy Limited, a private company operating as a dairy ingredient manufacturer, producing a range of milk products including milk powders, proteins, fats and cheeses that are used in food, beverage and nutritional applications (www.opencountry.co.nz); and

(c) Talley's Group Limited, a private company which operates seafood, vegetable and dairy processing factories throughout New Zealand (www.talleys.co.nz).

25.2 Talley's has a shareholding in Open Country Dairy, although both companies operate autonomously.

25.3 Fonterra has recently become a customer for GEA. GEA understands that Nu-Con has supplied Fonterra in the past, although it has now been some years since they have done so.

COORDINATED MARKET POWER

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

26.1 GEA believes that the following market conditions exist which render coordination unlikely:

- (a) there is strong existing competition within the market(s) with Tetra Pak and Powder Projects. This will remain post-acquisition;
- (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) customers are generally price conscious and have a high degree of countervailing power as noted above.

26.2 The factors identified by the Commission which are conducive to collusion, and whether GEA considers they are present in the relevant categories identified, are set out in the following table:

Factors conducive to collusion	
High seller concentration	Yes – but this is not affected by the proposed acquisition.
Undifferentiated product	Yes, if there is a market for dairy handling equipment. No, if the market is wider for handling equipment generally.
Static production technology	No – there are developing technologies.
Slow speed of new entry	No. In Decision No. 519 the Commission accepted that potential competition was likely to be a constraining factor in the related packing markets, and this applies for the dairy handling market. New entry can start coming into the market from about 3 months.
Lack of fringe competitors	No. There are other major competitors in Tetra Pak, Powder Projects, and Chinese suppliers, and there is availability of imports.
Acquisition of a maverick business	Not present – Nu-Con is unlikely to be classified as a maverick (a competitor who 'punches above its weight')

History of anti-competitive behaviour	Not present
No countervailing buying power	Not present – buyers have countervailing buying power.

EFFICIENCIES

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition? Please include a full discussion on:

27.1 how the merger would facilitate the realisation of efficiency improvements. Specify the steps the combined entity anticipates it would take, and the timeframe needed, to achieve the efficiencies. Where relevant, include a discussion of the risks and costs involved;

27.2 the magnitude of the efficiencies, whether the impact would be on fixed, variable or other costs, and generally how the cost structure of the merged entity would change;

27.3 whether such efficiencies could be realised without the merger, or over a longer timeframe; and

27.4 whether, and the extent to which, such efficiencies would be passed on to the customers of the merged entity.

27.1 The major efficiency gain in New Zealand would be the re-organisation of the Nu-Con Engineering Ltd workshop facility. The business would focus on high value rotary valve production, outsourcing current manufacturing of smaller product lines to third parties in this country. This has the potential to decrease the operating overheads of the business in general, allowing for either a more competitive price or higher operating margins, market dependent.

OTHER FACTORS

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

Not Applicable.

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

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

	Name of Company	Contact Details	Relevant Contact Person
	Both legal and trading names	Postal and physical address, telephone and fax, website	Name, position and contact details including telephone, fax, email
Competitors	Tetra Pak Ltd	Tetra Pak New Zealand Ltd Level 3 8 Pacific Rise Mt Wellington Auckland Ph: (09) 573 5588 Fax: (09) 573 5599 www.tetrapak.com www.tetrapak.com.au	Geoff Wilson
	Powder Projects Ltd	Unit 12 9 Karewa Place Te Rapa Hamilton Ph: (07) 850 8046 Fax: (07) 850 8848	Jeff Dance
	Techno Links New Zealand Limited	20 Tranquillity Rise Mellons Bay Manukau Auckland	Brian Day / Graeme Martin Directors
Buyers	Westland Co-operative Dairy Company Ltd (Westland Milk Products NZ)	Westland Milk Products 56 Livingstone Street PO Box 96	Bernard May

		Hokitika 7810 Ph: (03) 756 9800 Fax: (03) 755 8208 www.westland.co.nz	
	Open Country Dairy Ltd	Unit L Building 4 195 Main Highway Ellerslie Auckland Ph: (09) 589 1372 Fax: (09) 525 0347 www.opencountry.co.nz	Dannie Brink
	Talley's Group Limited	PO Box 5 Motueka Ph: (03) 528 2800 Fax: (03) 528 2805	
	Fonterra Co-operative Group Limited	Private Bag 92032, Auckland New Zealand +64 9 374 9000	Dave Holland
Any other relevant market participants or interested parties	Guerin Systems France	49122 Le May Sur Evre France Ph: +33 2 41 63 26 26 Fax: +33 2 41 63 12 15 www.guerinsystems.com	N/A
	AZO GmbH & Co. KG	Rosenberger Strasse 28 Industriegebiet Ost 74706 Osterburken Ph: +49 06 291/92-0 Fax: +49 06 291/92-9500 www.azo.de	N/A
	Gericke	Gericke GmbH Max-Eyth-Strasse 1 DE-78239 Rielasingen Ph: +49 7731 929 0 Fax: +49 7731 929 312 www.gericke.net	N/A
	Albrecht Baumer	Asdorfer Str 96 – 106 Freudenberg 57258 Germany	N/A

		Ph: +49 2734 289 0 www.baeumer.de	
	Fresco NZ Ltd	61 Ben Lomond Cres Pakuranga Manukau City Auckland Ph: (09) 576 7013 Fax: (09) 576 2868 www.frescosystems.com	N/A
	Grain Tech Engineering Ltd	55b Druces Road Manukau City Auckland 2240 Ph: (09) 263 6926 Fax: (09) 262 1335 www.graintech.co.nz	N/A

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

30.1 Please find **attached** in **Appendix Four** a copy of the 2010 annual report for GEA Group. GEA does not have a copy of an annual report for Nu-Con.

PART 7: CONFIDENTIALITY

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

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

- (a)** the information is commercially sensitive and contains valuable information which is confidential to the merger parties; and
- (b)** disclosure of it is likely to give an unfair advantage to competitors of the merger parties and/or unreasonably prejudice the commercial position of the merger parties.

31.2 GEA requests that it be notified of any request made to the Commission under the Official Information Act for release of its own confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive at the time responses to those requests are being considered.

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

32. Provide a separate schedule of all confidential information claimed in the application. The Commission requires applicants to provide a separate schedule listing all the confidential information so the Commission can process confidentiality requests quickly.

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

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

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

33.2 In the public version the confidential information should be removed from within the square brackets, with the brackets

remaining, thus [].

- 33.1** A confidential version and a public version have been provided.
- 33.2** In the confidential version of the application, confidential information is highlighted in bold, contained in square brackets and shaded in green.

THIS NOTICE is given by **GEA PROCESS ENGINEERING A/S (The Company)**.

The Company hereby confirms that:

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

The Company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of July 2011

Niels Erik Olsen
Executive Vice President
GEA Process Engineering A/S

I am the Executive Vice President of GEA Process Engineering A/S and am duly authorised to make this application/notice.

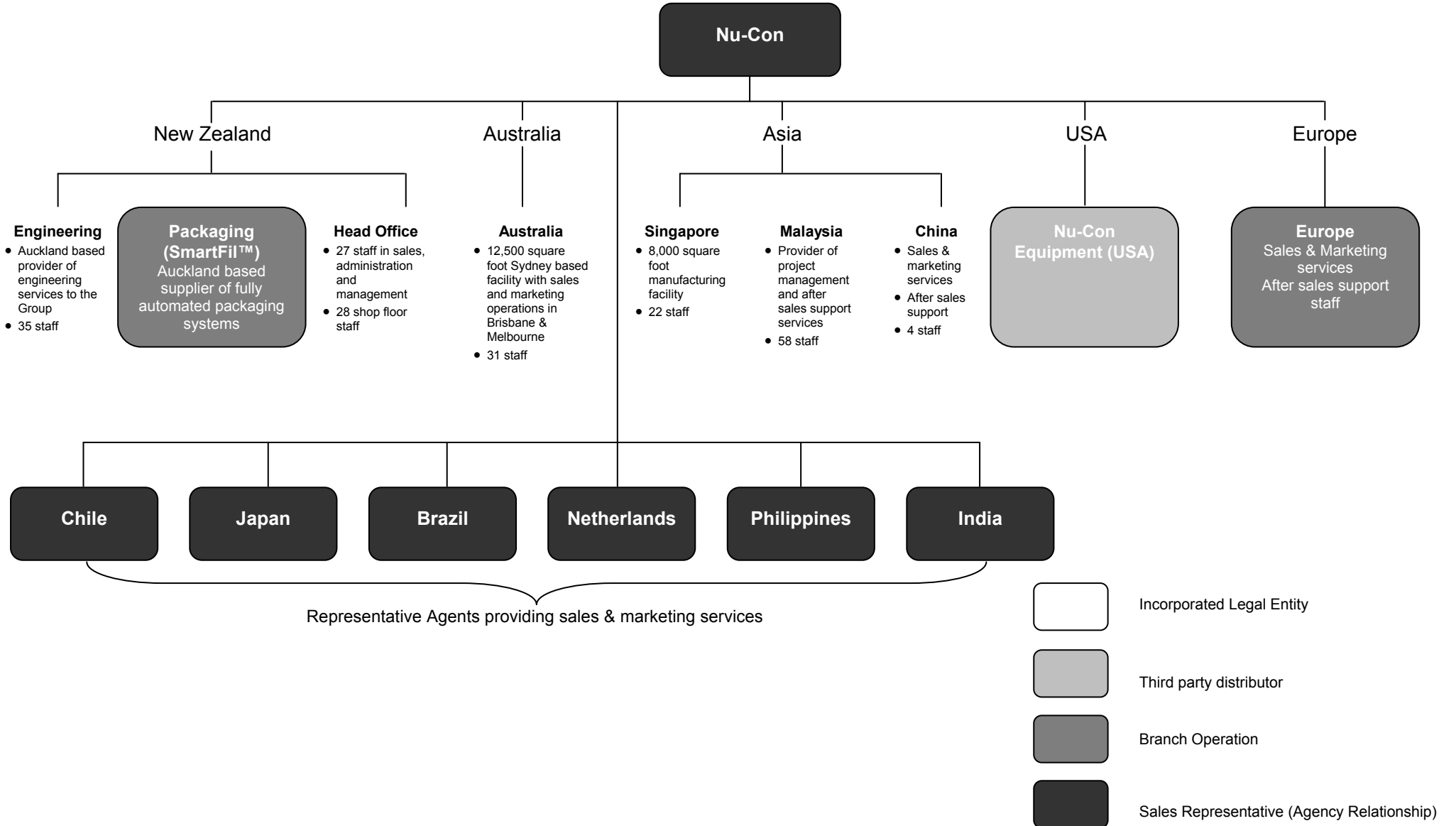
Appendix One

GEA Process Engineering A/S Organisational Chart

See attached diagram

Appendix Two

Nu-Con Organisational Chart



Appendix Three

Documents Bringing about the Proposed Merger

[Confidential]

(a) [redacted];

(b) [redacted];

(c) [redacted]; and

(d) [redacted].

Appendix Four

Annual Report

- (a)** The 2010 annual report for GEA Group Aktiengesellschaft.

[Confidential]

Appendix Five

[redacted]

Appendix Six

Schedule of Confidential Information

Confidential information is contained in square brackets and is highlighted in bold with green shading.

The following paragraphs contain confidential information:

Executive Summary

- 12
- 13

Main Body

- 4.3
 - 5.2(b)
 - 6.1(a), (b) and (c)
 - 12.2(c)
 - 16.2(c)
 - 17.2, 17.2(a) and (b)
 - 18.1(a) and (e)
 - 18.2
-
- Appendix 3
 - Appendix 5