

## **Statement of Issues**

### **Reward Supply Co Pty Limited / Southern Hospitality Limited**

**8 June 2023**

### **Introduction**

1. On 4 April 2023, the Commerce Commission registered an application (the Application) from Reward Supply Co Pty Limited (Reward or the Applicant) seeking clearance to acquire 100% of the shares of Southern Hospitality Limited (Southern) (the proposed acquisition).<sup>1</sup>
2. To grant clearance to an acquisition the Commission must be satisfied that the acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.
3. This Statement of Issues (Sol) sets out the potential competition issues we have identified following our initial investigation. This is so Reward and Southern (the Parties) and other interested parties can provide us with submissions relating to those concerns.
4. In reaching the preliminary views set out in this Sol, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues). Our views may change, and new competition issues may arise, as the investigation continues.

### **The concerns we have tested**

5. As described further in this document, the Parties supply products for use in commercial kitchens. This includes equipment (such as ovens, cooktops and refrigeration), smallware (such as crockery, cutlery and glassware) and consumables (such as chemicals and packaging). The Parties primarily do not produce these products themselves but instead purchase them from local or overseas manufacturers. For this reason, the Parties and their competitors are commonly referred to as 'resellers'.

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<sup>1</sup> A public version of the Application is available on our website at: <https://comcom.govt.nz/case-register/case-register-entries/reward-supply-co-pty-limited,-southern-hospitality-limited>.

### The issues which we are continuing to investigate

6. At this point, our primary concerns from the proposed acquisition relate to two relevant markets in which the Parties compete:
  - 6.1 the supply of equipment on a standalone basis, for example where a customer needs to replace equipment or add new equipment to a commercial kitchen (standalone equipment); and,
  - 6.2 the supply of 'project' services to fitout a new or refurbished kitchen, where design, equipment supply, and fitout will often be carried out in conjunction (projects).
7. The Commission is not yet satisfied that the proposed acquisition would not be likely to cause a substantial lessening of competition in the supply of either standalone equipment or projects. We are concerned that the acquisition may enable the merged entity to profitably raise prices or lower quality to some customers in the markets for the supply of standalone equipment and/or projects.<sup>2</sup>
8. We continue to explore each of these areas but based on our current assessment our view is that:
  - 8.1 the Parties are close competitors, as the Parties focus on similar types of customers and appear to have an ability to source equipment from manufacturers at lower prices compared to their rivals;
  - 8.2 rivals are mostly of a smaller scale and some focus on particular customer types or geographic areas and so the competition lost with the proposed acquisition may mean some customers will face less choice and higher prices;
  - 8.3 while entry barriers appear low, the ability of rivals to expand and replace the lost competition may be limited by scale and reputation effects; and,
  - 8.4 while some larger customers may have countervailing buyer power, it is unclear whether this would be sufficient to protect smaller customers from higher prices.
9. We are also concerned that there may be an impact on resellers if the incentives in the market for the sale of wholesale commercial kitchen equipment by manufacturers and importers were to change following the proposed acquisition. We are considering whether the loss of competition between Reward and Southern may enable the merged entity to obtain exclusive agreements with manufacturers and/or otherwise obtain preferential commercial terms that would enable it to prevent or hinder rival resellers' ability to compete for the supply of projects and standalone equipment (known as 'foreclosing rivals').
10. Our current view is that it is unlikely manufacturers would have an incentive to allow such a scenario to arise. However, we are considering further the extent to which the

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<sup>2</sup> This theory is commonly referred to as unilateral effects.

merged entity may become an unavoidable trading partner for the manufacturers of equipment and the extent to which rival resellers rely on a small number of key manufacturers. It would also be necessary to show that, if rivals are foreclosed, the merged entity could profitably increase prices or lower quality without inducing effective entry and expansion.

### The issues that do not currently raise concerns

11. We are satisfied that the proposed acquisition would not be likely to cause a substantial lessening of competition due to any of the issues below. We are not planning to investigate these issues further and do not consider them any further in this Sol.
  - 11.1 The proposed acquisition is unlikely to result in horizontal unilateral effects in the markets for smallware or consumables because customers generally considered that there were other competitive options available in the relevant markets.<sup>3</sup> No customers raised concerns about these products.
  - 11.2 The proposed acquisition is unlikely to give rise to coordinated effects in any relevant market because:
    - 11.2.1 there does not appear to be an easy metric to coordinate on, due to the lack of price transparency and diverse nature of customers that characterise the relevant markets; and,
    - 11.2.2 the asymmetry among market participants is likely to mean an understanding that would soften competition is hard to reach and/or sustain.

### Process and timeline

12. We have agreed with the Applicant an extension of time from the initial 40 working day statutory timeframe until 28 July 2023 in which to make a decision.
13. The Commission welcomes submissions and supporting evidence from the Parties and other interested parties on the issues raised in this Sol. We request responses by close of business on **22 June 2023**, including a confidential and public version of any submission made. Please read the instructions for making a submission, which can be found starting at paragraph 117 of this document.
14. All submissions received will be published on our website with appropriate redactions.<sup>4</sup> All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **29 June 2023**.

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<sup>3</sup> Interviews with [ ], [ ], [ ], [ ], [ ] and [ ].

<sup>4</sup> Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of

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

## The Parties

### The acquirer - Reward

16. Reward is an Australian company that supplies food service solutions in Australia. Reward is a member of the ECF Group, an international distribution company group specialising in the supply of food service solutions.<sup>5</sup> The ECF Group operates in New Zealand through:<sup>6</sup>
- 16.1 Burns & Ferrall Limited, trading as Reward NZ (Reward NZ); and,
- 16.2 Safco Limited (Safco).
17. Reward NZ's operations in New Zealand include:<sup>7</sup>
- 17.1 importing or acquiring locally equipment (such as fridges, ovens and dishwashers), tabletop and kitchenware products, takeaway and packaging products, and other consumables for supply to food service customers;
- 17.2 providing parts and servicing for food service equipment; and,
- 17.3 importing and wholesaling domestic sinks and tapware to merchants and other distributors in the domestic building products market.
18. Reward NZ is the New Zealand distributor for Rational. Rational is one of the leading brands of commercial ovens in New Zealand. As distributor, Reward NZ is responsible for importing Rational product and distributing it in New Zealand.
19. Reward NZ had FY22 annual revenue of [ ] which [ ]<sup>8</sup>,  
[ ]. It employs 57 staff and has four showrooms (Auckland, Hamilton, Wellington and Christchurch). Reward NZ describes itself as "the largest supplier of non-food, food service products in our region".<sup>9</sup>

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information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

<sup>5</sup> The Application at [4].

<sup>6</sup> The Application at [5].

<sup>7</sup> The Application at [6] – [7].

<sup>8</sup> [ ]

<sup>9</sup> Reward NZ "About us" <[www.rewardhospitality.co.nz](http://www.rewardhospitality.co.nz)>

20. Safco imports or acquires locally equipment which it supplies to quick service restaurant (QSR) customers such as Subway and Restaurant Brands.<sup>10</sup> Safco has eight employees.

### The acquisition target – Southern

21. Southern is a New Zealand supplier to the New Zealand hospitality and food service industry.<sup>11</sup> Its operations in New Zealand include:<sup>12</sup>
- 21.1 importing and supplying products to food service customers in the following categories: tabletop and kitchenware, equipment, and consumables; and,
  - 21.2 ownership interests in four stainless steel fabrication businesses which produce benches, shelving units, bain-maries, wall-linings and commercial ventilation systems.
22. Southern had FY22 annual revenue of [ ]. According to its adviser for the sale to Reward, Southern is “the largest hospitality supply business in New Zealand with significant market share across the hospitality, healthcare, education and accommodation sectors”.<sup>13</sup> It employs 210 full time staff, which includes [ ] sales staff.<sup>14</sup> It has 12 showrooms and two distribution centres (Tauranga and Christchurch). Southern describes itself as a “a major player in the catering and hospitality industry providing a multitude of services and products”.<sup>15</sup>

### Background to the industry

23. As noted in paragraph 5 above, the Parties supply products for use in commercial kitchens. The main types of products that they both supply (relevant to the proposed acquisition) are:
- 23.1 Equipment – commercial kitchen equipment including ovens, fryers, combi steamers, griddles, cooktops, pizza ovens, refrigeration, display cabinets, and dishwashers.
  - 23.2 Smallware – items such as tabletop (for example crockery, cutlery and glassware) and kitchenware (utensils).
  - 23.3 Consumables – items such as hygiene products (for example chemicals and toilet paper) and disposable products such as packaging.
24. As noted above, the Parties primarily do not produce these products themselves but instead purchase them from local or overseas manufacturers. These products are

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<sup>10</sup> The Application at [10].

<sup>11</sup> The Application at [16].

<sup>12</sup> The Application at [17] – [18].

<sup>13</sup> <https://cameronpartners.co.nz/portfolio/southern-hospitality/> and [ ]

<sup>14</sup> Interview with [ ]

<sup>15</sup> Southern Hospitality “About us” <www.southernhospitality.co.nz>

then on-sold to customers, typically the operators of commercial kitchens. The Parties and their competitors are commonly referred to as ‘resellers’.<sup>16</sup>

25. As noted earlier, the Parties supply equipment on a standalone basis or as part of a project.
26. Where customers purchase equipment on a standalone basis, this might be as part of a commercial kitchen’s ‘business as usual’ purchases. For example, a customer may need to replace equipment that has broken down or has reached the end of its life. A customer may also wish to add equipment to an existing kitchen.
27. An example of a project is where a customer is building a new or refurbished commercial kitchen.<sup>17</sup> Types of customers that may build or refurbish commercial kitchens (and who also may, following completion of a project, acquire standalone equipment) include but are not limited to:
  - 27.1 bars, restaurants and hotels;
  - 27.2 aged care homes and hospitals;
  - 27.3 schools, prisons and other government buildings; and,
  - 27.4 catering companies who operate out of their client’s premises.
28. A project to build a new or refurbished commercial kitchen can involve designing the kitchen, supplying the equipment and/or completing the fitout. Some resellers such as the Parties can offer all these services although in some cases may subcontract components such as design and fitout. Customers will sometimes run a bidding process or simply request quotes to select a reseller. This might cover all aspects of the build or only parts. For example, a customer may already have had the kitchen designed by their own architect and is only looking for a reseller to supply and install the equipment.
29. Customers’ purchases of smallware and consumables for a commercial kitchen tend to come after the project has been completed, and so is normally a separate transaction.

## **Our framework**

30. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>18</sup> As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.

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<sup>16</sup> Some market participants also refer to resellers as ‘distributors’.

<sup>17</sup> Reward has submitted that it is difficult to define what a project is. We discuss this further in the market definition section.

<sup>18</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, May 2022. Available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz)

31. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).<sup>19</sup> This allows us to assess the degree by which the proposed acquisition might lessen competition.
32. If the lessening of competition as a result of the proposed acquisition is likely to be substantial, we will not give clearance. When making that assessment in relation to unilateral effects, we consider, among other matters:
- 32.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;
  - 32.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and,
  - 32.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser’s ability to exert substantial influence on negotiations.

### **The relevant market**

33. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.
34. When assessing relevant markets, we consider:<sup>20</sup>
- 34.1 whether customers would easily switch to alternative products in response to a price increase (known as ‘demand side’ substitution); and,
  - 34.2 whether suppliers would easily switch their manufacturing process to produce different products (known as ‘supply side’ substitution).

### **The Applicant’s view**

35. In its Application, Reward submitted that there are three product markets:<sup>21</sup>
- 35.1 the national market for the supply of commercial kitchen equipment including ovens, fryers, combi steamers, griddles, cooktops, pizza ovens,

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<sup>19</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>20</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, May 2022.

<sup>21</sup> The Application at [32].

refrigeration, display cabinets, and dishwashers – the ‘commercial kitchen equipment market’;

- 35.2 the national market for the supply of tabletop, kitchenware, and smallware used in commercial food service – the ‘food service smallware market’; and,
  - 35.3 the national market for the supply of consumables and hygiene products used in commercial food service – the ‘food service consumables market’.
36. Reward submitted that the markets are not narrower than those listed above.
- 36.1 Reward submitted there is not a separate market for projects and that projects are, primarily, a subset of the supply of commercial kitchen equipment.<sup>22</sup> This is because (among other reasons):<sup>23</sup>
    - 36.1.1 there is no hard and fast rule as to what is referred to as a project; and,
    - 36.1.2 a customer building or developing a commercial kitchen can separate out the different stages of the process (ie, it can separate the design, the supply, and the fitout).
  - 36.2 Reward submitted that there are not separate markets for specific types of customers, such as aged care customers.<sup>24</sup> This is because (among other reasons):<sup>25</sup>
    - 36.2.1 all types of customers require the same equipment; and,
    - 36.2.2 there are no barriers for suppliers to switch between customer types (for example, it submitted that if a supplier is able to install a commercial kitchen for a non aged care or healthcare customer, then it can do so successfully for an aged care or healthcare customer).

### **Our current view**

- 37. For the purpose of our competition assessment, we have used the following product market definitions:<sup>26</sup>
  - 37.1 the market for the supply of kitchen equipment ordered for commercial kitchens including for example ovens, fryers, combi steamers, griddles, cooktops, pizza ovens and refrigeration (the standalone equipment market); and,

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<sup>22</sup> The Application at [33].

<sup>23</sup> The Application at [55]-[66].

<sup>24</sup> The Application at [41].

<sup>25</sup> The Application at [67] – [76].

<sup>26</sup> We also consider there are separate markets for smallware and consumables. As these markets did not raise concerns we have not considered them further in this Sol.



- 37.2 the market for projects to supply commercial kitchens as part of new builds and refurbishments, in which sales are typically made together with the design, fitout and installation of the kitchen (the project market).
38. We are continuing to investigate the geographic dimensions of the relevant markets, although there is some evidence to suggest there are differences in the degree of competition for different regions.
39. We set out reasons for these market definitions below.

*Separate market for standalone equipment and projects sales*

40. We consider that competition for standalone equipment and projects sales may differ from one another in several key respects, such that a supplier of one may not necessarily pose a competitive constraint on the other. These factors include the following.
- 40.1 In taking on a project, a reseller will often take on the risk of the project and be responsible for managing subcontractors,<sup>27</sup> whereas supplying standalone equipment would involve relatively less risk.
- 40.2 There are some suppliers who only or predominantly compete for project work and others who only or predominantly compete for equipment sales.<sup>28</sup>
- 40.3 Standalone equipment customers appear to have greater demands for quick delivery than projects customers given the long lead times for projects.<sup>29</sup> This means that resellers that focus on projects may not be able to serve a customer that is urgently seeking a piece of equipment.
- 40.4 Projects customers appear to value the quality and expertise of project design and so may be less price sensitive for equipment when they are purchasing both design and equipment from the same party, compared with standalone equipment customers.
41. These factors mean that suppliers in one market may not be able to easily switch to supply the other market in response to a price rise. For the purpose of our assessment, we have treated projects as a separate relevant market from the supply

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<sup>27</sup> We understand that the risk taken on by resellers can be material, especially for large scale projects. One customer indicated that there can be significant penalties for late delivery, for example. Interview with [ ]

<sup>28</sup> For example, some resellers we spoke to indicated that they were specialised or largely focused on project sales. Interviews with [ ] and [ ] Another reseller advised it is rarely successful for project work and is more focussed on equipment supply. Interview with [ ]

<sup>29</sup> For example, one reseller commented that in hospitality, customers want products the day before they order them. Interview with [ ]. One customer referred to a circumstance where they would need a product the next day in the event of breakdown. Interview with [ ]. Another customer commented that unless a piece of equipment has died, there tends to be a reasonably long lead time. Interview with [ ].

of standalone equipment. However, we take into account out-of-market constraints in each market.

42. We invite submissions on this and in particular whether a supplier can easily switch between supplying project services to standalone sales and compete effectively, and vice versa.

*Likely differentiation in respect to customer type*

43. We are considering whether it is appropriate to define separate customer markets because some customers may have fewer alternatives post-acquisition and face higher prices as a consequence. In relation to customer dimensions of the market for standalone equipment and the market for projects, there appears to be two broad customer sectors. These are:
- 43.1 customers in hospitality settings such as hotels, restaurants, cafes and bars; and,
  - 43.2 institutional customers such as aged care facilities, hospitals, prisons, schools and military facilities.
44. We have heard that some customers typically look for resellers with previous experience supplying their sector<sup>30</sup> and value the expertise of resellers in relation to understanding how best to use products in their operating environment.<sup>31</sup> Some resellers also specialise in supplying certain types of customers.<sup>32</sup>
45. This may mean some resellers compete more closely than others for certain customers and that some customers may not consider certain resellers to be close alternatives. At this point, we have not defined separate markets for any customer groups. We consider the different strengths of suppliers in relation to serving different customer groups in our competition assessment of the proposed acquisition.
46. There also appears to be a separate customer group for QSRs. This is relevant because Safco (a company already owned by the ECF Group) supplies QSR restaurants. Reward submitted that QSR chains such as McDonald's and Burger King use specialised equipment that is specified on a global (or at least regional) basis and

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<sup>30</sup> For example, one reseller considered that prior relationships are necessary to win institutional business. Interview with [ ]. One customer chose Southern over another reseller for its project despite similar price offerings because it had worked with Southern before, whereas it hadn't delivered anything of a similar scale with the other reseller. Interview with [ ]. Another customer commented that it takes past experience into account and would be reluctant to engage a company it had not done work with before. Interview with [ ].

<sup>31</sup> For example, one customer considered that Southern and Reward were its main options for project fit-out work, noting that one reseller who focuses on restaurants, "do not understand [its] needs". Interview with [ ]. One reseller considered that there was some difference in the way the equipment is used depending on how used in certain facilities. Interview with [ ].

<sup>32</sup> For example, Host Services appears to have a focus on aged care fitouts.  
<https://www.hostservice.co.nz/aged-care>

supplied by local distributors who supply and install the specified products to operators at prices negotiated with the manufacturers at a global or regional level.<sup>33</sup> Reward submitted that Southern is not a supplier of such equipment.<sup>34</sup> This is consistent with our inquiries.<sup>35</sup> As there is little to no overlap between Southern and Safco, we do not consider the impact of the proposed acquisition on QSR customers further.

47. We invite submissions on whether it is appropriate to define separate customer markets and in particular the barriers to serving customers in different sectors, such as institutional and hospitality sectors.

*Functional dimension*

48. The relevant functional market appears to primarily be in the resale of the products. Resellers such as Reward and Southern purchase products from manufacturers (both domestically and internationally) and then retail to end customers.
49. We also consider there is a functional market at the wholesale level of the supply chain. This is the market for the sale of wholesale commercial kitchen equipment by manufacturers and importers. This is because Reward is the exclusive distributor for Rational, which is a key brand of commercial oven. Reward competes at the wholesale level with importers and manufacturers of other brands to sell Rational ovens to resellers.

*Geographic scope*

50. We are continuing to investigate the geographic dimensions of the relevant markets. In relation to the market for standalone equipment, there is some evidence to suggest that the market may be narrower than national, and competition may be more regional in geographic scope. We understand that:
- 50.1 there are several competitors who primarily supply equipment in the region in which they are based;<sup>36</sup>
- 50.2 for high-cost items, such as large equipment, some customers value being able to see the item in person before making a purchase, and so having local showrooms is an important factor for some of these customers in making their purchasing decisions;<sup>37</sup> and,

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<sup>33</sup> The Application at [11].

<sup>34</sup> The Application at [42].

<sup>35</sup> Interviews with [ ], [ ] and [ ].

<sup>36</sup> For example, one reseller said it partners with local dealers outside its areas to supply the rest of New Zealand. Interview with [ ] Another reseller said that because of the internet they can do business everywhere, but they are primarily focussed on their particular region. Interview with [ ] See also interview with [ ].

<sup>37</sup> For example, one customer said a showroom was helpful, especially when doing something different or trying to imagine something in a space. Interview with [ ]. One customer indicated that it

- 50.3 warehouses provide an advantage where a customer requires an item urgently (for example, to replace an item that has broken down and cannot be repaired), assuming the item is one that is normally stocked in the warehouse.
51. On the other hand, we understand that while distributors may hold some stock, domestically produced equipment will often be shipped directly from the manufacturer meaning the location of the distributor is less important.<sup>38</sup> We are seeking further information on the proportion of equipment shipped directly.
52. At this point, we do not think it is necessary to conclude on the precise geographic nature of competition in this case. In considering the geographic scope of competition in the relevant markets, our competitive assessment of the proposed acquisition presently considers estimated market shares at a national level and, separately, a regional level for Auckland, as well as the rest of the North Island and the South Island.<sup>39</sup>
53. For the project market, the relevant geographic market may depend on the size of the project. Resellers may be willing to travel nationwide for projects with a long lead time and high value. For example, we heard an example of a North Island based reseller bidding and winning a large contract in the South Island.
54. However, customers for smaller projects may not receive attractive offers from resellers located in a different part of the country, due to the travel costs and other inconveniences from working at distance. For example, one reseller stated that it will not compete in a tender outside of its home region that it did not complete the design for as its installers would have to travel.<sup>40</sup> One reseller considered that having a branch in a location was useful when competing for projects because people will view you as local.<sup>41</sup>
55. We invite submissions on this and in particular (for each of standalone and project markets):
- 55.1 for customers:
- 55.1.1 the ease to which a customer can switch to a reseller in a different region;

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sometimes “want[s] to look at” the “bigger stuff”. Interview with [ ]. One customer said when it received quotes, it considers where it can look at equipment. Interview with [ ]

<sup>38</sup> The Application at [45]. Further, in our interview with [ ] it noted that when it sells [ ] product, that product is shipped directly from [ ] Interview with [ ]. One manufacturer confirmed that if a reseller sells its product, it ships that product directly to the customer. Interview with [ ].

<sup>39</sup> We note that regional markets may be smaller than this, but this split was made for practical purposes in gathering information.

<sup>40</sup> Interview with [ ]

<sup>41</sup> Interview with [ ]

- 55.1.2 the value that is placed on being able to see items in a showroom (and the range of equipment that is normally available to be viewed in a showroom);
- 55.1.3 the importance of access to a local sales representative; and,
- 55.1.4 the importance of delivery times (such as the proportion of equipment that is required urgently) and shipping costs; and,
- 55.2 whether regional resellers serve other parts of the country for low value projects given the expense of travelling to serve the projects.

### **With and without scenarios**

- 56. Assessing whether a substantial lessening of competition is likely requires us to compare the likely state of competition if the proposed acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual) and to determine whether competition is likely to be substantially lessened by comparing those scenarios.

### **The counterfactual**

- 57. Reward submitted that if the proposed acquisition does not proceed, Southern would continue to operate independently from Reward as it does today whether under existing or new ownership.<sup>42</sup>
- 58. We considered whether there were any other likely counterfactuals that are more competitive than the status quo, including whether:
  - 58.1 [ ];
  - 58.2 [ ];
  - 58.3 [ ]; and/or,
  - 58.4 [ ].
- 59. We gathered evidence to help assess these potential counterfactuals. However, the evidence received to date does not support that any of the counterfactuals reach the 'likely' threshold. As such, we consider the status quo is the appropriate counterfactual against which to assess the competitive effects of the proposed acquisition.

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<sup>42</sup> The Application at [26].

### The factual

60. With the proposed acquisition, Reward would acquire all the shares in Southern. The outcome of the acquisition is that Reward NZ, Safco and Southern would all be part of the ECF Group.

61. [ ]

62. [ 43

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63. [ 44]

64. [ ]

### Horizontal effects for the supply of standalone equipment

65. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a market participant can profitably increase prices above the level that would prevail without the merger (and/or reduce quality).<sup>45</sup>

66. We have considered the extent to which:

66.1 the Parties are currently competing in the standalone equipment market (that is, the competition that would be lost from the proposed acquisition);

66.2 competitors could enter and expand in the standalone equipment market to replace any competition lost due the proposed acquisition (including a consideration of barriers to entry and expansion); and,

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<sup>43</sup> [ ]

<sup>44</sup> [ ]

<sup>45</sup> Harm from a substantial lessening of competition can manifest in different ways. Aside from an increase in prices or a decrease in quality or service, an adverse effect from the proposed acquisition could also be a delay or reduction in capacity expansion. When we refer to 'higher prices' in this Sol we also refer to a decrease in quality, service, ie, higher quality-adjusted prices.

66.3 customers would exert countervailing buyer power.

67. At this point, we consider that there is insufficient evidence to be satisfied that the proposed acquisition would not be likely to cause a substantial lessening of competition in this market. This is because:

67.1 we estimate the merged entity will have a high market share in the standalone equipment market on a national basis and a particularly high share outside of Auckland, which may indicate a competitive strength in areas where few or no rivals have warehouses or a competitive presence;

67.2 the size of the Parties likely means they can source equipment more cheaply than rivals. In the standalone market, where price-competition is likely to be an important driver of customer choice, this may mean the Parties are close competitors compared to other resellers; and,

67.3 some larger customers may have countervailing buyer power. However, it is unclear whether this would be sufficient to protect smaller customers from higher prices.

**Closeness of competition between the Parties**

*The Applicant’s view*

68. In the Application, Reward submitted that the proposed acquisition will result in a low level of market share aggregation,<sup>46</sup> and notes that the Parties supply different brands for products such as combi ovens, dishwashers and refrigeration.<sup>47</sup>

*Our current view*

69. We consider the evidence gathered to date indicates that the Parties are close competitors in the standalone equipment market.

70. When considering the broader supply of products to the hospitality sector including projects, equipment, smallware, and consumables, the evidence indicates that the Parties (especially Southern) are large market participants. As noted earlier,

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[ ]<sup>50</sup>  
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<sup>46</sup> The Application at [78].

<sup>47</sup> The Application at [82].

<sup>48</sup> [

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<sup>49</sup> [

<sup>50</sup> [ ]].

].<sup>51</sup> [ ]<sup>52</sup>

71. The overall size of the Parties' businesses in relation to the hospitality sector does not directly correspond to the markets we have defined above. However, we are considering whether each of the Parties' overall size may enable it to receive more favourable pricing from equipment suppliers than their rivals. Market participants identified that volumes tend to drive the price that resellers can source equipment at: higher volumes will normally mean a reseller benefits from higher discounts and rebates.<sup>53</sup>
72. Equipment is purchased for supply as standalone equipment and for projects. Accordingly, the sale volumes generated on account of the Parties' presence across both markets may provide the two firms an advantage in gaining better discounts and rebates relative to their competitors who focus on one market or the other. If this means the Parties can price lower than rivals, then the Parties may be the primary driver of each other's price levels. The Parties would be close competitors compared to other resellers when price is an important driver of customer choice. We discuss the evidence on pricing in further detail below.
73. On the defined market for standalone equipment, we estimate that the merged entity would have a high market share on a national basis of approximately 60%, and that the Parties appear to be the two largest suppliers (Southern approximately 45% and Reward approximately 15%).<sup>54</sup> We estimate the merged entity's share is likely particularly high outside of Auckland.
74. We continue to consider the extent to which these market shares reflect the constraint between the Parties at present.
- 74.1 First, we have not spoken to all resellers that supply equipment (although we believe we have spoken to the largest) and manufacturers supply some equipment directly to large customers (although this is likely only an option for certain customers). We continue to assess other firms who may be competitors for the supply of standalone equipment.
- 74.2 Second, Southern and Reward may not be close competitors where a customer has committed to using a certain brand of equipment by virtue of its previous equipment purchases. Southern and Reward mostly promote

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<sup>51</sup> [ ]

<sup>52</sup> [ ]

<sup>53</sup> For example: interview with [ ], interview with [ ], interview with [ ]

<sup>54</sup> We based our market share estimates on various sources. We found estimating market shares difficult. Some of the information received was unclear and incomplete.



different brands of equipment.<sup>55</sup> Some customers that are seeking standalone equipment might prefer to continue with a brand because the dimensions of their products match the design of their kitchen or because staff are familiar using it.<sup>56</sup> We are seeking further information on whether customers are likely to switch once they have started using a particular brand.

### **Constraint from rivals**

#### *The Applicant's view*

75. Reward submitted that the market for the supply of commercial kitchen equipment is highly competitive, with existing competition from resellers who all have access to the major brands sold in New Zealand.<sup>57</sup> It also submitted that there is additional existing competition from manufacturers who supply direct to end users as well as non-exclusively through resellers, specialist providers who compete for specific types of equipment, service providers and installers who can and do source equipment for sale, the prevalence of an active second-hand market and the fact that customers can and do parallel import their own equipment.<sup>58</sup> Reward considers that this existing strong competition is illustrated by the proposed acquisition being within the Commission's market share indicators, as it estimates that the merged firm's total combined share (excluding equipment sales used as a proxy for projects) would be [ ]%.<sup>59</sup>

#### *Our current view*

76. There appear to be many firms that compete with Southern and Reward for standalone equipment sales although they are mostly of a smaller scale. The main competitors that we have identified are set out below. However, we continue to assess other resellers that may compete in this market.

76.1 Nisbets is a supplier of equipment in New Zealand.<sup>60</sup> Nisbets is based in Auckland. According to its website, Nisbets sells approximately 47 different brands of commercial kitchen equipment, including brands sourced through Moffat and its own range of equipment under the brand 'Nisbets Essentials'.<sup>61</sup>

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<sup>55</sup> See, for example, Table 2 of the Application. As noted in the Application at [95], there is only one supplier of equipment who appears in the top ten suppliers of both Southern and Reward. In respect of the Parties' product ranges, one reseller said they were 'polar opposites', and that Southern can't access the equipment that Reward holds. Interview with [ ]

<sup>56</sup> For example, one customer said it tried to do things for uniformity, and that it has a lot of people who move across kitchens and they want similar product to make the transfer of skills easy. Interview with [ ] Another customer said it was aligned to a single brand of oven, so would continue with that brand for replacement to avoid having to change things like stainless steel and plumbing. Interview with [ ]

<sup>57</sup> The Application at [81] – [82].

<sup>58</sup> The Application at [83].

<sup>59</sup> The Application at [84] – [85].

<sup>60</sup> <https://www.nisbets.co.nz/aboutus>

<sup>61</sup> <https://www.nisbets.co.nz/>

- 76.2 Aitkens is a supplier of equipment in New Zealand.<sup>62</sup> It has three branches in New Zealand (Auckland, Christchurch and Dunedin). The equipment listed on Aitkens' website includes cooking equipment, refrigeration, and espresso machines.
- 76.3 BCE Catering has a particular focus on the Wellington/lower North Island region, although serves some customers in other parts of the country.<sup>63</sup> Its website lists similar commercial equipment and brands as Southern, such as Moffat and Skope.<sup>64</sup>
- 76.4 Rollex Group is based in Auckland. According to its website, Rollex Group imports food processing, washware, dishwashing and packaging equipment.<sup>65</sup> Rollex Group supplies to the retail, food, supermarket, aged care and commercial markets.<sup>66</sup>
77. We are still considering whether competition from these rivals is sufficient to replace the competition that will be lost as a result of the proposed acquisition. We are continuing to consider the following issues.

#### Scale of rivals

78. Some of the rivals listed above appear to operate at a smaller scale to the Parties. As noted earlier, this likely means the price they pay to source equipment is higher. We are seeking to understand whether rival resellers can still compete on price against the Parties. If rival resellers cannot compete on price with the Parties, this may mean the merged entity would be able to profitably increase prices above the levels the Parties currently charge (so long as they remain below those of rival resellers).
79. We recognise that customers are likely to consider other aspects to the offer than just price. However, price is likely to be particularly important in the standalone market compared to projects, as there is not the associated design element for which suppliers can compete on specialist expertise.
80. We are continuing to assess the extent of this purchasing advantage and whether rivals are currently able to compete on price against Southern and Reward.
- 80.1 We sought to obtain further pricing information from market participants on both the cost of purchasing key pieces of equipment and the price that resellers typically supply to end customers. In the time available we were not able to obtain sufficient information to fully assess this. The limited information we received indicated that Southern (due to its size) obtained

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<sup>62</sup> <https://aitkens.co.nz/>

<sup>63</sup> As identified on BCE's website, it covers "Greater Wellington and Beyond" and identifies its sales staff as covering the lower North Island. However, it also identifies that it has also has "loyal customers the length of the country from Auckland to Invercargill and everywhere in between".

<sup>64</sup> <https://www.bcecateringequipment.co.nz/>

<sup>65</sup> <https://www.bcecateringequipment.co.nz/brand/moffat/>

<sup>65</sup> <https://rollexgroup.com/about-us>

<sup>66</sup> <https://rollexgroup.com/about-us>

higher discounts and rebates from some manufacturers.<sup>67</sup> As the Rational distributor, we would expect Reward will enjoy lower prices for those products. [ ].<sup>68</sup>

80.2 We sought feedback from market participants on the ability of resellers to compete on price.

80.2.1 We spoke to several manufacturers on the prices they set to resellers. The general feedback was that manufacturers considered they set their prices at a level that allowed smaller resellers to be competitive.<sup>69</sup> On the other hand, one manufacturer told us that it gave Southern a better commercial deal than other resellers.<sup>70</sup>

80.2.2 Some resellers said they struggled to compete against the Parties on price.<sup>71</sup> One reseller considered that it could compete on price through having lower overheads.<sup>72</sup>

80.3 There was mixed evidence from customers on pricing.

80.3.1 One customer viewed Southern and Reward as having low prices,<sup>73</sup> while one customer viewed Southern and Reward as having higher prices.<sup>74</sup> Another customer viewed Reward as being slightly more expensive than Southern.<sup>75</sup>

80.3.2 There were also mixed views on whether the merged entity could raise prices following the proposed acquisition. One customer expected higher prices as a result of the proposed acquisition because two competitors were turning into one.<sup>76</sup> Some customers' expectation was lower prices as a result of the proposed acquisition.<sup>77</sup>

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<sup>67</sup> For example, some manufacturers we spoke to indicated that Southern tends to get higher discounts due to its volume.

<sup>68</sup> [ ]

<sup>69</sup> One supplier said it set its prices to ensure all players can compete. Interview with [ ]. One supplier was of the view that Southern was not able to 'buy business' without going to low margins and that its pricing structures allowed smaller resellers to be competitive. Interview with [ ]

<sup>70</sup> Interview with [ ]

<sup>71</sup> For example, one considered it was very hard to compete on price. It also noted that while it does not think the merged entity would have the ability to increase prices, it would get a better buy price from suppliers and drive from that direction instead. Interview with [ ]. One noted that bigger margins can be enjoyed by competitors who import more product (such as Reward and Southern), which is where it becomes harder to compete on an even playing field. Interview with [ ].

<sup>72</sup> Interview with [ ]

<sup>73</sup> Interview with [ ]

<sup>74</sup> Interview with [ ]

<sup>75</sup> Interview with [ ].

<sup>76</sup> Interview with [ ]

<sup>77</sup> Interviews with [ ] and [ ]

For example, one customer thought the merged entity “would be silly” to raise prices and expected to see the opposite.<sup>78</sup>

### Geographic location

81. As noted in the market definition, geographic location may be important to competition. We set out below the areas that Parties appear to overlap for distribution and showrooms.
- 81.1 For distribution, Reward has distribution centres in Auckland and Christchurch and Southern in Tauranga and Christchurch. It may be in areas the Parties overlap they are particularly close competitors (for example, in Christchurch and to the extent to which Auckland and Tauranga overlap). We continue to seek further information about the proportion of equipment delivered direct to customers from manufacturers compared to that which is held in stock by resellers.
- 81.2 Southern has 12 showrooms and Reward has four, with both Parties having showrooms in Auckland, Hamilton, Wellington and Christchurch.<sup>79</sup> Hamilton appears to be one location in which an overlap occurs but none of the other resellers we have spoken to so far operates a showroom. We continue to seek further information about the extent to which showrooms will display equipment and the importance to customers of viewing this equipment before purchasing.

### **Conditions of entry and expansion**

#### *The Applicant’s view*

82. Reward submitted that there is nothing to prevent existing equipment distributors from increasing their sales other than continued strong competition in the market, including from the merged Reward / Southern.<sup>80</sup> Reward considers that all existing suppliers have access to well-known and well regarded domestic and international brands<sup>81</sup> and that access to warehousing capacity is not a barrier to entry and expansion.<sup>82</sup>

#### *Our current view*

83. Based on the evidence we have seen, barriers to entry into the market appear surmountable. The requirements seem to include having:
- 83.1 appropriate expertise in kitchen equipment;
- 83.2 access to suppliers (manufacturers) of key pieces of equipment; and,

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<sup>78</sup> Interview with [ ]

<sup>79</sup> [ ]

<sup>80</sup> The Application at [91].

<sup>81</sup> The Application at [92].

<sup>82</sup> The Application at [93].

- 83.3 the ability to reach customers through, for example, the development of a website or employing sales reps.
84. An example of entry is Nisbets (a large international provider) however its initial entry was through the acquisition of an existing participant in 2017 (being Choice Catering).<sup>83</sup>
85. However, it appears as if there are challenges for rivals when seeking to expand in the market. In particular:
- 85.1 capital investments may be necessary to develop and operate showrooms and warehousing in different regions to be able to effectively serve customers; and,
- 85.2 the incentives to make those investments may be limited by the ability of smaller resellers to obtain access to supply on terms which allow them to compete with the largest players in the market (scale effects).
86. We continue to assess whether other competitors in the market could expand to constrain the merged entity if it increased prices significantly post-merger.

### **Countervailing power**

#### *The Applicant's views*

87. Reward submitted that countervailing power can be exerted by both manufacturers and customers.<sup>84</sup> In terms of manufacturers, Reward submitted that equipment suppliers rely on selling equipment manufactured by manufacturers, and that manufacturers would simply support another distributor if the merged entity acted in a way that reduced demand for its products.<sup>85</sup> In terms of customers, Reward submitted that while they may not be able to sponsor new entry, customers could exercise countervailing power by switching to other suppliers or switching purchases in other markets (such as consumables or smallware) from the merged entity to other suppliers.<sup>86</sup>

#### *Our current view*

88. We consider that some larger customers may be able to exercise countervailing power through sourcing directly from the manufacturer or agency holder.
- 88.1 One customer identified that it had relationships with global manufacturers and could choose whether to purchase from a reseller or buy direct from the manufacturer.<sup>87</sup> Another customer stated they while they had historically dealt directly with manufacturers, they did not currently.<sup>88</sup> Another customer

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<sup>83</sup> <https://www.nisbets.co.nz/aboutus>

<sup>84</sup> The Application at [97] – [102].

<sup>85</sup> The Application at [98].

<sup>86</sup> The Application at [100] – [102].

<sup>87</sup> Interview with [ ]

<sup>88</sup> Interview with [ ]

stated that they have formed a relationship with an overseas manufacturer to import equipment directly.<sup>89</sup>

88.2 The manufacturers we spoke to said that they sometimes deal directly with certain customers (but in the case of one manufacturer especially, this was not common).<sup>90</sup>

89. These options do not appear available for all customers. Some customers we spoke with had not considered these options or viewed them as impractical. These customers considered having to import product introduces additional risk and effort, and adds complexity over who will service the equipment if it breaks down.<sup>91</sup>

90. We are continuing to assess the extent to which customers may have countervailing power. We are also assessing the extent to which manufacturers may act to influence competition if the Parties were to gain market power (for example by supporting smaller resellers to expand).

### Conclusion

91. At this point, we consider that there is insufficient evidence to be satisfied that the proposed acquisition would not be likely to cause a substantial lessening of competition in the standalone equipment market. We invite submissions on this and in particular:

91.1 the extent to which customers are likely to switch between brands for standalone equipment purchases;

91.2 the ability of smaller resellers to source equipment at a price that allows them to constrain a price increase by the merged entity;

91.3 the ability of smaller resellers to expand to constrain the merged entity if it attempted to significantly increase prices post-merger;

91.4 the importance of having showrooms and warehouses near to customers; and,

91.5 the extent to which large customers can source directly and whether this could protect smaller customers.

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<sup>89</sup> Interview with [ ]

<sup>90</sup> Interviews with [ ], [ ] and [ ].

<sup>91</sup> See for example, one customer said it was “not [its] business to directly import”. Interview with [ ]. Another customer identified that they could buy direct, but noted the hassle of importing and managing. Interview with [ ]. Another customer said it would consider alternative ways to source product, but that doing so increases risk for them. Interview with [ ].

## Horizontal unilateral effects for the supply of projects

92. At this point, we are not satisfied that the proposed acquisition would not have or be likely to have the effect of substantially lessening competition in the market for projects. This is because:

- 92.1 the Parties may be particularly close competitors for certain customers;
- 92.2 it is unclear that rivals will be able to replace that lost competition if they are focused on certain customer types or locations; and,
- 92.3 although some larger customers may have countervailing buyer power, however, it is unclear whether this would be sufficient to protect smaller customers from higher prices.

## Closeness of competition between the Parties

### *The Applicant's view*

93. In the Application, Reward acknowledges that the Parties are competitors for project work.<sup>92</sup> However, it submits that there are several other suppliers who are actively winning significant project work and that it does not consider that the bid data provided to the Commission supports the conclusion that the Parties are close competitors.<sup>93</sup>

### *Our current view*

94. We consider the evidence gathered to date indicates that the Parties are close competitors in the project market.
95. First, when considering the projects market, we estimate that the merged entity would have a moderate market share on a national basis of around 30-40%, (Southern approximately 29% and Reward approximately 9%).<sup>94</sup> Although the merged entity's market share in the national market is not high, we continue to consider whether the Parties are particularly close competitors for any types of customers, or in particular regional locations.
96. Second, our review of Reward and Southern's bid data shows that the Parties compete against each other for the same customers. Southern's bid data indicated that [ ].  
However, the bid data also showed that [ ]

[ ]. Reward's bid data indicated that [ ]

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<sup>92</sup> The Application at [156].

<sup>93</sup> The Application at [156].

<sup>94</sup> As with the standalone market, we based our market share estimates on various sources and found estimating market shares difficult. Some of the information received was unclear and incomplete. And the figures may slightly overestimate the Parties' market shares as we have not spoken to all firms listed in the Application, although we believe we have spoken to all the major competitors in the projects market.

]. The Parties submitted that the bid data was an unreliable guide. This was because [

].<sup>95</sup> We continue to assess this.

97. Third, feedback from market participants was generally consistent that Southern and Reward are close competitors for project work.

97.1 Most competitors viewed the Parties as close competitors who competed across New Zealand and for a wide range of customers. Some types of customers that market participants considered the Parties are particularly close competitors for included customers in the aged care, hospitals and catering industries.<sup>96</sup>

97.2 Most customers we spoke with viewed the Parties as strong competitors. Some customers viewed Reward and Southern as the main two alternatives.<sup>97</sup> Of those customers who viewed Reward and Southern’s offerings more highly than alternative suppliers, some of the factors the customers placed weight on were included:

97.2.1 extent of the product range and benefits of being a one stop shop,<sup>98</sup>

97.2.2 geographical coverage;<sup>99</sup>

97.2.3 ability to hold stock;<sup>100</sup> and,

97.2.4 price.<sup>101</sup>

97.3 Not all customers considered Reward and Southern as close competitors or viewed other competitors as better options. For example, some customers we had spoken to had not considered Reward as an alternative when choosing their project supplier.<sup>102</sup>

98. As noted earlier, Southern and Reward may not be close competitors where a customer has committed to using a certain brand of equipment in previous purchases. An example may be where a customer has multiple kitchens and specifies the same brand requirements in compiling their tenders to ensure staff can switch

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<sup>95</sup> The Application at [155] – [166].

<sup>96</sup> Interviews with [ ], [ ], [ ], and [ ].

<sup>97</sup> Interviews with [ ], [ ], and [ ]

<sup>98</sup> Interviews with [ ] and [ ]

<sup>99</sup> Interviews with [ ] and [ ]

<sup>100</sup> Interview with [ ]

<sup>101</sup> [ ] Interview with [ ]

<sup>102</sup> Interviews with [ ] and [ ]



between kitchens upon completion.<sup>103</sup> We continue to assess the extent to which customers for projects are prepared to switch between different types of brands.

### Constraint from rivals

#### *The Applicant's view*

99. Reward submitted that competition for the supply of projects is the same as competition for the supply of commercial kitchen equipment, and that it has no reason to believe the Parties' market share for projects would be any different to their market share in the commercial kitchen equipment market.<sup>104</sup> It submitted further that there are several providers who can and do successfully compete for projects of all sizes throughout the country.<sup>105</sup>

#### *Our current view*

100. There appear to be many firms that compete against Southern and Reward for projects. The main rivals we have identified for projects are set out below. However, we are continuing to consider other resellers that may compete in this market.

100.1 Wildfire is a potentially significant supplier of projects in New Zealand. Wildfire's past fitouts include stadiums, hotels, restaurants, a hospitality school, and retirement village.<sup>106</sup> A large proportion of those projects appear to have been in Auckland although it has also done projects in Queenstown, Tekapo, Hanmer and New Plymouth.

[ ]<sup>107</sup>

100.2 Aitkens is also a potentially significant supplier of projects in New Zealand. Aitkens appear to have a similar offering to Southern and Reward, including supplying equipment and smallware, as well as fitout services.<sup>108</sup> As noted above, Aitkens has three branches in New Zealand (Auckland, Christchurch and Dunedin). Aitkens' website states that it has worked with hospitality operators "across New Zealand since the 1950s".<sup>109</sup> Based on market feedback, we understand that Aitkens is particularly strong in the South Island.<sup>110</sup>

100.3 Host Services, another supplier of projects, is based in Nelson but has delivered projects in different locations throughout the country including

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<sup>103</sup> See FN56.

<sup>104</sup> The Application at [136].

<sup>105</sup> The Application at [154]. By way of further illustration, it non-exhaustively lists Wildfire, Host Service, Aitkens, Nisbets, BCE Catering, Eletrolux and Rollex Group as companies that compete to supply equipment, and lists Wildfire, Host Service, NCA Group, Aitkens, Electrolux and Rollex Group as companies that regularly compete to win design, supply and install projects. See the Application at [144] and [148].

<sup>106</sup> <https://www.wildfire.co.nz/projects>

<sup>107</sup> Interviews with [ ] and [ ]

<sup>108</sup> <https://www.aitkens.co.nz/>

<sup>109</sup> <https://aitkens.co.nz/pages/fitout-services>

<sup>110</sup> Interview with [ ] This also aligns with [ ]

Auckland, Hamilton, Palmerston North, and Christchurch.<sup>111</sup> Host Services appears to have a focus on aged care and hospital projects, although in the past has also delivered some hospitality projects.<sup>112</sup>

100.4 BCE Catering is another supplier of projects. As noted above, BCE Catering appears to have a particular focus on the Wellington/lower North Island region, although serves some customers in other parts of the country. Its website states it specialises in “the Hospitality/Food Service and Aged Care sectors in New Zealand”.<sup>113</sup> BCE Catering’s Facebook page also suggests it serves cafes, bars and restaurants, but we understand that it [ ].<sup>114</sup>

100.5 In addition to the above companies, there are other rivals who compete to win project-based work such as Rollex Group, Teutonia, FED Hospitality and Tiger Hospo Equipment.

101. We are still considering whether these rivals are sufficient to replace the competition that would be lost from the proposed acquisition. Many of these rivals appear to be of a smaller scale, and focus on particular types of customers and/or certain regions. In some cases, there may be few alternatives for customers. We continue to consider the following issues.

101.1 As with the market for replacement equipment, some smaller rival resellers raised concerns that they are not able to compete on price against the Parties. For example, one competitor considered small companies struggle to compete because of Southern’s buying power and its relationships with some manufacturers.<sup>115</sup>

101.2 Rival resellers tend to focus on certain types of customers. One area that was identified as an area where the Parties are close competitors was aged care. However, there was mixed feedback from the aged care operators we interviewed. For example, some aged care operators raised concerns that there were no other competitive options than the Parties,<sup>116</sup> but some aged care operators used suppliers other than the Parties and/or considered there were other players they could possibly switch to including Wildfire, Host Services, BCE and/or Aitkens.<sup>117</sup> Catering companies were also identified by competitors as an area where the Parties may compete closely. However, the catering companies we spoke to were satisfied there were other options they could turn to. We are continuing to consider whether there are any customers that would have few options due to the proposed acquisition.

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<sup>111</sup> <https://www.hostservice.co.nz/case-studies>

<sup>112</sup> <https://www.hostservice.co.nz/case-studies>

<sup>113</sup> [https://www.bcecateringequipment.co.nz/about\\_us](https://www.bcecateringequipment.co.nz/about_us)

<sup>114</sup> <https://www.facebook.com/bcecateringequipment/> and interview with [ ].

<sup>115</sup> Interview with [ ].

<sup>116</sup> Interviews with [ ] and [ ].

<sup>117</sup> Interviews with [ ] and [ ].

101.3 As with standalone equipment, the locations where the Parties' warehouses and showrooms overlap (in Auckland, Hamilton, Wellington and Christchurch) may be areas where they are particularly close competitors.

101.4 We are also considering whether there are any particular sizes of customers for which the Parties compete for which other rivals do not.

101.4.1 The evidence gathered from market participants suggests that the main two competitors for the largest projects are Southern and Wildfire.<sup>118</sup>

101.4.2 Southern and Reward appear to compete for medium- to small-sized projects, although it appears there are other competitors capable of supplying customers with projects of different sizes. For example, the information we have viewed indicates that rival suppliers win projects of all sizes including relatively large ones. However, the market feedback suggests that while some of those competitors are capable of winning larger projects, they may choose to focus on smaller projects or owner-operator clients.<sup>119</sup> As such, we are continuing to consider the extent to which rival resellers compete for customers of all sizes.

## Conditions of entry and expansion

### *The Applicant's view*

102. Reward submitted that there are no barriers to entry or expansion for project services. In particular, it submitted that all equipment suppliers have access to the necessary equipment required for projects and can easily contract installation and/or design services as existing providers do today.<sup>120</sup> Reward also considers that there is nothing to stop a stainless-steel fabricator from expanding into the projects space.<sup>121</sup>

### *Our current view*

103. Based on the evidence we have seen, barriers to entry to the project markets appear surmountable. The requirements seem to include having:

103.1 appropriate expertise in kitchen equipment and installation;

103.2 access to suppliers (manufacturers) of key pieces of equipment;

103.3 access to appropriate expertise in relation to kitchen design; and,

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<sup>118</sup> One customer said it saw Southern and Wildfire as the only options for its largest projects. Interview with [ ] [ ]

<sup>119</sup> Interviews with [ ] and [ ].

<sup>120</sup> The Application at [167].

<sup>121</sup> The Application at [168].

- 103.4 the ability to reach customers through, for example, the development of a website or employing sales reps.
104. There are examples of small entrants who have managed to successfully enter the market with limited capital and win small customer projects. Often these have been ex-employees of existing companies in the market. There does however appear to be some factors which may mean these rivals may not be able to expand even if the merged entity raised prices above the existing levels. In particular:
- 104.1 Scale and pricing – some smaller distributors have indicated they struggle to win business because they are not able to achieve the same terms of supply as larger suppliers.
- 104.2 Having demonstrable experience in a sector. For example, we heard it can be difficult to win government and institutional contracts without previous experience to point to.<sup>122</sup>
105. We understand there are strategies which have enabled smaller suppliers to compete and grow their businesses. For example:
- 105.1 One supplier used their low overheads and small scale to their advantage to be able to compete on price.<sup>123</sup> However, there are likely limits to the extent suppliers can expand with this approach as there will eventually reach a point where they also need to take on staff and increase their fixed cost base.
- 105.2 Some suppliers have indicated that they focus on competing in contracts for which they are able to compete on the design. This will typically be for a particular niche they specialise in. We understand that often suppliers having control of the design mean that there is less focus on price competition when it comes to equipment supply and so they are better able to compete compared to tenders where they do not have design control.<sup>124</sup> It may be therefore that there are certain types of tenders for which smaller suppliers are less likely to be able to expand into.

## Countervailing power

### *The Applicant's views*

106. Reward submitted that the competitive dynamics in a market for projects are the same as the competitive dynamics in the commercial kitchen equipment market. With regards to whether customers have any specific countervailing power in a market for projects, Reward submitted that many corporate aged care providers

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<sup>122</sup> Interview with [ ].

<sup>123</sup> Interview with [ ].

<sup>124</sup> For example, one reseller stated that they are more inclined to be involved with people that have engaged them from an early stage. Interview with [ ] Another reseller said it was scarcely worth pricing a project where it was merely pricing off a tender list. It preferred to add value and build up the relationship, rather than just competing on price. Interview with [ ] Another reseller stated that it will not compete in a tender outside of its home region that it did not complete the design for. Interview with [ ].

have a sufficient forward book of work to enable to them to exercise countervailing power by promoting and supporting with contracts the expansion of a competitor into the aged care sector.<sup>125</sup>

*Our current view*

107. As with standalone equipment, some larger customers may be able to exercise countervailing power. Aside from sourcing directly from the manufacturer or distributor, a customer could in theory self-supply certain parts of a project. For example, customers could obtain design work by an architect or specialist hospitality designer and purchase the relevant equipment needed from any equipment supplier. Some customers we spoke to self-supplied the design part of the product (or believed it could do so).

107.1 One customer had standardised designs which their contractors put out for tender. It also thought that it would be possible for their contractor to run the project themselves (by purchasing all the equipment and taking on the risk) instead of subcontracting to Southern or Reward.<sup>126</sup>

107.2 One customer considered that design could be done by anyone and does not have to be completed by Reward or Southern.<sup>127</sup> It noted that design was one component that the Parties offer but that they will not necessarily proceed with what the Parties' create, and in some cases, there might already be designers established for a particular build.

108. We continue to assess whether these options are available for all or only an option for larger customers, and if larger customers could use their countervailing power to protect smaller customers.

**Conclusion**

109. At this point, we are not yet satisfied that the proposed acquisition would not be likely to cause a substantial lessening of competition in the market for projects. We invite submissions on this and in particular:

109.1 the extent to which customers are likely to switch between brands for projects;

109.2 the ability of smaller resellers to source equipment at a price that allows them constraint a price increase by the merged entity;

109.3 the ability of smaller resellers to expand to constrain the merged entity, especially for different types of customers;

109.4 the importance of having showrooms and warehouses near to customers; and,

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<sup>125</sup> The Application at 2.

<sup>126</sup> Interview with [ ] .

<sup>127</sup> Interview with [ ]

109.5 the extent to which large customers can source directly and whether this could protect smaller customers.

## Vertical effects

### *The Applicant's views*

110. Reward submitted that the acquisition is unlikely to result in a substantial lessening of competition arising from vertical effects because the acquisition does not change the nature of the vertical integration in the market and because neither party stocks any “must have” products for customers that are not available to other market participants.<sup>128</sup> Relatedly, it submitted that it is difficult to see how an exclusive distribution agreement could harm competition in this market given the wide range of products and brands available and the way that products are sold remotely and delivered to customers. It further submitted that rival manufacturers would not have an incentive to agree to parallel exclusive agreements that harmed sales of their products in New Zealand.<sup>129</sup> It also submitted that given there is only one supplier who is in the top ten suppliers of both of the Parties, there are unlikely to be significant purchasing efficiencies arising from the proposed acquisition.<sup>130</sup>

### *Our current view*

111. Some market participants raised concerns over potential vertical effects.<sup>131</sup> Their concern was that the merged entity would have sufficient bargaining power to convince the major brand holders to grant exclusive arrangements or better terms, which would prevent or hinder rivals from competing. For such a concern to adversely affect competition (which in principle could occur in either the standalone equipment or project markets) the following conditions would need to be met.

111.1 The proposed acquisition increases the market power of the merged entity to such a point that the brand holders would grant exclusive or quasi-exclusive arrangements that would render rivals unable to compete effectively.

111.2 The merged entity can extract enough of these arrangements such that it ties up a sufficient number of key brands that rival resellers are unable to compete effectively.

111.3 That once competitors have been foreclosed, the merged entity could put up prices without inducing entry and/or expansion.

112. We are already assessing whether the proposed acquisition will cause the merged entity to gain market power due to unilateral effects. The impact of the proposed acquisition on manufacturers may differ slightly. The merged entity would gain

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<sup>128</sup> The Application at [178.2].

<sup>129</sup> The Application at [104].

<sup>130</sup> The Application at [95] – [96].

<sup>131</sup> For example, some market participants raised concerns that the merged entity would attempt to seek exclusivity over brands. Interviews with [ ] and [ ].

market power over the manufacturers if it significantly reduces the available supply channels to customers. We are continuing to assess this.

113. We asked some manufacturers if they would grant exclusive arrangements to the Parties. These manufacturers generally indicated they would be unwilling to. For example, one told us that it did not use exclusive contracts for any of its products and supplied to all customers and it could not see any reason why the proposed acquisition would change that approach.<sup>132</sup> This suggests it may be difficult for the merged entity to control enough brands to foreclose rivals.<sup>133</sup> We are still considering whether the manufacturers might offer improved terms to the merged entity.
114. In addition to reaching exclusivity (or terms that render a rival unable to compete) it would also be necessary to show that rivals would not be able to re-enter or expand in the market that foreclosure took place once prices rise. As noted in the barriers to entry sections, entry barriers appear surmountable although there are some expansion barriers. We continue to assess the ability of rival suppliers to expand and how this may differ if the key brands were supplied on worse terms.

### Next steps in our investigation

115. The Commission was scheduled to decide whether or not to give clearance to the proposed acquisition by 2 June 2023. We have agreed with the Applicant an extension of time from the initial 40 working day statutory timeframe until 28 July 2023 in which to make a decision.<sup>134</sup> This is so that we can test and consider the issues identified above further.
116. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

### Making a submission

117. We are continuing to undertake inquiries and seek information from industry participants about the impact of the proposed acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this Sol.
118. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference 'Reward/Southern' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **22 June 2023**.

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<sup>132</sup> Interview with [ ]

<sup>133</sup> There are some brands that Reward and Southern do not supply, which we would assume the merged entity would be unable to force into exclusivity. For example, brands of combi oven that neither Southern or Reward supply include Unox, Giorik and Honuo. A rival may be able to switch to these to avoid being foreclosed.

<sup>134</sup> The Commission maintains a clearance register on our website at <https://comcom.govt.nz/case-register/case-register-entries/reward-supply-co-pty-limited,-southern-hospitality-limited> where we update any changes to our deadlines and provide relevant documents.

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