NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF THE COMMERCE ACT 1986

24 August 2020

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

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

1. EXECUTIVE SUMMARY

1.1 Pact Group Holdings Limited ("**Pact**")[1] seeks clearance to acquire, directly or indirectly, the assets and business of Flight Plastics Limited, and the packaging-related assets of Flight Extruded Plastics LP (which is a business based in Adelaide) (together "**Flight** ") (the "**Acquisition**"). The Acquisition includes all Flight Plastics Limited's assets and businesses in New Zealand ("**NZ**") and Flight Extruded LP's packaging-related assets in Adelaide, but does not include Flight Extruded Plastics LP's plastic sheet / roll stock business based in Adelaide.

1.2 Pact has identified the Acquisition as an attractive opportunity to combine Flight's capabilities in washing and recycling NZ PET waste streams with Pact's expertise in producing customised and innovative extrusion and thermoformed ("**E&T**") packaging. As a result, the Acquisition will enable Pact to better meet customers' demand for sustainable and innovative packaging solutions and expand the use of NZ-recycled PET ("**RPET**") (increasing the level of recycling of the NZ PET waste stream and maximising the utilisation of Pact's decontamination line, which was [ ] funded through the Waste Minimisation Fund), whilst also enabling Pact to better compete with the significant and increasing imports of E&T packaging and the increasing use of other (non-E&T) packaging solutions.

1.3 Moreover, Pact is confident that the Acquisition is not likely to give rise to a substantial lessening of competition in any NZ market. This is because:

(a) there are a number of other E&T packaging suppliers competing in NZ, including:

(i) local manufacturers such as Custom-Pak [ ], Formrite, Aztec, and Progressive Plastics; and

(ii) a vast range of importers, including Linpac (which in the four years since its launch in Australasia has secured significant E&T share in both Australia and NZ), Plantic, Huhtamaki, Berica, Jenkins Freshpac Systems, Oppenheimer, LeesPac, Benxon (of Philippines), and Multisteps Pty Ltd (of Australia);

(b) imports are a significant and ever-growing presence in the supply of E&T packaging in NZ. Imports are estimated to comprise at least [ ] of E&T packaging products supplied in NZ, and that share is continuing to grow, in particular, as manufacturers in larger markets overseas (such as Australia or Asia) leverage their greater economies of scale in order to vigorously compete in NZ. [ ];

(c) E&T packaging competes against a significant range of other packaging alternatives and substrates, including alternatives that are marketed as being more sustainable, such as sugarcane, cornstarch, cardboard, fibre, bamboo, and wheatstraw. This means that there are more rigid packaging alternatives available to customers than ever before;

(d) all types of customer are able to use the range of alternatives available to them (including E&T suppliers, imports, Australasian distribution companies (such as MPM, Bunzl, and LeesPac) and the many other packaging alternatives) to exercise significant bargaining power in commercial negotiations;

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[1] Pact is an Australian-registered business (ABN 55 145 989 644) and is listed on the Australian Stock Exchange ("**ASX**").

(e) the Acquisition will not increase the potential for coordinated effects to arise in any market as there are a range of alternative competitors – including significant imports, a number of new and innovative competing alternatives, and a range of different sizes and business models amongst the competitors; and

(f) the Acquisition will not give rise to any vertical input foreclosure effects as neither Pact nor Flight has any significant business supplying inputs to any other competitors in the market, and inputs are readily available from other sources.

1.4 Accordingly, Pact is confident that the Acquisition will deliver a number of benefits for customers – including expanding the range of sustainable and innovative packaging solutions available in NZ and [ ], without a detrimental impact on competition in any market.

PART A: TRANSACTION DETAILS

DETAILS OF PARTIES

1. THE PURCHASER: PACT GROUP HOLDINGS LIMITED

1.1 This notice seeking clearance is given by Pact Group Holdings Limited (defined as "**Pact**").

1.2 The contact details for Pact are as follows:

Jonathon West
General Counsel & Company Secretary
Pact Group Holdings Limited
[ ]
[ ]
Building 3, 658 Church Street
Cremorne, VIC 3121
Australia

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

Russell McVeagh
PO Box 8
Auckland 1140
Attention: Troy Pilkington (Partner) / Chris Brunt (Solicitor)
Telephone: 09 367 8108 / 09 367 8266

Email: troy.pilkington@russellmcveagh.com / chris.brunt@russellmcveagh.com

1.4 A corporate structure chart for Pact and its related companies is provided at **Appendix One**.

1.5 Pact is an Australian founded packaging solutions business, operating over 100 sites, employing 6,000 people, worldwide. These sites are based in Australia, NZ, the United States, the UK, and throughout Asia. Pact is headquartered in Melbourne, Australia and is listed on the Australian Securities Exchange ("**ASX**").[2] Its primary focus is the manufacture / supply of rigid plastic packaging for consumer and industrial customers in the food, beverage, chemical, industrial and agricultural sectors, as well as providing various other material handling solutions. Details regarding Pact's operations in NZ have been provided to the Commission.

1.6 More information regarding Pact is available: https://pactgroup.com.au/

THE VENDOR: FLIGHT PLASTICS LIMITED

1.7 The contact details for Flight Plastics Limited ("**Flight**") are as follows:

Derek Lander
Director
Flight Plastics Limited
PO Box 38 252

[2] https://www.asx.com.au/asx/share-price-research/company/PGH

Wellington Mail Centre
Wellington 5010

1.8 All correspondence and notices in respect of the application for Flight should be directed in the first instance to:

Chapman Tripp
PO Box 993
Wellington 6140
Attention: Lucy Cooper (Partner) / Brittany Reddington (Solicitor)
Telephone: 04 498 2406 / 04 498 6352
Email: lucy.cooper@chapmantripp.com / brittany.reddington@chapmantripp.com

1.9 A corporate structure chart for Flight and its related companies is provided at **Appendix Two**.

1.10 Flight was founded in NZ in 1907 as a manufacturer of luggage, and moved into plastic packaging production in the 1970s. Flight now sells plastic sheets and packaging including fruit and produce, bakery, meat and seafood, and nursery and horticulture packaging. Flight has packaging plants in Wellington and Adelaide, Australia. The Acquisition does not include Flight Extruded Plastics LP's plastic sheet / roll stock business based in Adelaide.

1.11 In 2012 Flight began investing in enabling the use of RPET at its NZ plant, beginning with the purchase of an E&T plant that was able to process imported RPET flake. Subsequent to that, in 2017, Flight opened a new PET sorting and wash plant (supported by a $4 million grant from the Ministry for the Environment's Waste Minimisation Fund), which means it can process waste PET plastic collected locally and turn it back into food-grade plastic packaging.

1.12 Details regarding Flight's operations in NZ have been provided to the Commission. More information regarding Flight is available: https://www.flight.co.nz/

THE PROPOSED TRANSACTION

2. TRANSACTION DETAILS

Outline and structure of the transaction

2.1 Pact Group Holdings Limited ("**Pact**") seeks clearance to acquire, directly or indirectly, the assets and business of Flight Plastics Limited (together "**Flight** "), and the packaging-related assets of Flight Extruded Plastics LP (which is a business based in Adelaide) (the "**Acquisition**").

2.2 Flight's Wellington assets comprise one wash plant, two extruders and ten thermoformers. This site produces:

(a) E&T containers: approximately [ ]% PET/RPET, [ ]% PVC, [ ]% HIPS/PP;

(b) Rollstock (extruded rolls of material): Flight sells some rollstock to its customers that have in-house form/fill/seal lines to package their own products, but are not themselves E&T suppliers. These customers thermoform their own trays as part of an integrated production process (e.g. the customer manufactures a food product and creates the packaging themselves from Flight rollstock). As far as Flight is

aware, these customers do not supply packaging to any third parties. Rollstock of this nature comprises [ ]% of Flight's extrusion output. The breakdown between materials within this [ ]% is: [ ]% PET/RPET, [ ]% PETG, [ ]% HIPS.

2.3 The Acquisition includes four thermoformers from Flight's Adelaide packaging business. This site currently produces PET/RPET E&T containers. This site has other extruders for Flight's industrial plastics division, which is not part of the Pact transaction. There are zero extruders for packaging material, which is supplied from Flight's New Zealand extruders.

2.4 For completeness, we note that Flight Group Limited is partly owned by individuals who are also shareholders in Flight Investments Limited. Flight Investments Limited in turn owns 100% of Flight Timbers Limited. Flight Timbers Limited is owned through a separate corporate group and is not part of the Acquisition.

Transaction documents

2.5 Copies of the documentation that bring about the Acquisition are enclosed.

Rationale for the Acquisition

2.6 Pact has identified the Acquisition as an attractive opportunity to combine Flight's capabilities in washing and recycling NZ PET waste streams with Pact's expertise in producing customised and innovative E&T packaging. As a result, the Acquisition will enable Pact to better meet customers' demand for sustainable and innovative packaging solutions and expand the use of NZ RPET (increasing the level of recycling of the NZ PET waste stream and maximising the utilisation of Pact's decontamination line that was [ ] funded through the Waste Minimisation Fund), whilst also enabling Pact to better compete with the significant and increasing imports of E&T packaging and the increasing use of other (non-E&T) rigid packaging solutions.

2.7 [ ].

3. NOTIFICATION OF OTHER COMPETITION AGENCIES

3.1 No other competition agencies are being notified regarding the Acquisition.

PART B: COUNTERFACTUAL

4. COUNTERFACTUAL

4.1 From Pact's perspective, if the Acquisition does not proceed, it considers it likely that the status quo will continue - i.e. that Flight will continue as a separate business from other packaging competitors in the relevant markets, and that Pact will continue to face increasing competition from other substrates and increasing competition from imported packaging products.

4.2 [ ].

4.3 From Flight's perspective, if the Acquisition does not proceed, it considers that [ ].

4.4 [ ].

4.5 Therefore, consistent with the Commission's *Mergers & Acquisitions Guidelines*, Pact considers the relevant counterfactual to be the status quo, given that it does not know if any other party is interested in acquiring Flight, and it is not apparent to Pact that the acquisition of Flight by any other participant would result in a state of competition that is materially different to the status quo.

PART C: THE INDUSTRY

5. THE INDUSTRY

5.1 The industry of relevance to the Acquisition is the small rigid packaging industry. While the Parties overlap in the manufacture of E&T packaging, small rigid packaging takes a wide variety of forms and is made from a wide variety of substrates, but all have the same basic function of preserving shelf life and product integrity.

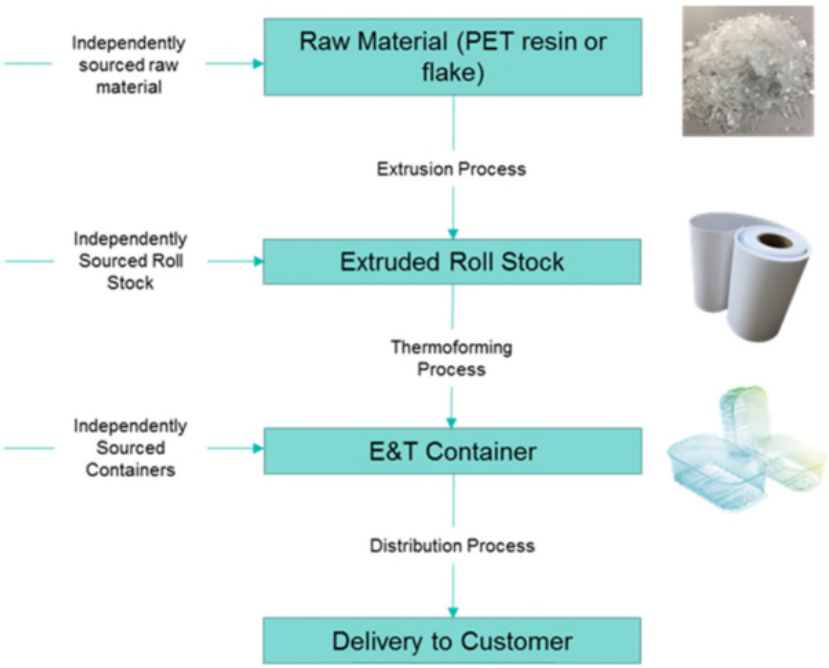
5.2 Examples of the many different varieties and substrates used for small rigid packaging and alternatives are set out at **Appendix Four**. These examples demonstrate that there are multiple different packaging options, using multiple different substrates, available to manufacturers/suppliers of food products.

5.3 The Parties have observed increasing levels of competition between different substrates in recent years. Examples of this substitutability are provided at paragraph 5.16 below, and includes tomatoes now being packaged in cardboard containers, meat trays made of corn starch, berry punnets made of fibre, and product packaging made of sugarcane (amongst many other examples). The Parties' experiences is that this substitutability spans all the different customer and product application segments serviced by their E&T packaging.

The E&T manufacturing process

5.4 A diagram of the E&T packaging manufacturing process for non-recycled material is provided at Figure 1 below. As Figure 1 demonstrates, E&T packaging can be manufactured by a supplier either performing both the extrusion and thermoforming processes itself, or by purchasing already extruded roll stock to thermoform into packaging.

Figure 1 - E&T Manufacturing Process



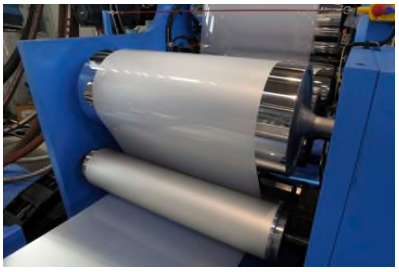
5.5 By way of further explanation:

(a) The manufacture of E&T packaging begins with the raw material. This raw material is commonly referred to as 'resin' or 'flake' (in the case of recycled inputs, which is granulated plastic material). This material has typically been sourced by purchasing virgin PET resin or recycled RPET flake from overseas, but can also be manufactured by recycling NZ-sourced PET packaging if a producer has its own wash plant (which Flight does), or by using a combination of virgin resin and recycled RPET flake. Of the Parties, only Flight has capability to produce RPET flake in NZ, as it is necessary to have a wash plant to wash used PET packaging in order to convert it into RPET flake.

(b) For RPET flake to be used in direct food-contact packaging, it is necessary for it to be decontaminated. Flight has a decontamination unit, which it uses in addition to its wash plant. In July 2019 it was announced that Pact had successfully applied to the Ministry for the Environment for a Waste Minimisation Fund grant to fund [ ] investment to establish its own RPET flake decontamination line.[3] This would enable Pact to decontaminate RPET flake (but that would not enable it to produce RPET flake itself, as that requires a wash plant). At this stage Pact expects this decontamination line to be operational by [ ].

(c) Resin or decontaminated RPET flake is then extruded into plastic sheets. This extrusion process involves mixing the resin or flake with additives such as colorants, heating that combined mixture and then extruding that material through a die into a sheet. See Figure 2 below. Both Flight and Pact carry out this step in the manufacturing process.

Figure 2 - Extrusion Machinery



[4]

(d) That sheet is then converted into a usable product (such as a container) via the thermoforming process. This thermoforming process heats the plastic sheet and then stretches it over a mould (often via a vacuum), before cooling it. The cooled moulded plastic is then trimmed to reach the final product. Both Flight and Pact carry out this step in the manufacturing process (as do all local E&T manufacturers).

(e) That final product is then sold to packaging customers (such as food suppliers or supermarkets).

(f) Food suppliers / supermarkets package items for sale to end customers.

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[3] https://pactgroup.com.au/news/pact-group-receive-government-funding-to-transition-to-100-recycled-rpet-in-its-food-packaging-range/

[4] https://www.directindustry.com/prod/amut/product-20400-1445327.html

5.6 As noted at paragraph 5.4, it is possible for suppliers of E&T packaging to perform all, or only part, of this process. For example, some manufacturers procure roll stock from third party sources and thermoform it in-house. Similarly, some importers manufacture or procure E&T packaging manufactured overseas (Linpac, Bonson,[5] for example), and sell to NZ customers.

5.7 For the Commission's benefit, Pact notes that food packaging made from several different plastic polymers can be manufactured using the E&T process. A summary of those polymers and their qualities and common uses is provided at Table 1.

Table 1 - Summary of Plastic Polymers

Polymer	Qualities	Common uses
PP	PP is: ▪ a food-safe polymer; ▪ microwaveable (good heat resistance); ▪ can perform well at below-zero temperatures (can be frozen); and ▪ commonly used in Injection Moulded ("**IM**") manufacturing, given it is capable of "in-mould labelling", where it is decorated / labelled simultaneously with manufacturing. PP is technically recyclable, but it is not yet readily recycled in NZ. The Parties also note that: ▪ PP is slower to process in extruders and thermoformers as more care is required for tooling design; ▪ softer less dense material means trays must be made thicker if rigidity is desired; ▪ PP's barrier properties are not as strong as other materials (which means it does not preserve food shelf life as much as other materials); and ▪ PP is opaque in its natural colour state.	PP is used to manufacture (among other things) protein trays, lid and containers for spreads, ice-cream tub and lid, microwave food, produce trays, drink cups, fruit juice bottles, caps and closures, containers that are hot-filled, trays and containers that require freezing.
HIPS, EPS (Polystyrene)	Polystyrene is: ▪ a food-safe polymer; ▪ reasonably cost-efficient to manufacture; ▪ lighter than other polymers; ▪ capable of maintaining good rigidity at less thickness than other materials; and ▪ easy to separate, "snap-off", or cut (useful for yoghurt multipacks, for example). Disadvantages include that there is no commercial recycling available for polystyrene, it is not microwavable, it is not transparent (its natural colour is close to white), its barrier properties are	Polystyrene is used for various dairy applications (snappable six packs of yoghurts, sour cream, etc), plant pots, display trays.

[5] Bonson supplies injection moulded ("**IM**") plastic packaging that is, from a customer's perspective, identical to E&T in appearance and function (e.g. IM plastic trays).

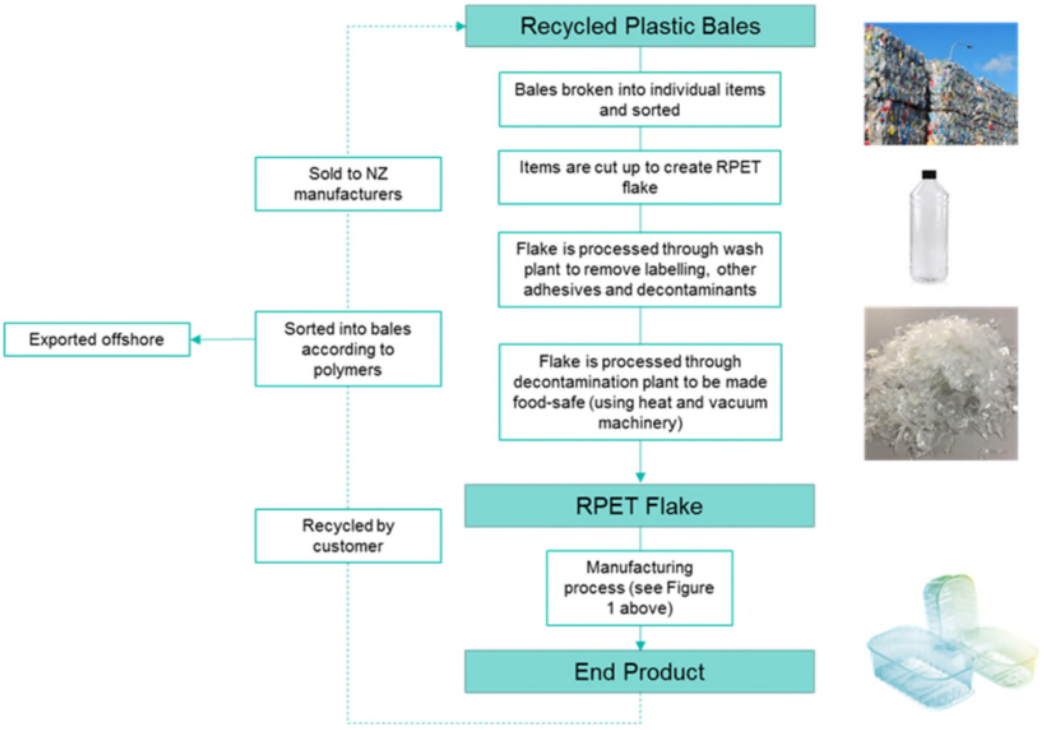
	not as strong as other materials (which means it does not preserve food shelf life as much as other materials).	
PVC	PVC is a low cost, durable polymer. Other advantages include its transparency (looks almost identical to PET), it provides good barrier properties for food shelf life, it has good adhesion and sonic welding performance, it performs better than PET at below-zero temperatures and in hot-fill application. It is, however, not recyclable in food grade applications. Its similarity in appearance to PET means that it is capable of contaminating the PET recycling stream. Due to this, and the chemicals used to make PVC, the NZ government has announced plans to ban PVC from food packaging.[6]	PVC is commonly used for bakery applications, biscuit trays, over wrap cling film and sleeves (cheese), meat trays, clear bottles, non-food blister packs, pharmaceutical packaging.
PET	PET is a food-safe recyclable polymer that has a clear appearance. It can be used in multiple processes. However, PET cannot be used in hot-fill applications due to its lower melting point. It cannot be microwaved. It has limited low temperature capability (not ideal for freezer applications).	PET is used extensively for food packaging, including protein trays, water bottles, carbonated soft drink bottles, milk bottles, fruit juice bottles and produce punnets.
RPET	RPET has the same qualities as PET, with the difference being it is made from recycled materials. RPET can be food-safe provided it meets the FDA food-grade standards.	As with PET, RPET may be used for food packaging, including bottles, containers and trays.
PETG	Another variety of PET, PETG (polyethylene terephthalate glycol) performs better at lower temperatures than other PET varieties. PETG's surface properties are very favourable for printing; adhesives and sonic welding. PETG is very transparent when made clear, so its optical properties are very good.	PETG is also used for speciality applications (e.g. welded ant baits, some beverage containers), plastic face masks.
CPET	CPET (crystallized PET) is designed for use in ready-meal trays and can be both frozen and heated in an oven or microwave. It is difficult to make CPET in colours other than black due to the manufacturing process, which can contaminate the clear PET recycling stream. Additional	CPET is used for specific food service applications where temperature is an essential feature, such as ready-meals.

[6] https://www.stuff.co.nz/national/politics/118031877/prime-minister-aims-new-plastics-ban-at-meat-trays-and-takeaway-cups

	processing is required to enable the heating / freezing qualities to be effective.	

5.8 Once an end-customer consumes a product housed in recyclable PET packaging,[7] they can recycle that packaging. Manufacturers can purchase this recycled material from local councils. A diagram of how that recycled waste is transformed into a new product is provided at Figure 3.

Figure 3 - Plastic Recycling Process



5.9 Unlike Flight, Pact is not able to perform the full process set out in Figure 3 in NZ, given it does not have a wash plant. While, like Flight, Pact is able to utilise RPET flake in its manufacturing process, including through the establishing of a RPET flake decontamination unit,[8] Pact does not have the ability to manufacture RPET flake itself - it needs to source flake from external suppliers or from its operations in Australia.

How business is awarded

5.10 The Parties and their competitors sell packaging to manufacturers, wholesalers and retailers of various products, depending on where in the supply chain packaging is required. By way of demonstration, [ ]:

(a) [ ], a manufacturer and distributor of food items. [ ] procures packaging products [ ] prior to distributing packaged products to retailers; and

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[7] For example, PVC and HIPS cannot be recycled in NZ for food grade use.

[8] In July 2019 it was announced that Pact had successfully applied to the Ministry for the Environment ("**MFE**") for a Waste Minimisation Fund grant to fund [ ] investment to establish its own RPET flake decontamination line. https://pactgroup.com.au/news/pact-group-receive-government-funding-to-transition-to-100-recycled-rpet-in-its-food-packaging-range/

(b) [ ] a supermarket retailer. [ ] will on occasion (meat and in-store baked bakery items, for example) source inputs in a 'raw', unpackaged form, and then package that product itself prior to resale.

5.11 As set out in further detail at paragraph 7.16, customers are generally large and have sophisticated procurement functions. These customers typically conduct tenders to award contracts for their packaging requirements, and often ([ ]) for a specified term. Contract tenders are highly competitive, with customers playing both NZ and overseas-based suppliers off against one another to extract better pricing and service quality over a prolonged and exacting process.

5.12 In the course of those tenders, it is necessary for competitors to compete across a range of aspects of competitive differentiation, including:

(a) price, where the Parties face increasing competition from imports, as set out in detail at paragraph 7.9(b);

(b) the sustainability of the suppliers' products and policies, which are an increasingly important aspect of the Parties' and their competitors' offerings – including competing with packaging options made from non-plastic substrates;

(c) innovation. For example, design changes which enhance the efficiency of the customers packing processes, or adds features for the benefit of consumers such as easy open, shelf life performance, advanced graphics etc;

(d) service level, including timing of supply;

(e) contingency of supply - the ability to have effective plans in place to cater for interruption of supply; and

(f) credit terms offered by the manufacturer to that customer.

5.13 As noted at paragraph 5.12(c), innovation and intellectual property can play a part in some tender processes, for example customers seeking innovative features for a packaging product. That said, innovation must sit alongside price, service, supply and other factors mentioned above. Furthermore:

(a) many large customers have their own proprietary designs that they require suppliers to use, which means that the packaging suppliers have to produce a specific design specified by the customer. For example, [ ];

(b) there is also a common industry design standard for many products that does not have any innovation or intellectual property dimension;

(c) while innovation can be a feature of a tender, such an offering could almost always be substituted for a generic offering with no innovation or intellectual property dimension for any given packaging application; and

(d) Flight's perspective is that intellectual property plays a less important role in tenders than the other features outlined at 5.12 above. Flight's experience is that:

(i) [ ];

(ii) [ ]; and

(iii) [ ].

5.14 For these reasons, the Parties do not consider that innovation or intellectual property limits the range or type of competitors that can participate in any given customer tender.

Key industry trends

Sustainability

5.15 A key trend in the industry is the increased desire for sustainable packaging options, which means that food suppliers and consumers have become more focused on purchasing recyclable, reusable or compostable packaging, and businesses prioritise presenting themselves as environmentally conscious to end consumers:

(a) A 2019 US consumer behaviour report found that: [9]

(i) 37% of consumers are willing to pay 5% more for environmentally friendly products and are actively changing shopping behaviour to do so;

(ii) almost 31% of consumers say their concern about the impact of plastic packaging is as high as it can possibly be (i.e. rated 10/10), with 61% rating their concern 8/10 or higher; and

(iii) 83% of consumers believe non-plastic packaging is more eco-friendly.

(b) The build-up of plastic in the environment is now the top concern for New Zealanders, according to a 2019 Colmar Brunton report. The report commented that this consumer awareness has created pressure for businesses to eliminate unnecessary packaging from their product offerings. It also noted that:[10]

(i) 85% of New Zealanders say reducing disposable packaging is the right thing to do; and

(ii) 77% of consumers believe they can personally make a difference by reducing their own consumption of plastic packaging.

(c) Several leading NZ businesses, including major customers of the Parties, have committed to using 100% reusable, recyclable or compostable packaging across their operations by 2025 or earlier.[11] Parties to this agreement include Danone, PepsiCo, Coca-Cola, Woolworths, Foodstuffs and Frucor Suntory. These customers are also clear that their suppliers should make similar improvements. For example Woolworths' public statement on plastic waste says that:[12]

> We are absolutely committed to using 100 percent reusable, recyclable or compostable packaging in our own brands by 2025 or

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[9] https://www.packworld.com/issues/sustainability/article/21096310/toluna-report-37-of-consumers-willing-to-pay-more-for-ecofriendly-products

[10] https://static.colmarbrunton.co.nz/wp-content/uploads/2019/05/Colmar-Brunton-Better-Futures-2019-MASTER-FINAL-REPORT.pdf

[11] https://www.mfe.govt.nz/sites/default/files/media/Waste/FINAL_NZ%20Plastic%20Packaging%20Declaration.pdf

[12] https://www.countdown.co.nz/plasticbags

> earlier and we're also working hard to encourage our suppliers to work with us and drive change in their own brand.

Similarly, Fonterra's policy states that:[13]

> We are also working with vendors looking at options for changing the packaging materials we use, including the inclusion of some recycled plastic content (e.g. rPET). This needs careful evaluation to validate the food safety aspects, and to assess the options to make the approach circular and local.

5.16 Many prominent NZ retailers are taking steps to reduce the use of plastic packaging, for example:

(a) In July 2018 St Pierre's Sushi began offering discounts to customers that brought their own reusable containers for sushi in store.[14]

(b) In January 2019 Foodstuffs said it was "exploring compostable packaging derived from bio-based feedstock, a plastic sourced from food production or forestry waste".[15]

(c) In May 2019 Foodstuffs North Island announced "it will now be allowing customers to bring re-useable containers for use in staffed areas like seafood, bakery, delicatessen, and butchery areas".[16]

(d) In July 2019 Woolworths announced that Countdown "will accept BYO (bring your own) containers for food sold over the counter in its supermarkets nationwide."[17]

(e) Woolworths announced it would undertake a ‘plastic-free’ trial in three of its Countdown stores from February 2020. This 10 week trial is intended to test how Countdown can further reduce plastic in its produce section. The stores will use paper and cardboard alternatives, and in some instances will not use any packaging.[18]

(f) In 2018 Wellington sushi chain TJ Katsu switched to "compostable eco packaging" (made by Nature Pac), and it offers "a five per cent discount to customer who provide their own containers".[19]

(g) Better Burger "now use only 100% compostable packaging".[20]

5.17 This trend towards sustainability means that the Parties' customers face increasing pressure from end-customers to ensure that their products are packaged in environmentally friendly materials. This has meant that Pact's supply of E&T packaging has faced increasing competitive pressure from other substrates due to customers increasingly expressing a

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[13] https://view.publitas.com/fonterra/sustainability-report-2019/page/72-73
[14] http://restaurantandcafe.co.nz/st-pierres-offers-byo-discount/
[15] http://supermarketnews.co.nz/the-plastic-packaging-debate-rages-on/
[16] https://www.stuff.co.nz/environment/112682016/supermarkets-say-they-will-allow-byo-containers-for-the-butchery-seafood-delicatessen-and-bakery
[17] https://www.countdown.co.nz/news-and-media-releases/2019/july/countdown-to-roll-out-byo-containers-at-deli-meat-and-seafood-service-counters-nationwide
[18] https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12303604
[19] https://www.stuff.co.nz/life-style/food-wine/120370855/the-wellington-sushi-chain-fighting-plastic-waste
[20] https://innocentpackaging.co.nz/blogs/journal/case-study-better-burger

preference for recycled, reusable or compostable packaging (whether that be other forms of plastic, such as RPET or PLA, or other substrates such as cardboard or tetra pak). For example:

(a) Foodstuffs has moved many of its deli containers from plastic to cardboard.

(b) Woolworths has recently switched some PET bakery tray packaging for packaging made from sugarcane manufactured by BioPak and moved to "choos[e] produce partners that will supply fresh fruit and vegetables, switching to compostable BioPak sugarcane pulp trays" (with BioPak winning a Woolworths "Sustainability Supplier of the Year" award in November 2019 as a result):[21]

> BioPak carbon neutral, plant-based packaging is designed to reduce negative environmental harm and increase positive community impact. We designed Woolworths award-winning Bakery Trays with sugarcane fibre (bagasse), a by-product of the sugar refining industry that is certified home compostable to Australian Standards (AS5810) and deemed recyclable by PREP.

Woolworths has also replaced certain non-recyclable plastic trays with a renewable sourced pulp/plant-based fibre sourced from unbleached bamboo (40%) and unbleached sugarcane (60%).[22] On 5 June 2020, Woolworths also announced that:[23]

(i) It would be "replacing plastic trays with pulp fibre on tomatoes"; and

(ii) "Trays used to hold sweet potatoes and organic apples are now made of recycled cardboard, rather than plastic".

(c) Turners and Growers recently switched from purchasing E&T plastic containers for their tomato punnet packaging to instead using cardboard containers, citing "the company's commitment to the environment" as the reason for the change;[24]

(d) In August 2019 Bostock New Zealand began packaging its onions in beechwood compostable netting in order to "reduce its plastic packaging",[25] and from August 2018 Bostock Brothers began packaging its poultry products in home compostable packaging ("we believe this is the first time meat has been packaged in compostable packaging of this kind in New Zealand");[26]

(e) In March 2019 Hawkes Bay apple supplier Rockit Global switched from RPET plastic tube packaging to cardboard packaging for supply to NZ supermarkets and other retailers – noting: "Like so many Kiwis, members of the Rockit Global team recognise that there is enough plastic in the world already and if there is an alternative material that can fulfil the purpose of packaging, which is to reduce food wastage, we should embrace it";[27]

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[21] https://www.biopak.co.nz/blog/sustainability/biopak-awarded-woolworths-%E2%80%98sustainability-supplier-of-the-year

[22] http://www.packaging.org.nz/page/310/2020-worldstar-packaging-award-winners-for-anz

[23] https://7news.com.au/lifestyle/woolworths-announces-huge-change-for-fruit-and-veggies-c-1081951

[24] https://tandg.global/theres-a-new-buzz-on-the-vine-were-saying-goodbye-to-plastic-tomato-punnets/

[25] https://www.bostock.nz/leading-new-zealand-grower-launches-home-compostable-vegetable-netting/

[26] https://bostocksorganic.co.nz/compostable-packaging/

[27] http://www.fruitnet.com/asiafruit/article/178108/rockit-shows-sustainable-side

(f) Huhtamaki[28] and Jenkins Freshpac[29] market a range of moulded fibre packaging products for produce packaging/punnets;

(g) In 2017 Neat Meat (in Gisborne) began working with Plantic Technologies (from Australia) to develop a meat tray that is made from a combination of corn-starch based substrates and recycled plastic water bottles.[30] This new packaging product won a Silver Sustainable Packaging Award at the 2019 Packaging Innovation & Design Awards ("**PIDAs**"),[31] and a WorldStar Packaging Award winner in May 2020;[32]

(h) In October 2019 Harrington's Smallgoods introduced "eco-friendly packaging. Made from recycled and plant-based materials";[33]

(i) In June 2019 Meadow Mushrooms announced it was trialling manufacture of its own punnets made from mushroom stalks;[34]

(j) In November 2019 Silver Fern Farms announced that it was changing its retail packaging by adopting a "recyclable cardboard sleeve, which will reduce plastic in our supply chain… We have removed up to 50% of the plastic used to protect our retail range";[35] and

(k) Kaituna Blueberries has switched to fibre punnets, a development that won PunchBowl Packaging (a packaging supplier to horticultural customers in South Auckland) a Gold Sustainable Packaging Award at the 2019 PIDAs. This switching journey by Kaituna Blueberries is illustrated in Figure 4 below.

Figure 4 - Kaituna Blueberries Journey to Reducing Plastic Waste

[28] https://www2.huhtamaki.com/web/moldedfiber/products-solutions/fruit-packaging/frutpak

[29] https://www.jenkinsfps.co.nz/enviro-pac

[30] https://www.neatmeat.com/the-eriksen-brothers

[31] http://www.scoop.co.nz/stories/BU1905/S00107/winners-announced-for-packaging-innovation-design-awards.htm

[32] http://www.packaging.org.nz/page/310/2020-worldstar-packaging-award-winners-for-anz

[33] https://harringtonsmallgoods.co.nz/2019/10/29/harringtons-smallgoods-introduces-sustainable-packaging/

[34] https://www.stuff.co.nz/business/113396440/mushroom-company-to-make-its-own-packaging--from-mushrooms

[35] https://www.scoop.co.nz/stories/BU1911/S00409/silver-fern-farms-retail-packing-changes-for-good.htm

5.18 [ ], while these increased pressures to adopt sustainable business practices have seen moves towards more environmentally-friendly packaging, price also remains an important consideration for customers. [ ].

5.19 [ ].

5.20 [ ].

5.21 Finally, some customers continue to prefer PET products to RPET.[36] [ ].

Packaging as a marketing tool

5.22 There is also a continuing trend for food suppliers to use packaging as a marketing tool, for example, by using shape and labelling to make products more interesting and attractive to purchasers, or to market the supplier's sustainability credentials.[37] This is further increasing the substitution between packaging made of different substrates. In particular, E&T packaging is disadvantaged compared to other substrates in this respect. E&T packaging is thin walled, generally manufactured using a standardised process, and used primarily for the packaging of high volume, low value products. This is contrasted with, for example:

(a) cardboard, sugarcane, cornstarch, and moulded fibre packaging products, which are often used to market a supplier's sustainability credentials (see above);

(b) IM containers which can be manufactured with special features such as custom-designed shapes, break-tab tamper evident seals, and in-mould labels;

(c) cardboard, on which manufacturers can have different images printed; and

(d) glass, which can be blown into different shapes and sizes, and can display labelling that has been adhered to it (for example, the recent emergence of yoghurt in glass jars – a product that had previously almost exclusively been packaged in plastic packaging).

5.23 This trend means that the Parties' E&T sales have, in recent years, faced increased competition from manufacturers of other non-plastic or more customisable substrates. For example, Zespri [ ] as part of its commitment "to make all of its packaging 100 per cent reusable, recyclable or compostable by 2025",[38] and has moved to cardboard packaging (instead of plastic) for kiwifruit products sold in certain overseas markets (e.g. France):[39]

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[36] [ ]

[37] For example: Neat Meat. See: https://www.neatmeat.com/

[38] https://www.scoop.co.nz/stories/BU2002/S00179/zespri-reveals-sustainability-commitments.htm

[39] http://www.fruitnet.com/eurofruit/article/181949/zespri-ditches-plastic-in-monoprix

Figure 5 – New Zespri Cardboard Packaging

Industry participants

5.24 The NZ industry for the supply of small rigid packaging is highly competitive, with a large number of different competitors with different business models – both in the supply of E&T packaging, and in the supply of small rigid packaging produced using the wide range of other packaging substrates. Further detail is provided at paragraph 7.7 below.

PART D: COMPETITIVE ASSESSMENT

6. RELEVANT MARKETS

6.1 The Parties are both suppliers of E&T packaging. However, the Parties consider that the Acquisition should primarily be assessed in the market for the supply of all small rigid packaging and alternatives.

6.2 In particular, they consider that the Acquisition should be assessed in a market that includes rigid packaging and alternatives produced using all the substrates set out in **Appendix Four** (rigid plastic, cardboard, corn starch, etc). While the Commission has previously declined to take this broader view of the relevant market, and instead opted to define a market solely for rigid plastic packaging,[40] the Parties consider that:

(a) There is significant demand-side substitutability between these different substrates, such that a modest increase in the price of E&T packaging would cause, for example:

(i) meat / poultry / seafood packaging customers to consider switching to flexible bags or vacuum skin pack ("**VSP**") packaging;

(ii) fruit packaging customers to consider switching to flexible bags, cardboard or moulded fibre trays;

(iii) ice cream manufacturers will actively evaluate both paper and plastic packaging alternatives when consider packaging options; and

(iv) while not specifically in relation to E&T packaging, Pact notes that customers are increasingly switching from plastic to paper straws despite paper straws costing approximately twice the price of plastic straws.

(b) as set out at paragraph 5.16 above, customers switching from rigid plastic packaging to other materials has been a significant and increasing trend in recent years. Perceived environmental credibility is becoming more important over time. In the Parties' experience, customers are prepared to pay a higher price for materials perceived to be more environmentally friendly, such as cardboard, than for recycled plastic.

6.3 There is also some supply-side substitutability across the various types of packaging products. For example:

(a) for a manufacturer to switch or expand from supplying one shape of E&T packaging to another, it would take [ ] to obtain and test the relevant tool, and cost between [ ], depending on the nature of the thermoformer, the tool and the performance levels required;

(b) the Parties consider that food-grade and non food-grade containers are within the same product market, given that the same machinery and manufacturing process is used for both grades, and the Parties' experience is that all packaging is produced to a food grade standard. In other words, provided packaging is

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[40] *Tec Projects Limited and Tecpak Industries Limited* (18 November 2010), at [16].

manufactured in accordance with the Australia and New Zealand Food Standards Code and the USA Food and Drug Administration ("**FDA**") requirements,[41] these products are substitutable on the supply side, and can be substituted from a demand perspective with only a change in description from food grade supply to non-food grade (i.e. there is no change in the manufacturing process). As noted, the Parties' understanding is that all E&T packaging in NZ is produced to a food-grade standard, regardless of whether its end use will be for food products, and that manufacturers can switch between food and non-food grade products without any changes to their processes. If a manufacturer did not currently manufacture to a food-grade standard, it would then require some upgrading of facilities in order to be able to manufacture packaging used for food. Pact estimates that it would take [ ], and cost [ ], to install the necessary equipment and processes to upgrade a non-food grade plan to produce food-grade products.

In order to produce food-grade packaging using RPET, there are two options:

(i) using a triple layered (multi-extruder) approach whereby the outer layers are extruded from virgin PET, with the inner layer extruded from RPET (which is what Pact currently does); or

(ii) having a decontamination line in order to decontaminate RPET (which is what Pact is currently installing, at a total cost of [ ]);

(c) for a manufacturer to switch from one polymer to another will depend on the specific change taking place, but Pact estimates that a change from PET to PP or PP to PET may cost around [ ] in new production equipment.

6.4 More fundamental changes by a packaging manufacturer would involve greater investment. For example, for a manufacturer to switch from producing E&T packaging to a different substrate it would likely require a total change in production process and equipment, costing [ ] over [ ] (depending on the new substrate in question).

6.5 Given the above, notwithstanding the Commission's previous views on market definition, and given market conditions have continued to evolve significantly in the intervening decade, with increasing and significant demand-side substitution in particular, the Parties consider the Commission should define a market for small rigid packaging manufactured from all substrates.

6.6 For completeness, the Parties note that, to the extent that the Commission is minded to consider the size of packaging in its market definition analysis, the Parties supply E&T packaging of 5L and below.

6.7 Even if the Commission were to adopt a narrow approach and define a separate market for small E&T packaging (despite the changes in intervening years), the Acquisition is unlikely to have the effect of substantially lessening competition in that narrow market due to the significant number of E&T competitors (both domestic manufacturers and importers) that compete in NZ. Furthermore, even if the Commission were to define the relevant market in this way, its analysis would need to take into account the significant constraint from other forms of packaging (e.g. IM plastic, cardboard) – as the High Court observed in *Brambles v Commerce Commission*:[42]

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[41] Further to that food contact packaging manufacturers are required to operate a certified and audited Food Safety system in house (for example, Flight is certified to the FSSC22000 standard).

[42] *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868, at [137].

> A decision to define the market by reference to crates only can provide an appropriate basis for analysis of the competition issues which need to be decided, but defining the market in that way should not lead to any under-estimation of the potential substitutability and level of constraint on market participants in that narrowly defined market, from cardboard packaging both premerger and post-merger.

7. Overview of the competitive dynamics in the market for small rigid packaging

7.1 As noted at paragraphs 6.2 and 6.5 above, while the Commission has previously defined a narrow market for the supply of E&T packaging, given the high level of demand side substitution between different substrates, the Parties consider it would be more accurate to define a broader market.

7.2 However, even if the Commission is minded to consider the Acquisition on the narrowest possible basis (in a market for the supply of small E&T packaging, for example), the Parties are confident that the Acquisition will not give rise to any competition issues in NZ. This is for the reasons set out below.

There are a number of other close and vigorous competitors in the supply of small rigid packaging

7.3 While Pact and Flight are both NZ-based manufacturers of E&T, there are a number of other close and vigorous competitors, and there are differences in the respective focuses of each of Pact and Flight:

(a) Pact has capability across a broad variety of E&T packaging, including customisable, 'decorated' E&T packaging for large customers [ ] as well as supply into other larger customers [ ] and other sectors that require less customisation. Pact considers its closest competitor to be [ ]; and

(b) by contrast, Flight specialises in 'non-decorated' E&T packaging, typically to smaller customers or for more generic product designs. Flight's closest competitors are importers who supply significant quantities of non-customised E&T packaging for what the Commission has previously described as "high volume commodity products"[43] (such as sushi clamshells, fruit punnets, etc). [ ]

7.4 Furthermore, the Parties are not each other's closest or largest E&T competitors in any of the different end-use segments set out in **Appendix Four**. Estimates of Pact's shares in each of these end-use segments are set out in Table 2 below.

Table 2 – Pact's Estimated E&T Shares in End-Use Segments[44]

Segment	Pact estimated share in E&T supply	Flight estimated share in E&T supply	Other suppliers and share in E&T supply
Meat / Poultry / Seafood	[ ]%	[ ]	Linpac - [ ]% Other importers]- [ ]%
Fruit	[ ]	[ ]	Progressive Plastics, Imports - [ ] For example: Multisteps Pty Ltd (supplier to, for example,

[43] *Tec Projects Limited*, above n 40, at [12].

[44] Shares based on Pact estimates.

			Ye Olde Berry Farm), Jenkins Freshpac Systems,
Kiwifruit	[ ]%	[ ]	Imports - [ ]% For example: Jenkins Freshpac Systems Custom-Pak[45]
Bakery	[ ]	[ ]	Berica Progressive Plastics Imports - [ ]%
Horticulture	[ ]	[ ]	Imports - [ ]%
Fast Food	[ ]	[ ]	Imports - [ ]%
Biscuits	[ ]	[ ]	Linpac - [ ]
Frozen Meals	[ ]	~[ ]%	Imports (e.g. Sonoco [ ]%
Pharmaceuticals[46]	[ ]	[ ]	[ ]
Dairy (Yoghurts and Spreads)	Pact's presence in yoghurt and spreads is through the supply of injection moulded ("**IM**") tubs and lids. Flight does not supply injection moulded products.	[ ]	Yoghurts and spreads are primarily packaged in injection moulded in-mould labelled ("**IML**") products, such as those supplied by FocusIML (which packages Fonterra Butter).[47]

There are several other existing competitors, as well as competitors that have the potential to expand

7.5 The Parties will continue to be constrained by numerous domestic manufacturers, and large importers that all have established NZ customer relationships. Pact estimates that currently at least [ ] of all E&T packaging supplied in NZ is imported.

7.6 The Parties' estimates of total shares in the supply of E&T packaging specifically are set out in Table 3 below. In respect of these shares, the Parties note:

(a) there is no independent share data available for this segment, such that the below are management estimates only;

(b) as set out in paragraph 7.3 above, these shares overstate the level of competitive tension between the Parties, given that they are not each other's closest or largest competitors in any of the end-use segments for E&T packaging; and

(c) these shares do not include the supply of other substrates (except for IM plastic packaging where that has almost identical function/appearance to E&T packaging),[48] which (as set out at paragraph 6.2 above) the Parties' E&T packaging regularly compete with and/or lose business to.

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[45] https://custompak.co.nz/product-catalogue/horticulture/

[46] Pharmaceuticals are not a major component of E&T. The majority of the market is blow moulded products such as pill bottles and jars. [ ].

[47] https://vacupack.com.au/focusiml/

[48] [ ].

Table 3 – Internal Estimates of Market Shares in the Supply of E&T Packaging

Supplier	Pact estimated revenue and share		Substrate	Estimated to be expanding or declining since January 2018?
	Est'd Rev ($m)	Share (%)		
Pact	[ ]	[ ]	[ ]	[ ]
Flight	[ ]	[ ]	[ ]	[ ]
Past post-acquisition	[ ]	[ ]	[ ]	[ ]
Cryovac/Sealed Air/Bonson (local manufacture of IM and imports)	[ ]	[ ]	[ ]	[ ]
Plantic Technologies (imports)	[ ]	[ ]	[ ]	[ ]
Linpac (imports)	[ ]	[ ]	[ ]	[ ]
Custom-Pak (formerly Sullivans)	[ ]	[ ]	[ ]	[ ]
Formrite	[ ]	[ ]	[ ]	[ ]
Huhtamaki (imports)	[ ]	[ ]	[ ]	[ ]
Aztec	[ ]	[ ]	[ ]	[ ]
Other domestic manufacturers (eg Progressive) and other importers (eg, Jenkins Freshpac Systems, Bunzl, Oppenheimer, Packaging House, IKON, Multisteps)	[ ]		[ ]	[ ]
TOTAL	[ ]	[ ]		

7.7 There are a range of other competitors in the supply of E&T packaging (and IM equivalents) in NZ – including:

(a) **Bonson,** an IM packaging manufacturer/importer, is one of Australasia's leading manufacturers of rigid plastic food containers and alternative food packaging options.[49] Established in NZ 35 years ago, Bonson has rapidly progressed from modest facilities to opening a purpose built manufacturing site in Auckland in 2012.[50] Bonson has been expanding its sales in Australasia in recent years, with the stated objective of being "NZ and Australia's best choice in food packaging solutions".[51]

[49] https://www.bonson-savpac.co.nz/about-us

[50] https://www.bonson-savpac.co.nz/about-us/articles/bonsons-35th-anniversary

[51] https://www.bonson-savpac.co.nz/about-us/our-values

Bonson's NZ presence is strengthened by its partnership with Cryovac (Sealed Air's rigid plastics brand). This partnership, whereby Cryovac and Bonson together provide both existing and new products to Cryovac's customer base bolsters Bonson's NZ presence:[52]

> One of Bonson Industrial's most notable achievements is their partnership with Sealed Air Cryovac, through which the company supplies to major supermarket chains and multi-national food processors, including Woolworths. Sealed Air Cryovac is well-known for its high standards in the international food industry so this partnership is a true testament to Bonson Industrial's manufacturing capabilities.

While Bonson only has IM, and not E&T, manufacturing capability in NZ, it is a vigorous competitor for the supply of competing packaging to Pact given its IM packaging, such as IM trays, have in effect identical appearance/function to customers. For example, Pact understands that [ ].

Pact's view is that Bonson could further grow its NZ E&T supply by establishing a NZ-based E&T plant or increasing the volumes and range that it imports in NZ.

(b) **Custom-Pak**, which manufactures a range of plastic E&T packaging solutions, specialising in packaging for meat / produce, frozen meals and baked goods.[53] Custom-Pak operates manufacturing plants in Auckland and Christchurch.[54] Its brand is focused on the environmental sustainability of its products, marketing itself as "Designers & Manufacturers of 100% Recyclable Plastic Packaging":[55]

> In recent times, we have switched most of our production from virgin PET (polyethylene terephthalate) to clear RPET (recycled PET). While we are not the only plastic packaging manufacturer using RPET, there is one significant difference with ours – the RPET we use is made from 100% recycled material.

Custom-Pak's website markets its sustainability vision to create a "closed loop" recycled packaging option:[56]

> Custom-Pak values the world we live in, therefore we are working towards a future manufacturing plan that will close the circle on recycling packaging. Our aim is to include specific customer brands within a "closed circle" packaging solution that recycles their post-consumer PET and RPET, so it can be reinstated back into 100% RPET material.…
>
> Our ultimate goal is to help New Zealand move towards a more desirable circular economy which will minimise plastic waste in landfill and limit the use of non-renewable energy sources.

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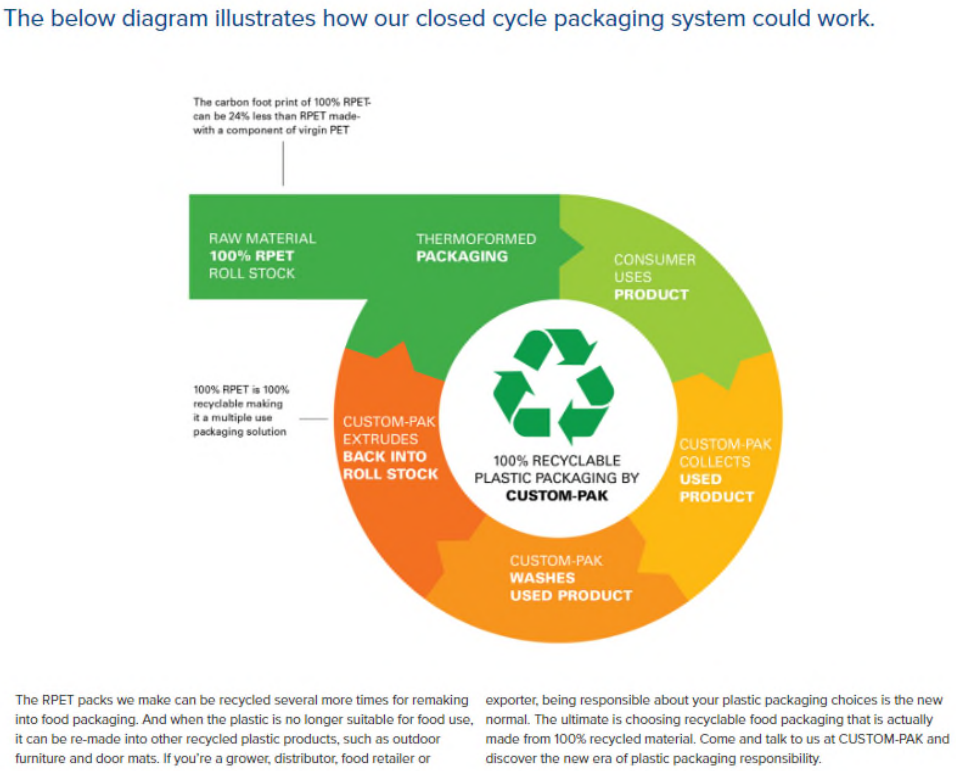
[52] http://auckland.scoop.co.nz/2014/09/30-years-of-manufacturing-success/
[53] https://plasticpackaging.co.nz/about-us/
[54] https://plasticpackaging.co.nz/about-us/
[55] https://plasticpackaging.co.nz/
[56] https://plasticpackaging.co.nz/

Figure 6 - Custom-Pak marketing of its proposed closed cycle packaging system



[ ] - with it focussing on sourcing overseas RPET, for example:[57]

> For meat packaging supplies, Custom-Pak adheres to the principle of 'above ground' plastics only, which is why we focus on RPET. In our opinion, mixing RPET with new resin is not the answer the world is looking for.
>
> Talk to us about RPET plastic meat trays and fish packaging. We have a range of standard shapes and sizes for plastic containers, or we can custom-make to suit special requirements.

However, it recently announced its intention to develop its own:

(i) NZ-based extrusion capability; and

(ii) RPET wash plant, which it can use to manufacture RPET flake (the raw material used in RPET E&T packaging and other products such as RPET beverage bottles).

Accordingly, it is expected that within the short to medium term Custom-Pak will have 'closed loop' E&T capability, with the ability to manufacture RPET flake from recycled material and manufacture E&T packaging from that flake using an entirely in-house process, in a similar manner to how Flight does currently.

Pact estimates that Custom-Pak has a [ ] share in the NZ supply of E&T packaging, competing vigorously, [ ].

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[57] https://plasticpackaging.co.nz/product-catalogue/fish-meat/

(c) **Progressive Plastics**, a supplier of E&T packaging based in Dunedin:[58]

> At Progressive Plastics we manufacture a range of pre-formed rigid and flexible plastic trays for New Zealand meat, fish and produce companies. Our trays help to protect and preserve quality products in premium export and New Zealand retail ready markets.

Progressive Plastics competes by thermoforming extruded roll stock that it procures from third parties. [ ]. Progressive Plastics has a partnership with Plantic Technologies to:[59]

> allow us to offer trays that are made from a combination of recycled PET together with a renewably sourced plant based core of PLANTIC HP. This core has exceptional gas barrier properties resulting in long shelf life for food products. These trays are fully recyclable in the usual PET waste streams.

In June 2020 Progressive Plastics announced that it would be expanding its business to a second site as it had invested in new machinery and is "just outgrowing the old Fryatt St building, really".[60]

(d) **Formrite Plastics Ltd**, a Christchurch based supplier of plastic packaging that supplies customers across NZ. Formite's marketing says that:

> For more than four decades, Formrite Plastics have been providing New Zealand businesses with attractive plastic packaging. Formrite Plastics proudly supplies food manufacturers and nurseries with custom-created plastic packaging solutions.[61]
>
> Our plastic packaging is used in the food and nursery industries across New Zealand from South Auckland to Invercargill to house bakery items, confectionery, produce, meat and seedlings. However, Formrite Plastics is aware that not everyone requires custom plastic packaging. To cut out design costs, we have a selection of stock packaging sold in carton lots, which may meet your requirements. Whether you require plastic food packaging on the North Shore, seedling trays for nursery products in Nelson or something else, Formrite Plastics has something to suit your products and budget.[62]

(e) **Linpac**, which markets itself as a "global leader" in the supply of rigid packaging to customers in the catering, retail, food manufacturing sectors.[63] Specifically, Linpac belongs to the Klockner Pentaplast group of companies — a "global leader" in the supply of rigid packaging, with US$2 billion+ annual revenue, operations in 16 countries, and 6,300 staff.[64] Linpac services NZ from its Australian Head Offices, located in Melbourne.[65]

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[58] http://www.progressiveplastics.co.nz/
[59] http://www.progressiveplastics.co.nz/pplinks/ppcata.pdf
[60] https://www.odt.co.nz/business/plastics-manufacturer-expands-bigger-premises
[61] https://kbhrotorua.co.nz/formrite-plastics/
[62] https://www.formriteplastics.co.nz/plastic-food-containers
[63] https://www.packaging-gateway.com/contractors/materials/linpac-packaging/
[64] https://www.kpfilms.com/en/News/_Documents/20170407_PR_Klöckner_Pentaplast_LINPAC_EN.pdf
[65] https://www.kpfilms.com/en/About_us/Company_Locations.php

Linpac commenced supplying E&T packaging products to Australasian customers in 2015 after winning a contract to supply E&T meat trays to Woolworths:[66]

> [Linpac] reported that the recent Australian setup was driven by Woolworths' desire to use the recyclable trays for their fresh meats, which resulted in the company securing a significant share of the market in only 2 years of operation.
>
> The trays include a minimum of 95% post consumer Recyclate rPET, which is processed onsite by state of the art equipment that supercleans the rPET flake to produce food grade material.
>
> [Linpac] was able to demonstrate the technical advancements that have been made by the company over the past decade (in the UK), which now allows the company to produce rigid rPET trays that are only 0.4mm thick.

Linpac has a sizeable NZ customer base for its imported E&T packaging, and is particularly strong in supplying NZ meat, poultry and seafood customers [ ]. Linpac has achieved this significant share in NZ despite only commencing its Australasian E&T business in 2015.

[ ].

(f) **Huhtamaki**, global specialists in packaging for catering, food-to-go, biscuit, personal care and home care customers.[67] Huhtamaki has 77 manufacturing units situated across 34 countries.[68] In NZ, Huhtamaki operates via a moulded fibre manufacturing site in Otahuhu, Auckland, [69] and via importing a number of other packaging products.

Until 2017, Huhtamaki operated a plastic packaging manufacturing plant in Auckland, which it used to supply locally-manufactured packaging to NZ customers. However, citing downward pressure on price from imports, in 2017 it altered its NZ business model to be based on importing E&T packaging from its manufacturing facilities in Asia.[70] Huhtamaki continues to compete vigorously in the NZ market, however, by leveraging its NZ customer relationships and its newly established cost efficiencies (due to lower labour costs, economies of scale, etc in Asia) to compete with the Parties and other local E&T and IM plastic packaging manufacturers. Huhtamaki has also transitioned its previous extruded polystyrene products to be imported E&T products.

(g) **Jenkins Freshpac Systems**, which competes in the NZ horticultural produce end-use segment using E&T packaging imported from Italy,[71] and is described as having a "leading position in the market for labelling and packaging of horticultural products, and continued to focus on this area to the point where it is the clear

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[66] http://aipack.com.au/aip-site-visit-linpac-24th-may-2017/
[67] https://www.huhtamaki.com/en/food-packaging-products/
[68] https://www.huhtamaki.com/en/about/
[69] https://www.huhtamaki.com/en/about/contact-us/
[70] https://www.stuff.co.nz/business/industries/107606208/huhtamaki-factory-to-make-128-workers-redundant-in-restructure-union-says
[71] https://www.jenkinsfps.co.nz/punnets

market leader".[72] In addition to E&T packaging, Jenkins Freshpac Systems supplies moulded fibre punnets/packaging to NZ produce customers.

(h) **Sealed Air (Cryovac)**,[73] a NYSE listed company that supplies plastic packaging products globally. In NZ, Sealed Air supplies its 'Cryovac' branded E&T packaging, manufactured in its Australian factory. In 2019 Sealed Air launched a new "Cryovac HydroLoQ, padless barrier MAP tray" for the Australian / NZ meat industry.[74]

(i) **Aztec Packaging**, which is a long-time competitor based in Auckland, which competes via manufacturing in Auckland ([ ]), and importing some finished products from lower cost countries:[75]

> Aztec Packaging was established in 1982 in Auckland New Zealand. Since inception Aztec has formed a reputation for continued investment in plant and equipment and has become a trusted brand in the rigid plastic space for quality packaging materials.

(j) **Plus Pac Packaging Solutions Ltd**, which is based in Auckland and competes by importing roll stock to manufacture E&T packaging:

> Established in 1983, PlusPac Packaging are the experts in design and manufacturing innovative rigid plastic packaging, our value add proposition… PlusPac is proudly NZ owned and operated and has many long standing partnerships with our clients, ranging from leading Food, Medical, Horticulture, Retail and Product manufactures.

(k) **Multisteps**, which is an importer based in Australia that focuses on supplying to berry customers using imports from China:[76]

> Multisteps is a leading international PET, PVC, PP, PS plastic sheet and punnet producer and distributor group. The company was founded in Australia and remains headquartered in Sydney. This family-owned business has branched out throughout Victoria, Queensland, Tasmania, Western Australia, and Southern Australia. We own factories in China, and also an office in Hong Kong.

For example, berry supplier Olde Berry Farm NZ Ltd uses packaging produced by Multisteps Pty Ltd.

(l) **Berica**,[77] which is said to be a "nationwide supplier to Foodstuffs".[78]

(m) **Packaging House**,[79] **IKON**[80] and others.

(n) In addition, there are a number of distributors in NZ that are owned by Australasian companies, which actively source both rigid and non-rigid packaging from a range

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[72] https://businessawards.org.nz/2018-awards-night/
[73] https://sealedair.com/
[74] https://www.foodtechnology.co.nz/content/packaging-with-a-focus-for-the-future/
[75] https://www.aztec.co.nz/about
[76] http://www.multisteps.com/
[77] https://www.berica.co.nz/
[78] https://www.stuff.co.nz/business/81234313/marlborough-company-berica-helps-supermarkets-reduce-waste
[79] https://www.linkedin.com/company/packaging-house-nz
[80] https://ikonpack.com/

of suppliers across Australasia, for example MPM,[81] Bunzl,[82] and Leespac,[83] or elsewhere, for example Oppenheimer New Zealand Ltd.[84]

Imported rigid packaging will remain a significant and increasing source of competition after the Acquisition

7.8 Not only is there a significant number of existing NZ-based suppliers of E&T packaging, as set out above, importers from Australia, Europe, and Asia are also a significant source of competitive constraint on domestic E&T manufacturers like Pact and Flight.

7.9 In particular:

(a) Pact estimates that [ ] of the total supply of E&T packaging to NZ customers is manufactured overseas, per Table 3 above. In particular:

(i) imports already have a significant presence in the horticulture and kiwifruit end-use segments, where they are estimated to have a [ ] share of customer demand;

(ii) Pact estimates that importers are the [ ] supplier in a number of key E&T end-use segments. For example:

(aa) Pact estimates that Linpac is the [ ] supplier of meat / poultry E&T trays in NZ, after Pact. [ ]. [ ]; and

(bb) the [ ] suppliers of kiwifruit E&T packaging are both importers;

Overseas and Australian suppliers of rigid plastic packaging are increasingly seeking to supply products in Australasia that compete on the basis of innovative packaging features (such as "cell design" features, which are innovations designed to capture and retain fluid, such as fluid that might otherwise pool in bottom of plastic meat trays).

(b) imports, particularly from Asia, have a significant cost advantage in the supply of E&T packaging when contrasted with NZ-manufactured packaging, given:

(i) the lower labour costs in Asia compared to NZ; and

(ii) the economies of scale available to overseas manufacturers that are serving a far larger customer base than NZ manufacturers.

These cost advantages of imports are significant, with domestic manufacturers needing to compete on price with much larger overseas manufacturers. [ ].

These cost advantages substantially outweigh:

(i) any costs associated with freight from overseas and warehousing, in particular given that E&T packaging is nestable by design, and so is efficient to transport and/or store; and

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[81] http://mpmmarketing.com.au/

[82] https://shop.bunzl.com.au/packaging?SortingAttribute=featureproduct-desc

[83] https://www.leespac.co.nz/product-category/containers/pet-clamshell/

[84] https://oppenheimer.co.nz/

(iii) any costs arising from potential fluctuations in the foreign exchange rate (including given local manufacturers import raw materials (plastic resin), and so can also be subject to exchange rate variations);

(c) the Parties' experience is that customers do not consider that there is any difference in quality between imported and domestically manufactured packaging, even for food-grade products. Overseas manufacturers invariably have the necessary food-safety certificates that enable them to sell food-grade products into the NZ market;

(d) barriers to entry for new importers to commence supply to NZ customers are low (as set out in further detail in paragraphs 7.14 and 7.15), as evidenced by a number of E&T importers competing in the NZ market, including:

(i) Linpac (whose entry into E&T packaging in NZ was facilitated by Woolworths purchasing from it in both Australia and NZ, and has achieved significant presence in the NZ market in only four years);

(ii) Jenkins Freshpac Systems, which competes in the NZ horticultural produce end-use segment using E&T packaging imported from Italy[85] (and is described as having a "leading position in the market for labelling and packaging of horticultural products, and continued to focus on this area to the point where it is the clear market leader"[86]); and

(iii) there are a number of E&T manufacturers from overseas that have their packaging used by customers in NZ, for example, Benxon (of Philippines),[87] and Multisteps Pty Ltd (of Australia);[88]

(e) imports are a viable option for even small customers, as those customers generally purchase non-customised, generic products (sandwich wedges, cake domes, sushi clamshells, etc) which can be procured from importers with ease.

7.10 The increasing constraint presented by imports (including other substrates) in recent years has had a significant effect on the Parties' supply of E&T packaging. In particular:

(a) [ ]. Media on this dynamic has included:

> Pact Group has conceded it may be forced to close more Australian manufacturing plants in preference of imports as costs pile pressure on its ability to remain competitive.[89]
>
> We made meaningful steps in the transformation of our packaging network with the closure of two facilities in the second half, the rationalisation of another and the establishment of an import channel to support supply in several product categories.[90]

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[85] https://www.jenkinsfps.co.nz/punnets

[86] https://businessawards.org.nz/2018-awards-night/

[87] For example, tomato suppliers in NZ use E&T punnets produced by Benxon.

[88] For example, berry supplier Olde Berry Farm NZ Ltd uses packaging produced by Multisteps Pty Ltd.

[89] (15 August 2019). Pact Group may be forced to close factories. The Australian.

[90] https://www.packagingnews.com.au/latest/pact-group-reports-290m-loss-after-challenging-year

(b) the pressure on prices by Asian imports has also caused domestic plastic manufacturers of rigid plastic packaging to exit NZ in recent years. For example, in September 2018 Huhtamaki announced the closure of its Auckland E&T packaging manufacturing facility, shifting this manufacturing capability to Asia.[91]

7.11 Furthermore, Pact considers that imported product can compete across the full range of E&T packaging products (and their substitutes), from generic high volume products to more innovative bespoke products. Flight is similarly of the view that imported E&T products compete in offering innovative products – with Flight's experience being that often new innovations arrive as a result of ideas from around the world being introduced into NZ.

7.12 Examples of this include the following:

(a) Oppenheimer New Zealand Ltd is an importer of innovative E&T packaging products into New Zealand;[92]

(b) Linpac (part of Klöckner Pentaplast) would have access to Klöckner Pentaplast's innovation from around the world; and

(c) There are numerous other multi-national E&T packaging offerings that could readily be imported into New Zealand. [ ].

7.13 Furthermore:

(a) communication technology means that overseas suppliers can work with NZ customers to develop innovative offerings that are manufactured overseas;

(b) NZ distributors of imported product have local warehousing, and so can work with NZ customers to offer desired solutions using overseas manufactured product (such as by offering local warehousing solutions); and

(c) Pact has lost volumes to imports of other substrates, for example [ ].

Barriers to entry in the supply of rigid packaging are low, *such that the threat of further new entry will also constrain Pact post-Acquisition*

7.14 Not only is there a significant number of existing suppliers of E&T packaging, and other small rigid containers, in NZ, but barriers to entry are not material for competitors to enter or expand, either by:

(a) establishing or expanding their NZ-manufacturing presence, as Custom-Pak has recently announced its intention to do by establishing its own NZ-based extrusion facilities and RPET wash plant; or

(b) commence the supply of NZ customers from overseas via imported packaging – as many different competitors do in the NZ market, both with a material on-the-ground presence (such as Bonson) or with a more import/distribution-based model.

7.15 New entrants do not face significant obstacles in securing supply contracts with NZ-based customers. [ ]. [ ].

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[91] https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12124622

[92] https://oppenheimer.co.nz/packaging/mrt/

Customers will continue to exercise significant countervailing power on Pact post-Acquisition

7.16 Pact will also continue to be constrained by the countervailing power of customers post-Acquisition. The Parties' customers are often large NZ businesses ([ ]) with sophisticated procurement functions, who will continue to exercise significant bargaining power in commercial negotiations.

7.17 Additionally, many of the Parties' larger customers are subsidiaries of multi-national firms, [ ], who have access to offshore supply chains which they can tap into for their NZ packaging requirements. For example:

(a) [ ];

(b) [ ]; and

(c) [ ].

7.18 Flight also supplies to some smaller customers, [ ].

7.19 Regardless, if Pact were to attempt to raise prices above competitive levels post-Acquisition, even the smallest customers are readily able to switch supplier, including to imported product. Packaging can be purchased in a range of quantities from websites such as Alibaba.[93] [ ].

7.20 [ ].

7.21 If any customers were to become dissatisfied with the price and/or quality of Pact's offerings post-Acquisition, they retain the ability to terminate those supply arrangements on short notice (as set out at paragraph 7.15). As the Commission has previously been informed by industry participants,[94] these customers can then award new business via prolonged and exacting tenders, where multiple competitors are played off against each other to extract competitive pricing and higher quality.

7.22 In the event that customers remain dissatisfied with the price and/or quality offerings of Pact at the culmination of those tender processes, they are able to easily:

(a) switch their supply to another supplier of E&T packaging with an established NZ presence. As feedback provided to the Commission has previously highlighted,[95] rigid container customers are increasingly adopting dual-sourcing arrangements with multiple suppliers, enabling them to fulfil their large volume requirements with multiple smaller competitors rather than a large single competitor. Pact estimates that [ ] of its customers have dual-sourcing arrangements in place. [ ];

(b) switch their supply to another supplier of E&T packaging based in, for example, Australia, that can readily supply imported E&T packaging from overseas. The Parties' customers have globally integrated supply chains, and could readily switch to an alternative importer if they become unhappy with the price or quality offered to them under their current supply arrangements. For example:

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[93] https://www.alibaba.com/product-detail/PET-Fresh-Fruit-Packaging-Hot-Sale_693824730.html?spm=a2700.galleryofferlist.0.0.2ae220c76hTHL3&s=p

[94] *TEC Projects Limited*, above n 40, at [36].

[95] *TEC Projects Limited*, above n 40, at [31].

(i) [ ] businesses with pre-existing supply relationships with Australian E&T packaging manufacturers. As sophisticated global customers, these Australasian businesses could readily substitute NZ domestic supply for Australian imports; and

(ii) [ ] businesses which could purchase E&T packaging from Australian manufacturers with ease;

(c) commence self-supply of E&T packaging, by establishing their own in-house / in-line forming and filling facilities. [ ]; or

(d) by, as the Commission has previously been informed by customers in the packaging industry:[96]

(i) sponsoring new entry into the NZ market, [ ]; and/or

(ii) sponsoring the expansion of small competitors with an established NZ presence.

No risk of coordinated effects

7.23 Pact is also confident that the Acquisition will not increase the potential for coordinated effects to arise in any market. Specifically, there is no element of the Acquisition that will make it easier for the remaining firms to:

(a) reach and sustain agreement on key dimensions of competition;

(b) detect deviations from the agreement, so as to dissuade firms from deviating for fear of punishment; or

(c) deter such deviations from coordination by means of more effective punishments (e.g. faster and more costly to the cheating firm).

7.24 The reasons for this are as follows:

(a) **A large number of competitors will remain in each relevant market**: Irrespective of the Acquisition, the plastic manufacturing industry in NZ will continue to have a large number of competitors, which will disrupt the potential for any coordinated conduct.

(b) **Limited evidence that the Parties represent a material constraint on each other's prices:** Assessing the potential for coordinated effects to arise out of a transaction, the Commission needs to focus on whether the target is playing any substantial role in constraining prices or destabilising any coordination between the other competitors.

The evidence (for the reasons set out at paragraph 7.3 above) is that the Parties are not each other's closest competitors, with significant competitive constraint on the Parties (price competition, in particular) being exercised by importers and local E&T suppliers. As such, the removal of competition between Pact and Flight could not be regarded as likely to lead to increased potential for coordination in the factual when compared to the counterfactual.

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[96] *TEC Projects Limited*, above n 40, at [36].

(c) **Highly dynamic industry**: The Commission has previously described markets with "little innovation" as susceptible to coordinated effects. The supply of rigid packaging is the opposite of such a market – it is a dynamic industry, with a range of new innovative product offerings, recent examples of entry and expansion, a series of overseas competitors well positioned to commence or continue the expansion of their supply of plastic materials and products in NZ. For example:

(i) New entry / expansion: As detailed at paragraphs 7.14 and 7.15, there has been significant new entry and expansion in the NZ plastics industry in recent years.

(ii) Significant supply shocks in recent years: The development of high volume manufacturing of standardised products in Asia has also caused significant disruption to the NZ supply of plastic products in the past 5-10 years, with low labour costs and economies of scale delivering significant cost advantages for imports compared to domestically manufactured products. As set out at paragraph 7.10(a) above, this has caused domestic manufacturers of plastic packaging in NZ [ ] to move their supply to Asia, as well as driving down the prices that NZ customers expect to pay for plastic packaging.

(iii) New, innovative product offerings: As set out at paragraph 5.16, the displacement of plastic (particularly non-recyclable plastic) by other substrates has been a significant source of instability in the supply of plastic in recent years, with plastic manufacturers forced to make rapid modifications to their procurement and manufacturing processes in order to meet those customer expectations. Compostable and biodegradable products are a particular focus of customer preference, and cardboard, in particular.

The highly dynamic nature of the packaging industry in NZ (including significant innovation and supply shocks) creates volatility in the relevant markets and would make any attempts at coordination between competitors post-Acquisition very difficult - including because this volatility would make it almost impossible for coordinating businesses to determine whether a reduction in their sales is due to another coordinating party deviating from any coordinated outcome, or a supply shock caused by new entry and/or expansion. This will inevitably reduce the likelihood of coordination between plastics suppliers post-Acquisition.

(d) **Different business models among primary competitors:** The Commission has said that markets with "homogenous products" and "firms of similar size and cost structures" will be more susceptible to coordinated effects than a market with firms of different sizes, with different product offerings.[97] Post-Acquisition, there will continue to be a number of large competitors with different business models to Pact, including:

(i) Custom-Pak, which is set to have end-to-end E&T manufacturing capability, including a RPET wash plant, within the near future;

(ii) Progressive Plastics, which procures extruded roll stock from overseas and uses its NZ-based thermoforming plant to manufacture E&T packaging;

[97] NZCC "Mergers and Acquisition Guidelines" (July 2019) at [3.89].

(iii) Bonson, Linpac, Jenkins Freshpac Systems and other importers, which manufacture/source E&T packaging overseas before importing them for sale to NZ customers.

In addition to different supply processes set out above, different competitors have different end-use segments that they are focused on expanding their presence in. For example, Pact's view is that:

(i) [ ]; while

(ii) [ ].

This means that there will be no material increase in the symmetry of Pact's and its competitors' operations and cost structures and, therefore, no material increase in any ability to reach a common assessment of the optimal industry price.

(e) **Constraint from other substrates (even if they are treated as falling outside the market):** In assessing whether there is any potential for coordinated effects to arise in the plastic industry, the Commission has previously recognised that competitive constraint from outside the market is relevant. The ability of customers to substitute plastic packaging for other substrates (as detailed in **Appendix Four**) would inevitably undermine any potential for coordinated conduct, including by making it a high risk strategy and because market participants would be unable to discern whether a drop in demand is due to deviation from any attempted coordinated outcome, or whether it is due to substitution of plastic packaging for other substrates.

(f) **Lack of price transparency:** The Commission considers that markets where firms can readily observe each other's prices are more susceptible to coordinated effects than markets where prices are less transparent. The plastics / packaging industry in NZ does not have transparent pricing:

(i) while some industry participants have publicly available price lists available online, the overwhelming majority of the Parties' prices are negotiated in private, with no public visibility as to price or volume purchased – including with customers negotiating bespoke prices and discounts via sophisticated tender processes. [ ]; and

(ii) competition takes place across a multitude of parameters, including price, manufacturing reliability, sustainability, customisability, location of plant, etc, and therefore, it would be very difficult to coordinate across these parameters.

(g) **Multi-market contact:** The Commission considers that coordinated effects will be more likely to arise where competitors have frequent contractual or other commercial interactions with one another. The Parties do not have any material ongoing contractual or commercial interactions with other plastic suppliers in NZ, further mitigating any prospect of coordinated effects arising.

7.25 Given the industry characteristics described above, the Parties are confident that there is no likelihood of any materially increased potential for coordinated effects in the supply of plastic packaging in NZ as a result of the Acquisition.

No risk of vertical effects

7.26 As Flight does not manufacture blow-moulded PET beverage and non-beverage containers in NZ, there is no risk of horizontal effects arising from the Acquisition in the supply of blow-moulded PET containers.

7.27 There is also no risk of vertical effects arising in respect of PET inputs to either blow-moulded or E&T packaging suppliers given there is no market for the supply of NZ-sourced RPET flake / roll stock in NZ that will be affected by the Acquisition and, therefore:

(a) there is no prospect of Pact being able to vertically foreclose its competitors in blow moulded PET manufacturing from the supply of RPET flake;

(b) there is no prospect of Pact being able to vertically foreclose its competitors in E&T packaging from access to RPET flakes or roll stock.

7.28 This is for the following reasons:

(a) Pact does not have the capability to supply NZ-sourced RPET flake / roll stock. Furthermore, Pact does not have any material business supplying any other inputs to competitors. [ ];

(b) [ ];[98]

(c) all other manufacturers of RPET products (Pact, Custom-Pak, for example) operate by importing RPET flake to be extruded and thermoformed, or by importing RPET extruded roll stock to be thermoformed, from overseas suppliers. Imported RPET inputs is a viable alternative to domestic RPET flakes or roll stock. Indeed, this is how Pact primarily operates its current RPET range. [ ] it still would be unable to vertically foreclose Pact's competitors post-Acquisition, as those competitors are able to readily source RPET flake from overseas providers (as demonstrated by [ ]);

(d) while it is unclear whether Custom-Pak will sell RPET flake from the wash plant that it intends to install in 2020 to third parties, or whether it will simply use that RPET flake for Custom-Pak manufactured products, any domestic supply of RPET flake by Custom-Pak will be unaffected by the Acquisition. To the extent that Custom-Pak commences the supply of RPET flake to third party customers after the installation of its wash plant in 2020, this supply would be a further alternative supply of RPET flake;

(e) RPET flake is not a "must have" input for the manufacture of E&T or blow-moulded PET beverage and non-beverage containers. Indeed:

(i) the majority of blow-moulded PET beverage and non-beverage containers only have one stage PET machinery, for which the input is RPET preform rather than RPET flake. Pact's competitors in this space are therefore primarily reliant on third party preform supply rather than RPET flake supply. Accordingly, any hypothetical foreclosure in the

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[98] For completeness, Flight notes that:

- [ ]; and
- [ ]

supply of RPET flake by Pact could not in any way affect the inputs of these blow moulded PET competitors post-Acquisition; and

(ii) RPET flakes can be substituted for non-recycled virgin resin by manufacturers. [ ], and the Parties' view is that a 5% increase in the relative price of RPET inputs compared to virgin resin could precipitate blow moulders switching back to non-recycled products.

7.29 Accordingly, the above demonstrates the ready availability of alternative sources of RPET inputs from overseas suppliers, and that when assessed against the counterfactual, the Acquisition does not increase the prospects of foreclosure in the supply of RPET flake or roll stock to competitors.

7.30 For completeness, Flight notes that [ ]:

(a) [ ];

(b) [ ]; and

(c) [ ].

7.31 Accordingly, the Parties are confident that the Acquisition will not result in any vertical foreclosure effects.

FURTHER DOCUMENTATION / INFORMATION

Copies of most recent financial statements

7.32 See **Appendices Eight**, **Nine** and **Ten**.

Each party's sales revenues and volumes

Pact NZ Sales Volumes (units)

[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

Pact NZ Sales Revenues

[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

Flight Plastics NZ Sales Volumes (Extrusion)

[]	[]	[]	[]
[]	[]	[]	[]

Flight Plastics NZ Sales Volumes (Thermoforming)

[]	[]	[]	[]
[]	[]	[]	[]

Flight Plastics NZ Sales Revenues

[]	[]	[]	[]
[]	[]	[]	[]

Names and contact details of key competitors

7.33 See **Appendix Five**.

Key customers

7.34 See **Confidential Appendix Six**.

PART E: CONFIDENTIALITY

8. Reasons for seeking confidentiality

8.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and valuable information which is confidential to the participants; and

(b) disclosure would be likely unreasonably to prejudice the commercial position of the participants, as the parties providing the information.

8.2 The Parties request that they are notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. The Parties also request that the Commission seek and consider the Parties' views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.

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

PART F: DECLARATION

I, Jonathon West, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all the information specified by the Commission has been supplied;
- if the information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

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

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Jonathon West, General Counsel & Company Secretary of Pact Group Holdings Limited

Signature **Date**

CONFIDENTIAL APPENDIX ONE

[ ]

CONFIDENTIAL APPENDIX TWO

[ ][99]

[99] [ ].

CONFIDENTIAL APPENDIX THREE

[ ]

APPENDIX FOUR

Packaging substrates by end-use segment

Usage	Common Substrates
Meat / Poultry / Seafood	Cornstarch and recycled plastics  100 Expanded polystyrene  101 E&T plastic  102 Sugarcane  103 Compostable flexible packaging

[100] https://www.packagingnews.com.au/sustainability/pida-2019-sustainability-attracts-record-number-of-entries
[101] http://cdn3.blocksassets.com/assets/pact/alto-site/Z9JI87mpXuM89jI/ALTO-AllCombined-LR.pdf
[102] http://cdn3.blocksassets.com/assets/pact/alto-site/Z9JI87mpXuM89jI/ALTO-AllCombined-LR.pdf
[103] https://www.bio4pack.com/news/compostable-meat-tray-organic-meat/

	 [104]
Fruit	Cornstarch punnets  [105] Fibre punnets  [106]  [107] E&T Punnets  [108] Cardboard

[104] https://bostocksorganic.co.nz/compostable-packaging/
[105] https://www.earthbasics.com.au/trays-containers/548-strawberry-punnet-pla.html
[106] https://www.punchbowlpackaging.co.nz/news/07-05-2019/we-won/
[107] https://www2.huhtamaki.com/web/moldedfiber/products-solutions/fruit-packaging/frutpak
[108] https://plasticpackaging.co.nz/product-catalogue/strawberries/

 [109]

[110]

PLA (Starch) Packaging

 [111]

Compostable Palm Fibre (Enviro Pac)

 [112]

Compostable Netting

 [113]

Soft Plastic Packaging

[109] https://tandg.global/theres-a-new-buzz-on-the-vine-were-saying-goodbye-to-plastic-tomato-punnets/
[110] https://produceprocessing.net/news/rockit-new-zealand-apple-biodegradable-cardboard-packaging/
[111] https://www.bio4pack.com/embalaje-de-pla/
[112] http://www.jtechsystems.com.au/product/environmentally-sustainable-packaging/
[113] https://www.jenkinsfps.co.nz/Compostable_Netting_Packnatur/c/44/direct/1

	 114 Compostable Sugarcane  115
Fast Food	Cardboard  116  117 Compostable Sugarcane  118 119 Wheatstraw

[114] https://www.ulmapackaging.com/en/packaging-solutions/produce/fresh-vegetables-in-trays/fruits-and-vegetables-trays-packaging-in-flow-pack
[115] https://www.biopak.co.nz/products/produce-trays/produce-trays/436-biocane-produce-tray
[116] https://www.petespackaging.co.nz/product/takeaway-box-white/
[117] https://innocentpackaging.co.nz/products/cardboard-burger-clam
[118] https://www.petespackaging.co.nz/product/compostable-sugarcane-oval-bowls-trays/
[119] https://innocentpackaging.co.nz/products/flat-container-clear-uni-lid

	 120 E&T plastic  121 Expanded Polystyrene  122 Paper  123 Bioplastic  124 Bamboo

[120] https://innocentpackaging.co.nz/products/wheatstraw-1000ml-clam
[121] http://cdn3.blocksassets.com/assets/pact/alto-site/Z9JI87mpXuM89jI/ALTO-AllCombined-LR.pdf
[122] http://cdn3.blocksassets.com/assets/pact/alto-site/Z9JI87mpXuM89jI/ALTO-AllCombined-LR.pdf
[123] https://www.biopak.co.nz/products/takeaway-containers
[124] https://www.biopak.co.nz/products/takeaway-containers

	 [125] Polyactic Acid Performance Materials ("**PLA**")  [126] Foil  [127] Hemp  [128]
Biscuit Trays	E&T plastic  [129] Cardboard and foils  [130]

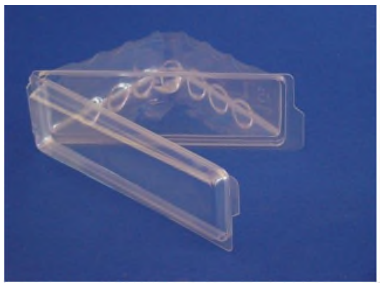
[125] https://www.insinc.co.nz/category/bamboo-food-packaging.html
[126] https://www.insinc.co.nz/product/1912409
[127] https://www.insinc.co.nz/product/1915563
[128] https://hempnz.co.nz/products/packaging/
[129] https://www.formriteplastics.co.nz/plastic-packaging-north-shore
[130] https://atp-packaging.com/en/biscuits-packaging/

	Paper  131 Soft Plastic (no tray)  132
Frozen Meals	E&T plastic  133 Cardboard  134 Compostable Sugarcane  135 Aluminium

[131] https://www.pouchdirect.com/extra/material.html
[132] https://www.mightyape.co.nz/product/griffins-gingernuts-250g/23002746
[133] https://www.sonoco.com/market/frozen-foods
[134] https://leadpackaging.com/en/frozen-food/
[135] https://www.packagingoftheworld.com/2016/11/coco-and-lucas-kitchen.html

	 136 Cornstarch  137 Recycled Fibres  138
Packaged salads	E&T Plastic  139 Flexible packaging

[136] https://www.bakeryandsnacks.com/Article/2013/03/06/KCC-develops-eco-friendly-ready-meal-packaging
[137] https://www.bakeryandsnacks.com/Article/2013/03/06/KCC-develops-eco-friendly-ready-meal-packaging
[138] https://www.packworld.com/design/protective-transport-packaging/article/13376878/meal-kit-company-tackles-sustainable-packaging
[139] https://shop.countdown.co.nz/shop/productdetails?stockcode=672725&name=taylor-farms-fresh-salad-caesar-with-dressing

	 [140]
Bakery (sandwiches)	E&T Plastic  [141] Cardboard  [142]
Bakery (cakes)	E&T Plastic  [143]

[140] https://shop.countdown.co.nz/shop/productdetails?stockcode=340834&name=fresh-produce-leader-brand-salad-caesar

[141] https://www.flightplastics.co.nz/product-category/bakery-range/page/2/

[142] http://www.primadeli.co.nz/pdnhome.html

[143] https://shop.countdown.co.nz/shop/productdetails?stockcode=579098&name=original-foods-cake-chocolate

	Flexible plastic  144 Cardboard  145 Combination of E&T and cardboard  146
Dairy – Yoghurt	IM Plastic  147  148 E&T Plastic

[144] https://shop.countdown.co.nz/shop/productdetails?stockcode=275630&name=ernest-adams-cake-madeira
[145] https://shop.countdown.co.nz/shop/productdetails?stockcode=362599&name=original-foods-cake-chocolate-happy-birthday
[146] https://www.berica.co.nz/online-shop/food-packaging/bakery-packaging/crown-range/crown-range-elevated-packaging-24hi/
[147] https://meadowfresh.co.nz/products/yoghurt/
[148] The Collective. Packaging produced/supplied by Huhtamaki.

	 [149] Glass  [150] Soft Plastic  [151] Tetra Pak  [152]
Dairy – Ice Cream	IM Plastic  [153]

[149] https://recyclenation.com/2015/05/how-to-recycle-yogurt-containers/
[150] https://raglancoconutyoghurt.co.nz/faqs/
[151] https://meadowfresh.co.nz/products/yoghurt/bouncy-berry-pouch/
[152] https://shop.countdown.co.nz/shop/productdetails?stockcode=740802&name=dewinkel-yoghurt-carton-plain-unsweetened
[153] https://www.tiptop.co.nz/products/tubs/cookies-cream

	Paperboard  154
Dairy - Spreads	IM Plastic  155 E&T Plastic  156
Nursery and Horticulture	E&T  157 Expanded Polystyrene  158 Cardboard

154 https://littleislandcreamery.co.nz/#ice-cream
155 https://www.mainland.co.nz/products/butter/mainland-buttersoft.html
156 https://www.quinn-packaging.com/product-range/dairy-spread-containers/
157 https://www.flightplastics.co.nz/product/t2275-small-trainer/
158 https://www.synprodo.com/applications/horticulture/

	 159 Wood fibre  160 Terracotta or ceramic pots  161 Wooden Containers  162 Fabric pots  163

[159] https://twitter.com/SiraneLtd/status/1098243584707432448
[160] https://www.biogrow.co.nz/fertilpot/about-fertilpots
[161] https://www.thespruce.com/all-about-choosing-plant-containers-847998
[162] https://www.thespruce.com/all-about-choosing-plant-containers-847998
[163] https://www.thespruce.com/all-about-choosing-plant-containers-847998

APPENDIX FIVE

Contact details for key competitors referred to in the application

Competitors	Website	Key Contact	Address
Custompak	www.plasticpackaging.co.nz	[ ]	4 Zelanian Drive, East Tamaki, Auckland
Linpac	www.linpacpackaging.com	[ ]	28 Distribution Drive, Truganina, Victoria 3029, Australia
Progressive Plastics	www.progressiveplastics.co.nz	[ ]	31-37 Fryatt St, Dunedin
Multisteps	www.multisteps.com.au	[ ]	Unit 19-20, Slough Business Park, Silverwater, NSW 2128, Australia
Aztec Plastics	www.aztec.co.nz	[ ]	19 Ross Reid Place, East Tamaki, Auckland
Jenkins Group	www.jenkinsfps.co.nz	[ ]	201 / 100 Parnell Road, Auckland
Bonson	https://www.bonson-savpac.co.nz/	[ ]	59-65 Portage Road, New Lynn, Auckland
Huhtamaki	https://www.huhtamaki.com/en-nz/foodservice-new-zealand/	[ ]	30 Keeling Road, Henderson, Auckland
Berica	https://www.berica.co.nz/	[ ]	4 Liverpool St, Riverlands, Blenheim
Formrite Plastics	https://www.formriteplastics.co.nz/	[ ]	30 Mowbray Street, Christchurch
Sealed Air	https://sealedair.com/	[ ]	2415 Cascade Pointe Boulevard, Charlotte, NC, USA

CONFIDENTIAL APPENDIX SIX

Key customers and suppliers

Pact NZ Customers

[ ]

Customer	Total Pact Revenue (last 12 months)	Contact Details
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

[ ]

Customer	Total Pact Revenue (last 12 months)	Contact Details
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

Flight Plastics NZ Customers

Customer	Total Flight Revenue			Contact Details
	FY2018	FY2019	FY2020	
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]

Pact NZ Suppliers

Supplier	Total Pact Expenditure (last 12 months)	Contact Details
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

Flight Plastics NZ Suppliers

Supplier	Total Flight Expenditure (FY20)	Contact Details
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

APPENDIX SEVEN

Trade or industry associations

Pact NZ

Plastics NZ

Flight Plastics NZ

Plastics NZ

APPENDIX EIGHT

Copies of annual report

Pact NZ

Pact's Annual Reports can be found at the following link:

- 2019 Annual Report
- 2018 Annual Report
- 2017 Annual Report

Flight Plastics NZ

Flight does not publish annual reports.

APPENDIX NINE

Copies of audited financial statements

Pact NZ

Pact NZ's financial statements are available on the Companies Office website. For the Commission's convenience, links to the relevant accounts are as follows:

- 2019 Financial Statement
- 2018 Financial Statement

Flight Plastics NZ

Flight Plastics NZ does not produce audited financial statements.

APPENDIX TEN

Copies of management accounts

Pact

Pact **attaches** as **Attachment 1** its FY18 and FY19 management accounts.

Flight Plastics

Flight Plastics **attaches** as **Attachment 2** its FY18 and FY19 management accounts.