
Commerce Act 1986: Business Acquisition

Section 66: Confidential Notice Seeking Clearance

Proposed Acquisition of Tecpak Industries Limited by TEC Projects Limited

Public version

22 October 2010

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

GPO Box 3810
Sydney NSW 2001

T +61 2 9263 4000
F +61 2 9263 4111

DX 10348 SSE

www.gtlaw.com.au

Contents

	Page
Executive summary	3
PART 1: TRANSACTION DETAILS	4
1 Acquirer	4
2 Target	4
3 Relationships	5
4 The Proposed Acquisition	6
5 Commercial rationale	6
6 Transaction documents	6
7 Other jurisdictions	6
PART 2: THE INDUSTRY	7
8 Goods or services supplied by the merger parties	7
9 The industry affected by the Proposed Acquisition	8
10 Industry trends and developments	11
11 Recent relevant mergers	14
PART 3: MARKET DEFINITION AND MARKET SHARE	15
12 Horizontal aggregation: Market dimensions	15
13 Horizontal aggregation: Product differentiation	18
14 Vertical integration	18
PART 4: COUNTERFACTUAL	19
15 In the event the Proposed Acquisition does not take place	19
PART 5: COMPETITION ANALYSIS	20
16 Existing competitors	20
17 Market shares	22
18 Constraint by existing competitors	23
19 Potential competition: Conditions of entry	27
20 Factors likely to impede or prompt new entry	30
21 LET test: Likely new entrants	30
22 LET test: Sufficiency of constraint posed by potential new entrants	35

23	LET test: Timeliness of Entry	35
24	Countervailing power: Ability to self-supply, import or switch	35
25	Countervailing power: Top buyers	40
26	Coordinated market power	41
	PART 6: INFORMATION AND DOCUMENTATION	43
27	Contact details of relevant competitors, buyers, suppliers and relevant market participants	43
28	Annual Reports	43
	PART 7: CONFIDENTIALITY	43
	DECLARATION	44
	Confidential Appendix A - Sale and Purchase Agreement	45
	Appendix B - Glossary	46
	Appendix C - Plastic manufacturing – raw materials and processes	47
	Appendix D - The IM manufacturing processes	50
	Appendix E - Contact details of relevant competitors, buyers, suppliers and relevant market participants	51
	Confidential Appendix F - Most recent Annual Reports	57

Executive summary

Proposed Acquisition	TEC Projects Limited, a wholly owned subsidiary of Pact Group (NZ) Limited (the Acquirer) proposes to acquire the business of Tecpak Industries Limited (the Target).
Relevant markets	<p>For the purposes of this Notice, the competitive impact of the Proposed Acquisition has been analysed on the basis of the narrowest area of overlap between the Acquirer and the Target, namely, the manufacture and supply of thin-walled plastic containers manufactured using injection moulding technology.</p> <p>Whilst this is a narrower focus than has been previously adopted by the New Zealand Commerce Commission (Commission), this Notice has adopted this approach on the basis that if there is no substantial lessening of competition in the narrow area identified above, then no substantial lessening of competition is likely in any broader market either. However, the Acquirer submits that the relevant market in which thin-walled plastic containers are manufactured is likely to be broader than injection moulded thin-walled plastic containers.</p>
No substantial lessening of competition in any relevant market	<p>There will be no substantial lessening of competition in any relevant market because post acquisition:</p> <ul style="list-style-type: none">- the merged firm will continue to face vigorous competition from Huhtamaki, currently New Zealand's largest supplier of thin-walled plastic containers manufactured using injection moulding;- the merged firm will also be constrained by competition from Cryovac, a competitor with very extensive international experience and resources;- barriers to entry will continue to be low;- imports, and the threat of imports, will continue to play a significant role constraining the operations of the merged firm; and- large customers will continue to have significant countervailing power.
Conclusion	For the reasons outlined above, and discussed in more detail in this submission, the Proposed Acquisition will not have the effect or likely effect of substantially lessening competition in any relevant market in New Zealand.

PART 1: TRANSACTION DETAILS

1 Acquirer

The acquirer is TEC Projects Limited, a wholly owned subsidiary of Pact Group, incorporated under the *Companies Act 1993* on 22 June 2010.

The contact details for TEC Projects Limited are:

Registered office:
Level 6
57 Symonds Street
Grafton
AUCKLAND 1010

The contact details for Pact Group are as follows:

Registered office / physical address:
Corporate Head Office
Level 16, 644 Chapel Street,
South Yarra, Victoria 3141
Australia

Postal address:
PO Box 6265
South Yarra 3141
Australia

Telephone: + 61 3 8825 4100
Fax: + 61 3 9815 8388
Website: www.pactgroup.com.au

Contact person: Nick Perkins, General Counsel
Telephone: +61 3 8825 4108
Fax: + 61 3 9815 8388
Email: nick.perkins@pactgroup.com.au

All correspondence in respect of this notice should be directed to:

Gina Cass-Gottlieb
Partner, Gilbert + Tobin
Level 37, 2 Park St
Sydney NSW 2000
Australia

Telephone: +61 2 9263 4006
Fax: + 61 2 9263 4246
Email: gcass-gottlieb@gtlaw.com.au

2 Target

The contact details for the Target are:

Tecpak Industries Ltd
759 Kaikorai Valley Rd
PO Box 1685, Dunedin
New Zealand 9054

Telephone: +64 3 488 4138
Fax: +64 3 488 4315
<http://www.tecpak.co.nz/>

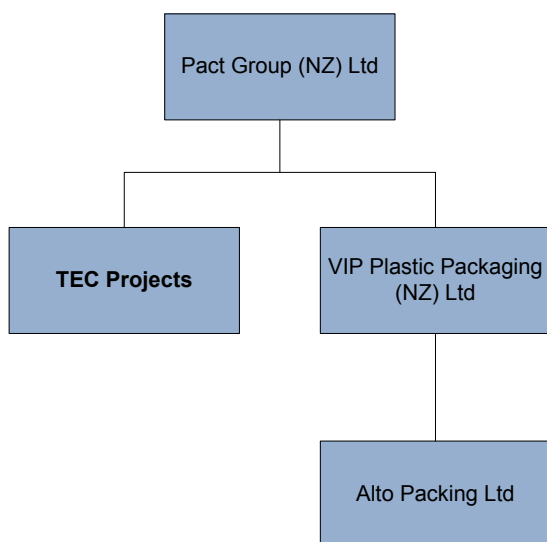
Attention: Pat White, Chief Executive Officer
Telephone: +64 3 478 8029
Email: PWhite@tecpak.co.nz

3 Relationships

3.1 Acquirer

The structure of ownership and control of the acquirer, as relevant to the competition law assessment of the Proposed Acquisition, is shown below.

Figure 1 Structure of ownership and control of the Acquirer



When the Commission considered the acquisition of the plastic packaging business of ACI Plastics by Visy Industrial Plastics (NZ) Limited (**VIP**),¹ it approached its analysis of the transaction on the basis that VIP and VisyPak² were associated.³

In the interests of expediting the clearance process, this position was not challenged by Pact Group when it applied for clearance to acquire Alto Holdings (**Alto**) in 2006.⁴

¹ As Pact Group used to be known in 2004 (ie, at the time of that transaction).

² In that transaction, VisyPak was the trading name of VisyPET (NZ) Limited and Visy Rigid Packaging (NZ) Limited, both ultimately part of Visy Industries Pty Ltd.

³ *Decision 524 (Visy Industrial Plastics (NZ) Limited and ACI Operations NZ Limited)*.

⁴ *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)*.

The Acquirer has decided to adopt the same approach in respect of the proposed acquisition of Tecpak Industries Limited. Therefore, the Acquirer proceeds with this application on the basis that the Commission will treat Pact Group and Visy Industries Pty Ltd (**Visy**) as being associated. However, Pact Group continues to reserve its position on this issue.

3.2 Target

Tecpak Industries Limited is owned as to 79.4% by Rangatira Limited and as to 20.6% by MG Securities Limited. The company does not have other relevant subsidiaries.

4 The Proposed Acquisition

The Acquirer is proposing to acquire the entire plastic packaging business and assets of the Target and all its subsidiaries and associated companies (**Proposed Acquisition**), including:

- a manufacturing plant located in Dunedin, South Island;
- all the equipment of that plant, including [REDACTED] and
- the business and goodwill of the company.

The Acquirer and the Target have agreed to terms on which the Proposed Acquisition would take place. A copy of the Agreement for Sale and Purchase (**Agreement**) is attached to this submission as Appendix A

The Agreement is conditional on a clearance being granted by the Commission.

5 Commercial rationale

The Acquirer's commercial rationale for the Proposed Acquisition is to:

- increase efficiencies and reduce production costs;
- take advantage of cost synergies; and
- improve the Acquirer's capacity to compete in an increasingly global packaging market, particularly with competitors in China, Malaysia and other areas of South-East Asia that manufacture and offer to supply products across the region.

6 Transaction documents

As mentioned in section 5 of this Submission, a copy of the Agreement is included as Appendix A.

7 Other jurisdictions

The parties have no intention to seek clearance from any other competition authority in another jurisdiction in relation to the Proposed Acquisition.

PART 2: THE INDUSTRY

8 Goods or services supplied by the merger parties

8.1 The Acquirer

The Acquirer manufactures and supplies packaging products made of both steel and plastic.

In New Zealand, the range of plastic packaging products manufactured and supplied by Pact Group includes:

- a mixture of large and small containers such as bottles, tubs, punnets, pails, jars and tubes (eg for yoghurt, ice-cream, dips, fruit and sandwich wedges);
- trays and bowls (eg, for meat and bakery products including biscuit trays and cake domes);
- oven-ready containers (eg for pre-made meals);
- PET beverage bottles;
- closures; and
- larger plastic containers such as crates, jerry cans, cubes, large pails and drums.

These products are used for the packaging of a wide array of products such as pharmaceuticals, food, beverages, personal care products (eg cosmetics and hair products), chemicals, paints, etc.

Pact Group's customers are found in a large number of industries including retail, manufacturing, food and beverages, and industrial, amongst many others.

8.2 The Target

Tecpak Industries Limited is a New Zealand packaging company. It manufactures and supplies the following range of plastic packaging products:

- small plastic tubs;
- dishes;
- bowls; and
- lids.

The Target's packaging products are mostly supplied to the food manufacturing industry (with a small percentage supplied to horticultural clients).

8.3 Overlap

Both the Acquirer and the Target manufacture and supply small rigid plastic packaging containers.

As previously analysed by the Commission, small rigid plastic packaging containers are containers made of rigid plastic (ie, as opposed to flexible materials), in sizes of up to 20

litres, which are manufactured in a range of shapes and forms including as bottles, jars, pails, bowls, tubs, etc.⁵

Small rigid plastic packaging containers have a wide variety of uses and industry applications.⁶ In particular, we note that the food service industry commonly uses these types of containers for bulk supply and takeaway food. Retailers also acquire small rigid plastic containers to package supermarket goods (eg deli or bakery goods), and in the fresh food context, small rigid plastic containers are often used to pack together fresh fruit, produce or meat. They can also be variously used to package pharmaceuticals, health care products, cosmetics, and household chemicals.

Due to the broad spectrum of products that can be characterised as small rigid plastic packaging containers, this submission focuses the analysis of the competitive impact of the Proposed Acquisition on a group of containers generally known as “thin-walled plastic containers” which is the area of specific overlap between the parties.⁷ Some examples of thin-walled plastic containers are shown below.



These containers are a subset of the small rigid small plastic packaging container group, and are manufactured by both the Acquirer and the Target.

9 The industry affected by the Proposed Acquisition

9.1 Supply chain of the affected industry

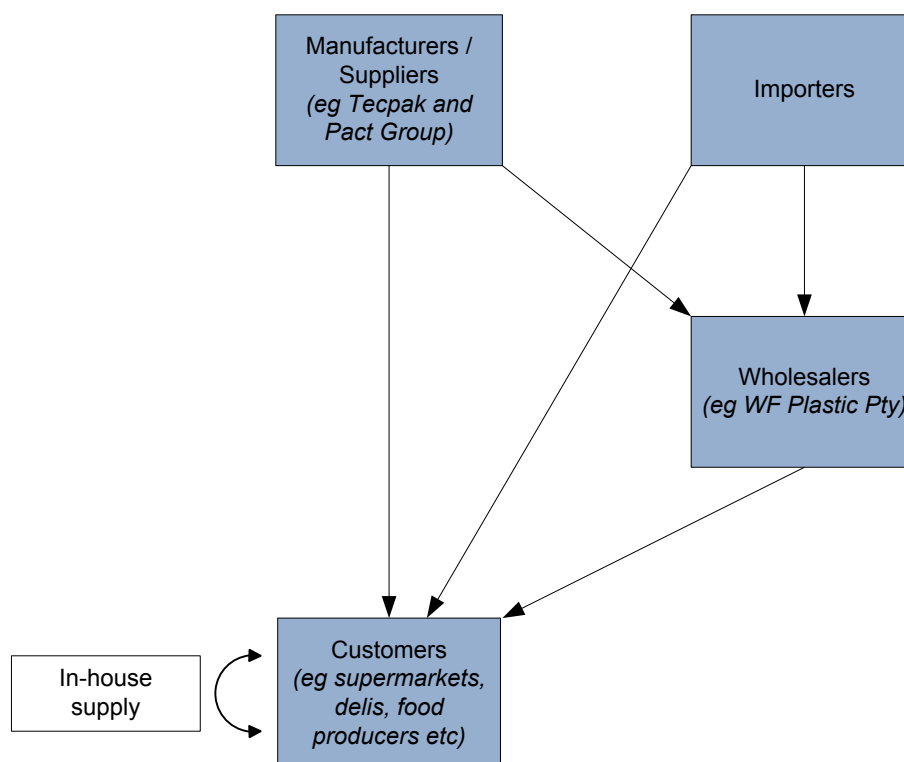
The industry affected by the Proposed Acquisition is the rigid plastic packaging industry in New Zealand. The relevant supply chain is illustrated below in Figure 2.

⁵ *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)*, at pages 19-20.

⁶ *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)*, at paragraphs 48 and 107.

⁷ The phrase “thin-walled” typically refers to plastic containers with a wall thickness ranging from 0.4 to ~ 0.80mm (in contrast to containers of normal thickness which ranges from 1mm to 5mm). Although not always described as “small”, the fact that the walls of these containers are thin means that these products are typically small in size (ie, definitively below 20 Lt in capacity). Also, no reference is made to the fact that these containers are made of rigid plastic, but again, that is implicit in the reference to “thin-walls”.

Figure 2 Supply chain for rigid plastic packaging



Rigid plastic containers are either manufactured locally or imported. The low cost of labour overseas means that overseas manufacture is comparatively inexpensive. For this reason imports typically constitute a large proportion of the market for any plastic packaging product supplied in New Zealand.

Both filled product and empty containers are imported from China, South-East Asia and Australia. The Acquirer is aware of both large and small plastic packaging containers being imported into New Zealand. Typically the smaller, lighter and more “nestable” the container, the more readily it can be imported.

The Acquirer supplies its rigid plastic containers directly to pharmaceutical and personal care product manufacturers, industrial product suppliers (eg paint manufacturers), food manufacturers and fillers, food service operators, fast-food restaurants, large retailers and other operators in the consumer goods market.

Pact Group also supplies a large number of packaging products (such as meat foam trays) to distributors or wholesalers that on-sell the containers to end-customers. Wholesaler or distributor customers of Pact Group in New Zealand include

Wholesalers and distributors typically also purchase from other packaging manufacturers and/or engage in direct importation of products.

Large volume customers may also choose to satisfy some or all of their packaging requirements in-house by setting up their own manufacturing operations. For example, Goodman Fielder, National Foods and Fonterra have their own form, fill and seal operations.

9.2 Manufacturing thin-walled plastic containers

Rigid plastic containers can be manufactured using a number of manufacturing processes such as extrusion and thermoforming (**E&T**), injection moulding (**IM**), injection blow moulding (**IBM**), extrusion blow moulding (**EBM**) and injection stretch blow moulding (**ISBM**).

However, only two of these processes, namely E&T and IM, are used to manufacture thin-walled plastic containers. Further details on these processes are provided below.

(a) Resins

There are five types of resin, or polymers used to manufacture thin-walled plastic containers:

- Polystyrene (**PS**), which is used to manufacture trays for packing meat and fruit, disposable cups, cutlery and;
- Polyethylene terephthalate (**PET**), which is principally used to manufacture soft drink and water bottles, salad domes, biscuit trays, dressing and peanut butter containers;
- Polypropylene (**PP**), which is used for applications such as reusable and collapsible/stackable crates, caps and closures, blow moulded bottles and other thin-walled containers used in food packaging (eg, yoghurt and ice cream tubs);
- Polyethylene (**PE**), which is used to manufacture products such as milk bottles, ice cream containers, juice bottles, and food wrapping material; and
- Polyvinyl chloride (**PVC**), which is used to manufacture cordial bottles, hoses, tubing, berry and tomato punnets, deli containers, cake domes, butter packs and yoghurt container lids. However, the use of PVC in food packaging is declining.

More information on these resins is set out in Appendix C.

(b) The E&T process

In this process, resin is heated and formed (or “extruded”) into a sheet/roll, which is then cooled. The sheet /roll is then reheated and, using pressure, is “thermoformed” into the container shape in a mould, in an in-line (usually continuous) process. The container is then either trimmed (for a container manufactured by a packaging supplier), or filled and lidded prior to being trimmed (for large volume customers using their own in-house “form, fill and seal” processes) to create a single container.

The E&T process can be used to manufacture a broad spectrum of end products that range from low value (eg, food service clam shells) to high value (eg, cream cups) goods.

(c) The IM process

The IM process involves a closed mould into which heated molten resin is injected. It has the advantage of distributing material within the container to very tight tolerances, so a very strong container, at light weights, is achievable.

The IM process is not continuous (like the E&T process); therefore it is typically more expensive than E&T. However advances in IM design and polymer technology have reduced cycle times, making IM more competitive with E&T.

Further details into the IM process are set out in Appendix D.

(d) Decoration

A variety of decoration methods can be used for thin-walled plastic containers, including:

- adhesive labels (eg La Bonne Cuisine Mediterranean chunky dip);
- shrink-wrapping (eg single serve noodles);
- offset printing (applied to the surface of the container) including both for E&T containers and dry offset IM containers (eg, dips such as Tararua and Country Goodness); and
- in-mould-labelling (**IML**) (eg dip brands such as Lisa's, Turkish Kitchen, Genoese and ice-creams including brands such as Blue Ribbon, Killinchy Gold, New Zealand Natural, Rush Munro's and Talley's).

IML is only available for IM containers. It involves the introduction of a printed label into the mould, immediately before the resin is injected. The label, being printed via a normal flat print technology, provides excellent quality graphics and the possibility of top-to-bottom 360 degree coverage.

E&T containers at the higher end of the value spectrum are often offset printed,⁸ and must be held on a mandrel for ink to be printed via a print blanket onto the packaging. This technology used to be of a much lower quality than IML, however, in recent years quality has improved.

10 Industry trends and developments

In recent years, the plastic packaging industry has been marked by the following characteristics, trends and developments:

- growth in use of plastic packaging over alternatives such as steel or glass;
- costs pressures upon packaging manufacturers;
- customers seeking innovative packaging to distinguish a product as unique or premium; and
- imports comprising an increasingly significant proportion of sales.

10.1 Growth in use of plastic packaging

The significant growth in the use of plastic packaging in recent years has been consumer driven. In developed countries there has been an overall increase in the availability of disposable income which in turn has led to an overall increase in availability of consumer products. Also, the number of smaller one-person households has increased,⁹ and end-customers have become more and more time-pressured. Hence, consumers are willing to buy more value-added, convenience products such as prepared foods.

⁸ There is a range of decorating options other than offset printing available as explained above.

⁹ Statistics from the 2006 New Zealand Census show that the number of 1-person households is increasing: from 20.7 percent (256,569 households) in 1996 to 23.0 percent (328,299 households) in 2006: Statistics New Zealand, 2006 Census Data.

The plastic packaging industry has responded to this increased demand. As a result, in countries such as the UK, the major growth in plastic packaging since 2000 has been for chilled ready-made meals, with plastic trays and other plastic packaging gaining market share at the expense of aluminium trays and dual ovenable board.¹⁰ This is a global trend that is likely to continue driving growth in packaging for years to come.

10.2 Costs pressures upon packaging manufacturers

According to BIS Shrapnel,¹¹ the packaging industry has been experiencing “tremendous cost pressures”. The average polymer price has risen significantly in recent years, as has the price of fuel and thereby transport costs. Manufacturers are not always able to recover these costs from their customer base, which has led to some business failures.

These cost pressures are being somewhat alleviated by technological developments that have enabled the manufacture of increasingly more “lightweight” packaging products requiring less polymer.¹² This has resulted in a trend toward products being redesigned so they have thinner walls and weigh less (which also benefits manufacturers that transport products over long distances). As a result, the overall proportion of polymer volume used for plastic packaging as a percentage of total plastic consumption has been declining over time.¹³

10.3 Customers seeking innovative packaging to distinguish product as unique or premium

Packaging is critical to the success of a new product (or product relaunch), particularly within the fast moving consumer goods (FMCG) segment.

For example, IM containers have tended to have better decoration than E&T containers. For this reason, they are often perceived by FMCG manufacturers as fitting more closely the image of “premium” products.¹⁴ The Acquirer believes this perception has led to the current industry preference for IM containers, and the corresponding increased take-up of IM containers by FMCG manufacturers.

However, the Acquirer notes that IM containers tend to be more expensive than their equivalent E&T containers, in part because they require more resin and in part because IML (the label technology used with IM containers) is a relatively expensive process (the label alone can comprise anything from 10% to 40% of the cost of the container). So, although IM containers are currently a popular choice, industry preference could easily swing back to less expensive containers if customer preferences move more sharply into a cost efficiency phase.

Different shapes and sizes of container are also being adopted to attract the attention of end consumers. For example, New Zealand Natural has a 946ml ice-cream container which is a uniquely curved carton container. The Acquirer is also aware that one of its competitors [REDACTED] is also producing a 1 litre ice-cream container in a rectangular-oval shape for Rush Muro's and Killinchy Gold. Other containers are being designed for functional reasons as well as aesthetics. For example, Heinz recently introduced a

¹⁰ Pira International & University of Brighton, ‘Packaging’s Place in Society’, 2004, at page 38.

¹¹ BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 26.

¹² BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 29.

¹³ BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 21.

¹⁴ For example, using IML it is possible to manufacture innovative products such as the highly decorated drinking cups sold in cinemas (eg the Twilight cup, which is imported from Thailand).

plastic pot made from plastic with special oxygen scavengers. The packaging looks more appealing than a can, and compared to conventional plastic packaging has the advantage of an extended shelf life.

10.4 Imports play a significant role in the market

Imports have traditionally represented a large proportion of sales of rigid plastic packaging in New Zealand.¹⁵ Imports are particularly prevalent in relation to products such as oven-ready containers for frozen meals and stock line products made available to smaller distributors and end-users such as small cafes and restaurants.

A similar situation arises in Australia. In a recent survey by BIS Shrapnel, 40% of respondents stated cheap imports as the reason for increasing competitiveness in the industry.¹⁶

Importers typically include:

- local manufacturers that may supply imported products along side locally manufactured containers;
- global manufacturers that may import products from their overseas plants for sale into the local market. For example, the Acquirer understands that Cryovac has been looking at the opportunity to begin importing small rigid plastic containers into New Zealand from Malaysia. The company has a number of other operations throughout Asia, which, if pricing was appropriate, it could utilise to import rigid plastic packaging products into New Zealand;
- wholesalers (eg Packaging House, Gilmours, Snells, Arypak, Unipak, Cospak and Stowers) that can supply imported as well as locally manufactured products for resupply to end-customers.; and
- customers that engage in direct importation of products they need. [REDACTED]

Most imports into New Zealand arrive from Australia, China and South East Asia. Notably, in the last 10 years manufacturing standards and technology in China and other Asian countries have vastly improved to the point where they are now more comparable to New Zealand standards (but at a fraction of the cost).

Imports are common both in respect of empty and filled containers. Importing filled products, in particular, is a commonly used strategy because:

- the relatively small size of most consumer products makes such imports economical; and
- brands are globalised and consumer products are typically packaged in the same (or substantially similar) containers throughout the world.

Switching to imports temporarily or threatening to switch is one way larger companies negotiate better prices and push down costs (see further discussion in section 24).

¹⁵ In Decision No 583, the Commission accepted that the biggest competitor in the market for small rigid plastic containers was imports of unfilled product: *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)*, at par 261.

¹⁶ BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 26.

11 Recent relevant mergers

In 2008 Pact Group acquired the assets of Mintt Packaging (**Mintt**). Mintt was a division of Form Plastic, a small supplier of plastic containers that operated a plant in Auckland. At the time of the acquisition, the company was in receivership. Pact Group has never traded as Mintt.

In 2008, Pact Group acquired the shares of Signum NZ Limited (**Signum**), a small manufacturer of plastic containers. At the time of the acquisition, the company was in receivership.

The Acquirer is aware that Premier Plastics Ltd and Superior Plastics Ltd (together the Premier Plastics Group) supply rigid plastic packaging and have recently been acquired by Cospak Pty Ltd. Cospak Pty Ltd offers a range of both rigid plastic packaging and flexible packaging to the wine, beverage, food, chemical and pharmaceutical industries. Cospak Pty Ltd was itself recently acquired by San Miguel Yamamura Packaging International Ltd.

PART 3: MARKET DEFINITION AND MARKET SHARE

12 Horizontal aggregation: Market dimensions

12.1 Previous relevant decisions

When the Commission last considered the range of plastic packaging products supplied by Pact Group,¹⁷ it found four relevant markets, one of which was a New Zealand market for the manufacture and wholesale supply of small rigid plastic containers up to 20L in size (excluding PET beverage bottles) (**small rigid plastic containers market**).¹⁸

The Acquirer also notes that in 2009 the Australian Competition and Consumer Commission (**ACCC**) considered a transaction involving a range of products similar to those supplied by the Target.¹⁹ Although the ACCC did not form a definitive view as to market definition relevant for that transaction, it considered:

- the national market for the supply of thin-walled plastic food containers up to approximately 5L in capacity manufactured using injection moulding (**IM thin-walled food containers**); and
- the national market for the supply of thin-walled plastic food containers manufactured using extrusion & thermoforming (**E&T thin-walled food containers**).

12.2 Product or service

As noted previously, both the Acquirer and the Target manufacture and supply thin-walled plastic containers. In New Zealand, thin-walled plastic containers are used principally (but not exclusively) for food packaging.²⁰

(a) Supply-side substitution

As noted above, thin-walled containers can be manufactured using E&T or IM. Pact Group manufactures these containers using both these technologies. The Target only manufactures thin-walled containers using IM.

Whilst E&T and IM are different technologies and manufacturing processes, the cost of switching between one and the other is low. Examples of actual switching costs are as follows:

- switching from IM to E&T would cost as little as \$100,000 if a Chinese thermoformer was chosen. Tooling could be purchased from China from \$50,000 to \$100,000. Alternatively, if a new European thermoformer was purchased, the

¹⁷ See proposed acquisition of Alto Holdings Limited (**Alto**) by Visy Industrial Plastics (NZ) Limited (**VIP**) (**Alto Acquisition**).

¹⁸ *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)*.

¹⁹ ACCC, *Proposed Acquisition by Pact Group of certain assets from Huhtamaki Australia Pty Ltd*: <http://www.accc.gov.au/content/index.phtml/itemId/892945/fromItemId/751043>.

²⁰ While the Target and the Acquirer predominately supply to customers in the food (and dairy) industry, the same containers (ie, manufactured using the same processes and materials) could be used for packaging non-food products. Therefore, the Acquirer does not consider it relevant whether the containers are for "food packaging" or not to the matter of market definition. This is consistent with the views of the Commission, as expressed in *Decision 583 (Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited)* at par 106. In that case the Commission found that rigid plastic products used to package beverages were "exactly the same as those used to package food or chemicals, other than in their physical design".

cost would be approximately \$500,000. This method of entry would rely upon buying in extruded rollstock, of which there is ready supply; and

- switching from E&T to IM would cost less than \$150,000 for a full system (ie machine, mould and robotics), if new Chinese equipment were purchased. With European machinery, switching would cost upward from \$100,000 for a single cavity machine and approximately \$200,000 for a double cavity machine.

The Acquirer also notes that there is a ready supply of second hand injection moulders and thermoformers available globally. Using second hand machinery would be likely to further reduce the cost of entry.

Further we note that an existing plastic packaging manufacturer seeking to switch to IM or E&T would have much of the necessary infrastructure already at its plant (for example, materials handling, cold water, etc), so the overall costs of such switch would not be expected to be high.

A period of 4 to 6 months would be required to complete the switching process (from the time when the new machinery is first purchased to the time when the manufacturer is able to commence supply).

(b) Demand-side substitution

Small rigid plastic containers manufactured by E&T are functionally very similar to small rigid plastic containers manufactured by IM. From the point of view of consumers buying food products from a supermarket shelf, the differences would rarely be noticeable (or relevant). From the point of view of customers that purchase E&T or IM containers to pack their food products, the differences are minimal. In New Zealand, yoghurt and dips, for example, are available in both E&T and IM containers.

Traditionally, though, it was the case that IM allowed the manufacture of more functional shaped containers that have improved graphics, tighter seal and that resulted in less wastage (but the overall manufacturing process was more costly than for E&T containers). Yet, ongoing technological advancements in E&T technology have meant that these differences are not as pronounced as they may have been in years past.

Contractual obligations rarely prohibit substitution between IM and E&T processes. In fact, tenders may not specify a manufacturing process at all, with customers accepting bids to supply containers manufactured using E&T, IM or sometimes using 'fill and seal' technology. For example, Cryovac through its supply arrangement with Bonson, won a recent tender for Woolworths which included the manufacture of salad domes. The product, the subject of the tender, was previously made from transparent PET resin and polystyrene using an E&T process. Having won the tender, Bonson now manufactures it as a clear container using PP and an IM process.

(c) Conclusion

Consistent with previous views of the Commission, the product dimension of the relevant market is likely to be small rigid plastic containers.

We also note that the narrowest area of overlap between the Acquirer and the Target is the supply of thin-walled plastic containers manufactured using IM. Evidence of supply-side and demand-side substitution possibilities (briefly discussed above) is such that it is unlikely that such a narrow area of overlap would constitute a separate market. However, this submission considers the potential competitive impact of the Proposed Acquisition in such area as if it were a "market", on the basis that if it can be demonstrated that no

substantial lessening of competition would occur on a narrow basis, then no substantial lessening of competition is likely to occur in any wider market either.

12.3 Functional level

Both the Target and the Acquirer manufacture containers locally for supply to end-customers and wholesalers (that resupply to end-customers).

However, as noted above, a large number of small rigid plastic containers are also imported into the New Zealand market. We note that, for example, Sunrise Plastics (Australia) currently supply La Bonne Cuisine (Heinz) with imported product, Patina (Roblan Pty Ltd (Australia)) supply imported bowls into Melba Foods and NCI and Cospak import product into New Zealand.

Therefore, the relevant functional dimension of the market is the manufacture and supply of the relevant products, including containers manufactured locally and those imported from overseas.

12.4 Geographic area

The Target has only one manufacturing plant in New Zealand. It is located in Dunedin, South Island. The Target supplies and transports its product across New Zealand from this one location.

Pact Group has several plants in New Zealand but it [REDACTED]

Therefore, the Acquirer submits that the relevant geographic dimension of the market is national. This is consistent with previous views of the Commission. In Decision No 583,²¹ the Commission accepted that small rigid plastic containers are commonly used to package higher value products and that as such the freight component as percentage of the cost of these products was not large enough to prohibit their transport between the North and South islands. For this reason, the Commission found a national market for the supply of small rigid plastic containers.

12.5 Conclusions

The Acquirer considers that the relevant market is likely to be the market for the manufacture and supply of small rigid plastic containers across New Zealand.

However, this submission analyses the impact of the Proposed Acquisition on the basis of the area of overlap between the Acquirer and the Target, ie, the market in which thin-walled containers manufactured using IM are supplied to New Zealand customers (**IM thin-walled plastic containers market**). For the purposes of the submission, we have assumed that no other products (or manufacturing processes) are part of this hypothetical "market". However we note that there is evidence of demand-side and supply-side substitution that would contradict any such narrow approach to market definition.

In any case, this submission demonstrates that even if the market were to be defined very narrowly, the Proposed Acquisition would not result in a substantial lessening of competition in breach of section 47 of the Commerce Act 1986.

²¹ Decision 583 (*Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited*), at par 151-153.

13 Horizontal aggregation: Product differentiation

Thin-walled plastic containers are not highly differentiated products. In fact, many are considered commodity products that are manufactured using standard moulds that are easily available to any manufacturer. Other containers are manufactured using customised moulds. However, the impact of this differentiation in market definition is limited as moulds (even customised ones) can be transferred from manufacturer to manufacturer (or duplicated).

Therefore, the Acquirer does not consider there are material levels of product differentiation in any relevant market.

14 Vertical integration

The Proposed Acquisition will not have an impact on the levels of vertical integration in any relevant market.

PART 4: COUNTERFACTUAL

15 In the event the Proposed Acquisition does not take place

TEC Projects limited has entered into a binding sale agreement to acquire Tecpak Industries Limited. At this time, the Acquirer is negotiating exclusively with the Target. The Acquirer has no knowledge as to whether the Target would seek to sell the business and engage in a competitive sale process in the absence of the Proposed Acquisition.

Therefore, in the counterfactual, it can be assumed that the parties would both continue to operate in the market.

PART 5: COMPETITION ANALYSIS

16 Existing competitors

16.1 Local manufacturers and distributors

Profiles of the competitors of the parties in the relevant market are set out below.

Huhtamaki

Huhtamaki is a global packaging company, established in 1920, which supplies a broad range of rigid consumer goods plastics to customers for use by fresh food, dairy, ice cream and edible fat manufacturers.

Huhtamaki has a number of brands, including Chinet (available in America, Europe and Oceania), Bibo (available in Europe) and Lily (available in Oceania).²² The company operates in 33 countries, with 54 manufacturing units, employing approximately 13,000 employees. It has 3 locations in Australia (Rhodes NSW, Preston VIC and Mt Waverly VIC) and 3 locations in New Zealand (New Lyn, Henderson and Otahuhu), with its head office located in Espoo, Finland. In its 2009 Annual Report, Huhtamaki listed New Zealand as the 9th largest country in which it had a presence, as determined by number of employees per country.

Huhtamaki employs a number of technologies to manufacture its products, including E&T and IM. Huhtamaki's expertise in IM technology, in particular, is well developed across a number of jurisdictions. In Europe, Huhtamaki uses IM to produce thin-walled containers for spreads (such as margarines, butters and sweet spreads) and dairy products (such as yoghurts and ice cream). In America, Huhtamaki uses IM to produce plastic containers for its brand Velocity and other custom plastic containers. Huhtamaki decorates its IM produced containers using IML, direct dry offset printing and shrink sleaving.

Huhtamaki's net sales for 2009 were EUR 2 billion.²³ Huhtamaki has rigid plastic operations in five countries in Europe with a 14% share of net sales in 2009.²⁴ Further information about Huhtamaki is available at: <http://www2.huhtamaki.com>.

Further discussion of Huhtamaki is provided in section 18.2.

Bonson

Bonson was founded in 1984 and incorporated in 1994, specialising in plastic injection moulding of polypropylene food containers supplied across New Zealand, Australia and the South Pacific region.²⁵ Brands within Bonson include; Better Selection, Homeal, Clear Vision, Bio Choise and BonPak. Bonson manufactures a range of plastic containers, in a variety of shapes and sizes for food packaging, as well as plastic plates, bowls and cups.²⁶

²² Huhtamaki; <http://www2.huhtamaki.com/web/guest/huhtamaki>.

²³ Huhtamaki Presentation, "Huhtamaki – a global consumer packaging company", page 2.

²⁴ Huhtamaki Presentation, "Huhtamaki – a global consumer packaging company", page 11.

²⁵ Bonson; <http://www.bonson.co.nz/>.

²⁶ Bonson, "Products"; <http://www.bonson.co.nz/bonsonproducts/>.

Bonson has recently begun manufacturing IM thin-walled containers for Cryovac. These containers are deli tubs and lids for supply to Woolworths.

Further information about Bonson is available at: <http://www.bonson.co.nz/>.

Packit

Packit is a New Zealand company located in Dunedin. Packit specialises in IM food containers, offering a range of 70 containers within a range of 40ml to 1 L. Packit also does custom IM labelling and printing. Common uses for Packit products are as containers for honey, ice cream, yogurt and other products such as pesto and oysters.

Further discussion of Packit is provided in section 18.2.

Galantai Plastics

Galantai Plastics is a family owned New Zealand business, which has been operating for over 30 years to become one of New Zealand's' leading manufacturers of IM containers in New Zealand. The company has only one location, in Auckland, consisting of 15 IM machines and using over 50 different resins.

Galantai Plastics produce a range of thin-walled plastic containers, including cups, pottles, pails and containers in a variety of sizes, all with lids. Other plastic products include plant pots and saucers, utility boxes, scoops and CD/DVD clamshells. The company has won several Plastic New Zealand Awards, including for the following categories; IM, consumer products and primary products.

Further information about Galantai Plastics is available at: <http://www.gplastics.co.nz/index.html>

16.2 Importers

Although not individually identified in the market share tables, the Acquirer understands that the firms listed below actively engage in imports of thin-walled plastic containers into New Zealand.

Cryovac

Cryovac is a major brand of the Sealed Air group, a global manufacturer of packaging founded in 1960.²⁷ Cryovac designs and manufactures rigid and thin-walled food containers using a variety of production methods including E&T and IM, and imports products from Melbourne and Asia, selling its products under the Cryovac brand. Cryovac manufactures containers for food products including dips, margarine, instant meals (such as macaroni) and yoghurt. Cryovac also manufactures a range of other plastic products including protective packaging, shrink packaging, medical products and specialty products (such as adhesive products and water retention products).

As discussed above, Cryovac also has an arrangement under which Bonson manufacture deli tubs and lids for Cryovac in New Zealand.

Cryovac has two sales locations in New Zealand; Wellington and Hamilton, and several locations through Australia, including in Victoria, NSW, QLD and Tasmania.

²⁷ Cryovac, "Company Profile"; <http://www.cryovac.com/corp/profile.html>.

Further information about Cryovac is available at: <http://www.cryovac.com/>. Cryovac is also discussed in section 18.2 of this submission.

National Can Industries Limited (NCI)

NCI was established in 1954 and it has operations in Australia, New Zealand, Fiji and PNG, with over 900 staff.²⁸ NCI is a public company comprising two businesses: NCI Packaging (Metal and Plastic manufacturing) and Pacmetal Services (tinplate and aluminium products). NCI Packaging manufactures IM plastic products from its Melbourne manufacturing facilities. Products range from 200ml to 1.25L retail packs and 800ml to 12L pails supplemented by tamper evident lids and patented film sealing, available in a range of colours.²⁹ These products are used in the following industries: paint, industrial chemicals, food, detergents, veterinary and pharmaceuticals. Further information about NCI is available at: <http://www.nci-packaging.com/Content/Main/Main.htm>. NCI is also discussed in section 18.2 of this submission.

Sunrise Plastics

Sunrise Plastics commenced operations in 1976 and since 2000 has been operating out of Boronia, Melbourne.³⁰ Sunrise manufactures a wide variety of thin-walled plastic containers and lids using IM (Sunrise acquired the injection moulding business in 1983). Products manufactured by Sunrise are used for food packaging, such as dips and yoghurt. Further information about Sunrise Plastics is available at: <http://www.sunriseplastics.com.au/>

17 Market shares

The Acquirer estimates that sales of IM thin-walled plastic containers in New Zealand are as shown in the table below.³¹

Competitors (including merger parties)	Estimated revenue (NZD\$'000)	Estimated % of market share by revenue
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████
██████████	██████████	██████████

²⁸ NCI Packaging; <http://www.nci-packaging.com/>.

²⁹ NCI Packaging; <http://www.nci-packaging.com/>.

³⁰ Sunrise Plastics; <http://www.sunriseplastics.com.au/>.

³¹ Estimates are based on the Acquirer's industry knowledge and annual reports.

Competitors (including merger parties)	Estimated revenue (NZD\$'000)	Estimated % of market share by revenue
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

* The estimated revenues and market shares of Pact Group and the other named competitors will include revenue from imported products.

The Acquirer estimates the domestic sales of small thin-walled plastic containers amount to approximately [REDACTED] including imports.

On the basis of the figures provided above, post-transaction concentration levels for the three largest manufacturers of IM thin-walled plastic containers would be [REDACTED%] and sales for the merged entity would be [REDACTED%]. Post transaction, the second largest manufacturer would be [REDACTED], also with over [REDACTED%] of the total sales (ie only slightly lower market share than the merged entity).

Although the above figures fall outside of the Commission’s safe harbour for transactions unlikely to cause competition concerns, we note these figures have been calculated on the basis that “IM thin-walled plastic containers” constitute a separate “market” (which, as noted in previous sections, is an artificially narrow construction). Therefore, it is not surprising that the three largest competitors in this “market” represent a high percentage of sales. Putting that aside, even in this very narrow “market”:

- Huhtamaki will retain practically the same market share as the merged entity, allowing it to continue operating as a very vigorous and effective competitor;
- imports (in actuality as well as a threat) will continue to play a significant role;³² and
- barriers to entry to the manufacture of thin-walled containers will continue to be low.

Therefore, the Proposed Acquisition is unlikely to result in a substantial lessening of competition, even if the market is very narrowly defined.

18 Constraint by existing competitors

18.1 Ease of switching between existing suppliers

As discussed in section 16, there are several competitors supplying IM thin-walled plastic containers into New Zealand, either through manufacture or imports. The ease of

³² Including from companies such as NCI, Sunrise Plastics, Genfac, Profile Plastics, Arrow Plastic, Huhtamaki and Patina Products.

switching between these suppliers depends more on the decoration and the sophistication of the end-product more than the existence or length of contractual supply arrangements.

For small to medium size customers who require relatively small volumes of products manufactured using standardised moulds (also known as “stock” products) switching costs are minimal. In fact, where the customer has no contract with the supplier, there are virtually no switching costs as the customer simply needs to start ordering products from another supplier with access to the similar moulds. We understand that the majority of the Target’s customers are not on contract.

Recent examples of customers switching suppliers of stock products include:

- [REDACTED]
- [REDACTED]
- [REDACTED] and [REDACTED]
- [REDACTED]

We also note that switching suppliers in respect of some product lines (as opposed to a customer’s entire packaging requirements) is a strategy commonly used by many customers in order to retain competitive tension between suppliers. For example:

- [REDACTED]
- [REDACTED]
- [REDACTED] and [REDACTED]
- [REDACTED]

Switching in cases where products are manufactured using a customised mould can be more complex as it depends on who owns the mould. If the mould is owned by the packaging manufacturer, negotiations need to take place with the new supplier to decide whether the same mould will be used by the new supplier (or a new one will need to be

developed), and who will be responsible for paying for the new mould (ie, whether it will be the new supplier or the customer). While somewhat more difficult than switching in respect of stock products, switching in instances where custom moulds are involved does happen, including as shown in the following examples:

- [REDACTED] and [REDACTED]
- [REDACTED]

18.2 Potential new supply and expansion

Additionally, we note that the firms listed below could quickly start supplying IM thin-walled containers (or expand their existing supply) in response to any theoretical attempt to increase prices by the merged entity.

Huhtamaki³³

Huhtamaki has proven to be a vigorous competitor. It has the commercial relationships, reputation, and technical capability and expertise to quickly expand in the relevant market. Further, the Acquirer understands that it currently has excess capacity therefore it could quickly respond with increased supply in the event of any theoretical attempt to increase prices by the merged entity. Additionally we note that Huhtamaki could quickly further supplement its local production of thin-walled IM containers with imports from its own manufacturing plant overseas.

Customers that have switched to Huhtamaki in recent times include Kiwi Ice cream and [REDACTED].

Packit³⁴

Packit is a prime example of a competitor which started with a very small operation, which has expanded significantly in recent years. The company was created approximately 6 years ago by a group of former Tecpak Industries limited employees who had the technical expertise necessary to establish an injection moulding business, but who otherwise had no experience in running a company.

Since then, Packit has been particularly successful, pursuing a strategy of securing a number of customers that were seeking to switch suppliers or that had decided to engage more than one supplier. [REDACTED]

[REDACTED] In its relatively short life of 6 years, Packit has become the fourth largest supplier of thin-walled IM containers in New Zealand.

Cryovac³⁵

Cryovac has recently entered an alliance with Bonson (a Hong Kong based company with manufacturing capability in New Zealand) for the manufacture of thin-walled IM

³³ See also discussion in section 16.1.

³⁴ See also discussion in section 16.1.

³⁵ See also discussion in section 16.2.

containers. Bonson is looking to grow its share of IM thin-walled container sales and has recently purchased IM machinery and IML robots. The alliance with Bonson has already allowed Cryovac to win tenders as supplier with Bonson as the manufacturer. For example, deli tubs for Woolworths.

Cryovac could also choose to set up its own manufacturing operations in New Zealand. It could do this at relatively low costs and risk given its manufacturing capability in Australia and the fact that it already supplies the market via imports. Cryovac has already relied upon such strategy before, to enter the market in Australia.³⁶

Figure 3 Sample of Cryovac’s small rigid plastic packaging container range³⁷



IML Plastics Limited

IML Plastics Limited is a plastic manufacturer located in Wellington.

The company currently manufactures IM containers for industrial applications. While it is not currently focussed on supplying IM thin-walled containers, IML Plastics Limited has developed and patented a generic plastic food container which could be used to package various products.

As IML Plastics Limited already has the necessary technology and technical expertise, if prices of IM thin-walled containers increased in the market, it could easily further its expansion into the manufacture of containers for customers in the food industry with minimal investment (primarily tooling).

NCI³⁸

NCI is a vigorous competitor in the region, with manufacturing capacity in Australia, a well established model for imports into New Zealand and a well known brand due to its imports and presence in New Zealand as a tin packaging manufacturer.

³⁶ Cryovac established its IML/IM supply capability in Australia by establishing a partnership with a Malaysian supplier and initially using imports only rather than setting up plant and equipment.

³⁷ Cryovac, “Food Products”; <http://www.cryovac.com/ap/en/products/food/rigid.html>.

³⁸ See also discussion in section 16.2.

NCI has an interest in expanding its operations in New Zealand. The company [REDACTED]

[REDACTED] If prices of IM thin-walled containers increased, NCI would be in a position to increase the level of containers it imports into New Zealand at very quick notice. Furthermore, NCI would be in a position to supply at very competitive prices because of its size and Australian capacity.

19 Potential competition: Conditions of entry

19.1 Typical requirements for new entry

For a typical new entrant, the requirements to set up a plant for the manufacture of IM thin-walled containers would include some (or all) of the items listed below.

Raw materials

Resin is readily available. Whilst historically large suppliers were able to obtain volume discounts by entering into longer term contracts with resin suppliers, these generally precluded suppliers from sourcing cheaper resin available on the “spot” or “wide specification” markets. The globalisation of resin supply has resulted in large, medium and small plastic manufacturers purchasing on the spot or wide specification markets. As a result, such smaller manufacturers are no longer at a disadvantage – ie, while they may not enter into long term supply contracts, buying on the spot market or buying slightly “off-spec” material may result in savings of up to 10% in relation to the same type of purchase from a major resin supplier.

Large customers are also able to tie the supply of raw materials to packaging manufacturing contracts. Therefore, smaller suppliers may be able to benefit by purchasing resin at cost-effective prices through their customers.

Plant and equipment

There are a range of business models and plant set-ups that an IM manufacturer could use. Assuming supply of 2 to 3 million containers annually) for the production of the most common type of IM thin-walled container available in the New Zealand market (ie, a 200g thin-walled plastic container) a factory would require:

- factory floor space (at least 5m wide and 6m long);
- a high level of cleanliness;
- three-phase electricity;
- mains water;
- a water chiller;
- a water treatment machine (to imbue the water with anti-corrosive properties);
- mechanised auger (for dispensing resin from silos into heating machinery);
- IM machinery; and
- tooling.

Estimated costs

The wide range of equipment size and speed available in the market makes cost estimations difficult. However, based on the production specifications outlined above, the cost for IM plant and equipment is likely to be in the order of \$3 million. The addition of robotics to the IM process required to have IML capability is not prohibitively expensive, and could cost less than \$50,000 using Asian equipment.

The cost of setting up a small-scale or other operation using second-hand plant and equipment or older models (eg from Europe or America) would be lower than by using new equipment. However, we note that any savings made by purchasing second hand equipment have become less attractive as the cost of new Asian equipment is low (and the quality is generally comparable to European equipment).

None of these costs are prohibitive, particularly taking into account that the typical entry model in the industry relies upon a firm having secured a supply contract and volume before any investment is made.

19.2 Estimated costs of entry depending on business model

It is also important to note that entry into the hypothetical “market” for the manufacture and supply of IM thin-walled plastic containers could occur in a number of ways (eg, expansion, imports, etc). Costs of new entry would vary depending on the chosen model, as shown in the table below.

Model	Likely costs	Comments
Switch from manufacture of E&T containers into IM thin-walled containers. Examples: Huhtamaki; Pact Group	Starting from \$100,000 if new Chinese equipment were purchased	The manufacturer would already have knowledge of the industry including commercial contacts and much of the plant infrastructure required
Expand from the manufacture of “standard” IM containers (or industrial containers) into the manufacture of IM thin-walled plastic containers. Examples: IML Plastics Limited.	Tooling which can be obtained starting from \$50,000 (for a single cavity tool)	The manufacturer would have the technical expertise, knowledge of the industry and much of the required infrastructure and IM equipment
Expand from manufacturing IM thin-walled containers outside of New Zealand to New Zealand. Examples: Cryovac (through its arrangement with Bonson)	See section 19.1 (for new plant and equipment in New Zealand).	The manufacturer would have the technical expertise for the manufacture of the exact product type, an established brand and potentially an established customer base.

Model	Likely costs	Comments
Start importing IM thin-walled containers into New Zealand. Examples: Cryovac and NCI.	The only cost would be the availability of working capital. Lead times for imports tend to be around 1 month (depending on product availability).	This mode of entry does not require the investment capital to set up the plant and machinery. It could also provide a lower risk way to test viability in the New Zealand market before setting up a manufacturing plant.
Enter de novo. Examples: Packit	See section 19.1	

19.3 Anticipated timeframes

Depending on the mode of entry, the anticipated time frame ranges from around 4 to 6 months.

This covers the time from when the machinery is first purchased to the time when the manufacturer is able to commence supply. In relation to importing, if the imports are from China, for example, it would take around 7-8 weeks from order to receipt.

19.4 Regulatory requirements

There are no production specific licences required for the manufacture of IM thin-walled containers. Quality standards are more customer-driven than a regulatory requirement. For example, Pact Group voluntarily complies with HACCP to meet its customer's expectations.

19.5 IP rights

Intellectual property rights in some new technological developments are available to most, if not all, participants in the market as these technologies are developed by material suppliers and equipment suppliers rather than by the manufacturers themselves.

19.6 Frontier requirements

There are no tariffs, licensing or quarantine requirements for the import of thin-walled plastic containers from Australia or other countries in the Asia Pacific region.

19.7 Contractual arrangements

As noted in section 18.1, in most instances, customers that purchase stock line thin-walled plastic containers do not have contracts. In relation to these customers, contractual arrangements do not constitute a barrier to entry. The ease of switching between suppliers depends more on the decoration and the sophistication of the end-product than the existence or length of contractual supply arrangements.

Where customers do have contractual arrangements, it may be because they require a high level of supply and price certainty or because the packaging for their product requires additional capital investment and the investment risk can be amortised over the length of the contract. Generally, contractual arrangements will also provide mechanisms that allow for the switching of suppliers based on service levels and in some cases price

or competitive benchmarks. Where customers seek contractual arrangements, switching will often occur at the time of the tender process.

Larger customers are generally more likely to have long term supply contracts but at the same time they do not always have a single supplier of plastic packaging. Instead, they tend to enter into contracts with a range of suppliers as a way to maintain competitive tension in the market.

For these customers, switching suppliers tends to be easier than for customers that are required to start looking for a new supplier.

20 Factors likely to impede or prompt new entry

20.1 Factors impeding entry or expansion

In the current climate, economic uncertainty and tightening credit conditions are likely to have a negative impact on new entry and expansion.

However, we note that these factors affect all industry participants equally, and in any case could be neutralised if:

- a large customer (eg, Fonterra or similar) is willing to sponsor the new entry or expansion (see further discussion in section 24); and/or
- the firm entering or expanding is a global manufacturer (such as Cryovac or Huhtamaki).

20.2 Factors prompting new entry post-acquisition

Tightening economic conditions means that there is a premium on low cost manufacture and supply. In this market, firms that are able to operate without substantial overheads are likely to be highly valued by customers.

The need for low cost products also means that imports are likely to be increasingly attractive, as they typically are available at a cost lower than locally manufactured products.

21 LET test: Likely new entrants

There are numerous firms that would be able to start manufacturing IM thin-walled plastic containers if the right circumstances applied (eg, hypothetical price increase by the merged entity). The firms listed below have been selected as the most likely new entrants because they already manufacture thin-walled containers using E&T and/or they already have IM manufacturing capability.

Tekplas

Located in Hamilton, New Zealand and established in 1995, Tekplas is a plastic injection moulding company, utilising 12 injection moulders to produce a range of 150 plastic products from a vast range of materials, including PP, HDPE, LDPE, Nylon and biodegradable materials. Currently, Tekplas is the only moulding company in New Zealand which can offer customers mould tool approval and validation.

Tekplas mainly produces plastic scoops, however it also provides custom moulding. For the past 12 years, Tekplas has exclusively supplied Fonterra with plastic scoops. Its scoops come in a range of sizes and colours, ranging in capacity from 7.8mls to 35mls.

Tekplas produces injection mouldings for a variety of industries, including human nutritional health, the dairy industry, animal health, agriculture and industrial mouldings. Tekplas provides custom injection moulding as well as product assembly, printing, packaging and local and international distribution, exporting to a number of countries worldwide.

Clients of Tekplas include; Fonterra, Nutricia N.Z, Proform Plastics, Heinz, Astron Plastics Ltd, Simcro Tech, Stockguard, Milfos International, Greens Industries and many more.

More information about Tekplas is available at <http://www.tekplas.co.nz/>.

Millennium Plastics Ltd

Established in 2000 and located in Hamilton, New Zealand, Millennium Plastics is a wholly owned subsidiary of DEC International Ltd, a New Zealand based company which operates in the animal drug delivery industry. Millennium Plastics also has two sister companies, Interag and Sensortec.

Millennium Plastics manufactures products for the horticulture, agribio, medial, hygiene and engineering industries. It specialises in optically clear materials for use in sterile systems for applications in both animal and human health. Products manufactured by Millennium Plastics include pots and lids, dispensers, drench guns and safety equipment such as helmets, earmuffs and protective visors.

More information about Millennium Plastics Ltd is available at <http://www.millenniumplastics.co.nz/main.cfm>.

ES Plastics

ES Plastics is based in Hamilton, New Zealand, and is a longstanding manufacturer of injection moulded plastics. EP Plastics works alongside its sister company Sharp Concepts (specialising in industrial design and engineering) to transform ideas into manufacturable products.

ES Plastics' injection moulding capabilities include 11 moulding machines and the ability to produce a range of injection moulded products of up to 4.5kg in weight. Products manufactured by ES Plastics are used in a variety of industries, including the automotive, agriculture, control systems, electrical appliances, hardware and marine industries.

More information about ES Plastics is available at <http://www.esplastics.co.nz/main.cfm?id=104>.

TCI New Zealand

Located in Avondale, Auckland and established in 1995, TCI is one of the largest privately owned injection moulding companies in New Zealand, currently operating 28 injection moulding machines. In addition to injection moulding, TCI offers gas assisted moulding services.

TCI manufactures products for use in a range of industries, including animal health, dispensing equipment, homewares, garden products and communications. TCI also offers custom injection moulding, with in-house production design, printing, assembly, warehousing and distribution anywhere in the world.

More information about TCI New Zealand is available at <http://www.tazcinz.co.nz/>.

Elite Polymers

Located in Hamilton, New Zealand and established in 1946, Elite Polymers is a subsidiary of Forlong & Maisey Ltd. Elite Polymers specialises in technical injection moulding and custom moulding.

Elite Polymers manufactures caps and closures for the industrial, food and beverage industries.

More information about Elite Polymers is available at <http://www.elitepolymers.co.nz/>.

Petersen Plastics

Petersen Plastics was established in 1985 and manufactures injection moulded plastic consumer and industrial products, specialising in custom injection moulding.

Services offered by Petersen Plastics include moulding, assembly, finishing, packaging and warehousing. Petersen Plastics has production levels capable of 24 hour operation, producing high volumes of both short and long run products. The industrial moulding technology employed by Petersen Plastics is capable of moulding products up to 1200 grams in weight. Products produced by Petersen Plastics can be used for containers, safety equipment, kitchen hardware, bathroom fittings and horticultural products.

More information about Petersen Plastics is available at <http://www.petersens.co.nz/>.

MT Containers

MT Containers is a privately owned injection moulding company based in Avondale, Auckland. The company produced plastic products with a focus on recycling of plastics.

MT Containers specialised in custom injection moulding and mainly manufactures buckets, bowls and pails for use in storage, horticulture and general application.

More information about MT Containers is available at <http://www.buckets.co.nz/index.htm>.

Canyon Plastics Limited

Canyon Plastics is a plastics manufacturer specialising in small and medium run sizes of small injection moulded industrial components and products.

Products manufacture by Canyon Plastics are generally used for; containers for general and industrial storage, game pieces and counters, novelty items (such as quoits and ink pads), pastry cutters, promotion packages and retail display hooks and hangers.

More information about Canyon Plastics is available at <http://www.canyonplastics.co.nz/index.php>.

Flight Plastic Packaging (part of Flight Group Ltd)

Flight Group Ltd is a privately owned New Zealand based company, specialising in timber and plastics. Flight Plastic Packaging (**FPP**) is the plastics arm of the company. Its plastic manufacturing plants are located in Wellington, Adelaide and Winchester (UK).

FPP manufactures its thermoformed thin-walled plastic packaging in-house at its Wellington plant, with a sales office and warehouse in Auckland. The thin-walled plastic

packaging products are produced for the food industry, as well as the medical and horticultural industries. Within the food industry, FPP's products cater for bakery goods, sandwich containers, meat and seafood containers and fruit and produce containers. FPP's machinery allows for high volume or lower volume production as well as speciality production and 3D software enabled labelling.

Flight Plastic Extrusion (**FPE**) is another arm of Flight Group Ltd, focused on manufacturing rigid plastic sheet and rollstock for the Pacific Rim and European markets, with factories in New Zealand, Australia and the UK. FPE is one of the largest manufacturers of extruded sheet in Australasia, supplying markets for over 30 years. FPE serves two distinct markets, light gauge rollstock produced for thin-walled packaging thermoformers, and heavier gauge sheet for industrial uses. FPE has longstanding relationships with the US and European equipment suppliers and "immediate access to the largest polymer technology and innovations".³⁹

Aztec Packaging

Aztec Packaging (**Aztec**) is a New Zealand company which manufactures thermoformed plastic packaging, with 20 years experience in supplying heat-seal blister packs, moulded trays, clamshell packs and slide-on and hang-sell display packaging. Aztec's food packaging range caters to fresh, frozen or dried food and also offers a rigid packaging alternative. Aztec also produces off-the-shelf packaging, such as trays and hinged lid containers.

Figure 4 Sample of Aztec Packaging's small rigid plastic packaging range.⁴⁰



BF Honan Limited

BF Honan is a leading New Zealand manufacturer and distributor of "unbreakable" and "dishwasher safe" plastic products, focused on overseas trade, exporting to several countries. BF Honan is located in Auckland, New Zealand and has been operating since 1988. BF Honan's products include; drinkware, trays, measures, key tags and promotional products.

³⁹ Flight Plastic Extrusion; <http://www.flight.co.nz/extrusion/default.asp>.

⁴⁰ Aztec Packaging website, "Food"; http://www.aztec.co.nz/food_packs.html.

Figure 5 Sample of BF Honan’s plastic product range



Formrite Plastics

Formrite is an Australian company located in Brookvale, with a 6,000m² manufacturing plant. Formrite employs the IM process to produce blister packaging, insert packaging and custom packaging. Formrite also produces shelf trays, food trays and thin-walled food containers.

Figure 6 Sample of Formrite Plastic’s IM packaging products.⁴¹



Plus Pac

Plus Pac is a New Zealand owned company, operating for over 25 years, specialising in manufacturing custom designed packaging for specific customers in the mid-volume range.

Plus Pac employs both IM and E&T processes to produce trays, thin-walled containers, clamshells, pots and lids, blister packaging, shelf trays and sandwich containers.

Figure 7 Sample of Plus Pac’s products⁴²



⁴¹ Formrite Group, “Packaging”; <http://www.formrite.com.au/items.cfm?range=B0781224>.

⁴² Plus Pac, “Products”; <http://www.pluspac.co.nz/products.shtml>.

Sullivan Packaging

Sullivan Packaging is a New Zealand company which has manufactured plastic packaging since 1986, specifically thermoformed ridged and semi-ridged plastic packaging.

Sullivan Packaging's food container products include; food trays, fruit and vegetable plastic packaging (punnets, cartons and clamshells), bakery packaging (tubs with lids, sandwich containers, cake containers and clamshells) and meat and seafood trays.

22 LET test: Sufficiency of constraint posed by potential new entrants

In New Zealand, competitors can offer sufficient constraint whether they enter on a small or large scale. For example, Packit entered de novo on a small scale and it has grown by picking up smaller customers ready to switch or without a supplier. In just 6 years it has become the fourth largest supplier of IM thin-walled containers in New Zealand.

Entry by moving from the manufacture of other IM products to IM thin-walled containers also poses a significant constraint to existing competitors (eg the entry model used by IML Plastics Limited). These suppliers already have the IM expertise, capability, much of the plant and equipment required and a reputation as a credible supplier in IM products. This mode of entry makes commercial sense particularly where import competition may be shrinking growth opportunities in the supply of the other IM product, and machinery may otherwise be left unutilised.

The potential for entry through partnerships with a New Zealand manufacturer (eg Cryovac/Bonson) allows entry to occur at a greater scale and is particularly useful for customers looking for larger new suppliers.

23 LET test: Timeliness of Entry

A new entrant can start manufacturing thin-walled IM containers in a relatively short period of time, particularly if the new entrant is already an established plastics manufacturer or importer. For example, for a new entrant that only needs to purchase new machinery, the anticipated time frame ranges from around 4 to 6 months.

This covers the time from when the machinery is first purchased to the time when the manufacturer is able to commence supply. In relation to importing, if the imports are from China, for example, it would take around 7-8 weeks from order to receipt.

24 Countervailing power: Ability to self-supply, import or switch

24.1 Large number of customers with countervailing power

The Acquirer considers that a number of its customers have significant countervailing power due to a combination of the following factors:

- the significant value of their total spend on IM thin-walled plastic containers. [REDACTED]
- the fact that many of the products they purchase are standard (or "stock" products) such as tubs, containers, bowls and lids;

- the financial resources and investment ability of the customers; and/or
- the international nature of the customer's operations.

Customers that have one or more of the features listed above include the following firms:

- **Fonterra**⁴³ – New Zealand's dairy co-operative is the world's leading exporter of dairy products, responsible for more than a third of international dairy trade. Fonterra is a listed company with over 15,000 employees and an annual turnover of \$16 billion. Its consumer brands include Anchor, Anlene, Mainland, Annum and TipTop.



- **Goodman Fielder**⁴⁴ – the leading Australasian listed food manufacturer responsible for brands such as Meadow Lea, Meadow Fresh, Praise, White Wings and many more. Goodman Fielder has near to 60 plants in Australia, New Zealand, Papua New Guinea, Fiji and New Caledonia. It supplies the retail grocery market, as well as food manufacturers and wholesalers. Goodman Fielder is the largest supplier of edible fats and oils to Australian and New Zealand food manufacturers and wholesalers.



- **Kirin Holdings**⁴⁵ – One of the leading food and beverage companies in the Asia-Oceania region, Kirin has been seeking to expand further into the Australian and New Zealand market in recent years. The company already encompasses Lion Nathan National Foods, Kirin Beverage and Brewery, San Miguel Brewery, and the Coca-Cola Bottling Company of Northern New England. Kirin also has pharmaceutical and other interests. In 2007 it acquired National Foods, which in 2008 acquired Dairy Farmers. Kirin now manufactures and packages brands such as Yoplait and Dairy Farmers;

- **Hansells Food Group**⁴⁶ – Previously known as the Old Fashioned Foods Group, Hansells is one of New Zealand's leading export companies. It supplies food products globally, including to Tesco and other major supermarkets in the UK. Hansells manufactures the majority of its products at three sites across New Zealand, and operates its own distribution, selling and merchandising systems. Its brands include Aunt Betty's, Hansells, Weight Watchers and more.



- **Bakels**⁴⁷ – Global company Bakels Worldwide manufacture and distribute a wide range of quality ingredients such a spreads, mixes and sauces tailor-made for the bread, pastry, cake and confectionery sectors. Bakels products are available in more than 120 countries.



⁴³ Fonterra; <http://www.fonterra.com>.

⁴⁴ Goodman Fielder, "Who we are"; <http://www.goodmanfielder.com.au/index.php?q=node/3>.

⁴⁵ Kirin Holdings; <http://www.kirinholdings.co.jp/english>.

⁴⁶ Old Fashioned Foods, "Our Profile"; <http://www.oldfashionedfoods.co.nz/ourcompany/ourprofile.aspx>.

⁴⁷ Bakels; <http://www.bakels.com/>.

- **Talley's Group**⁴⁸ – One of the largest privately companies in New Zealand's South Island, Talley's has manufacturing divisions for seafood, vegetables and ice-cream. Talley's employs near to 1000 full-time staff and an additional 600 staff across the seasons at it nine site locations.

[REDACTED]

- **Emerald Foods**⁴⁹ – Emerald Foods manufactures or imports many of New Zealand's leading premium ice creams, including New Zealand Natural, Mövenpick, Killinchy Gold, Heavenly Treats, Zilch, Lite Licks, and Chateau Premium scoop ice cream. Emerald Foods also have a range of products available for foodservice, and manufacture private label products for companies such as New Zealand Dairy Food's Fresh n Fruity brand, and Monte Bianco of Japan. Emerald Foods exports to countries throughout the Asia Pacific region.

Any of these customers would have the ability and expertise to completely bypass the Acquirer by doing one or more of the following:

- switching suppliers;
- fostering new entry or expansion of an existing industry participant by tendering large contracts;
- in certain cases, moving some packaging product production in-house (or threatening to do so);
- purchasing and importing containers from Australia or manufacturers located in Asia; and
- purchasing containers from wholesalers who could manage the importation process.

As discussed in more detail below, if post-acquisition the Acquirer sought to act unilaterally by raising prices and/or lowering the quality of its products, these customers would have the ability to quickly and effectively constrain such conduct.

24.2 Ability of customers to switch suppliers

The majority of Pact Group's sales of IM thin-walled plastic containers are to its top ten customers.

[REDACTED] As such, its customers can exercise significant constraint upon [REDACTED] by switching or threatening to switch to an alternative New Zealand supplier.

Although the market being analysed here has been defined very narrowly, there are still several competing suppliers of IM thin-walled containers in New Zealand. These suppliers offer quality alternatives at reasonable prices.

[REDACTED]

- [REDACTED]

⁴⁸ Talleys, "Employment"; <http://www.talleys.co.nz/employment.htm>.

⁴⁹ Emerald Foods, "The Company"; <http://www.icecream.co.nz/thecompany.cfm>.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Further, in many cases customers already have a policy of dual supply (substantially to maintain competitive tension) and there is no reason to assume that such strategies would change post transaction.⁵⁰

24.3 Ability to sponsor entry or expansion

Sponsoring new entry and expansion is very common in the packaging industry because:

- customers like to increase competitive tension by sourcing their products from multiple suppliers and by inviting multiple suppliers to submit tenders. BIS Shrapnel, for example, has observed a growing preference by large volume customers for multi-vendor supply arrangements, noting that 62% of customers use two or more suppliers.⁵¹ Further, 43% of customers classified as “large” and 50% of customers classified as “very large” in the report sourced rigid plastic packaging from three or more packaging suppliers,⁵² and
- some large customers actually prefer using smaller suppliers where they will be the dominant or only significant customer, and the easiest and fastest way for a large customer to become the largest customer of a supplier is to sponsor that supplier’s expansion. For this reason, it is common industry practice for large volume customers to ask bidders in the tender process what percentage of the bidder’s total production volume would be constituted by that large customer’s requirements.

A supplier does not need to be able to produce the full range of products to adequately tender for and supply a large volume customer. Large volume customers may obtain different sizes or types of containers (manufactured using either E&T or IM or both) from a number of small or large suppliers.⁵³ Indeed, Packit has utilised this strategy with great success.⁵⁴

24.4 Ability of customers to self supply

In-house packaging manufacture is particularly feasible for food manufacturers such as dairy companies, juice manufacturers and other fresh food producers. These companies tend to want to package their products as quickly as possible after production.

⁵⁰ See further discussion of this issue in section 18.1.

⁵¹ BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 191.

⁵² BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 191. Note: customers were classified by value spent on rigid plastic packaging.

⁵³ See further discussion of this issue in section 18.1.

⁵⁴ See further discussion in section 18.2.

Form-fill-seal technology also offers an easy opportunity for self-manufacture, particularly in the dairy industry. [REDACTED]

[REDACTED] These companies could easily return to self-manufacture if required (eg, in response to a price increase or other unfavourable market developments). [REDACTED]

While in-house operations have more traditionally relied on E&T technology, there is no reason why a food manufacturer with large-scale product requirements could not begin self-supply via establishing an in-house IM operation, or alternatively by a tolling arrangement with an existing packaging supplier.

24.5 Ability to import

Imports are an increasing trend due to both increased visibility of import options over the internet and the availability of similar quality and price competitive product.

The choice between importing and acquiring locally manufactured thin-walled containers depends on a number of factors, including:

- whether the container's mould is customised or standardised (ie, stock). Generally, stock products are more easily imported than those manufactured using custom moulds;
- whether the product is new. Local manufacture is generally preferred for development of new containers as this allows greater control over the process and quality and avoids the risks inherent in importing (such as shipping delays);
- printing requirements. Generally, the less decoration on a container, the easier it is to import; and
- volumes to be purchased. Generally, imports are better suited for regular large volume purchases rather than small runs.

Imports of thin-walled containers are readily available from Australia, as well as from further afield in Asia.

Importation from Australia

In Acquirer's experience, imports from Australia are typically of an equivalent price and quality to local product. The geographic proximity of Australia means imports are able to satisfy short stock run requirements and large quantities need not be ordered. The easy substitutability of Australian imports for local product is demonstrated by the fact manufacturers such as Huhtamaki, Cryovac and Pact Group have tended to import certain smaller run product lines rather than duplicating manufacture in New Zealand.

Manufacturers importing thin-walled containers from Australia include:

- Sunrise Plastics – import a range of containers for specialty foods such as dips and olives, including tubs and lids from 90ml to 1.2L in size for customers such as La Bonne Cuisine;
- Cryovac – import a variety of small bowls, tubs and lids of various sizes;
- Arrow Plastics – import tubs and lids from 90ml to 1.2L in size.

- NCI – import small tubs, dishes and lids of various sizes for customers such as Future Cuisine;
- Patina Products / Roblan - import small bowls and lids;
- Genfac – import tubs and lids from 90ml to 1.2L in size; and
- Cospak – import tubs and lids from 90ml to 1.2L in size to be distributed to various customers.

Importation from Asia

Imports are also readily available from Asia, both filled and unfilled. In the last 10 years, Asian-manufactured thin-walled plastic food container standards and technology have vastly improved and are now comparable to New Zealand standards for food packaging. A longer lead time may be required, but due to the lower cost of labour in certain Asian countries significant cost savings stand to be made, especially if the end product is also manufactured overseas and imported filled. Notably, the import figures cited within this submission do not include filled product as a reliable source is not available.

[REDACTED]

Pact Group has been contacted directly by packaging companies in China searching for business. [REDACTED]

[REDACTED] Language is not a barrier, and a lead of only around one month was required.

The difficulties associated with importing from Asia into New Zealand are not prohibitive. They include:

- issues around the relative value of New Zealand dollar (also relevant to importing from Australia);
- a requirement to pay upfront; and
- arranging storage facilities for stock.

In the Acquirer's experience, these can be easily overcome.

Distributors importing product

Pact Group supplies product to a range of distributors, many of whom could choose to import product. [REDACTED]

[REDACTED] Cospak also imports tubs and lids from 90ml to 1.2L in size. The majority of imported rigid food packaging is imported by smaller based distributors such as Arypak and Unipak.

25 Countervailing power: Top buyers

The following is a list of the top 5 buyers by sales and volume of Pact Group's IM thin-walled plastic containers.

Table 1 Top 5 buyers of IM thin-walled plastic containers from Pact Group

Customers	Volume (units)	Sales (NZ\$)
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

These are all large food companies with substantial resources, technical expertise and sophisticated procurement policies. Indeed, many already have implemented policies of dual supply and/or have experience with sponsored entry and in-house manufacture. Thus, each of these companies have substantial degree of countervailing power.

26 Coordinated market power

The Commission's *Mergers and Acquisitions Guidelines* identify three key elements which are necessary for successful coordination between competing firms.⁵⁵ These are collusion, detection and retaliation. The Commission also refers to factors it considers in assessing the likelihood of coordinated conduct in a market.

The market for the manufacture and supply of IM thin-walled plastic containers has a number of characteristics that post acquisition would impede the exercise of coordinated market power. These are discussed further in the table below.

Table 2 Market characteristics making coordinated conduct unlikely

Market characteristic	Presence in market for small rigid plastic containers
Low seller concentration for such a narrowly defined market	Following the Proposed Acquisition, there will be at least five other competitors in the market. Taking into account how narrowly the market has been defined, this number is significant. These competitors will continue to compete vigorously with the merged entity.
Disparity in the size of competitors, and cost differences between businesses	Within the market, there are a range of large and small competitors. The cost of operation for each competitor is likely to be different, meaning that coordinated conduct would be difficult to hide.
Developing product technology and product innovation	Differences in quality and age of manufacturing machinery would make it difficult for market participants to agree on price. In addition, new forms of packaging are frequently being taken up to make retail products appear premium or unique (eg the growing popularity of paper-composite packaging). The

⁵⁵ New Zealand Commerce Commission, *Mergers and Acquisitions Guidelines*, p33.

Market characteristic	Presence in market for small rigid plastic containers
	existence of such alternatives would make profiting from coordination difficult.
Existence of fringe competitors	There are a large amount of small competitors in the market who could expand if competition were to lessen, for example, Packit and Galantai Plastics. In addition, competitors in other markets (eg PET beverage containers, large rigid plastic containers, etc) would be likely to respond to any attempted co-ordination.
Existence of large customers with countervailing power	Large companies such as Fonterra, Goodman Fielder, Hansell's Good Group [REDACTED] have significant countervailing power and could easily defeat any attempts at exercising coordinated market power.
High level of imports	Imports are readily and easily available, particularly for stockline products. If the existing competitors attempted collusive behaviour, their customers could easily switch to imports. Customers are extremely price sensitive and would react quickly and effectively to price any discrepancies.

PART 6: INFORMATION AND DOCUMENTATION

27 Contact details of relevant competitors, buyers, suppliers and relevant market participants

The contact details of relevant competitors, buyers and suppliers are set out in the Appendix E.

28 Annual Reports

TEC Projects Limited was incorporated under the *Companies Act 1993* on 22 June 2010. As such, copies of annual reports or audited financial statements are not yet available. The annual report for Tecpak Industries Limited for the year ended 31 March 2010 is provided at Confidential Appendix F.

PART 7: CONFIDENTIALITY

Confidentiality is sought over the information contained in or attached to the Notice and identified by square brackets and shaded or in the case of attachments described as being “Confidential” (**Confidential Information**).

Confidentiality is sought over the Confidential Information until PLP advises the Commission that it can make public disclosure of that information.

Confidentiality is sought under section 9(2)(b) of the *Official Information Act* 1982 on the grounds that:

- (a) the information is commercially sensitive and valuable information which is confidential to the parties; and
- (b) disclosure of the information is likely to give unfair advantage to competitors of the parties and unreasonably prejudice the commercial position of the parties.

The Acquirer requests that it is notified of any request made to the Commission under the Official Information Act for access to the Confidential Information, and that the Commission seeks the Acquirer’s views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

The above applies in respect of any additional information provided to the Commission that is expressed to be “confidential”.

DECLARATION

THIS NOTICE is given by the Pact Group Pty Ltd, represented in New Zealand by its related company Pact Group (NZ) Ltd.

Pact Group hereby confirms 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 the applicant which is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this Notice.

Pact Group undertakes to advise the Commission immediately of any material change in circumstances relating to the Notice.

Dated this day of October 2010

Signed by Pact Group:

Nick Perkins
General Counsel, Pact Group

I am duly authorised to make this Notice.

Authorised signatory

Appendix A Confidential: Sale and Purchase Agreement

Appendix B Glossary

The following are terms and acronyms used throughout the submission:

E&T – extrusion and thermoforming

EBM – extrusion blow moulding

HDPE - High-density polyethylene

IBM – injection blow moulding

IM – injection moulding

IML – In-mould labelling

ISBM – injection-stretch moulding

PET – Polyethylene terephthalate

PP - polypropylene

Appendix C Plastic manufacturing – raw materials and processes

Part 1: Resin types

Polyethylene Terephthalate (PET)

PET is an engineering plastic with excellent processing characteristics and high strength and rigidity, which is used for a broad range of applications. PET is clear, tough, solvent resistant and a good barrier to gas and moisture. Some properties which differentiate PET from other engineering plastics include extremely low water absorption, excellent resistance to chemical attack and high environmental stress crack resistance, very good heat and heat ageing resistance and excellent wear properties.

PET is used widely in a variety of industries including transportation, automotive, electrical/electronic, appliances, industrial and packaging. It is commonly used for containers including soft drink and water bottles, salad domes, biscuit trays, dressing and peanut butter containers.

Polypropylene (PP)

Polypropylene is one of the most versatile polymers available with applications, both as a plastic and as a fibre, in virtually all of the plastics end-use segments.

Applications for PP include reusable and collapsible/stackable crates, caps and closures, blow moulded bottles for the packaging of a range of products including condiments, detergent and toiletries and other thin-walled containers used in food packaging (eg, yogurt tubs).

Polyvinyl Chloride (PVC)

PVC is a major thermoplastic material finding use in a very wide variety of applications and products. PVC is suitable for most plastic processing methods including extrusion blow moulding, injection moulding and extrusion and thermoforming.

PVC's major benefit is its strength and flexibility, and its compatibility with many different kinds of additives.

PVC is used extensively in a range of industries (eg, building and construction, medical, electrical, etc) and for a variety of uses. Examples of PVC products include cosmetic containers, electrical conduit, plumbing pipes and fittings, blister packs, wall cladding, roof sheeting, bottles, garden hoses, cable sheathing, blood bags, watch straps, etc.

High Density Polyethylene (HDPE)

HDPE is a polymer characterised for being flexible, translucent/waxy, weatherproof and having good low temperature toughness (to -60°C). It is easy to process by most methods, relatively low cost and has good chemical resistance.

HDPE is used to manufacture products such as chemical drums, jerry cans, toys, picnic ware, household and kitchenware, cable insulation, shopping and freezer bags, milk bottles, ice cream containers, juice bottles, shampoo, chemical and detergent bottles, buckets, rigid agricultural pipe, milk crates and food wrapping material.

Low Density Polyethylene (LDPE, LLDPE)

It is a semi-rigid, translucent, very tough, weatherproof polymer with good chemical resistance and low water absorption. It is easily processed by most methods at low cost.

It is used to manufacture squeeze bottles, glad wrap, garbage bags and bins, toys, carrier bags, high frequency insulation, chemical tank linings, heavy duty sacks, general packaging, and gas and water pipes.

General Purpose Polystyrene (GPPS)

It is a brittle, rigid, transparent, low shrinkage, low cost polymer, with excellent X-ray resistance, free from odour and taste and easy to process.

It is used to manufacture toys and novelties, rigid packaging, garment hangers refrigerator trays and boxes, cosmetic packs and costume jewellery, lighting diffusers, and audiocassette and CD cases.

High Impact Polystyrene (HIPS)

It is a hard, rigid, translucent polymer, with impact strength up to seven times that of GPPS (but otherwise similar to GPPS).

It is used to manufacture yogurt tubs, refrigerator linings, vending cups, bathroom cabinets, toilet seats and tanks, closures and instrument control knobs.

Part 2: Manufacturing processes

Injection moulding

Injection moulding is the principal method of forming thermoplastic materials. In injection moulding, plastic material is put into a hopper, which feeds into a heated injection unit. A reciprocating screw pushes the plastic through this long heating chamber, where the material is softened to a fluid state. At the end of this chamber there is a nozzle, which abuts firmly against an opening into a cool, closed mould. The fluid plastic is forced at high pressure through this nozzle into the cold mould. A system of clamps hold the mould halves shut. As soon as the plastic cools to a solid state, the mould opens and the finished plastic is ejected from the press.

Blow moulding

Blow moulding is a method of forming hollow articles out of thermoplastic materials. It involves forming a molten tube of thermoplastic material, then with the use of compressed air, blowing up the tube to conform to the interior of a chilled blow mould. The most common methods of blow moulding are extrusion blow moulding (**EBM**), injection blow moulding (**IBM**), and injection-stretch blow moulding (**ISBM**).

EBM technology involves the extrusion of a hollow cylinder of molten plastic ("**parison**") between the two halves of a mould. The mould is closed around the parison and a blast of air in the neck orifice forces ("**blows**") the plastic out against the walls of the mould, producing a hollow article.

IBM technology involves a three-step process whereby molten plastic is injected into an injection mould (**Injection Moulding**) to create a preform. The preform is then transferred on its blow stem (core) to the next blow moulding station where the preform is blown into the shape of the water-cooled mould (**Blow Moulding**). The finished product is ejected from the Blow Stem in the final step of the process.

Compression moulding involves the extrusion of a solid pellet of material (at lower temperatures than Injection Moulding) into a hollow cavity. A core is then hydraulically forced into the cavity “squashing” the molten material into the cavity expelling the air, and after a short period of cooling the finished product is ejected from the mould.

ISBM is primarily used in the manufacture of PET containers but is also being used on a small scale for Polypropylene and Polyethylene containers. The first phase of the process is the manufacture of a preform in an injection moulding process as detailed above. This preform is then reheated, stretched lengthways, and blown into the form of a water-cooled cavity (slightly different process to conventional blow moulding due to the “stretching” of preforms prior to blowing).

Thermoforming

Thermoforming of plastic sheet has developed rapidly in recent years. This process consists of heating thermoplastic sheet to a formable plastic state and then applying air and/or mechanical assists to shape it to the contours of a mould.

Extrusion

Extrusion moulding is the method employed to form thermoplastic materials into continuous sheeting, film, tubes, rods, profile shapes, and filaments, and to coat wire, cable and cord.

Plastic Tube extrusion involves the continuous extrusion of a hollow cross section cylinder of molten plastic, which is cut into short lengths. These cylinders are then attached, on one side, to a header section in either an injection or compression moulding stage to form the neck and thread section for the cap to be applied. The other side is left open when supplied to customers who will heat seal the container at the open end after filling.

Laminate tube extrusion involves the extrusion of a flat, wide, laminated sheet and the cutting of that sheet into thin strips. These strips are then rolled into a cylinder and the two ends are welded together using heat to form a cylinder similar to that described in Plastic Tube extrusion above. These cylinders are then attached, on one side, to a header section in either an injection or compression moulding stage to form the neck and thread section for the cap to be applied. The other side is left open when supplied to customers who will heat seal the container at the open end after filling.

Appendix D The IM manufacturing processes

The various steps of the IM manufacturing process are set out below.

Extrusion

- The screw feed machine heats and moves the molten resin/polymer into the body of the machine, using a reciprocating screw mechanism.
- Molten material under pressure is pushed by an external barrel into a die.

Injection moulding

- Molten resin is injected into moulds through one or more injection points. Moulds consist of 2 parts, so they can open/close.
- If the container is to be decorated using IML, a label is applied to the inside of the mould by means of robotics, before the molten resin is injected. As the mould touches every surface of the container, the label can be applied to the entire container surface irrespective of its shape.
- A hydraulic-powered clamping mechanism keeps the mould firmly closed during injection. The levels of clamping force will vary depending on the polymer used.
- Chilled water is passed over the exterior of the mould, cooling the plastic so it retains shape.
- Once plastic is cooled and the container retains its shape, the mould is opened and the container is ejected. There is no need for guillotining, trimming or separation of containers as each container is created individually.
- The complete containers are collated using robotics into columns/sleeves of cups. They are now ready for delivery to the customer.

Main differences between IM and E&T processes

Overall, the IM process requires fewer steps than the E&T process. Significant differences between the two methods include the following:

- in IM, every surface of the container comes into contact with the mould, in E&T only the outside of the container touches the mould;
- IM containers are produced individually so there is no need for trimming or separation, unlike E&T containers; and
- E&T uses less electricity as it does not use the high force hydraulic clamping which is necessary for IM tooling/moulds.

In addition, more floor space is required for E&T than IM equipment.

Appendix E Contact details of relevant competitors, buyers, suppliers and relevant market participants

Table 3: Contact details of competitors

Name of company	Contact details	Relevant Contact person
Bonson Industrial Company Limited	43-47 Lansford Crescent, Avondale, Auckland, New Zealand P: +64 09 828-2121, +64 09 828-2427 F: +64 09 828-2433 W: www.bonson.co.nz	Unknown
Cryovac (Sealed Air)	Hamilton P: +64 7 8500 100 F: +64 7 8500-150 W: http://www.sealedair.com/ap/en/products/food/default.htm	John Hall Operations Manager
Huhtamaki New Zealand Ltd	30 Keeling Road 8 Henderson, Auckland New Zealand P: +64 9 837 0510 F: +64 9 837 1195 W: http://www2.huhtamaki.com	Onur Yilmaz
IML Plastics Ltd (Industrial Mouldings)	PO Box 38336 14 Meachen Street Seaview Lower Hutt Wellington 5145 P: (04) 568 4345 F:(04) 568 6861	David Jorgenson
NCI Packaging Ltd	80 Mt Wellington Hwy, Panmure, Auckland, New Zealand Po Box 14-443 Panmure P: +64 9 914 9444 F: +64 9 914 9440 W: http://www.nci-packaging.com	Unknown
Packit Packaging Ltd	Roslyn Mill Industrial Estate 229 Kaikorai Valley Road Dunedin P: 453 0996 F: 4530885 M:0274535335 E: packit@xtra.co.nz W: www.packit.co.nz	Tony Mann
Sunrise Plastics	12 Isa Way, Boronia Melbourne, Victoria 3155 P: 03 9738 2288 W:	Executive Officer: d.reynolds@sunriseplastics.com.au

Name of company	Contact details	Relevant Contact person
	http://www.sunriseplastics.com.au/	

Table 4: Contact details of the Target's buyers and suppliers

Name of company	Contact details	Relevant Contact person
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Emerald Foods Ltd	PO Box 58617 Botany, Manukau 1 Accent Drive East Tamaki Auckland [REDACTED] W: www.icecream.co.nz	[REDACTED]
Hansells Food Group Ltd	PO Box 112-141 Penrose 160 Rockfield Road	[REDACTED]

Name of company	Contact details	Relevant Contact person
	Penrose [REDACTED] W: www.oldfashionedfoods.co.nz	
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
Talleys Group Limited	PO Box 5 The Wharf Motueka, New Zealand [REDACTED] W: www.talleys.co.nz [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]

Table 5: Contact details of Pact Group's relevant buyers and suppliers

Name of company	Contact details	Relevant Contact person
<p>[REDACTED]</p> <p>Emerald Foods Ltd</p>	<p>PO Box 58617 Botany, Manukau</p> <p>1 Accent Drive East Tamaki Auckland</p> <p>[REDACTED]</p> <p>W: www.icecream.co.nz</p>	<p>[REDACTED]</p>
<p>Fonterra Co-Operative Group Ltd</p>	<p>Private Bag 92032, Auckland New Zealand</p> <p>[REDACTED]</p> <p>W: www.fonterra.com</p>	<p>[REDACTED]</p>
<p>Goodman Fielder</p>	<p>PO Box 90450 Victoria Street West, Auckland 1142, New Zealand</p> <p>2/8 Nelson St, Auckland City.</p> <p>Consumer Advisory Centre: 0800 100 538</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>W: www.goodmanfielder.com.au</p>	<p>[REDACTED]</p>
<p>Hansells Food Group Ltd</p>	<p>PO Box 112-141 Penrose</p> <p>160 Rockfield Road Penrose</p> <p>[REDACTED]</p> <p>W: www.olfashionedfoods.co.nz</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>

Name of company	Contact details	Relevant Contact person

Table 6: Contact details of other relevant market participants

Name of company	Contact details	Relevant Contact person
Agility Logistics Ltd	<p>PO Box 53-071, Auckland International Airport Auckland, New Zealand</p> <p>9 Richard Pearse Drive Mangere, New Zealand</p> <p>P: +64 9 275 0750 F: +64 9 275 8236 W: www.agilitylogisitics.com</p>	John Davis
Elastochem NZ Ltd	<p>PO Box 259 237 Greenmount Auckland, New Zealand</p> <p>Elastochem NZ Ltd C/- Chemfreight 10 Stonedon Drive East Tamaki Auckland, New Zealand</p> <p>P: 0800 64 35 35 +64-9-271 3457 F: 0800 64 36 36 +64-9-271 4726 E: info@elastochem.co.nz W: http://www.elastochem.co.nz</p>	Chris Davison
Plastics New Zealand	<p>P O Box 76 378 Manukau City New Zealand</p> <p>Building 2, 4-8 Pavilion Drive, Airport Oaks</p> <p>P: +64 9 255 5662 F: +64 9 255 5663 E: fo@plastics.org.nz W: http://www.plastics.org.nz/</p>	Kelly Buchanan-Johns

Tasman Machinery Ltd	P.O. Box 1644 Auckland 1 New Zealand 14-16 Auburn St, Grafton P: +64 9 379 5716 F: +64 9 379 9915 W: http://www.tasmanmachinery.co.n z	Oliver Wolf National Sales Manager E: oliver@tasmanmachi nery.co.nz
----------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------

Appendix F Confidential: Most recent Annual Reports