

Statement of Preliminary Issues

H. B. Fuller Company Australia Pty Limited /Advanced Adhesives (New Zealand Limited

2 March 2016

Introduction

1. H. B. Fuller Company Australia Pty Limited (H. B. Fuller) is proposing to acquire the business and assets of Advanced Adhesives (New Zealand) Limited (Advanced Adhesives).
2. On 18 February 2016, the Commerce Commission registered an application from Advanced Adhesives seeking clearance for the proposed acquisition.¹
3. The Commission will give clearance if it is satisfied that the acquisition will not have or would not be likely to have, the effect of substantially lessening of competition in a market in New Zealand.
4. This Statement of Preliminary Issues outlines the key competition issues we currently consider to be important in deciding whether or not to grant clearance.²
5. We invite interested parties to make comment on the likely competitive effects of the proposed acquisition. We request that parties who wish to make a submission do so by **Wednesday 16 March 2016**.

The parties

6. H. B. Fuller forms part of a global group of companies that are involved in the manufacture and supply of adhesives, sealants and other speciality chemical products. In New Zealand, H. B. Fuller mainly supplies hot-melt adhesives for the industrial packaging, paper converting, wood working, book binding and hygiene sectors. It also supplies a small volume of water-based adhesives to customers in the book binding and wood working sectors.
7. Advanced Adhesives, which is a private family-owned company, manufactures and supplies a range of hot-melt and water-based adhesives used in industrial applications, including packaging, paper converting and wood working.

¹ The public version of the application is available on our website at:
<http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/detail/925>

² The issues highlighted in this statement are based on the information available at the time of publication, and may change as our assessment of the application for clearance progresses. Therefore, the issues highlighted in this statement are not binding on us.

Our framework

8. 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, we assess mergers using the substantial lessening of competition test.
9. 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
10. We define markets in the way that we consider best isolates the key competition issues that arise from the acquisition. In many cases this may not require us to precisely define the boundaries of a market. A market is ultimately determined, in the words of the Commerce Act as a matter of fact and commercial common sense.⁵
11. We compare the extent of competition in each relevant market both with and without the acquisition. This allows us to assess the degree by which the proposed acquisition might lessen competition. If the lessening is likely to be substantial, we will not give clearance to the proposed acquisition. When making that assessment, we consider, among other matters:
 - 11.1 existing competition – the degree to which existing competitors compete.
 - 11.2 potential competition – the extent to which existing competitors would expand their sales or new competitors would enter and compete effectively if prices were increased; and
 - 11.3 the countervailing market power of buyers – the potential for a business to be sufficiently constrained by a purchaser’s ability to exert substantial influence on negotiations.
12. A comparison of the extent of competition both with and without the acquisition enables us to assess the degree by which the proposed acquisition might lessen competition. If the lessening is likely to be substantial, we may not give clearance to the proposed acquisition.

Preliminary issues

13. We will investigate whether the acquisition is likely to substantially lessen competition in the relevant markets. In particular, we will consider:
 - 13.1 what are the relevant markets;

³ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013. 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].

- 13.2 whether the merged entity would have sufficient market power to raise prices;
- 13.3 the ability and incentive for existing suppliers to expand and for new suppliers to enter the relevant markets;
- 13.4 the ability of customers to exert substantial influence on the price charged by the merged entity;
- 13.5 whether the merged entity would be able to coordinate with rivals to raise price; and
- 13.6 whether the merger is likely to increase the merged entity's ability and/or incentive to foreclose competition by, for example, bundling together complementary products, or by refusing to sell these products to customers unless they also buy a second product from it (tying).

Areas of overlap

- 14. H. B. Fuller and Advanced Adhesives are involved in the supply of a range of industrial adhesive products. H.B. Fuller submitted that the merging parties overlap in the wholesale supply of:
 - 14.1 hot-melt adhesives; and
 - 14.2 water-based adhesives.
- 15. We will focus on the overlap in hot-melt adhesives but will also consider whether any competition concerns are likely to arise in water-based adhesives.

Market definition

- 16. H. B. Fuller has submitted that the relevant markets are the national supply of:
 - 16.1 hot-melt adhesives for case/carton sealing;
 - 16.2 hot-melt adhesives for paper converting;
 - 16.3 hot-melt adhesives for book binding;
 - 16.4 water-based adhesives for book binding; and
 - 16.5 water-based adhesives for wood working.
- 17. As part of our investigation, we will consider whether:
 - 17.1 it is appropriate to define separate product markets for hot-melt and water-based adhesives;
 - 17.2 it is appropriate to further delineate the markets by the application for which the adhesives will be used; and

- 17.3 there are national geographic markets, or regional markets, including for example, separate markets for the North and South Islands.

Existing competition

18. H.B. Fuller has submitted that there will remain strong competition post-merger in hot-melt and water-based adhesives from other manufacturers and importers. In particular, H. B. Fuller identified two large global manufacturers/suppliers (Henkel and Bostik), a locally-based manufacturer/supplier (G & A Adhesives), and smaller importers. Further, H. B. Fuller considers that it is relatively easy for customers to switch suppliers.
19. As part of the investigation, we will consider whether the merged entity would be effectively constrained from raising its prices above the competitive level, or reducing the quality of its services by assessing the degree of constraint that rival suppliers provide, including whether customers have the ability to switch between different suppliers for their hot-melt and water-based adhesive requirements.

Entry and expansion

20. H. B. Fuller has submitted that:
- 20.1 existing manufacturers of hot-melt and water-based adhesives have spare capacity so could easily expand;
 - 20.2 all existing importers of hot-melt adhesives would be able to increase supplies to satisfy demand; and
 - 20.3 new entry is possible, including through the building of new plants for both hot-melt and water-based adhesives.
21. We will assess whether entry by new competitors or expansion by existing competitors is likely, of sufficient extent and would occur in a timely fashion to prevent a substantial lessening of competition. Our assessment will include considering the likelihood of manufacturers expanding their existing production and importers increasing their existing supplies.

Countervailing power

22. We will consider whether customers will be able to sufficiently constrain the merged entity from profitably increasing prices or reducing the quality of its services, including for instance by self-supply through imports.

Coordinated effects

23. We will consider whether the merger increases the potential for the merged entity and all or some of its rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market.
24. We will also assess:
- 24.1 whether any of the relevant markets are vulnerable to coordination; and

- 24.2 whether the merged entity would change the conditions in the relevant markets so that coordination is more likely, more complete or more sustainable.

Conglomerate effects

25. Foreclosure of competitors may be achieved in a conglomerate merger by, for example, a merged firm providing bundled discounts where customers buy products together rather than separately, or tying the purchase of one product to the purchase of a second product from it.
26. We will assess:
- 26.1 whether the merging parties have access to any 'must have' adhesive products; and, if so,
- 26.2 whether the merger could potentially increase the ability and/or incentive for the merged entity to foreclose competitors, including through offering any 'must have' product as part of a bundled discount or by tying any 'must have' product with other adhesive products.

Next steps

27. The Commission is currently aiming to make a final decision on whether or not to give clearance to the merger by **15 April 2015**. However, this date may change as the investigation progresses.⁶
28. As part of our investigation, we will be identifying and contacting parties we consider will be able to help us assess the preliminary issues identified above.

Making a submission

29. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference H B Fuller / Advanced Adhesives 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 **Wednesday 16 March 2016**.
30. 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, if disclosure would unreasonably prejudice the supplier or subject of the information. In assessing the confidentiality of information contained in submissions for the purposes of publication on our website, we intend to apply an approach that is consistent with the OIA.

⁶ 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.