Reward Supply Co Pty Limited

Notice seeking clearance to acquire the shares of Southern Hospitality Limited

To: registrar@comcom.govt.nz

ANB Competition Lawyers

Table of contents

Executive summary

Clearance sought to bring Reward NZ and Southern Hospitality under common ownership

Reward Supply Co Pty Limited (**Reward**) seeks clearance to acquire 100% of the shares of Southern Hospitality Limited (**Southern Hospitality**).

Reward is part of the ECF Group (**ECF**), a supplier of food service solutions throughout the world. In New Zealand, ECF operates through:

- Burns & Ferrall Limited, trading as Reward NZ, which supplies equipment, smallware, and consumables to New Zealand hospitality and food service customers; and
- Safco, which supplies equipment and kitchen supplies to quick service restaurant (**QSR**) chains.

The effect of the acquisition is that both Reward NZ and Southern Hospitality would be part of the ECF Group.

Primary overlap: the supply of kitchen equipment, smallware, and consumables to food service trade

Like Reward NZ, Southern Hospitality is a supplier of equipment, smallware, and consumables to New Zealand hospitality and food service customers.

The acquisition will primarily result in aggregation between Reward NZ and Southern Hospitality's sale of tabletop, kitchenware (together, **smallware**), and other consumables to the food service industry, and sale of equipment for commercial kitchens. This includes the supply of equipment and other products for customers building or redeveloping commercial kitchens (often referred to as projects). In all cases, the relevant markets are national.

The supply of kitchen equipment, smallware, and consumables to food service customers is, and will continue to be, very fragmented and competitive, characterised by strong established competitors who face no obstacles to expanding their market share.

Small market share aggregation within concentration indicators

This strong competition is reflected in market shares. Indeed, Reward continues to believe that the acquisition falls within the Commission's market share concentration indicators on any realistic view of market size.

Reward's best estimate is that the merged firm would have:

- a combined market share of less than 40% in the commercial kitchen equipment market, with market share aggregation of less than [CONFIDENTIAL]%; and
- a combined share of less than 20% in the food service smallware and food service consumables markets with market share aggregation of less than [CONFIDENTIAL]%.

Third party concerns reflect a concern about increased competition, rather than a loss of competition

Reward understands that some third parties have expressed concerns about the impact of the acquisition. The parties are not privy to those concerns. However, to the extent those concerns are voiced by competitors or suppliers, the parties believe these concerns simply reflect a natural commercial concern that the merged Reward NZ / Southern Hospitality will become a more effective competitor. Put simply, the concerns expressed imply that the acquisition will enhance competition and drive prices down.

For example, the parties understand that concern has been expressed that the merged firm will gain better supply terms, including better prices. Ironically, the parties do not understand Southern Hospitality to be a low-priced operator today due to its business model. In any event, if the acquisition enables the merged entity to obtain better supply terms, this will drive down prices to the benefit of customers and ultimately consumers.

To the extent that there is a separate market for projects, the acquisition is unlikely to substantially lessen competition for projects.

There are numerous providers that can and do compete for and win this project work. This is illustrated by the history of bidding on these projects and the awarding of major contracts to the parties' competitors. None of that will stop post-acquisition.

The parties understand that concern has been expressed that Reward NZ and Southern Hospitality are particularly close competitors for hospital and aged care projects.

While Reward accepts that some aged care customers may prefer the status quo, that does not provide cogent evidence that the acquisition is likely to substantially lessen competition.

No lessening of competition to supply new or redeveloped commercial kitchens

In fact, most providers already supply hospital and aged care projects now. Moreover, there is nothing unique about hospital and aged care projects that would prevent any competitor not currently supplying hospital and aged care projects from doing so.

Nor are there any switching costs for customers. The parties accept that any customer may be more likely to use a provider they have used before all else being equal. However, that is true of any good or service in the economy and such a preference is not a switching cost.

In any event, many of the corporate aged care providers have a sufficient forward book of work to enable them to exercise countervailing power by promoting and supporting with contracts the expansion of a competitor into the aged care sector. The size of such an opportunity would provide a powerful incentive for suppliers that do not currently focus on this segment to do so.

The absence of any material obstacles to expansion, the absence of any switching costs, and the strong incentives for suppliers to expand and customers to support that expansion should the merged firm seek to raise prices or decrease quality, should be sufficient to satisfy the Commission that no loss of competition is likely for project work.

Reward requests the Commission grants clearance

For the reasons outlined above and explained in more detail in the balance of this application, Reward submits that the Commission can be satisfied that the acquisition will not be likely to substantially lessen competition in any market.

Reward, therefore, requests that the Commission grant clearance for the acquisition.

Confidentiality

1. This application contains information that is confidential to one or more of Reward or Southern Hospitality. The confidential information is commercially sensitive, and disclosure of it would be likely to unreasonably prejudice the commercial position of the party providing that information.

2. Confidential information in this application is contained in bold square brackets and is highlighted yellow (i.e., **[CONFIDENTIAL]**). The confidential information is also listed in the Schedule of Confidential Information attached to this application.

The acquisition and the parties

The acquisition and the clearance sought

3. Reward Supply Co Pty Limited (**Reward**) is seeking clearance to acquire 100% of the shares in Southern Hospitality. The Sale and Purchase Agreement is conditional on the parties receiving Commission clearance.[1]

Reward Supply Co Pty Limited – the applicant for clearance

4. Reward is an Australian company that supplies food service solutions in Australia. Reward is a member of the ECF Group, which is an international distribution company specialising in the supply of food service solutions in Europe, the Middle East, North Africa, and Asia Pacific.

5. Reward is owned by ECF Asia Pacific Pty Limited (**ECF Asia Pacific**), part of the ECF Group. ECF Asia Pacific operates in New Zealand through Burns & Ferrall Limited, trading as Reward NZ (**Reward NZ**), and Safco Limited (**Safco**).

Reward NZ

6. Reward NZ imports or acquires locally equipment, tabletop and kitchenware products, takeaway and packaging products, and other consumables for supply to food service customers. Reward NZ also provides parts and servicing for food service equipment (accounting for **[CONFIDENTIAL]**% of its revenue). Reward NZ has showrooms in Auckland, Hamilton, Christchurch, and Wellington and has 57 employees.

7. Reward NZ is also an importer and wholesaler of domestic sinks and tapware to merchants and other distributors in the domestic building products market (accounting for **[CONFIDENTIAL]**% of Reward NZ's revenue).

8. ECF Asia Pacific acquired 98% of the shares in Burns & Ferrall in July 2019 to enter the New Zealand market. ECF Asia Pacific was attracted to Burns & Ferrall by its expertise in equipment sales and servicing. ECF Asia Pacific rebranded Burns & Ferrall as Reward NZ on 1 April 2022.

9. Other than closing its kitchen design function, ECF Asia Pacific has not changed the Burns & Ferrall/Reward NZ business or strategy in New Zealand.

[1] The acquisition only relates to New Zealand. No other competition agencies have been notified.

Safco

10. Safco imports or sources locally equipment and supplies that it then supplies to QSR (quick service restaurant) customers such as Subway and Restaurant Brands. Safco has 8 employees.

11. ECF Asia Pacific acquired Safco Australia and Safco NZ in June 2022. ECF Asia Pacific's rationale for buying the Safco businesses was to add expertise in sourcing the specialist products required by QSR customers. Supply of QSR customers is highly specialised. QSR chains such as McDonalds, Burger King etc, generally have equipment specially designed and manufactured for their restaurants by manufacturers. This specialised equipment is specified on a global (or at least a regional) basis and supplied by local distributors who supply and install the specified products to local operators at prices negotiated with the manufacturers at a global or regional level.

12. ECF Asia Pacific has not changed the Safco business or strategy. It remains focussed on and dedicated to supplying QSR customers.

Acquisition will bring Reward NZ and Southern Hospitality under common ownership

13. The effect of the acquisition will be to bring Reward NZ, Safco, and Southern Hospitality under the ultimate ownership of ECF Asia Pacific and the ECF Group. Attachment A shows ECF Group's structure pre and post-acquisition.

14. Reward's contact details are:

1 Arthur Dixon Court
Yatala
Queensland 4207

Attention: Julien Robillard
Director Business Transformation
[CONFIDENTIAL]

www.rewardhospitality.com.au

15. Reward requests that the Commission sends all correspondence regarding this application to David Blacktop at A&B Competition Lawyers (david@abcompetitionlawyers.nz, 021 366 284).

Southern Hospitality Limited – the party being acquired

16. Southern Hospitality is a New Zealand supplier to the New Zealand hospitality and food service industry. The vendors are the shareholders of Southern Hospitality as at the time of completion, who will own 100% of the shares in Southern Hospitality. A list of Southern Hospitality's shareholders at the time of the application is provided in Attachment B.[2]

17. Southern Hospitality is an importer and supplier of products to food service customers in the following categories: tabletop and kitchenware ([CONFIDENTIAL]% of revenue), equipment ([CONFIDENTIAL]% of revenue), consumables ([CONFIDENTIAL]% of revenue). Southern Hospitality has 12 showrooms[3] and 2 distribution centres.[4] Southern Hospitality has 210 full time equivalent employees.

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2 Some of the shareholders have agreed to reinvest some of the proceeds from the sale of Southern Hospitality in ECF Asia Pacific.

3 In Whangarei, Auckland, Hamilton, Tauranga, New Plymouth, Napier, Wellington, Nelson, Christchurch, Queenstown, Dunedin, and Invercargill.

4 Tauranga, which is Southern Hospitality's main distribution centre, and Christchurch, which is a satellite distribution centre.

18. Southern Hospitality also has ownership interests in four stainless steel fabrication businesses with plants in Auckland (two), Wellington, and Christchurch.[5] These fabricators produce benches, shelving units, bain-maries, wall-linings, and commercial ventilation systems. The stainless-steel business accounts for [CONFIDENTIAL]% of Southern Hospitality's revenues.[6]

19. Southern Hospitality's contact details are:

Southern Hospitality Limited,
12 Roberts Street
Dunedin

Deb Mackay (Managing Director)
[CONFIDENTIAL]

www.southernhospitality.co.nz

20. Southern Hospitality requests that the Commission sends all correspondence regarding this application to Dr Mark Berry, Barrister (mark.berry@mblaw.co.nz, 021 655 635) and Sarah Simmers, Anderson Lloyd (sarah.simmers@al.nz, 027 270 3907).

Rationale for the acquisition and the counterfactual

Reward's rationale for the acquisition

21. ECF Asia Pacific is acquiring Southern Hospitality to consolidate its position in the New Zealand market and position it to better compete against competitors to win existing business and the new business that is anticipated as the sector grows following COVID-19.[7]

22. More specifically:

    22.1 Reward will gain stainless-steel fabrication expertise, which is a capability ECF Asia Pacific is also in the process of acquiring in Australia;

    22.2 Reward will add Southern Hospitality's existing smallware (tabletop and kitchenware) business and expertise to the Reward NZ business – smallware (tabletop and kitchenware) has not been an area of focus for Reward NZ due to existing strong competition. Reward also expects to use Southern Hospitality's existing skill and expertise to further develop Reward's smallware offering in Australia; and

    22.3 Reward expects to be able to improve the parties combined consumables business, which Reward considers to be underdeveloped compared to its Australian offering.

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5 Southern Hospitality:
- wholly owns Project Mechanical Services (with an extraction fan fabrication plant in Auckland) and Project Mechanical Services itself owns 81% of Project Stainless Wellington Limited (with a plant in Wellington);
- 78% of Project Stainless Limited (with a plant in Auckland); and
- 79% of Project Stainless SI Limited (with a plant in Christchurch). [CONFIDENTIAL].

A copy of the structure chart of these entities is included as Attachment C.

6 The remainder of Southern Hospitality's revenue comes from sales of products other than those listed in paragraphs 17 and 18.

7 Notably, ECF Asia Pacific's business case on which its Board approved the acquisition assumes no market share gain because of the acquisition.

The vendors' rationale

23. Southern Hospitality was founded in Dunedin in 1989 by Hyam Hart and Roger Fewtrell. Having been involved in founding and growing the business since then, Mr Fewtrell (who, through his company Hospo Limited, owns 57.65% of Southern Hospitality) has a strong desire to exit his shareholding to ensure a smooth transition for his next of kin.

24. Interests associated with Andy Rayneau are Southern Hospitality's second largest shareholder, holding 25.48% of the shares in Southern Hospitality, and Mr Rayneau wishes to retire.

25. The acquisition is an opportunity for these two major shareholders and the remaining shareholders to exit their shareholdings.

The counterfactual

26. If this acquisition does not proceed, Southern Hospitality would continue to operate independently from Reward NZ as it does today whether under existing or new ownership.

27. The competition between Southern Hospitality and Reward NZ is likely to reflect the competition that existed immediately prior to the acquisition. [CONFIDENTIAL][8]

28. Other than the Safco acquisition, [CONFIDENTIAL].

Description of the relevant markets

29. As described above, Reward NZ and Southern Hospitality are suppliers to the commercial foodservice industry in New Zealand.

30. As far as the parties are aware, the Commission has not previously assessed a clearance application involving aggregation in this sector. Nor are the parties aware of overseas jurisdictions considering acquisitions at this level of the industry.[9]

31. The Commission has indicated that its preliminary view is that the acquisition impacts:

    31.1 the national market for the supply of products used in commercial kitchens (such as equipment, furniture, kitchenware, crockery, cutlery, glassware, uniforms, and cleaning products); and

    31.2 the national market for project-based services for supplying and fitting out commercial kitchens.

32. For the purposes of this application Reward has used the following markets to frame the competition analysis:

    32.1 the national market for the supply of commercial kitchen equipment including ovens, fryers, combi steamers, griddles, cooktops, pizza ovens, refrigeration, display cabinets, and dishwashers – the **commercial kitchen equipment market**;

    32.2 the national market for the supply of tabletop, kitchenware, and smallware used in commercial food service – the **food service smallware market**; and

[8] For completeness, Reward NZ has opened a satellite warehouse in Christchurch and has continued to add products to its consumables range.

[9] The CMA and European Commission have considered mergers involving equipment manufacturers. In 2022, the Competition and Markets Authority investigated the merger, Ali Group and Welbilt. And in 2008, the European Commission considered the merger of Manitowoc and Enodis.

32.3 the national market for the supply of consumables and hygiene products used in commercial food service – the **food service consumables market**.

33. The parties do not agree with the Commission's preliminary view that there is a separate market for the supply of project-based services for supplying and fitting out commercial kitchens. Rather, the parties see projects as being, primarily, a subset of the supply of commercial kitchen equipment although projects can also involve the supply of food service consumables.

34. Nevertheless, given the Commission's preliminary view, the parties have described separately why the acquisition would not substantially lessen competition even if there were a national market for the supply of project-based services for supplying and fitting out commercial kitchens – referred to as **commercial kitchen project services**.

35. In any event, Reward agrees with the Commission that what matters is not precisely defining markets, but rather ensuring that all relevant competitive constraints, and the extent of those constraints, are considered.[10] In particular, care is needed to ensure that adopting markets does not lead to certain constraints being discounted.

35.1 For example, in food service smallware and food service consumables markets, there are suppliers who supply all products and brand themselves as kitchen product specialists, and then there are suppliers who supply only some categories or are not specifically targeted toward the food service industry (e.g., Briscoes, The Warehouse, Kmart, Office Max, NXP etc). Adopting "food service" markets should not mean that the constraint from any supplier is underestimated.

35.2 In relation to commercial kitchen project services, customers have the choice of how they contract their project. Customers can and do choose to separate the design, supply, and installation aspects of a project, or combine some or all of them together. This choice in contracting is an important aspect of competition in this market and should not be overlooked or discounted.

36. For completeness, Reward notes that there are some products and services where there is no or no material overlap between Reward NZ and Southern Hospitality. For example:

36.1 Southern Hospitality provides stainless steel components and extraction hoods in competition with other stainless-steel fabricators and extraction providers,[11] while Reward NZ does not and has no plans to do so;

36.2 Reward NZ provides parts and service for commercial kitchen equipment in competition with other providers, while Southern Hospitality is a very limited participant in this market;[12] and

36.3 Reward NZ is a wholesaler of imported domestic sinks and tapware to merchants and distributors, while Southern Hospitality does not participate in this market.

37. Given the acquisition causes no or no material overlap in these areas, they are not considered further in this application.

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10 Mergers and Acquisitions Guidelines at [3.11]-[3.12].

11 These providers include Staybrite Stainless, Custom Made Stainless, RH King, Pacific Stainless, Paramount Stainless, Brightworks Stainless, Brayco, NCA Group, and Hoodmaster.

12 Southern Hospitality does distribute spare parts for some products it imports. Southern Hospitality undertakes no servicing itself but, on occasion, arranges other parties to perform repairs on behalf of some customers, including warranty claims.

The commercial kitchen equipment market

38. The commercial kitchen equipment market includes the supply of all types of kitchen equipment including ovens, fryers, combi steamers, griddles, cooktops, pizza ovens, refrigeration, display cabinets, and dishwashers.

Suppliers include local and international distributors and manufacturers

39. Suppliers of commercial kitchen equipment include distributors of products manufactured by others and the manufacturers themselves who can and often do supply direct to customers in New Zealand. Kitchen equipment manufacturers include both New Zealand based manufacturers (e.g., Moffat, Skope, and Washtech) and overseas manufacturers (e.g., Unox, Rational, Electrolux etc).

Single customer market

40. Customers for commercial kitchen equipment are highly sophisticated buyers. Simply put, they are experts buying the tools of their trade. They understand what types of products they want, what products are available, and the differences between them. Customers in the commercial kitchen equipment market include:

40.1 supermarkets;

40.2 accommodation providers (hotels and motels);

40.3 corporate customers;

40.4 café, restaurants, bars, and takeaways;

40.5 aged care (rest home and retirement villages);

40.6 healthcare (public and private);

40.7 education (early learning, primary, secondary, and tertiary);

40.8 government (Defence and Corrections);

40.9 maraes; and

40.10 production kitchens.

41. Broadly speaking, all of these types of customers acquire the same types of equipment. On the flip-side manufacturers do not make equipment specially designed for particular customer types. For example, the oven used in a restaurant kitchen will be the same as the oven used in an aged care facility, a hospital, or a prison. As such, the parties do not consider there are separate customer markets for equipment.

42. The only exception to this is that the supply of equipment to QSR chains falls outside this market. QSR chains such as McDonalds, Burger King etc, generally have equipment specially designed and manufactured for their restaurants by global manufacturers. This specialised equipment is specified on a global (or at least a regional) basis and supplied by local distributors who supply and install the specified products to local operators at prices negotiated with the manufacturers at a global or regional level. In New Zealand, Safco and JL Leonard are the local distributors who supply these QSR chains (and Reward NZ to a small extent). Other than small amounts of incidental purchases, Southern Hospitality has never supplied QSR chains. Given the lack of overlap in this customer segment, it is not considered further in this application for clearance.

Market is national

43. The commercial kitchen equipment market is national.

44. No commercial kitchen equipment is sold through stores (at least as far as the parties are aware). Sales occur remotely, whether online via a website, or by customers making direct contact with suppliers either by phone or email. As such, making sales of commercial kitchen equipment does not require a physical store presence. Indeed, the parties display only a handful of equipment products in their showrooms.

45. All product is delivered direct to a customer's premises. Where a customer buys a product manufactured in New Zealand, the product will usually ship straight from the manufacturer to the customer. (Most of Southern Hospitality's commercial kitchen equipment sales are of products manufactured in New Zealand.) Imported products are usually shipped from a supplier's warehouse or distribution centre. For example, Southern Hospitality and Reward NZ distribute imported product from their distribution centres in Tauranga (and to a lesser extent, Christchurch) and Auckland respectively.

46. As a result, commercial kitchen equipment suppliers either supply, or could easily supply, commercial kitchen equipment to customers anywhere in New Zealand. It follows that customers have access to suppliers wherever they are situated in New Zealand.

Food service smallware market

47. The food service smallware market includes the supply of tabletop (glassware, crockery, cutlery), kitchenware (which includes items such as breadboards, pans teapots, knives, plastic bins, cutlery holders, fry pans, pie tins, wooden bowls, pizza boards, ashtrays, baking trays, bar tools, strainers, pots, pans, salt & pepper shakers, cake covers, storage containers, cooling racks, thermometers, ice cream scoops, ladles, tongs, measuring spoons, platters, muffin trays, piping nozzles, spatulas, chalk boards, squeeze bottles, steam pans, table numbers, tongs, whisks, wine buckets), and other regularly purchased products such as uniforms.

48. There is no material difference in the competitive options available to customers of these products and therefore it is convenient to group them together in one market.

49. Suppliers in this market are diffuse and include:

    49.1 distributors who supply all these categories and market themselves specifically toward the food service trade; and

    49.2 generalist suppliers who supply some or all these products but do not market themselves as solely focussed on the foodservice industry, including suppliers such as Kmart, Briscoes, and The Warehouse.

50. As with the commercial kitchen equipment market, the market is national. To the parties' knowledge, all or almost all product is delivered direct to customers and suppliers supply products to customers across New Zealand (or could do so).

51. More generally, the importance of having a physical store has significantly decreased and the market is not one like supermarkets, fuel, or building products retailing where physical presence can be important. This is illustrated by the fact that Southern Hospitality – whose model has historically been based on having physical stores – has closed 12 cash and carry

locations in the last year, moving to a model where it has small display showrooms showcasing a limited range of products.

Food service consumables market

52. The food service consumables market includes the supply of consumable products used in food service such as hygiene products (chemicals, toilet paper etc) and disposables such as packaging.

53. Suppliers in this market are diffuse and include:

    53.1 distributors who market themselves specifically toward the food service trade;

    53.2 generalist suppliers who do not market themselves as solely focussed on the foodservice industry, including providers such as, Office Max, NXP etc; and

    53.3 specialist suppliers of cleaning or packaging products.

54. As with the commercial kitchen equipment market, the market is national. To the parties' knowledge, all or almost all products are delivered direct to customers and suppliers supply products to customers across New Zealand (or could do so).

Project services for commercial kitchens

55. As indicated above, the parties do not agree with the Commission's preliminary view that there is a separate market for the supply of project-based services for supplying and fitting out commercial kitchens.

56. While the parties accept that various suppliers refer to their ability to supply projects, there is no hard and fast rule as to what is a project and what is not. What amounts to a project can mean different things to different people in different contexts. This makes it almost impossible to define what a project is, from both a commercial and competition law standpoint.

57. Broadly speaking, a customer wishing to build or redevelop a commercial kitchen will require some or all of the following products and services.

    57.1 Design services, which are typically provided by architects, or specialist commercial kitchen designers, but are also provided in some cases by equipment suppliers (either directly or via sub-contract).

    57.2 Supply of commercial kitchen equipment and other components (e.g., stainless-steel extraction), and, in some cases, smallware, which are supplied by kitchen equipment distributors or manufacturers and other specialist suppliers.

    57.3 Installation and fitout services, which are typically provided by registered trades people such as builders, plumbers, gasfitters, and electricians.

58. A customer may also require project management services specifically for a commercial kitchen. However, project management services are usually provided by the construction company or project manager that is running an entire project of which the kitchen is only part.

59. Of these services, the supply of equipment accounts for approximately 80% of the total value of the services, with consumables and installation making up approximately 10% each. Design is a relatively small part of the overall cost.

60. From a demand side perspective, customers (or those managing the project on their behalf) will choose whether, how, and when, to procure these services based on what they believe delivers the most value for a customer.

61. While a customer could choose to acquire design services, equipment supply, installation, and project management services from the same provider (referred to as a "design, supply, and install project") this is relatively rare. Customers have many options beyond commercial kitchen equipment suppliers to supply design, installation, and project management services and customers can and do bundle or unbundle various aspects to achieve their desired result.

62. In fact, rather than acquiring all these services together, typically, customers will separate at least the design stage from the equipment supply and installation stages and will often separate all three.

63. From a market definition standpoint, the important point is that equipment suppliers – such as Southern Hospitality and Reward NZ – do not provide all these services. In reality, equipment suppliers supply commercial kitchen equipment (and consumables). Where needed, a supplier can sub-contract or self-supply installation and/or design services. Any equipment supplier can do this.

64. This sub-contracting model also means that, from a kitchen equipment supplier's viewpoint, there is very little, if any, distinction between supplying equipment to a customer who is using that equipment as part of a new or redeveloped commercial kitchen (a project) compared to supplying equipment to a customer who is not using that equipment in a project. The result is that competition to supply projects is a microcosm of the supply of commercial kitchen equipment and, to a lesser extent, the food service smallware market.

65. The result is, in the parties' view, that competition for projects collapses to competition to supply commercial kitchen equipment and food service smallware. There is no separate projects market.

66. Nevertheless, and without prejudice to the parties' view that there is no separate market for projects, to assist the Commission, Reward has analysed competitive effects in relation to the supply of commercial kitchen project services market.

Aged care (and healthcare) projects are not materially different to other projects

67. The parties understand that the Commission has been told that aged care (and healthcare) customers may have different requirements for their projects compared to other types of customers. The parties do not consider this is the case.

68. Every customer will regard their own needs and preferences as unique and important. That is natural. However, from a supplier's and market perspective, there is no material distinction between different types of commercial kitchens that would justify separate customer markets (other than for QSR chains as described above).

69. Indeed, no equipment suppliers make products that are dedicated solely to servicing aged care (or healthcare) customer. Product specialisation should be expected if there were a separate customer market. The reason there is no such specialisation is two-fold.

70. First, while commercial kitchen designs and layouts might differ to suit the production requirements and outputs of different customers, every commercial kitchen essentially consists of a mixture of cooking equipment, refrigeration, stainless steel components, and extraction. This is true of all customers, including aged care and healthcare.

71. Table 1 below shows the types of equipment used in aged care kitchens and restaurant kitchens. As illustrated, the products are the same.

Table 1: Types of equipment used in aged care kitchens and restaurant kitchens

	Aged care	Restaurant	Specification
Extraction Hood	Yes	Yes	Same
Stainless Steel Benching	Yes	Yes	Same
Refrigeration	Yes	Yes	Same
Dishwasher	Yes	Yes	Same
Combi Oven	Yes	Yes	Same
Prime Cooking	Yes	Yes	Same

72. Figure 1 below shows drawings for a typical aged care kitchen and a typical restaurant kitchen. Again what these drawings demonstrate is that while the kitchen layout might differ, the types of equipment used are the same.

Figure 1: Example of kitchen designs: aged care v restaurant kitchen

[CONFIDENTIAL]

73. As a further illustration, Reward has provided in Attachment D, four quotes Reward NZ provided in 2022. [CONFIDENTIAL]. These quotes illustrate that the types of equipment used in aged care are essentially the same as the equipment used in non-aged care settings.

74. Second, there are no regulatory or licensing barriers that prevent suppliers competing to win an aged care or healthcare customer contract. 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.

75. In summary, a supplier supplying project services to non-aged care customers has all the necessary equipment, skill, and expertise to supply an aged care or healthcare customer undertaking a project. In market definition terms:

    75.1 on the demand side, aged care and healthcare customers could easily switch their demand to suppliers who supply project services for non-aged care customers; and

    75.2 on the supply side, suppliers not currently supplying aged care and healthcare customers could easily, profitably, and quickly, supply aged care and healthcare customers without significant cost.

76. Simply put, aged care and healthcare customers have the same options open to them as other customers.

Why the acquisition will not substantially lessen competition in the commercial kitchen equipment market

Summary

77. The acquisition will not substantially lessen competition in the commercial kitchen equipment market.

78. On any plausible view of the market size, the acquisition is likely to fall within the Commission's concentration indicators. This low level of market share aggregation reflects the reality that the merged firm will be constrained by competition from existing distributors who face no obstacles to expanding their sales given the opportunity to do so.

79. The only "obstacle" to other distributors expanding post-acquisition will be the continued strong competition that can be expected from the merged firm. In this respect, to the extent the acquisition enables the merged firm to drive efficiencies and secure better supply terms, this will enhance competition rather than lessen it. As described in the Executive Summary, the parties do not understand Southern Hospitality to be a low-priced operator in the market currently due to its higher cost business model. Southern Hospitality's model has been to run a physical network of display showrooms with sales reps employed to drive sales.

80. Finally, the merged firm will also continue to be constrained by manufacturers, category specialists, the second-hand market, and customers' ability to exercise countervailing power by parallel importing their own product or switching away from the merged firm in the food service consumables market.

Existing strong competition from distributors and manufacturers

81. The market for the supply of kitchen equipment is highly competitive, with existing competition from distributors as well as manufacturers. Existing distributor competitors include:

    81.1 Wildfire, which is a New Zealand distributor owned 60% by Australian food service provider, Stoddart. Wildfire describes itself as "Specialists in Commercial Kitchen and Bar design, supply, fit out and project management".[13]

    81.2 Stoddart also has its own New Zealand operation, which it opened in 2018. Stoddart Australia describes itself as "one of Australia's leading stainless steel fabrication specialists, metal fabrication manufacturers, commercial food service equipment fabricators and distributor of major reliable brands for the food service, Architecture & building industries".[14]

    81.3 Aitkens, which is a New Zealand distributor with showrooms in Auckland, Christchurch, and Dunedin. Aitkens supplies major New Zealand and international brands.

    81.4 Nisbets New Zealand, which is part of the Nisbets Group, a United Kingdom catering equipment supplier with businesses in Australia, Belgium, France, Ireland, the Netherlands, and New Zealand. Nisbets New Zealand describes itself as "the leading distributor of catering equipment and hospitality supplies in New Zealand".[15]

    81.5 Host Service Limited (trading as Hostservice Commercial), is a New Zealand distributor based in Nelson and delivering to customers throughout New Zealand.

    81.6 BCE Catering Equipment, which is a New Zealand distributor based on the Kapiti Coast and supplies throughout the country.

    81.7 Rollex Group, which is a New Zealand distributor who "import a diverse range of high quality food processing, washware, dishwashing, and packaging equipment from around the world".[16]

    81.8 Tiger Hospo Equipment, which is a New Zealand distributor established in 2015 by an ex Southern Hospitality employee.

    81.9 Commercial Catering Equipment, which is a smaller operator based in Auckland.

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13 https://www.wildfire.co.nz/
14 https://stoddart.com.au/
15 See https://www.nisbets.co.nz/
16 https://rollexgroup.com/about-us

81.10 Northland Hospitality, which is another smaller operator based in Northland.

81.11 The Hospitality Supply Company is based in Northland and describes itself as "one of New Zealand's leading commercial hospitality suppliers" serving customers throughout New Zealand.[17]

81.12 Total Food Equipment, which is a New Zealand distributor of a range of commercial kitchen equipment.

81.13 JL Lennard, which is an Australasian distributor of commercial kitchen equipment from a range of international manufacturers.

81.14 Bunzl, which is part of the global Bunzl Group is a primarily a food service consumables supplier but also supplies a range of smaller commercial kitchen equipment.

81.15 Harvey Norman Commercial, which supplies equipment for commercial kitchen customers.[18]

81.16 Noel Leeming Commercial, which supplies equipment for commercial kitchen customers.[19]

81.17 Smith City Commercial, which supplies equipment for commercial kitchen customers.

81.18 FED Hospitality Equipment, is an Australian and New Zealand importer of commercial equipment.[20]

81.19 Webstaurant, which is the largest online restaurant supply store. Webrestaurant ships commercial kitchen equipment to New Zealand customers.

81.20 LKK Food Equipment, which describes itself as "one of New Zealand's largest manufacturers and suppliers of quality commercial catering equipment".[21] LKK supplies commercial gas cooking equipment, extraction canopies, stainless steel benching, shelving, grease converters, hot food displays.

82. All these distributors have access to the major brands sold in New Zealand.

Table 2: Non-exhaustive list of brands sold in New Zealand

Category	Brands sold		
	Southern Hospitality	Reward NZ	Other competitors
Prime cooking	• Blue Seal	• True Heat • Garland • Mareno • Waldorf	• Blue Seal • Waldorf

17 https://hospitalitysupply.co.nz/pages/about
18 https://www.harveynormancommercial.nz/
19 https://www.harveynormancommercial.nz/
20 https://www.fedproducts.co.nz/
21 http://www.lkk.co.nz/content/About/27.aspx

Category	Brands sold		
	Southern Hospitality	Reward NZ	Other competitors
			• Giorik • Cobra • Lincat
Combi Oven	• Moffat	• Rational	• Moffat • Rational (from Reward NZ) • Unox • Giorik • Honuo
Dishwasher	• Starline	• Hobart • Winterhalter • Meiko • Classiq • Eurowash	• Starline • Hobart • Winterhalter
Refrigeration	• Delta (Private Label) • Skope	• Turbo Air	• Skope • Turbo Air • Electrolux • Cyberchill • Airex (private label) • Forcar (private label) • Frigrite (private label) • Honar (private label) • FED (private label)

Category	Brands sold		
	Southern Hospitality	Reward NZ	Other competitors
			• True

83. In addition to these distributors:

83.1 manufacturers including Moffat (ovens and bakery equipment), Skope (commercial refrigeration), Electrolux, Cossiga (display cabinets), Festive NZ Limited (display cabinets), Future Products Group (display cabinets), Hobart (commercial dishwashers), Washtech (commercial dishwashers), and Teutonia (a wide range of commercial kitchen equipment), supply direct to end users as well as (non-exclusively) through distributors;

83.2 there are specialist providers who compete for specific types of products, for example, Interfridge (commercial refrigeration) and Cosell (commercial refrigeration);

83.3 service providers and installers such as Complete Electrical and KB Machinery can and do source equipment for sale, as do some 'container door' sellers such as Save Barn;

83.4 there is an active second-hand market with sales made by distributors or on a B2B basis through auction houses and trading platforms such as Trade Me, Brian Millan Auctions, Silverchef, and others; and

83.5 customers can and do parallel import their own equipment. [CONFIDENTIAL]

Existing strong competition illustrated by acquisition being within market share guidance

84. Reward has previously provided its assessment of the market share aggregation resulting from the acquisition. Reward has updated those figures based on data from 2022 for each of Southern Hospitality and Reward NZ. This estimate is shown in Table 1 below and the underlying data and an explanation of Reward's estimate of market size is included as Attachment E.

Table 3: Reward's estimate of market share aggregation

	Estimated market size	Reward NZ	Southern Hospitality	Combined share	Aggregation
Commercial Kitchen Equipment sales (excluding projects)	[CONFIDENTIAL]				
Total Commercial Kitchen Equipment sales (assuming no change in market size)	[CONFIDENTIAL]				

85. Reward estimates that the merged firm's total combined share (excluding equipment sales used as a proxy for projects) would be [CONFIDENTIAL]%; well within the Commission's

market share indicators for an unconcentrated market such as the commercial kitchen equipment market, illustrating a merger that is unlikely to substantially lessen competition.

86. This market share figure is based on the parties' actual sales in 2022 and a study of the Australian market completed for ECF Asia Pacific by Roland Berger in 2022. That study estimated the size of the Australian market, which Reward then interpolated to estimate New Zealand market size.

87. Reward understands that the Commission is cautious about the market size estimates given the assumptions that Reward needed to make to convert the Australian market size to an estimated New Zealand market size.

88. Reward accepts that there is room for different assumptions. However, for the acquisition to fall outside the market share indicators, the market size would have to be 30% smaller than estimated by Reward. Even adding the project equipment sales but not adjusting the market size to reflect the inclusion of projects, results in the merged firm's market share remaining well below 40%.

89. Given the unconcentrated nature of this market, these sensitivity checks suggest that on any plausible estimate of market size, the merger is likely to be within the Commission's concentration indicators.

90. Reward's view is that the fact that this acquisition is likely to be within the market share indicators is indicative of the strong competition the merged firm will continue to face in this market.

No obstacles to entry or expansion other than continued strong competition

91. 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 NZ / Southern Hospitality. This is evidenced by the recent entry and expansion of firms such as Tiger Hospitality, Bunzl, and Stoddart.

92. All existing suppliers have access to well-known and well-regarded domestic and international brands, including many of the brands distributed by the merging parties.

93. Access to warehousing capacity is not a barrier to entry or expansion in this market. As described at paragraph 45 above, New Zealand manufacturers of kitchen equipment distribute that equipment direct from their facilities, which removes the need for suppliers to hold stock.

94. To the extent that the suggestion is that the merged firm's increased scale will allow it to offer lower prices, then that is something that will promote additional competition in the market and drive better customer outcomes.

95. In any event, as illustrated in Table 4, there is only one supplier who appears in the top 10 suppliers of both companies.

Table 4: Parties' top 10 suppliers

	Reward NZ	Southern Hospitality
1	[CONFIDENTIAL]	[CONFIDENTIAL]
2	[CONFIDENTIAL]	[CONFIDENTIAL]
3	[CONFIDENTIAL]	[CONFIDENTIAL]
4	[CONFIDENTIAL]	[CONFIDENTIAL]

5	[CONFIDENTIAL]	[CONFIDENTIAL]
6	[CONFIDENTIAL]	[CONFIDENTIAL]
7	[CONFIDENTIAL]	[CONFIDENTIAL]
8	[CONFIDENTIAL]	[CONFIDENTIAL]
9	[CONFIDENTIAL]	[CONFIDENTIAL]
10	[CONFIDENTIAL]	[CONFIDENTIAL]

96. As a result there is unlikely to be significant purchasing efficiencies unless the merged firm consolidated to one brand. Reward has no plans to do this, but if it did, then the supplier that was not the merged firm's preferred supplier would actively seek to increase sales either directly, or by supporting another distributor to maintain its own sales.

Countervailing power of manufacturers

97. The scenario above, where a manufacturer would be incentivised to sell direct or support another distributor, illustrates the significant countervailing power manufacturers can exert.

98. Equipment suppliers rely on selling equipment manufactured by these manufacturers. If the merged firm acted in a way that damaged demand for a manufacturer's products, the manufacturer would simply support another distributor to expand its sales or increase its direct sales.

Countervailing power of customers

99. The Commission has indicated that it believes that customers have limited countervailing power because they are individually small and could not sponsor new entry.

100. While it may be true that individual customers could not sponsor new entry, as illustrated above they already have a host of providers who they can purchase equipment from, and the ability to purchase equipment from the active second-hand market.

101. However, customers can also exercise countervailing power by leveraging their choices in other markets to influence a supplier's position in the commercial kitchen equipment market.

102. For example, most equipment distributors also compete in the food service smallware and food service consumables markets. These distributors' goal is to maximise overall sales from a customer. Therefore, to the extent that a customer could not simply switch providers of commercial kitchen equipment to constrain pricing, the customer could switch its smallware and consumables purchases to another provider.

Possibility of the merged firm entering anti-competitive agreements in the future is not a relevant consideration for the Commission

103. The parties understand that a third party has expressed concern that the merged firm might be able to convince a manufacturer to agree to an exclusive distribution arrangement post-merger and thereby harm competition.

104. 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. There is no reason to believe that rival

manufacturers would have an incentive to agree to parallel exclusive agreements that harmed sales of their products in New Zealand.

105. In any event, the notion that the merged firm might enter into an anti-competitive agreement with another unknown party at some unknown point in the future is not something that the Commission can legitimately consider when deciding whether to grant clearance for the merger. The Commission would be in error if it did so.

106. First, it is pure speculation. It requires that the merger would change a manufacturer's profit maximising behaviour and there is no evidence to support that proposition. Nor is there any evidence that the merged firm would seek more exclusive distributorships.

107. Second, and more fundamentally, exclusive contracts are not unlawful. A contract is only unlawful if it would itself be likely to substantially lessen competition. Put another way, if the merged firm entered an exclusive arrangement in the future, then that is a separate and distinct matter for the Commission to consider on its merits under Part 2 of the Commerce Act.

108. In short, the Commission cannot decline clearance on the basis that the merged firm might do something else that is unlawful in the future. By analogy, it is not open to the Commission to decline a clearance for firm A to buy firm B because the Commission believes that the acquisition makes it more likely that the merged AB will acquire firm C and that acquisition will substantially lessen competition.

Why the acquisition will not substantially lessen competition in the food service smallware market

Summary

109. The acquisition will not substantially lessen competition in the food service smallware market.

110. As with the commercial kitchen equipment market, on any plausible view of the market size, the acquisition is likely to fall within the Commission's concentration indicators.

111. The market is highly fragmented with a plethora of strong existing competitors. These competitors range from food service distributors to category specialists, to well-known general suppliers such as Briscoes, Kmart, Farmers, and The Warehouse.

112. Customers already commonly substitute between these different providers and none of these providers face any obstacles to expanding their sales in the event the merged firm sought to increase prices or reduce quality and can be counted on to do so.

113. While there is also the potential for competitors from adjacent markets to enter, the ability for existing suppliers to expand their sales quickly and easily, and demonstrated readiness of customers to switch suppliers will be sufficient to constrain the merged firm.

There is a plethora of existing competitors

114. There is a plethora of competitors in the food service consumables market. These competitors include both those who market exclusively to the hospitality trade, generalists, and category specialists.

Category	Tableware	Kitchenware
Southern Hospitality	Yes	Yes
Reward	Yes	Yes

Category	Tableware	Kitchenware
Aitkens	Yes	Yes
BCE Catering	Yes	Yes
Nisbets	Yes	Yes
Bunzl	Yes	Yes
Webstaurant	Yes	Yes
Northland Hospitality	Yes	Yes
The Hospitality Supply Company	Yes	Yes
Total Food Equipment	Yes	Yes
Save Barn	Yes	Yes
The Warehouse	Yes	Yes
Kmart	Yes	Yes
Farmers	Yes	Yes
Stevens	Yes	Yes
Briscoes	Yes	Yes
Newby Zeaglaar Agencies	Yes	Yes
Blue Ribbon	Yes	Yes
OfficeMax	Yes	Yes
Catering Hardware	Yes	Yes
NXP	Yes	Yes

115. The parties' experience is that customers tend to shop around and purchase products from different suppliers based on price and value. For example, Southern Hospitality research conducted in 2017 show that [CONFIDENTIAL] Southern Hospitality customers had purchased products from other suppliers in the preceding 12 months with the main alternative providers being:

115.1 [CONFIDENTIAL];

115.2 [CONFIDENTIAL];

115.3 [CONFIDENTIAL];

115.4 [CONFIDENTIAL];

115.5 [CONFIDENTIAL];

115.6 [CONFIDENTIAL]; and

115.7 [CONFIDENTIAL].

116. Notably, Burns & Ferrall (now Reward NZ) was not cited by Southern Hospitality customers as a supplier they purchased from.

117. That research is now 6 years old, and the parties believe that the proportion of customers using multiple suppliers will have increased, particularly given the increasing use of online providers.

118. The parties' view is that the largest suppliers of crockery, glassware, kitchenware, and tabletop items to the food service trade are Briscoes, Kmart, Farmers, and The Warehouse. These suppliers are, obviously, well known brands with very strong distribution capabilities that sell items from international manufacturers, such as ARC and Libby, as well as their own house brands crockery and cutlery.

119. These generalist suppliers will in themselves be sufficient to constrain the merged firm, even putting aside the strong constraint that will remain from other food service specialists.

Low market share and low market share aggregation

120. As outlined in paragraph 84 above, Reward has previously provided the Commission with its estimate of the market aggregation in relation to kitchenware and tabletop resulting from the merger. Reward has updated these figures in Table 5 below.

Table 5: Reward's estimate of aggregation in kitchenware and tabletop

	Estimated market size	Reward NZ	Southern Hospitality	Combined share	Aggregation
Smallware	[CONFIDENTIAL] [22]				

121. As with its estimates of the equipment market, Reward accepts that the market share aggregation depends on assumptions made converting the Australian market size to an equivalent New Zealand figure.

122. However, as with the equipment market, even if the market size was halved (which would be a very conservative approach), the merged firm's market share would still be well below 40%. Given the unconcentrated nature of the market, this level of market share would be well within the Commission's market share indicators.

No obstacles to entry or expansion other than continued strong competition

123. As with the commercial kitchen equipment market, there is nothing to prevent suppliers from increasing their sales other than continued strong competition in the market, including from the merged Reward NZ / Southern Hospitality.

124. Indeed, to the extent that scale is an issue, Briscoes, Kmart, Farmers, and The Warehouse are all larger and likely to have much better bargaining and buying power than any of the food service specialists (including the merged firm). The merger will not change that.

125. In any event, as with the commercial kitchen equipment market, to the extent that the suggestion is that the merged firm's increased scale will allow it to offer lower prices, then that is something that will promote additional competition in the market and drive better customer outcomes.

126. Notwithstanding the strong competition in this market, entry into this market from an adjacent foodservice market would be likely in the event prices rose above competitive levels. Food service wholesalers such as Bidfood or Service Foods visit their customers regularly to deliver food supplies, chemicals, and consumables and it would be a simple step for that type of provider to add smallware to its offering.

Countervailing power across categories and the food service consumables market

127. Given the breadth and depth of competition in this market, it is unlikely that a customer would ever have to contemplate exercising countervailing market power. However, to the extent that a customer faced more limited choice in some categories, they could exercise

22 This figure includes sales identified as falling within "medium to large orders" used as a proxy measure of projects.

countervailing power by switching suppliers in other categories or in the food service consumables market.

Why the acquisition will not substantially lessen competition in the food service consumables market

128. For very similar reasons to the food service smallware market, the acquisition will not substantially lessen competition in the food service consumables market.

129. The acquisition will result in very low market share aggregation as shown in Table 6 below.

Table 6: Reward's estimate of aggregation in food service consumables market

	Estimated market size	Reward NZ	Southern Hospitality	Combined share	Aggregation
Consumables	[CONFIDENTIAL]				

130. As with its other estimates of market share, Reward accepts that the market share aggregation depends on the size of the market. However, even if the market size was reduced to [CONFIDENTIAL] per year (which is an unrealistically low number), the merged firm's market share would still only be approximately 20%. Given the unconcentrated nature of the market, this level of market share would be well within the Commission's market share indicators.

131. The parties' share is low because the most significant participants in this market are providers such as Bunzl, Office Max, Gilmours, NXP, NZ Safety Blackwoods, Otago Packaging Supplies, Snell Packaging, and Pete's Packaging. These suppliers will in themselves be sufficient to constrain the merged firm, even putting aside the strong constraint that will remain from other food service specialists. For completeness, the competitors include:

131.1 Bunzl;

131.2 Nisbets;

131.3 OfficeMax;

131.4 Gilmours;

131.5 Ecolab;

131.6 NXP;

131.7 NZ Safety Blackwoods;

131.8 Otago Packaging Supplies;

131.9 Snell Packaging;

131.10 Pete's Packaging;

131.11 Aitkens;

131.12 BCE Catering;

131.13 Northland Hospitality;

131.14 The Hospitality Supply Company; and

131.15 Total Food Equipment.

132. None of these competitors face any barriers to entry or expansion in this market.

Why the acquisition will not substantially lessen competition for the supply of project services

Summary

133. For equipment distributors such as Southern Hospitality and Reward NZ, competition to supply projects is a microcosm of competition in the commercial kitchen equipment market (and, to a lesser extent, the food service smallware market). While projects can involve design and installation aspects, in essence, equipment distributors are competing to supply kitchen equipment in competition with other equipment distributors or manufacturers.

134. As in the commercial kitchen equipment market, there are a range of providers who can and do compete to win projects of all sizes across New Zealand. These providers include Wildfire, Aitkens, Electrolux, BCE, Nisbets, Rollex Group, and others. There is nothing to stop these providers, or others, expanding their sales in the event the merged firm sought to increase prices or reduce quality.

135. Nor is there any reason to regard the competitive options open to aged care and healthcare customers as being any different to the competitive options open to other project customers. There is nothing unique or different about these projects that would prevent any supplier to projects competing to win these customers.

136. Overall, the parties view competition for the supply of projects as being the same as competition for the supply of commercial kitchen equipment. And although shares of supply are difficult to calculate for projects, the parties have no reason to believe that their market shares are any different to their market share in the commercial kitchen equipment market.

Customers choose the way they structure projects

137. As described in paragraphs 55 to 65 above, customers building or redeveloping a kitchen acquire one or more of the following:

137.1 design services;

137.2 project management services;

137.3 the supply of commercial kitchen equipment and other components and, in some cases, consumable products; and

137.4 installation and fitout services.

138. Customers (or those managing the project on their behalf) [23] will choose how and when to acquire the different services they need for a project based on their view of what will drive the best value outcome for them. For example, if they believe they will achieve a better value outcome by separating the design from the equipment supply and installation, the customer will do so.

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23 Such as an architect, construction company, interior fit-out company, project management company.

139. Relevantly, commercial kitchen equipment suppliers such as Reward NZ and Southern Hospitality are specialists in providing the commercial kitchen equipment part of a project. This reflects the bulk of a project's cost. Equipment supply is what these suppliers are competing for.

140. Equipment suppliers have no particular expertise or comparative advantage in the supply of design services, project management, or installation and fitout. However, they will offer to provide those services (either directly or by way of sub-contract) if a customer asks them to. Importantly, the supply of these services is contested not only by equipment suppliers, but also other suppliers who specialise in providing those services.

141. In short, customers have many options to supply these services. Indeed, as described above:

141.1 Customers typically separate the design stage from the equipment supply and installation stages. When a customer does so, they will engage one of the many New Zealand and international firms with commercial kitchen design specialties and capabilities.[24] All these parties compete to supply design services, as do equipment suppliers with inhouse design capability (e.g., Southern Hospitality and Wildfire).

141.2 Project management services for a kitchen are usually provided by the construction company or project manager that is running an entire project of which the kitchen is only part.

141.3 Nearly all equipment suppliers subcontract all or some of the installation and fitout services for a project to specialist third party providers (although some equipment suppliers such as Rollex Group and Reward NZ have some installation capabilities). These providers are readily available in the market.

142. Since equipment suppliers are bidding for equipment supply – which accounts for the bulk of a project's cost – the ability and incentive for customers to unbundle these different services substantially constrains the equipment suppliers' provision of these services in two ways:

142.1 first, it constrains what the equipment supplier can charge for these services given (a) the equipment supplier may lose that aspect of the job, and (b) this might undermine the equipment suppliers' chance to win the equipment supply; and

142.2 second, and relatedly, the ability for another equipment supplier to sub-contract all these different services means the barriers to entry and expansion in supplying projects are very low.

143. The result is that where suppliers are competing to supply a project (or competing for a supply and install project) competitive dynamics will reflect competitive dynamics in the commercial kitchen equipment market.

Competition for projects reflects competition in the commercial kitchen equipment market

144. As described at paragraphs 81 and 83 above, there are numerous equipment suppliers who compete to supply equipment including, among others:

24 These providers include: Project Design Consultants (PDC), SACH Hospitality Design, Izzard Design, PTK Design, Material Creative, ReDesign, Control Space, RM Designs, FPG, Burning Red, Ignite, Dimension Shopfitters, Element 17, Retail Dimension, Ken Design, Foley Architects, Peddle Thorpe Architects, Pennant and Triumph, Mike Marshall – Dogs Body 2.0, Space Studio, Spaceworks, Cheshire Architects, AnD Design Adrian Nancvival, Miele Design, Valdimir Danilov Designs, Godward Designspace, MTD Design [CONFIDENTIAL], FSDA [CONFIDENTIAL], CKP [CONFIDENTIAL]. Alto Cibum [CONFIDENTIAL], and Sangster Design Group [CONFIDENTIAL].

144.1 Wildfire / Stoddart;

144.2 Hostservice Commercial;

144.3 Aitkens;

144.4 Nisbets;

144.5 BCE Catering;

144.6 Electrolux; and

144.7 Rollex Group.

145. Insofar as these providers need to acquire other components (e.g., stainless steel components), there are several manufacturers they can partner with or acquire services from if they do not have their own inhouse capability.

146. Similarly, where a supplier is bidding for a supply and install project, access to installation services is straightforward. Nearly all equipment suppliers subcontract all or some of the installation and fitout services for a project to specialist third-party providers (although some equipment suppliers such as Rollex Group and Reward NZ have some installation capabilities). These providers are readily available in the market.

147. Design, supply, and install projects are the least common form of contracting in New Zealand. However, where a customer chooses to proceed in this way, equipment providers complete the design themselves or partner with a kitchen designer to tender for jobs. Reward NZ and Southern Hospitality represent these different approaches.

147.1 Reward NZ partners with SACH Hospitality Design to bid for design, supply, and install projects, having closed its design function in 2021; and

147.2 Southern Hospitality has its own internal design team which it uses to bid for design, supply, and install projects.

148. There are several equipment suppliers in addition to Southern Hospitality and Reward NZ that regularly compete to win design, supply, and install, projects, including:

148.1 Wildfire Commercial Kitchens and Bars;

148.2 Hostservice Commercial;

148.3 NCA Group;

148.4 Aitkens Hospitality;

148.5 Electrolux Commercial;

148.6 Rollex Group.

149. There are also other providers such as CMP Interiors, who adopt a different model. [25] CMP Interiors is the interiors division of the construction company CMP. [CONFIDENTIAL] CMP Interiors provides examples of the work it has done on its website and describes the scope of its commercial interior fitout work as ranging: “from rest homes, hotels and hospitals, to restaurants, cafes, bars and offices”. [26]

25 See https://www.cmpinteriors.nz/
26 https://www.cmpinteriors.nz/our-projects

150. More generally, the availability of third party designers (as illustrated by Reward NZ's decision to close its design function) means that lack of an internal design function, or lack of design capacity, would not prevent an equipment supplier from competing for design, supply, and install projects.

Market place evidence shows strong existing competition for all types of projects

151. Given the different ways customers can choose to structure and procure projects, it is very difficult to estimate market shares for project work as distinct from other equipment supply. The best the parties can do is provide proxy measures of what might be a project. Reward NZ and Southern Hospitality have provided the proxy estimates of projects revenues in Table 7 below.

Table 7: Estimates of project revenues

	Reward NZ[27]	Southern Hospitality[28]
Total revenue from projects	[CONFIDENTIAL]	[CONFIDENTIAL][29]
Equipment only	[CONFIDENTIAL]	[CONFIDENTIAL]

152. Estimating the total value of projects delivered in any one year is also extremely difficult as there is no publicly available information, and no party has visibility on all projects being completed. Nevertheless, the parties do not believe that they are over-represented in the supply of projects compared to their respective supply of commercial equipment.

153. In short, the parties believe that competition is strong, the market is fragmented, and that their combined market share would be well within the Commission's concentration indicators. This is perhaps best illustrated by the fact that Reward NZ has only 2 employees in its projects team.

154. The parties' view that competition is strong is illustrated by the fact that there are several providers who can and do successfully compete for projects of all sizes throughout the country as illustrated by the case studies below.

Table 8: Case studies of projects

Project	Type	Value[30]	Winning supplier	Feedback from customer
[CONFIDENTIAL]				
[CONFIDENTIAL]				
[CONFIDENTIAL]				
[CONFIDENTIAL]				
[CONFIDENTIAL]				
[CONFIDENTIAL]				

27 This revenue reflects revenue from supply situations Reward NZ has managed through the project module of its ERP. A project will be managed in this module if it involves some complexity, e.g., more than one invoice, third party charges etc. It is provided as Attachment F.

28 This revenue reflects "project related spend" categories and, in respect of equipment sales, medium to large equipment orders are used as a proxy for projects.

29 Project revenue is calculated as the sum of equipment, smallware, and consumables sales for medium to large orders, plus all other project revenue' plus stainless steel sales for medium to large orders (including sales to other parties carrying out projects).

30 Based on Southern Hospitality's quote or tender or feedback from the market.

Project	Type	Value[30]	Winning supplier	Feedback from customer
[CONFIDENTIAL]				
[CONFIDENTIAL]				

]

The parties' bid data does not show Reward NZ and Southern Hospitality are "close competitors"

155. The Commission has expressed the preliminary view that Southern Hospitality's and Reward NZ's bid data shows that Southern Hospitality and Reward NZ are "close competitors" to supply projects.

156. The parties do not believe that the data provided to the Commission supports this conclusion. At best, the data simply confirms that Southern Hospitality are competitors (something that is not denied) and that there are several other suppliers who are actively winning significant project work. Beyond that, the information is an unreliable guide as to the competitive strength of different providers.

<u>Southern Hospitality data</u>

157. [CONFIDENTIAL].

158. [CONFIDENTIAL]

159. [CONFIDENTIAL]

160. [CONFIDENTIAL]

161. [CONFIDENTIAL]

162. [CONFIDENTIAL].

163. [CONFIDENTIAL]

    163.1 [CONFIDENTIAL];

    163.2 [CONFIDENTIAL];

    163.3 [CONFIDENTIAL]; and

    163.4 [CONFIDENTIAL].

<u>Reward NZ's data</u>

164. [CONFIDENTIAL]

165. [CONFIDENTIAL]

166. [CONFIDENTIAL]

No barriers to entry or expansion

167. There are no barriers to entry or expansion for project services. 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.

168. Nor would there be anything to stop a stainless-steel fabricator from expanding into the projects space. In Australia, it is typically stainless-steel fabricators that bid for projects rather than equipment suppliers. There would be nothing to prevent that happening in New Zealand. In fact, an operator like Stoddart is well placed to expand its offering in New Zealand.

Competition is and will remain strong for aged care and healthcare projects

169. As described at paragraphs 67 to 76, the parties do not consider there is any material difference between supplying an aged care or healthcare facility and supplying other projects. At their core, all commercial kitchens require the same types of equipment and there are no legal or regulatory barriers that would prevent a supplier supplying aged care customers.

170. As a result, there is no distinction between the suppliers that compete for projects generally and those that compete for aged care and hospital projects specifically or who could compete for these projects given the incentive to do so.

170.1 [CONFIDENTIAL]

170.2 [CONFIDENTIAL]

170.3 [CONFIDENTIAL]

171. There is simply nothing to stop these providers from expanding in this segment if given the incentive to do so.

172. Despite some apparent suggestions to the contrary, there are no reputational barriers to entry or expansion in this market. In the parties' view, the fact that a customer may prefer to use someone it has used before – all else being equal – is unremarkable and is something that is replicated in all markets across the economy.

173. Such preferences do not amount to barriers to entry or expansion or confer market power. They simply reflect a preference to retain the status quo if nothing changes. The question is whether there is some switching cost or structural impediment that would prevent or hinder a customer switching away from their preferred supplier should the supplier seek to increase prices or decrease quality.

174. There are no such switching costs. Each project reflects a new opportunity that must be secured by a supplier. No doubt, a customer will have regard to the past performance of a supplier. That is natural. However, there are already other suppliers who supply aged care and healthcare providers, and other suppliers who have a demonstrated record of delivering projects that are, for all intents and purposes, the same.

175. The reality is that should the merged Reward NZ/Southern Hospitality seek to increase prices or decrease quality for aged care or healthcare customers, then those customers could very easily switch their supply to another provider such as one of those already serving the aged care and healthcare segment.

176. Moreover, the opportunity for providers is significant as demand for retirement villages and aged care increases with New Zealand's aging population, and the size of facilities increases.[31]

177. There is also every incentive for larger aged care providers to promote and encourage such entry given they are repeat players. To illustrate, [CONFIDENTIAL]. This level of demand is

[31] See, for example, NZACA "Aged Residential Care Industry Profile 2021-22" (March 2022), pp 15 and 56. Available at https://nzaca.org.nz/advocacy-and-policy/arc-industry-profile-2021-22/.

likely to be more than sufficient to encourage a new provider into the segment should that be necessary.

Coordinated, vertical, or conglomerate effects are unlikely

178. For completeness, Reward submits that the acquisition is unlikely to result in a substantial lessening of competition arising from coordinated, vertical, or conglomerate effects.

 178.1 Coordinated effects are unlikely due to the numerous competitors that will remain in the market combined.

 178.2 Vertical and conglomerate effects from the acquisition are unlikely given 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.

Summary and conclusion

179. The acquisition will not substantially lessen competition in any market. These markets are highly competitive and highly fragmented. In all markets, the merged Reward NZ / Southern Hospitality will continue to face strong competition from a range of competitors none of whom face any obstacles that would prevent them from expanding their sales in response to an attempt by the merged entity to raise prices or reduce quality.

180. Reward, therefore, requests that the Commission grant clearance for the acquisition.

Declaration

I, David Bull, have supervised the preparation of this notice seeking clearance. To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to 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 Chief Executive Distribution at ECF Asia Pacific, the parent company of Reward Supply Co Pty Limited, and I am duly authorised to submit this notice.

[CONFIDENTIAL].

David Bull

Date: 29 March 2023

Schedule of confidential information

The following information has been removed from the public version of the Application because the information is confidential to the parties and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice the commercial position of one or both of the parties (*cf* s 9(2)(b)(i) and (ii) of the Official Information Act):

- The percentage figures in the two bullet points under the eighth paragraph on page 1 of the Executive Summary.
- The percentage figure in paragraph [6].
- The percentage figure in paragraph [7].
- The percentage figure in paragraph [17].
- The percentage figure in paragraph [18].
- The second sentence of the third bullet point in footnote 5.
- The second sentence of paragraph [27].
- All of paragraph [28] after the comma.
- Figure 1 in its entirety.
- The second sentence of paragraph [73].
- The figures in Table 3.
- The percentage in paragraph [85].
- The names in Table 4.
- The words between “that” and “Southern Hospitality in the second sentence of paragraph [115].
- The names in paragraphs [115.1]-[115.7].
- The figures in Table 5.
- The figures in Table 6.
- The dollar figure in the second sentence of paragraph [130].
- The figures in Table 7.
- Paragraphs [157]-[166] in their entirety.
- The second sentence after the words “To illustrate,” in paragraph [177].
- Attachment D.
- All of Attachment E before the heading “Market sizing”.

- The dollar values in the second, third, fourth, and eighth paragraphs on page 4 of Attachment E.
- The percentage figures in the sixth and ninth paragraphs on page 4 of Attachment E.
- The final sentence of the sixth paragraph on page 4 of Attachment E.
- All of the seventh paragraph on page 4 of Attachment E after the word “for”.
- Attachment F in its entirety.
- Attachment G in its entirety.
- Attachment H in its entirety.
- Attachment I in its entirety.

The contact details of the individuals listed in the following parts of the Application have been removed from the public version to protect the privacy of individuals relying on s 9(2)(a) of the Official Information Act.

- Mr Robillard’s contact details in paragraph [14].
- Ms Mackay’s contact details.
- Mr Bull’s signature.

The following information the Commission (but not the parties) considers to be confidential to third-parties.

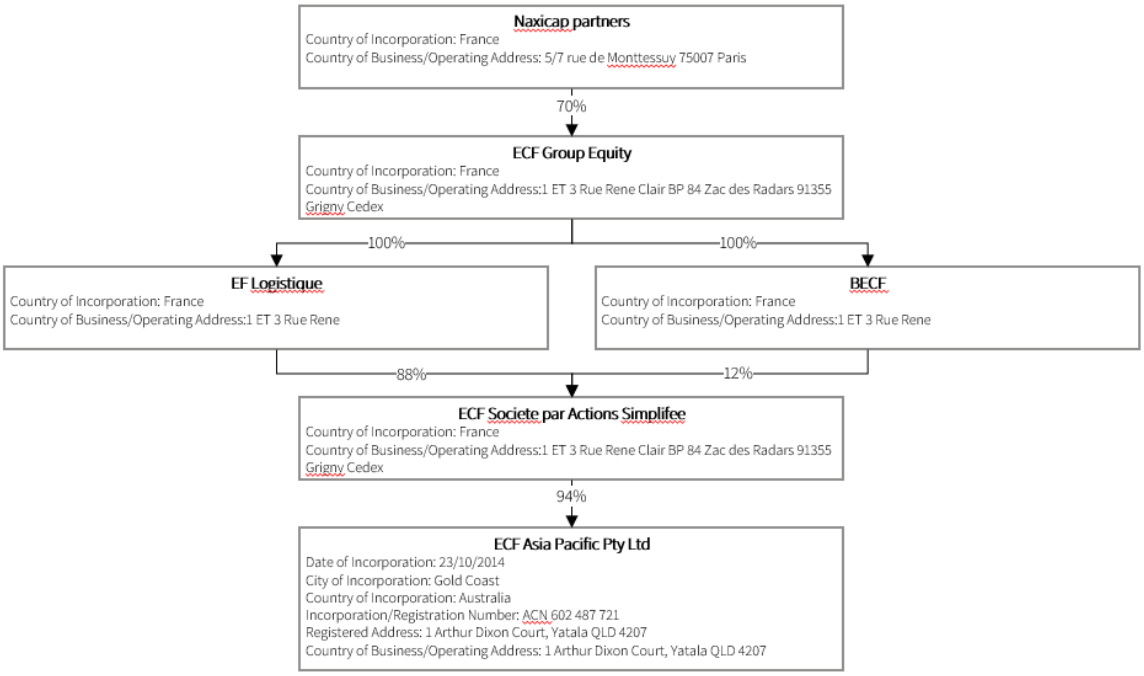
- The second sentence in paragraph [83.5].
- The third sentence of paragraph [149].
- Table 8 in its entirety.
- The highlighted information in footnote 24.
- Paragraphs [170.1]-[170.3].

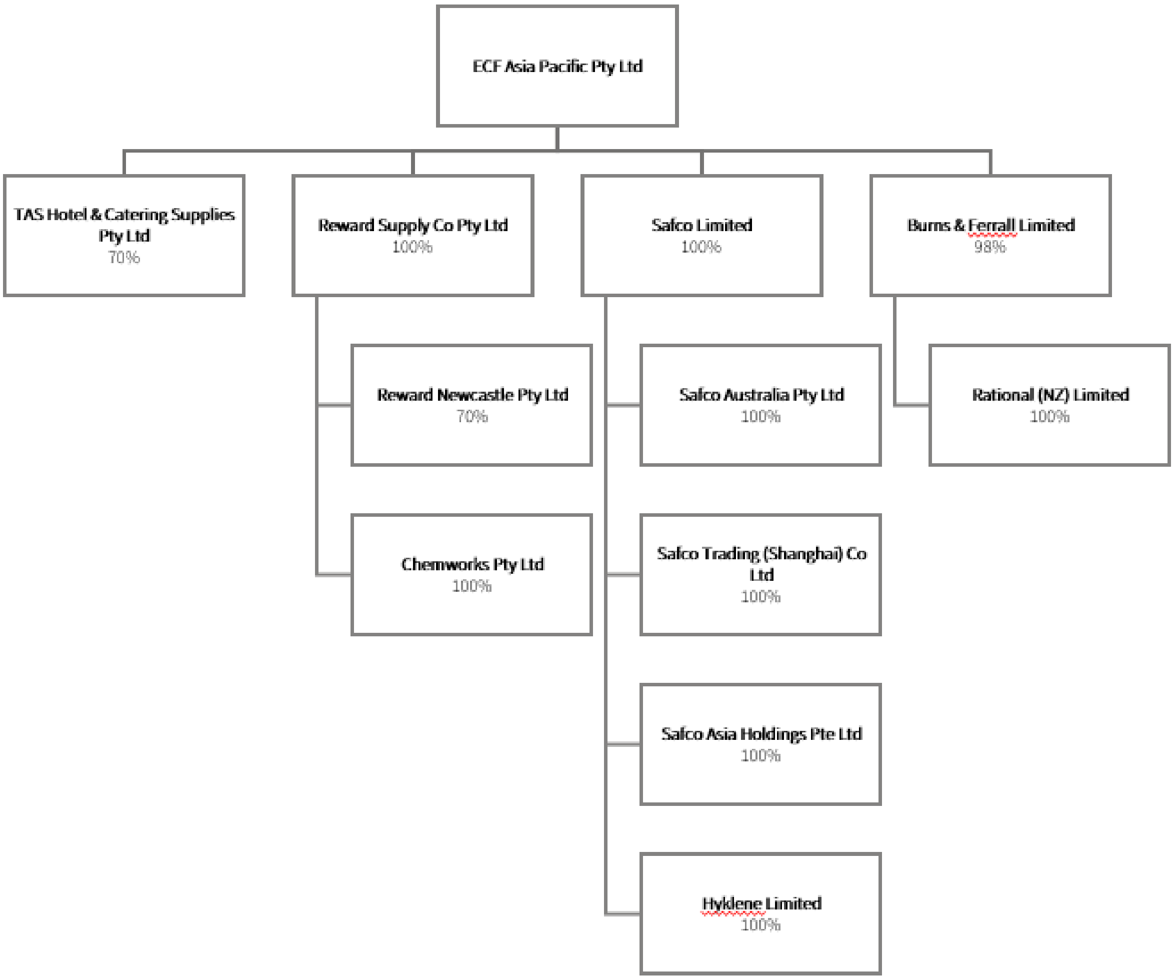
Schedule of required information in notice for clearance

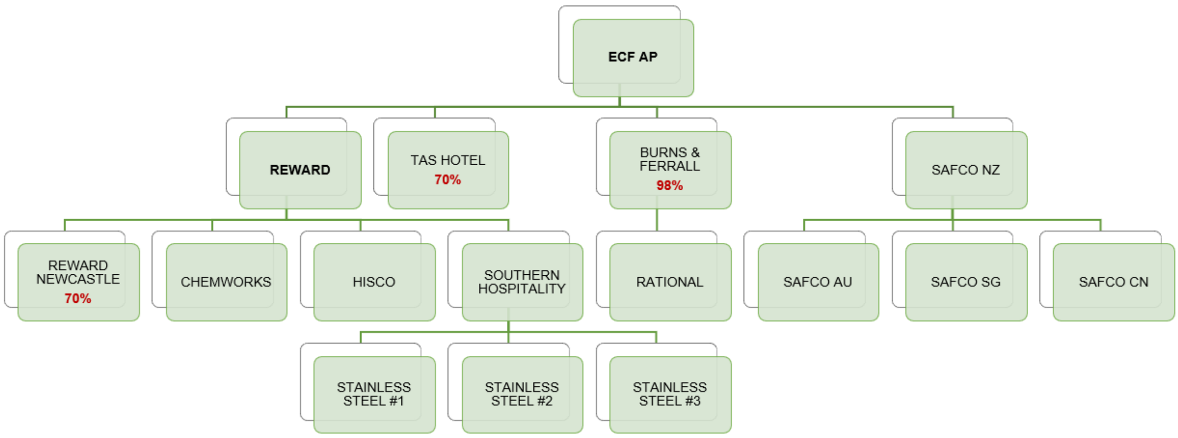
Notice para.	Commission request	Response
[1]	Applicant details	See paragraphs [4] to [15] of the Clearance Application.
[2]	Other party details	See paragraphs [16] to [20] of the Clearance Application.
[3.1]	Type of transaction	Acquisition of shares. See paragraph [3] of the Clearance Application.
[3.2]	Merger rationale	See paragraphs [21] to [25] of the Clearance Application.
[3.3]	How merger changes control	See paragraph [13] of the Clearance Application.
[3.4]	Ancillary agreements	There are no ancillary agreements.
[3.5]	Counterfactual	See paragraphs [26] to [28] of the Clearance Application.
[4]	International notification	N/A
[5.1]	Applicant's view on market definition	See paragraphs [29] to [76] of the Clearance Application
[5.2]	Each merging party's total sales revenues, volumes, and capacity for the last three financial years.	The Commission has requested information from the parties previously. If there is any further information the Commission requires, the parties will provide that information.
[5.3]	Names and contact details of the merging parties' main competitors	The parties understand that the Commission already has this information. If there are further details the Commission requires, the parties can provide that information.
[5.3]	Names of any trade or industry associations which either of the merging parties participate	**Southern Hospitality:** • Employers' Association • Restaurant Association • Hospitality New Zealand • NZ Aged Care Association • Retirement Villages Association • NZ Chefs Association **Reward NZ** • NZ Chefs Association • Restaurant Association
[5.4]	Names and contact details of merging parties top 5 customers	The parties understand that the Commission already has this information. If there are further details the Commission requires, the parties can provide that information.
[6]	Why the transaction will not substantially lessen competition	See the Executive Summary and paragraphs [77] to [180] of the Clearance Application.
[7]	Copies of documents bringing about the merger	Previously provided to the Commission.
[8]	Internal applicant documents seen by the Board or senior management within the last two years that relate to: • the transaction; or • market conditions.	See Attachment G

Notice para.	Commission request	Response
[9]	Most recent annual report, audited financial statements and management accounts	See Attachment H

Attachment A: Reward structure



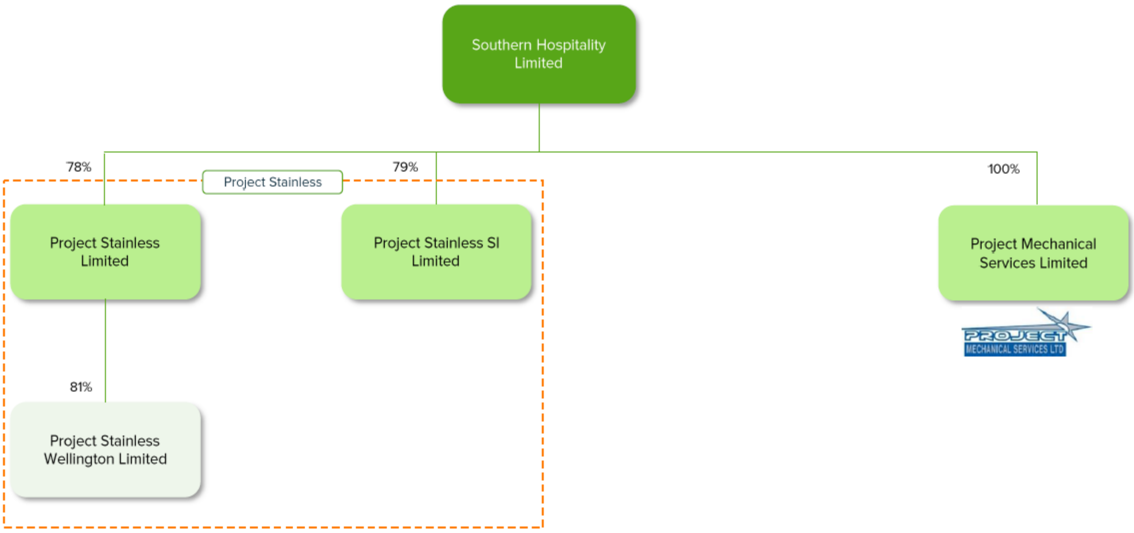

ECF Asia Pacific Pty Ltd
TAS Hotel & Catering Supplies Pty Ltd
70%
Reward Supply Co Pty Ltd
100%
Safco Limited
100%
Burns & Ferrall Limited
98%
Reward Newcastle Pty Ltd
70%
Chemworks Pty Ltd
100%
Safco Australia Pty Ltd
100%
Safco Trading (Shanghai) Co Ltd
100%
Safco Asia Holdings Pte Ltd
100%
Hyklene Limited
100%
Rational (NZ) Limited
100%


ECF AP
REWARD
TAS HOTEL
70%
BURNS & FERRALL
98%
SAFCO NZ
REWARD NEWCASTLE
70%
CHEMWORKS
HISCO
SOUTHERN HOSPITALITY
RATIONAL
SAFCO AU
SAFCO SG
SAFCO CN
STAINLESS STEEL #1
STAINLESS STEEL #2
STAINLESS STEEL #3

Attachment B: Southern Hospitality's shareholders

Shareholder	No of Shares	Shareholding %
Andrew Kenneth Rayneau, Bridget Gordon and Tbag Trustees (Comcater) Limited as trustees of the Comcater Trust	2,854,298	25.48%
Anthony Bakewell	215,625	1.92%
Christopher Burgess	165,234	1.47%
Jeffrey Casey	58,499	0.52%
Christopher Colvill	20,729	0.19%
Stuart Crooks	1,250	0.01%
Rory Dempsey	1,250	0.01%
Derryn Fewtrell	974,375	8.7%
Paul Gell	7,500	0.07%
Hospo Ltd	6,458,984	57.65%
Nathan Houston	76,875	0.69%
Deborah Mackay	328,750	2.93%
Khan Shanta	2,500	0.02%
Ross Simmonds	1,250	0.01%
Michael Subramani	1,875	0.02%
Blair Travers	34,375	0.31%

Attachment C: Southern Hospitality's structure chart



Attachment D: Reward NZ quotes

[CONFIDENTIAL]

Attachment E: Estimates of market share

[CONFIDENTIAL]

[CONFIDENTIAL]

[CONFIDENTIAL]

Market sizing

There are no publicly available estimates of market size. Reward has therefore estimated market size based on an analysis of Australian market size prepared for Reward by a third party consultancy, Roland Berger.

That analysis estimated the total market in Australia would be [CONFIDENTIAL] in 2022. This excluded projects.

Reward adjusted the market size into NZD at an exchange rate of $0.906, which was the exchange rate at the end of October 2022. This provided an Australian market size of [CONFIDENTIAL]. Using the prevailing exchange rate today of $0.929, would imply an Australian market size of [CONFIDENTIAL].

The NZ market size was scaled at 20% of the Australian market to reflect the population differences between Australia (25.8 m) and New Zealand (5.1 m). This provided an estimated New Zealand market size of [CONFIDENTIAL] at October exchange rates or [CONFIDENTIAL] at today's prevailing exchange rate.

To be conservative, Reward has used the exchange rate prevailing at the time of the clearance application to calculate market size.

Based on Reward's Australian product mix (Reward is the market leader in Australia) Reward estimates: smallware represents [CONFIDENTIAL]% of the market, consumables represents [CONFIDENTIAL]% of the market, and equipment (excluding projects) [CONFIDENTIAL]%. [CONFIDENTIAL].

This product mix was applied to the New Zealand market to give an estimated market size for [CONFIDENTIAL].

Reward also estimates that the projects component of the commercial kitchen equipment market to be equivalent to non-project equipment sales market (based on discussions with equipment suppliers in Australia). Therefore, the equipment market for projects only is estimated to be another [CONFIDENTIAL].

To put these figures in context, Statistics NZ data shows that in 2022, "accommodation and food services" providers purchased goods and services worth $11.225 billion (with salary and wages another $5.5 billion).[32] The market sizes described above account for [CONFIDENTIAL]% of all purchases collectively, and [CONFIDENTIAL]% individually.

[32] Statistics New Zealand "Business financial data: December 2022 quarter". Available at https://stats.govt.nz/publications?filters=Business%20financial%20data%2CInformation%20releases

Attachment F: Reward NZ supply managed in projects module of ERP

[CONFIDENTIAL]

Attachment G: Reward NZ documents

[CONFIDENTIAL]

Attachment H: Accounts

[CONFIDENTIAL]

Attachment I: Southern Hospitality projects data

[CONFIDENTIAL]