

Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986 (revised)

Euro Corporation Limited

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1 Persons giving Undertakings

- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FTA**) by Euro Corporation Limited (Company Number 863196), a company incorporated in New Zealand having its registered office at 25 Smales Road, East Tamaki, Auckland (**Euro Corp**).
- 1.2 In these Undertakings **Undertaking Party** means Euro Corp.

2 Background

Euro Corp

- 2.1 Euro Corp is a manufacturer and distributor of steel reinforcing for use in the construction sector.
- 2.2 From September 2015 the Commission has been investigating complaints about sales of a specific earthquake standard steel mesh for concrete slab reinforcement, SE615-500STD (**SE615**) being sold by Euro Corp as 500E grade steel mesh.
- 2.3 500E steel mesh (**500E**) is seismic grade steel reinforcing mesh as prescribed by AS/NZS 4671:2001 (the **Standard**).
- 2.4 In particular, the Commission is investigating whether:
- (a) Euro Corp has made misleading representations that its SE615 steel mesh is "500E" grade and/or complies with the Standard; and/or
 - (b) Euro Corp had reasonable grounds for representing that SE615 was "500E" grade and/or complied with the Standard, at the time those representations were made, irrespective of whether the representations were misleading.
- 2.5 The Commission is part way through its investigation into these practices.
- 2.6 On 20 January 2016 the Commission purchased six sheets of SE615. Samples from each of these sheets were submitted to two different testing agencies, SGS and SAI Global, in order to test for compliance with the Standard for 500E grade steel mesh.
- 2.7 The results of those tests indicated that each of the sheets of steel failed to meet the mechanical performance requirements of the Standard. A particular area of concern highlighted was the failure indicated in every test result for "Uniform Elongation" (Agt%). The Standard requires an average minimum elongation value of 10%, yet none of the sheets tested for the Commission showed an average above this value.
- 2.8 This and other evidence gathered during the investigation raised concerns for the Commission that Euro Corp may have engaged in conduct that breached the FTA and that consumers may be harmed by this conduct.

- 2.9 On 29 February 2016 the Commission sent a "Stop Now" letter to Euro Corp, asking it to immediately stop representing that its product was "500E" grade steel, as defined in the Standard (the **Stop Now letter**) pending further investigation by the Commission.
- 2.10 Euro Corp has complied with that request and co-operated with further investigation by the Commission.
- 2.11 The Ministry of Business, Innovation and Employment (**MBIE**) is the agency responsible for developing and overseeing compliance standards for some building products and is the overarching industry regulator.
- 2.12 MBIE through its Building and Housing team is working with steel mesh suppliers and industry and technical experts to determine suitable clarifications to the Standard to assist compliance and avoid dispute as to compliance and the methods of demonstrating compliance. These are expected to be introduced in due course.
- 2.13 Euro Corp wishes to recommence selling SE615 steel mesh and it wishes the Commission to rescind its Stop Now letter. Pending introduction of MBIE's clarification, Euro Corp has agreed to apply a revised testing regime for SE615 mesh to be returned to the market by Euro Corp. After MBIE's clarification is introduced, Euro Corp will comply with the Standard as clarified by MBIE and applicable from time to time.

3 Purpose of the Undertakings

- 3.1 These Undertakings are given by the Undertaking Party in order to satisfy the Commission that the revised testing regime should assist Euro Corp to demonstrate compliance with the Standard pending the introduction of MBIE's clarification. These undertakings (until expired) apply to all SE615 steel that Euro Corp currently hold, or will receive in the future, regardless of when the steel was manufactured. Accordingly, by accepting these Undertakings the Commission rescinds its Stop Now letter. However, the Commission will continue to investigate representations made in relation to steel mesh represented as 500E prior to the issue of the Stop Now letter, and is not by these Undertakings prevented from investigating claims made or the compliance of SE615 mesh sold after these Undertakings.
- 3.2 Euro Corp confirms its intention that it will at all times offer for sale and represent SE615 only in accordance with the Standard as prescribed by MBIE at the relevant time.

4 Undertakings

- 4.1 The Undertaking Party undertakes to the Commission that it will, personally or through employees, agents or contractors:
- (a) Use an IANZ accredited laboratory to test three sheets per batch of SE615 product in accordance with the approach set out at paragraph 7 of the Holmes Solutions letter of 14 April 2016 to Euro Corp, which is **Attachment A** (specifically, 6 tests per sheet.) The results from the testing are subject to the conformance criteria in B4.1 (Batch Conformance), and to the action on non-conforming batches in B5 if applicable. For the avoidance of doubt, B5 re-testing samples are required to be twice the original number of tests for the failed parameter. For the purpose of this Undertaking, this means a minimum

of an additional 36 tests for tensile tests. Results are then subject to the conformance criteria in B4.1.2 of the Standard.

- (b) Test using the method required by the Standard. Where interpretation issues arise, Euro Corp can apply the approach set out in Attachment A.
- (c) Ensure each batch of SE615 is no larger than 1,000 sheets of steel mesh.
- (d) Provide the test results for all tests of all batches of SE615 to the Commission, including failed test results. The test results for each batch of SE615 are to be:
 - (i) provided within five working days of receipt from the IANZ accredited laboratory, together with any other tests on that batch of SE615 by an IANZ accredited laboratory that are not already held by the Commission;
 - (ii) accompanied by a statement from a duly authorised representative of the Undertaking Party that:
 - (A) the test results attached to the statement are true and correct copies; and
 - (B) after reasonable inquiries, the authorised representative declarant is not aware of any tests on that batch of SE615 by an IANZ accredited laboratory, other than those where test results have been provided to the Commission.
- (e) Ensure, and for any batch of SE615 held by a merchant use reasonable endeavours to ensure, that where any batch of SE615 , has:
 - (i) not been tested in accordance with clause 4.1 above; or
 - (ii) after testing in accordance with clause 4.1 above, fails the conformance criteria in B4.1.2 of the Standard (Batch Conformance), and is subsequently re-tested and rejected as non-conforming under B5 of the Standard (Action on Non-Conforming Batches)

the entire batch is not offered for sale, or represented, as 500E. For the avoidance of doubt, a batch of SE615 that falls within this clause 4.1(e) may be offered for sale provided it is not represented as being 500E grade.

- (f) Include the testing results from clause 4.1(a) above (excluding rejected batches) in the long term quality data required to prove compliance with B6 of the Standard, and provide these results to the Commission on request.

5 Effect of the Undertakings

5.1 The Undertakings:

- (a) are Court enforceable undertakings in terms of s 46A of the FTA;
- (b) are made without admission of liability by the Undertaking Party as to its conduct pre and post these undertakings as described above; and

- (c) are made without prejudice to the Commission's ability to bring proceedings and/or seek orders from the Court in relation to the Undertakings Party's conduct before and after these undertakings as described above.

6 Commencement of Undertakings

- 6.1 The Undertakings come into effect when:
- (a) the Undertakings are executed by the Undertaking Party; and
 - (b) the Commission confirms its acceptance of the Undertakings.

7 Variation of the Undertakings

- 7.1 The Commission and the Undertaking Party can agree at any time to vary the Undertakings including, but not limited to, as a result of MBIE providing clarification of the Standard.
- 7.2 No variation to the Undertakings will be effective unless it is in writing, executed by the Undertaking Party, and signed as accepted by the Commission.

8 Duration of the Undertakings

- 8.1 These Undertakings will continue to have effect until the earlier of:
- (a) the Commission for any reason discharging the Undertaking Party from the Undertakings including, but not limited to, in the event of MBIE providing clarification of the Standard;
 - (b) one year from the date of acceptance; or
 - (c) the date a court (or subsequent appeal court in the event of appeal) determines that the conduct described above is not in breach of the FTA.

9 Compliance with the Undertakings

- 9.1 If the Undertaking Party becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission with seven days of becoming aware, giving full particulars of the breach.
- 9.2 If the Commission has a good faith basis to believe that the Undertaking Party has not complied with the Undertakings, and requests the Undertaking Party to do so, the Undertaking Party will engage at its own cost a reputable third party approved by the Commission (**Reviewer**) to conduct a review of their compliance with the Undertakings as directed by the Commission (**Compliance Audit**), and to report its findings to the Commission.
- 9.3 The Undertaking Party is to comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.

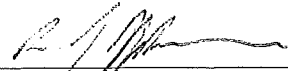
- 9.4 For the avoidance of doubt, nothing in paragraphs 9.1 to 9.3 above prevents the Commission from directly seeking any information from the Undertaking Party at any time during the course of any criminal and/or civil proceedings for the purpose of checking compliance with the undertakings.

10 Miscellaneous

- 10.1 These Undertakings are properly executed if the Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by the Undertaking Party or the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 10.2 The Undertaking Party acknowledge that:
- (a) The Commission may make the Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications.
 - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.

Execution

Signed by and on behalf of Euro
Corporation Limited



Authorised signatory

Randal McKenzie

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Lynette Solly
Lynette Solly
Buckland
Executive Assistant

Date:

2 May 2016

Acceptance

Accepted by the Commerce Commission by

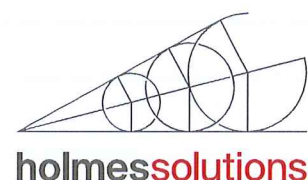
Andrew Scrimgeour
Authorised signatory

MARIE NEWMAN BERRY
Name

In the presence of:

Witness Name: Treva Daly
Witness Address: Commerce Commission, 44 The Terrace, Wellington
Witness Occupation: EA to GM Competition

Date: 3 May 2016



Euro Corporation
25 Smales Rd
East Tamaki
AUCKLAND

14th April 2016

Attention: Randal McKenzie

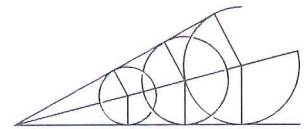
Compliance of Steel to AS/NZS 4671 with MBIE guidance

Randal,

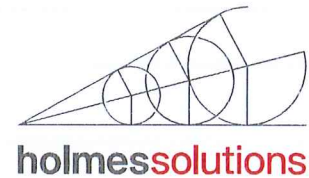
As you are aware, I attended the joint meeting in Auckland today to discuss ductile mesh and the testing requirements in accordance with AS/NZS 4671. Derek Baxter confirmed at the start of the meeting that the purpose was to discuss a number of the issues facing the industry and to provide feedback to MBIE. MBIE would then take this feedback and issue guidance documents at a later date, namely within weeks not months. It was made clear that the meeting was not on a consensus basis; MBIE would draft the guidance documents based on the feedback provided, but if consensus could be achieved it would considerably simplify this process. I thought the meeting was very valuable with healthy debate and dialogue. In general, I felt that consensus was reached on a large number of points.

Key points arising out of the meeting that will be of interest to Euro Corporation and have relevance to your discussions with the Commerce Commission are listed below. There are additional items that I have not included and please note that I have drafted these points from my recollection of the meeting so the final recommendations may differ slightly:

1. When completing tensile testing, the test specimen can be of any length provided it includes a welded intersection somewhere in the length. The extensometer should not be placed over the welded intersection and the A_{gt} reading should be taken at the attainment of peak stress. (this is how Holmes Solutions currently completes your testing)
2. Appendix A was agreed to be struck from the document. It has no relevance, given the requirement for all material to undergo statistical testing in accordance with Section 8 and Appendix B of the standard.
3. A batch size was confirmed to be a maximum of 1000 sheets of mesh (Clause B1.3.1 b). The batch doesn't need to be produced from the same cast of steel but if the mesh includes wire of two separate types (different diameter or grade) then it shall be considered as two batches of steel. Accordingly two lots of testing will be required (samples from each batch tested in each direction) and the analysis would be required to be completed as two separate batches.



4. In accordance with Clause B5, it was agreed that the LTQ database should remove all batches that fail to meet the requirements of the standard and are down-graded. This is as currently worded.
5. It was agreed that A_{gt} and the ratio R_m/R_e can be excluded from the LTQ in accordance with the waiver noted in the June 2003 amendments to Clause B6.1. This was agreed that this was relevant due to the difference in statistical distribution of these results compared to those of R_e and as such the statistical analysis requirements for a LTQ in Clause B6.2.1 do not fit with the data from A_g and R_m/R_e ratio.
6. It was agreed that the sample size used in Table B1 can be interpolated between the stated values when determining the K factor for statistical analysis of LTQ.
7. It was agreed that the minimum number of tensile tests in each batch (clause B3 c i) should be increased from 2 samples in each direction (i.e. 4 tensile tests) to 3 samples in each direction (i.e. 6 tensile tests) for all batches. This provides for increased statistical confidence in the measured results.
8. When analysing the results of a tested batch in accordance with B4.1.2, it was agreed that an additional requirement should be included for A_{gt} , which provides minimum limitations on any one-test sample. The final wording was yet to be agreed but it will likely include a requirement that no individual sample can fall below 6% (as an example) in addition to the current requirement that the average A_{gt} must be over 10%.
9. In Clause B5, it was agreed that if the samples tested fail the compliance requirements, you are required to test twice as many samples in the retest requirements (i.e. if you test 6 samples in the batch test then you are required to test 12 additional samples in the retest). This is as we have been working. Furthermore, the phrase "*If any of the additional test results demonstrate non-conformance*" is to be interpreted as the retested samples are required to be analysed (for the failed value only) in accordance with the requirements of B4.1.2 in order to determine compliance. Clarity was also provided that this analysis should only be completed on the retested samples and not the combination of original and retested samples.
10. Additional guidance is going to be provided on what must be undertaken if the LTQ falls outside of the stated requirements. This is likely to be that if the LTQ is out by a maximum level (say 15 MPa) then the number of tests samples per batch are required to be increased (to say 12 per batch) until the LTQ comes back within allowance. When the LTQ comes back into allowance, the test sample number per batch can be returned to the baseline minimum (3 tests in each direction). If the LTQ is outside of the allowance by more than the maximum level (say 15 MPa) then the manufacturer must revert to B7 compliance until a new LTQ database is achieved (i.e. 200 samples minimum).
11. It was agreed that existing suppliers of reinforcing mesh into the market should be allowed to continue with their current LTQ databases feeding in the new batch under the above-modified rules as collected until such time that all information in the LTQ is in keeping with this new interpretation.



Based on the above interpretations being adopted by MBIE, I am confident that the procedures you have in place and the mesh manufactured by Euro Corporation would be in full compliance with the standard;

- All testing we have completed for you is fully compliant with the interpretation of AS/NZS 4671 and all referenced standards.
- You have valid batch certs for your current batches of steel, thereby complying with the requirements of B3/B4.
- You have a valid LTQ that shows the required variable (R_e) is within the allowable limits imposed by Clause B6.

The above listed items should provide the necessary validation that you have your current mesh materials comply with the standard, however it will be important that you also look to implement (or continue to implement) the following items moving forward:

- It will be prudent to rebuild trust in the quality of your product and your manufacturing control. Accordingly, if the Commerce Commission are suggesting you complete a minimum of 12 samples for all of your current batches, it would be advised to comply. The results from this testing will quickly flush the previous results from your current LTQ database and will provide all parties with increased confidence in the production control of the existing product.
- The minimum sample number for each batch must be increased to 6 tensile tests total (3 in each direction) and 6 weld shear tests.
- You maintain a LTQ for the steel that you manufacture locally.
- In the interim, and until such time you have further increased your confidence in the externally produced information, you should continue to test 100% of batches imported and maintain a separate LTQ for this material. This should be supplemented with the Engtek batch certificates and associated LTQ database over time.

I trust the above information is sufficiently detailed, however if you require additional information or clarification please do not hesitate to contact me directly.

Best Regards,

Dr Chris Allington, B.E (Hons), PhD (Civil)
CEO
Holmes Solutions LP