COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

ISBN 978-1-869459-09-3

Statement of Preliminary Issues

IKO Industries / Ross Roof

18 June 2021

Introduction

1. On 28 May 2021, the Commerce Commission registered an application from IKO Industries Limited (IKO) seeking clearance to acquire all of the shares of Ross Roof Group Limited (Ross Roof) (the Proposed Acquisition).[1] IKO and Ross Roof are better known in New Zealand by their respective brands, Gerard and Metrotile.

2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.[2]

4. We invite interested parties to provide comments on the likely competitive effects of the Propose Acquisition. We request that parties who wish to make a submission do so by **28 June 2021**.

5. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The parties

6. IKO is a global roofing company, headquartered in Canada. In New Zealand, IKO cuts and presses steel roof tiles through its local subsidiary Roof Tile Group Limited (trading as Gerard) and sells these steel tiles within New Zealand and overseas. IKO also imports and supplies asphalt shingles and membrane roofing in New Zealand through an independent distributor, Nuralite Waterproofing Limited.

7. Ross Roof is a New Zealand owned and operated roofing company. It cuts and presses steel roof tiles, and then sells these tiles within New Zealand and overseas. Within New Zealand, Ross Roof supplies steel roof tiles under the Metrotile brand.

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[1] A public version of the Application is available on our website at: http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/. We note that IKO is separately acquiring the factory and land currently leased by Ross Roof at Inlet Road, Takanini, Auckland.

[2] The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

8. The parties overlap in the supply of steel roof tiles. These tiles are predominately used on residential houses.

Our framework

9. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[3] As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test.

10. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).[4] This allows us to assess the degree by which the Proposed Acquisition might lessen competition.

11. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:

    11.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;

    11.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

    11.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

12. We define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.[5]

13. In the Application, IKO submitted that there is a market for the supply of residential roofing products in New Zealand.[6] IKO considers that all residential roofing products are functionally the same so the steel tiles that Ross Roof and it supply compete with

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[3] Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz

[4] *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

[5] Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

[6] Clearance application at [130-131].

a range of other roofing materials and products including, in particular, profiled long run steel.

14. We are testing whether there should be one broad market for the supply of all roofing products used on residential homes[7], or more narrowly defined markets based on the roofing material and/or production method.

15. We are also testing whether there is a single market for any relevant roofing product or whether there are distinct customer markets for any relevant product(s). For example, we are considering whether the alternatives available to end customers, builders and/or roofing installers of residential roofs vary depending on:

    15.1 whether the roof will be installed as part of a new residential build or if it will replace an existing roof; and/or

    15.2 roof design and building consent requirements; and/or

    15.3 environmental factors (eg, house being located in an area of high wind).

Without the acquisition

16. We are considering the evidence on whether the without-the-acquisition scenario is best characterised by the status quo or whether the counterfactual may be something other than the status quo.

Preliminary issues

17. We are investigating whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant markets by assessing whether unilateral and coordinated effects might result from the Proposed Acquisition.

Unilateral effects

18. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint such that the merged firm can profitably increase price above the level that would prevail without the merger. The question that we will be focusing on is: would the loss of competition between the parties enable the merged entity to profitably raise prices or reduce quality or innovation by itself?

19. In the Application, IKO submitted that the Proposed Acquisition would not be likely to substantially lessen competition in any relevant market due to unilateral effects because:[8]

    19.1 the merged entity would face strong competition from existing suppliers of all the different types of roofing materials particularly from suppliers of profiled

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7 IKO considers that residential refers to the residential look of the relevant building, not the purpose, and so residential roofs can also include those used on single story commercial buildings such as suburban dentists and retirement homes. Clearance application at [14].

8 Clearance application at [167].

long run steel, which is currently the "dominant" material used on residential homes;

19.2 existing suppliers can quickly and easily expand and there are low barriers to manufacturers of long run steel expanding their product range to include the supply of steel tiles;

19.3 overseas steel tile manufacturers can import their products into New Zealand; and

19.4 large group home builders would have significant buyer power through an ability to credibly threaten to switch away from the merged entity's steel tiles to an alternative roofing product.

20. We are considering:

20.1 the degree of competitive constraint that IKO and Ross Roof impose upon one another. To the extent that any constraint is material, we will assess whether the competition lost between the merging parties could be replaced by rival competitors;[9]

20.2 how easily rivals (including overseas suppliers) could enter and/or expand in response to a price increase and/or reduction in the quality of the steel tiles supplied by the merged entity, and whether any entry and/or expansion is likely to occur in a timely manner; and

20.3 countervailing power and whether end customers, builders and/or roofing installers have special characteristics that would enable them to resist a price increase or reduction in quality or innovation by the merged entity, such as sponsoring new entry.

Coordinated effects

21. A merger can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike a substantial lessening of competition, which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.

22. In the Application, IKO submitted that the Proposed Acquisition would not be likely to increase the potential for coordinated effects primarily because:[10]

22.1 the relevant roofing products are not homogeneous, as they are differentiated by price, aesthetic and quality;

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9 Both IKO and Ross Roof export a significant amount of their steel tiles and so we are also considering whether these exports impact on any competitive constraint between the merging parties in New Zealand.

10 Clearance application at [209-210].

22.2 there are a range of existing competitors of varying sizes and with different cost structures; and

22.3 industry participants can not readily observe each other's pricing and capacity.

23. We are assessing whether the Proposed Acquisition would make coordination more likely, more complete or more sustainable. As part of our assessment we are considering whether any of the relevant markets are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant markets.

Next steps in our investigation

24. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **23 July 2021**. However, this date may change as our investigation progresses.[11] In particular, if we need to test and consider further the issues identified above, the decision date is likely to extend.

25. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

Making a submission

26. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference 'IKO/Ross Roof' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **28 June 2021**.

27. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.

28. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

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[11] The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.