
Commerce Act 1986: Business Acquisition

Section 66: Notice Seeking Clearance

Proposed Acquisition of Viscount Plastics by Pact Group

3 October 2011

PUBLIC VERSION

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Executive summary

Proposed Acquisition

Pact Group Pty Limited (**Pact Group**) proposes to acquire the plastic packaging business of Viscount Plastics (**Viscount**) which manufactures and supplies products in Australia, New Zealand and the Asia Pacific (**the Transaction**). The vendor is LINPAC Mouldings Limited (**LINPAC**), a global company based in the United Kingdom.

Clearance is sought in respect of the acquisition of Viscount's pails business (**Proposed Acquisition**), being the main area of business overlap.

No substantial lessening of competition

The Proposed Acquisition is unlikely to give rise to a substantial lessening of competition in the relevant market, being the market for the supply of plastic pails up to 25L in New Zealand (**relevant market**) because the merged entity will continue to be constrained by:

- a number of competitors that use a range of business models, including local manufacture and imports, to supply plastic pails in New Zealand. Competitors include local manufacturers, such as Simaplas, Galantai Plastics and Uniplas, as well as Australasian-based manufacturers, such as NCI and Huhtamaki, and distributors that supply imported products to customers direct from Asia or Europe, such as Stowers or from Australia, such as Cospak;
- the significant countervailing power of large customers, including DuluxGroup (**Dulux**), Watty, Resene, and [...]. Self-supply options remain a real threat for the merged entity's pails business. [...]; and
- the threat of new entry or expansion by existing manufacturers, distributors or customers. As barriers to entry and expansion are low and there are no impediments to customers switching, other manufacturers, distributors and customers pose a strong competitive constraint.

There are a range of competitors in the relevant market

NCI is an increasingly vigorous and effective competitor in the plastic pails market. While NCI does not currently manufacture plastic pails in New Zealand, it has been actively leveraging its supply relationships with Australian customers into New Zealand and has been actively targeting customers with aggressive prices and high quality pails. Over the past two to three years, NCI has attracted a sizeable number of customers demonstrating that its pail entry strategy has been a successful one. Pact Group estimates that NCI would only need one or two more medium-sized to large pail customers in New Zealand to 'sponsor' the commencement of local manufacture at its Auckland plant.

Other competitors in the relevant market include Galantai Plastics, Simaplas and Uniplas, which are local manufacturers. These competitors supply quality products at competitive prices and have the ability to expand their production levels such that they will be able to pose a competitive constraint on the merged entity post-acquisition. Pact Group considers that there is a real possibility that large customers could 'sponsor' the expansion of these competitors on a timely and effective basis.

There are also large distributors, such as Stowers, which currently import pails from Asia and would have the capacity to increase import volumes within a short timeframe.

Large customers

A high proportion of pails in New Zealand— [...] - are supplied to a small number of large customers, Dulux, Watty, Resene, [...]. These customers

have strong countervailing power

are large companies with sophisticated procurement processes. These customers would have the ability to sponsor new entry or expansion and/or bypass the merged entity by switching to in-house supply. In addition, as these customers represent significant volumes, they would be readily able to use the threat of switching to imports to defeat any attempt by the merged entity to impose a price rise post-acquisition.

Low barriers to entry and expansion

The success of NCI in entering the market and garnering a market share of over [...] in just three years demonstrates that barriers to entry are low.

The capital costs of expanding into local manufacture, or a new entrant starting local manufacture or a large customer, such as [...], setting up in-house operations are not significant. Entry on a monoline basis, such as supplying a 10L pail (which is the most popular pail size), would only involve capital costs of approximately [...]. The timeframe for this entry is likely to be around 4–6 months. Following monoline entry, the new entrant could then progressively invest and add more pails to its range over a 12 month period. A range of eight different sized pails is likely to involve capital costs of approximately [...].

Entry by a manufacturer with spare injection moulding capacity would involve an even smaller capital commitment, potentially just the cost of a new mould, [...].

Expansion by Stowers, the largest distributor in New Zealand, either on its own or together in a joint venture with an overseas manufacturer, would involve a relatively small incremental capital spend and could be done within a short timeframe (if not immediately).

Finally, the capital costs of a new distributor entering and commencing local supply would not be substantial. An operation with 2 sales representatives to sell imported pails to New Zealand customers would only take 2–3 months to set up.

Imports pose an effective competitive constraint

Imported pails pose an effective competitive constraint in the market, particularly in respect of the more popular pail sizes and shapes, and will continue to do so post-acquisition because they are of comparable quality and are around [...] less expensive than locally manufactured product.

Pails can be readily imported into New Zealand by customers, manufacturers or through distributors as they are nestable and light. NCI alone imports around [...] of the pails sold in New Zealand and has the capacity to import increased volumes. Similarly, Stowers and other distributors import large numbers of pails from overseas and have the ability to increase the volumes that they import at short notice.

Conclusion

For the reasons outlined above, and discussed in more detail in this application, the Proposed Acquisition will not have the effect or likely effect of substantially lessening competition in any relevant market.

Part 1: Transaction details

1 Acquirer

The acquirer is Pact Group.

The contact details for Pact Group are as follows:

Registered office / physical address:

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2 Target

The target is Pacific BBA Plastics (NZ) Limited and Viscount Plastics (NZ) (together, **Viscount**).

The contact details for Viscount are as follows:

Registered office / physical address:
Corporate Head Office
Level 1, 693 Burke Road
Hawthorn East, VICTORIA 3123
Australia

Telephone: +61 3 9811 1666
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Website: <http://www.viscountplastics.co.nz>

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Fax: + 64 9 916 8801
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3 Structure of the parties

3.1 Pact Group

Pact Group's plastic packaging business in New Zealand is managed through Pact Group (NZ) Ltd and the following wholly-owned subsidiaries: VIP Plastic Packaging (NZ) Ltd; Alto Packaging Ltd (**Alto**); and Tecpak Industries Limited. While part of the same group, each company in the packaging business operates as a separate entity under its own name and brand.

The structure of ownership and control of Pact Group, as relevant to the competition law assessment of the Proposed Acquisition, is provided in an organisational chart at **Confidential Attachment A**.

Pact Group operates as an independent company, and it has done so for many years. However, several years ago, at the time of the acquisition of the plastic packaging business of ACI Plastics by Pact Group (then known as Visy Industrial Plastics (NZ)

Limited (**VIP**)),¹ the Commission approached its analysis of the transaction on the basis that VIP and VisyPak² were associated.³

No issues relating to any association with Visy Industries Pty Ltd (**Visy**) or Visy Board (NZ) Ltd are relevant to the assessment of the Proposed Acquisition because Visy does not manufacture or supply plastic pails in New Zealand. Although Visy and Pact Group are of the view that changes over the last 7-10 years clearly indicate that the two companies should not properly be regarded as associated, it is not a point that Pact Group seeks to put in issue in the Commission's determination of this application. For completeness, Pact Group continues to reserve its position on this issue if it were to arise in any subsequent Commission process.

An entity that is part of Pact Group also holds a passive shareholding in NCI. [...] This shareholding does not give rise to any degree of influence over the business operations of NCI. NCI competes vigorously in the markets in which it operates, including those markets in which Pact Group is also a participant. The companies are not associated.

3.2 Viscount

Viscount is a division of LINPAC, a global company based in the United Kingdom. LINPAC is a privately owned business that is now owned by a consortium of banks, including Deutsche Bank.⁴

Pact Group understands that Viscount accounts for around 10% of LINPAC's global packaging business. An organisational chart showing the structure of ownership and control of Viscount is provided at **Confidential Attachment B**.

4 The Proposed Acquisition

Clearance is sought in respect of the proposed acquisition by Pact Group of the plastic pails business of Viscount.

In the broader Transaction, Pact Group is proposing to acquire 100% of the shares in Viscount. Relevant assets of Viscount in New Zealand include the business of manufacturing, distributing and selling plastic pails; and the business of manufacturing, distributing and selling materials handling products (such as crates, bins, trays and pallets), as well as cartridges.

These businesses operate from two plants in New Zealand conducted in rental premises at the following locations:

- 8-10 Vestey Drive, Mt Wellington, Auckland; and
- 435 Broughton Street (cnr of Gasson Street), Christchurch.

Viscount also leases office premises located at Office 18, 2nd Floor, 46-50 Bloomfield Terrace, Lower Hutt, Wellington.

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 As noted in public documents, Montagu Private Equity purchased the LINPAC global packaging business in 2003. Following the Global Financial Crisis, Montagu Private Equity had to restructure its debt to equity in mid 2009. The result of this restructuring was that Montagu Private Equity no longer owned LINPAC; LINPAC's new owners were a consortium of banks. See Simeon Goldstein, LINPAC completes debt restructure as banks take control, 22 January 2010, available at: <http://www.packagingnews.co.uk/business/linpac-completes-debt-restructure-as-banks-take-control/> (accessed 16 September 2011).

5 Commercial rationale

[...]

6 Transaction documents

A copy of the Share Sale Agreement (**Agreement**) is provided at **Confidential Attachment C**.

If the Application is approved, the parties expect that completion of the Proposed Acquisition is likely to occur early in 2012.

7 Notification in other jurisdictions

As the Proposed Acquisition involves Viscount's assets in Australia as well as in New Zealand, Pact Group has notified the ACCC of the Proposed Acquisition to seek informal clearance.

Part 2: The industry

8 Goods or services supplied by the merger parties

8.1 Pact Group

Pact Group supplies customers in a range of industries including food, retail, chemical and personal care. In New Zealand, the range of plastic packaging products supplied by Pact Group includes:

- PET beverage bottles;
- a mixture of large and small bottles, jars, tubes and containers;
- plastic pails and buckets (ie, for packaging food or paint);
- thin-walled plastic food containers (ie, for yoghurt, dips or ice-cream);
- a range of trays, bowls and punnets (ie, for packaging meat, fruit and bakery goods);
- plastic crates (ie, for materials handling purposes);
- larger plastic containers such as jerry cans, cubes, pails and drums (ie, for industrial purposes); and
- closures / lids.

8.2 Viscount

In New Zealand, Viscount manufactures and supplies:

- plastic pails with matching lids in sizes from 1L to 25L;
- plastic cartridges;
- plastic pallets, plastic crates and bins; and
- thin-walled plastic food containers. However, Viscount offers only one product in this category – a particular type of ice cream container.

These products are used for the packaging of products such as paints and other coatings, chemicals, adhesives and grease as well as food. Viscount's pallets, crates and bins are most frequently used by retailers and wholesalers to stock and transport large amounts of product (ie, materials handling purposes).

Viscount's customers come from a large number of industries including retail, manufacturing and food and beverage.

8.3 Overlap

The main area of overlap between Pact Group and Viscount, which is the subject of this clearance application, occurs in relation to the manufacture and supply of plastic pails up to 25L in size.

Pails are a type of rigid plastic container manufactured using injection moulding (**IM**). The IM process involves a closed mould into which heated molten resin is injected. The process has the advantage of distributing material within the container to very tight tolerances, so a very strong container is achieved. A hydraulic-powered clamping mechanism keeps the mould firmly closed during injection. Chilled water is passed over the exterior of the mould, cooling the plastic so it retains its shape. Once the plastic is cooled ensuring the container will retain 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.

Pails can be decorated using off-set printing, applying an adhesive label or in-mould labelling (**IML**). Off-set printing, a commonly used printing technique, is applied directly to the surface of the container (after manufacture). 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.

Pails are usually made from plastic or tinfoil and come in a variety of shapes (eg, round or square) and can be made with or without a handle (Figure 1).

Figure 1: The different type of plastic pails available



Plastic pails are used to package a variety of products including the following:

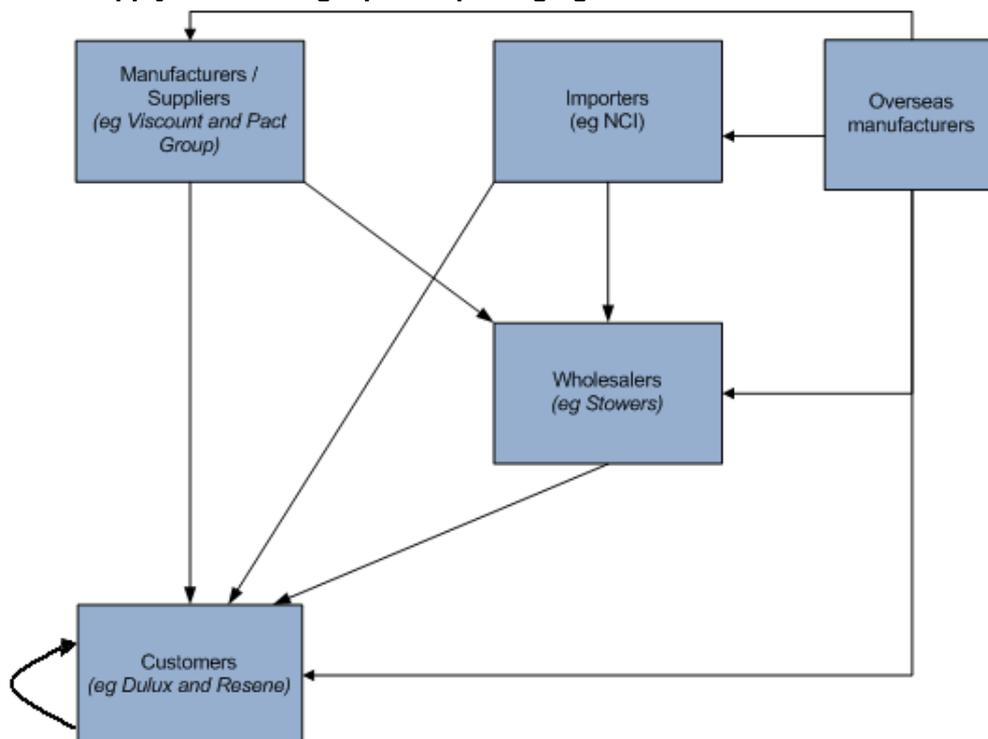
- coating and texture products (eg, paint, wood care products, textured coatings, etc);
- chemicals;
- oils and lubricants;
- retail food products;

- food products for foodservice purposes;
- cleaners, solvents, etc; and
- horticultural products.

9 The industry affected by the Proposed Acquisition

The Proposed Acquisition occurs in the rigid plastic container segment of the plastic packaging industry. The relevant supply chain is illustrated below in Figure 2.

Figure 2: Supply chain for rigid plastic packaging



Rigid plastic containers such as pails are either manufactured locally or imported. The low cost of labour and other inputs overseas, combined with a stronger New Zealand dollar and the much lower per unit costs of large offshore manufacturing operations, means that the landed cost of products manufactured overseas can be much cheaper than locally manufactured products.

Pact Group manufactures pails in New Zealand and supplies directly to end customers (eg, paint manufacturers, food and beverage manufacturers and fillers, food and beverage service operators, etc). Other competitors sell pails that have been imported into New Zealand from their overseas manufacturing plants. Wholesale distributors, such as Stowers, typically supply imported pails.

Customers can purchase pails from local manufacturers, wholesalers and distributors or overseas manufacturers directly. Larger customers may even choose to import plastic pails themselves.

10 Industry trends and developments

The competitive effects of the Proposed Acquisition must be considered in the context of the broader packaging industry in New Zealand which in recent times has been subject to a number of changes and challenges.

Broadly speaking, the manufacturing sector is under significant pressure to increase efficiencies and reduce costs. Packaging manufacturers have to compete with increased importation of both empty and filled packaging from the Asian region, as well as having to face the impact of the increased movement of manufacturing customers and procurement operations offshore where much larger operations allow for much lower per unit costs.

Imports have traditionally represented a large proportion of sales of rigid plastic packaging in New Zealand. Suppliers may rely solely on imports or use them to supplement supply from local manufacture. This allows entry or expansion at a reduced cost as investment can be focussed on a particular product rather than a full range. 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 and they are now comparable to New Zealand standards. At the same time, imports have maintained their significant cost advantage.

Plastic pails can be easily imported as they are relatively light and can nest into one another and technological developments are presenting opportunities for even lighter and therefore more easily transportable plastic pails.

At the same time, technological developments have increased the availability and decreased the costs of both new and second hand manufacturing machinery from overseas. These developments have made it relatively easy to set up and expand, or credibly threaten to set up, a local manufacturing operation or supply in-house should it be profitable to do so.

Increased levels of in-house manufacture have also changed competitive dynamics in the packaging industry. There are around six to ten key customers in New Zealand that have significant countervailing power. These large customers have sophisticated procurement processes and could bypass the merged entity by engaging in self-supply, switching to imports or sponsoring new entry.

As a result of these trends, local manufacturers are competing in an increasingly complex environment that includes other domestic manufactures (including firms that specialise in the smaller, more profitable segments of the market), businesses that have integrated in-house manufacturing operations and overseas based suppliers. This is a highly competitive environment which creates significant challenges for businesses such as Pact Group.

11 Recent mergers in the plastic packaging industry

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.

Pact Group 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.⁵

In 2010, Pact Group acquired the business and assets of Tecpak Industries Limited. Pact Group lodged a notice with the Commission in respect of this acquisition on 18 October 2010 and clearance was granted on 18 November 2010.

In 2011, an entity that is part of Pact Group acquired a 7.4% interest in NCI in Australia.

⁵ Prior to this, Premier Plastics Group had acquired Linkplas in 2003.

Part 3: Market Definition

12 Relevant markets

12.1 Previous decisions

Plastic pails are a type of rigid plastic packaging. The Commission last considered rigid plastic packaging in its analysis of VIP NZ's acquisition of Alto in 2006 (**Alto Decision**).⁶ In that decision, the Commission determined that there was a market for the manufacture and supply of small rigid plastic containers up to 20L in size (excluding PET beverage bottles).

Products included as part of this market were containers for:⁷

- packaging food, including food products that are liquid or semi liquid (eg, milk, sauces, mayonnaise, oil) and solids or dry food (eg, fruit, vegemite, jam and other spreads);
- packaging personal care products, including hair care products (eg, bottles for shampoo and conditioner), sunscreen, moisturisers etc;
- packaging household products, including dishwashing products, laundry detergents and fabric softeners, and household cleaners;
- packaging pharmaceutical products (eg, bottles/containers for tablets, vitamins etc); and
- packaging industrial and chemical products, including paint, oil and oil additives, fertilisers and garden chemicals.

Plastic pails were not considered in any detail in the analysis of the Alto Decision (the relevant overlap was much broader than that).

The ACCC has also considered rigid plastic packaging containers in several previous transactions involving Pact Group. In 2008 and 2009 the ACCC considered (then) proposed acquisitions of the Viscount business,⁸ and formed the view (on a preliminary basis) that the competition law analysis of these transactions should be on the basis that there was a separate market for the manufacture and supply of plastic pails.

We note that in these transactions Pact Group submitted that the product dimension of the relevant market was likely to be broader than 'plastic pails'. In particular, Pact Group noted that there is clear evidence of demand-side substitutability which demonstrates that the product dimension of the relevant market is broader than 'plastic pails' and includes tinsplate pails, plastic cubes and 'bag in a box' systems.

For products that use plastic pails, such as paint, customers commonly switch between using plastic pails, tinsplate pails and bag in a box systems to package their products (see Figure 3 below for the range of options available to customers for paint).

⁶ Decision No. 583, *Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited*.

⁷ Decision No. 583, *Visy Industrial Plastics (NZ) Limited and Alto Holdings Limited*, [48].

⁸ In both instances, applications for informal clearance were lodged but later withdrawn prior to the ACCC making a final decision.

Figure 3: A range of demand-side substitutes are available for paint

[...]	[...]	[...]
Plastic Pail	Tinplate Pail	Tinplate Can
[...]	[...]	
Plastic Tub	Bag in Box	

12.2 Approach to market definition

While Pact Group considers the evidence of substitutability mentioned above continues to be relevant, it also notes that, at the narrowest, the most significant area of overlap between Pact Group and Viscount is in respect of plastic pails (as opposed to plastic containers more generally). Taking this into account, this application focuses on the competitive impact of the Proposed Acquisition in that narrow area of overlap as the relevant 'market'. Pact Group submits that no substantial lessening of competition is likely to occur even if the Proposed Acquisition is analysed on that narrow basis.

The relevant functional dimension of the market is considered to be manufacture and supply (ie, both Pact Group and Viscount have local manufacturing capability but there are other competitors that supply imported products). The geographic dimension of the market is considered to be national.⁹

13 Differentiation within the relevant market

Plastic pails are not highly differentiated products. The majority of pails sold in New Zealand are commodity products that are manufactured using standard moulds that are easily available to any manufacturer. While some pails can be manufactured using customised moulds or proprietary technology, the impact of this differentiation in market definition is limited as these moulds and technology can be transferred from manufacturer to manufacturer (or duplicated).

14 Vertical integration

The Proposed Acquisition will not result in any increase in vertical integration within the market.

⁹ Pact Group manufactures from a single plant in Auckland, New Zealand and distributes nationally.

Part 4: Counterfactual

15 Future 'without' the Proposed Acquisition

There have been two previous instances (ie, 2008 and 2009) in which the owners of LINPAC have sought to sell the Viscount business. Pact Group considered purchasing the business on both of these occasions.

[...]

Pact Group therefore considers that if the Proposed Transaction does not proceed, the consortium of bank owners will continue to run the business as they have done in the last few years, ie, maintaining operations but avoiding further investment of capital. [...]¹⁰

¹⁰ [...]

Part 5: Competition Analysis

16 Existing competitors

16.1 There are a number of competitors in the relevant market

(a) Importers

National Can Industries Limited (NCI)

NCI has operations in a number of countries (including a factory in Thailand) but is based in Australia. In Australia, NCI uses IM technology to produce a large range of plastic pails and shaped tubs up to 25L in size as well as thin-walled food containers such as ice-cream tubs, yoghurt tubs, bowls and containers. NCI's plastic packaging products can be made to food grade standards depending on the required application. Tamper evident features are available on virtually their whole range.¹¹ NCI supplies these products to customers in the following industries: paint, industrial chemicals, food, detergents, veterinary and pharmaceuticals, among others. NCI also manufactures tinplate pails, general line cans and metal drums in Australia.

In New Zealand, NCI manufactures tinplate pails and general line cans. However, over the past two years, NCI has been supplying imported 4L and 10L plastic pails.

NCI is an increasingly vigorous and effective competitor in the market.

[...].¹² [...]

[...]

[...]

Further information about NCI is available at: <http://www.nci-packaging.com>.

Stowers

Stowers Containment Solutions (**Stowers**) is a New Zealand distributor that specialises in supplying plastic packaging (ie, materials handling products, rigid plastic non-beverage containers, closures, etc) to industrial and commercial customers. Stowers was established in 1972. In December 2010, after being privately owned for nearly 20 years, was acquired by Caniwi Capital, a New Zealand based investment and advisory group.

Stowers offers a wide range of plastic pails and lids ranging in size up to 20L, available in either round, square or rectangular designs. Its range includes products that are tamper-evident, food grade approved and/or suitable for dangerous goods. Stowers has 4 warehouse outlets across New Zealand.

[...]

¹¹ Further details on NCI's Packaging Products are available at: <http://www.thepackagingshop.com.au/packaging-products.asp>.

¹² [...]

Cospak / Arrow Plastics

Cospak is a manufacturer, importer and distributor of rigid and flexible packaging products including plastic pails. Cospak is a relatively new supplier of pails. It currently imports pails acquired from the Australian manufacturer Arrow Plastics (**Arrow**). Cospak is currently distributing 1L to 20L round and square pails to the small to medium customer segment of the market.

(b) Local manufacturers

Simaplas Plastic Injection Moulders

Simaplas is another privately owned company that commenced manufacture of IM components for the appliance and engineering markets in 1972. On the basis of its IM expertise, Simaplas subsequently expanded its operations to begin manufacturing plastic pails as well as a wider range of components for a variety of other industries. According to its website, in the last ten years, turnover has increased five-fold and is continuing to climb. It has also expanded with the acquisition of Targa Plastics in 2010.

Simaplas' plastic pail range includes both square and round pails ranging in size from 2L to 25L.¹³ All Simaplas containers are made from High Density Polyethylene (**HDPE**), although containers can also be specially ordered in polypropylene. Simaplas operates the largest IM machine in New Zealand, although generally its machines range in size from 15 tonnes up to 3000 tonnes. Simaplas manufacture and supply 2L and 4L pails to [...] as well as 20L pails [...].

Galantai Plastics

Galantai Plastics, like Pact Group, is a privately owned business. It has been operating for over 30 years and has become one of New Zealand's leading manufacturers of injection moulded containers. The company has one manufacturing plant, located in Auckland, where it has 15 IM machines.¹⁴

Galantai Plastics produce a range of plastic pails and lids as well as thin-walled containers, cups and bottles in various sizes. In addition, Galantai Plastics manufactures a range of IM plant pots and saucers, utility boxes, scoops and CD/DVD clamshells.

Galantai Plastics is recognised as being a high quality plastic manufacturer as evidenced by its success at the recent Plastic New Zealand Awards. Galantai Plastics won awards in seven categories, including IM, the category that includes plastic pails.¹⁵

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

¹³ Further details are available at: <http://www.simaplas.co.nz/view-products/10-and-125-litre-square-plastic-containers/>.

¹⁴ Further details on Galantai Plastics are available at: <http://www.gplastics.co.nz/index.html>.

¹⁵ Further details are available at: <http://www.gplastics.co.nz/index.html>.

Huhtamaki

Huhtamaki is a global plastic packaging manufacturer with operations across 37 countries.¹⁶ Huhtamaki manufactures and supplies 2L pails in New Zealand and has also recently developed a 5L scoop pail suitable for food service customers.

Uniplas

Uniplas is a small IM company who currently manufacture one 4.5L square plastic pail product in New Zealand. The pail comes in a range of colours. Uniplas is based in Wellington and has a factory in the Lower Hutt valley where it operates 22 IM machines ranging in capacity from 15 to 750 tonnes clamp capacity. Uniplas also operates a comprehensively equipped tool room for mould build and prototype development.

Bonson

Bonson is a plastics manufacturer specialising in IM of polypropylene food containers and food service disposables. It also manufactures a range of small pails.

Plastech Industries

Plastech Industries is a New Zealand based plastics manufacturing company based in Christchurch. It specialises in IM and offers a range of plastic pails in the following sizes: 1.25L, 2.5L and 10L.

(c) Other distributors / wholesalers

Pact Group is also aware that Arthur Holmes now supplies 4L, 10L and 20L pails.¹⁷

Copack International Limited is a manufacturer, importer and distributor of rigid and flexible packaging products. Copack is a manufacturer of some blow moulded packaging products, and in addition to its own manufacturing capabilities purchases and resells packaging products from a number of other New Zealand manufacturers, including offering a range of plastic pails.¹⁸

17 Market shares

Markets shares for the New Zealand pails market are shown in the table below. In the market there are a range of suppliers including local manufacturers, distributors and importers.

Supplier	Estimated sales value	Market share (%)
Pact Group	[...]	[...]
Viscount	[...]	[...]
Merged entity	[...]	[...]
NCI	[...]	[...]
Simaplas	[...]	[...]
Stowers	[...]	[...]

¹⁶ Further details are available at: <http://au.huhtamaki.com/>.

¹⁷ Further details are available at: http://www.arthurholmes.co.nz/index.php?cPath=1178_1146.

¹⁸ Further details are available at <http://www.copacksales.co.nz/index.php?page=pails-and-pots>.

Supplier	Estimated sales value	Market share (%)
Galantai Plastics	[...]	[...]
Huhtamaki	[...]	[...]
Cospak	[...]	[...]
Uniplas	[...]	[...]
Others	[...]	[...]
TOTAL	[...]	[...]

Source: Estimates by Pact Group and Viscount.

There are a number of suppliers listed in the table above (eg, NCI, Stowers and Cospak) that supply imported pails in New Zealand. [...] [...]

18 Constraint on the merged entity by existing competitors

Post-acquisition, the merged entity will continue to be constrained by existing competitors, including international entities such as NCI and Huhtamaki, and strong local competitors operating a range of business models, such as Simaplas, Stowers and Uniplas. Given that there are no barriers to customers switching suppliers, any competitor with a good product offering at a competitive price has the ability to grow its market share within a short timeframe.

NCI is one likely candidate for entry into local manufacture and expansion. NCI has been actively leveraging its supply relationships with Australian customers into New Zealand and has been actively targeting customers with aggressive prices and high quality pails. Over the past two to three years, NCI has attracted a sizeable number of customers demonstrating that its pail entry strategy has been a successful one. Pact Group estimates that NCI would only need one or two more medium-sized to large pail customers in New Zealand to 'sponsor' the commencement of local manufacture at its Auckland plant.

These issues are discussed in detail below.

18.1 There are no barriers to customers switching

If the merged entity were to attempt to increase the price of plastic pails by 5–10% post-acquisition, customers are likely to switch to an alternate supplier. This is because there are no barriers to customers switching.

(a) Customers are typically uncontracted

The majority of customers who acquire plastic pails are not contracted to a particular supplier. [...] [...]

Other large customers in New Zealand include [...] and [...]. While there are terms and conditions of supply agreed with [...], these customers are not contracted and could switch to an alternate supplier at very short notice.

(b) Plastic pails tend to be generic in nature

Switching suppliers is comparatively easy as plastic pails are typically fairly standard in design. For example, pails tend to be manufactured in three general shapes (round, square and rectangular) and come in a limited variety of sizes. Some pails are made to

food grade quality, while others are designed with thicker walls and specific lids to enable them to be used for packaging dangerous goods. However, most manufacturers and distributors are capable of providing a selection of each of these types of pails.

Where a manufacturer/distributor does not currently stock a specific size and/or shape of pail, it is usually the case that given a suitable long-term order or contract, the manufacturer/distributor could begin manufacturing and/or supplying that product fairly quickly and easily. Generally, a manufacturer would simply have to acquire a new mould for that particular type of pail. Alternatively, a distributor may have to contact a new supplier and potentially import that particular product from their choice of the many international pail manufacturers in Australia, Asia and abroad.

18.2 Existing competitors can expand on a large scale in a short timeframe

There are several IM manufacturers that are well-positioned to expand post-acquisition if the merged entity were to raise prices or decrease quality/service. Expansion by an existing competitor could be achieved very inexpensively and quickly (within less than a month).

These competitors are likely to be able to use their existing IM machinery to set up a new pail line. All that would be needed is a new mould for the required pail and/or lid size. There is currently enough excess capacity in the Australasian market that quality tooling could easily be acquired second hand from Australia. Tooling can be shipped across the Tasman for as little as [...]. This is not an uncommon practice, [...]

Relevant candidates for expansion using this model include Simaplas and Huhtamaki.

Simaplas manufactures both square and round pails ranging in size from 2L to 20L. Although they have previously focused predominantly on small pails, they have the machinery to enable them to manufacture large pails as well. Pact Group understands [...] The machinery used to previously manufacture products for [...] could be easily converted to manufacture pails instead. All that would be required would be new moulds for whatever size pails Simaplas wishes to manufacture.

While Huhtamaki does not currently manufacture a large range of pails, it has recently moved into manufacturing a 5L scoop pail for food service customers. Huhtamaki has the necessary financial backing to be able to expand further into pail manufacture if the conditions were appropriate.

Distributors such as Stowers could also readily expand and increase their pail range by importing increased volumes from overseas. As noted above, pails can be acquired from a wide range of Australian manufacturers – for example, Cospak currently imports pails manufactured by Arrow in Australia – or from China. Although upfront payment may be required for importation and orders must be of a certain size, distributors are in a good position to manage these volume requirements for their customers, particularly because imported pails tend to be cheaper than domestically manufactured product.¹⁹

19 Potential competition: the requirements for new entry

The success of NCI in entering the market and garnering a market share of over [...] in just three years demonstrates that barriers to entry are low.

¹⁹ [...]

Entry into the market can occur in a number of ways (eg, greenfields entry, expansion from other IM manufacturing, imports, etc). Costs of new entry would vary depending on the business model, as shown in the table below.

Business model	Likely requirements and costs	Timeframe
<p>Enter de novo</p> <p>First stage – enter and produce a popular sized pail, such as a 10L pail</p>	<p>In addition to raw materials (resin) and land and buildings, a new entrant is initially likely to require:</p> <ul style="list-style-type: none"> • Machinery – two machines – one to manufacture the base of the pail and one to manufacture the lid – could be purchased for approximately [...] (new) from an Asian supplier.²⁰ Similar machines from a European supplier would cost around [...].²¹ Second hand machines are also available to purchase. • Tooling – moulds for the lid, the pail and handle would cost around [...] if local low tech moulds or [...] if European high tech moulds. • Decoration – labelling can be done in a number of ways: pre-printed paper labels, in-mould labels or offset printing on the pail. Offset printing is the most expensive and would cost around [...], while IML would cost less than [...] if the robot was sourced from Asia. <p>Total capital spend is likely to be less than [...]</p>	<p>4–6 months</p>
<p>Enter de novo</p> <p>Second stage – progressively expand range to a total of 8 different sized pails</p>	<p>New entrant would need additional machinery, tooling and decoration equipment.</p> <p>Total capital spend for a range of 8 pails is likely to cost approximately [...]</p>	<p>12 months or less</p>
<p>Expand from the manufacture of other plastic IM containers into the manufacture of pails</p> <p>Examples: IML Plastics Limited</p>	<p>Tooling which can be obtained starting from [...] (for a single cavity tool).</p>	<p>1 month</p>
<p>Expand from manufacturing pails outside of New Zealand to New Zealand</p> <p>Examples: NCI</p>	<p>The costs would be similar to that for new entry. However, the technical expertise and customer knowledge could be leveraged such that the timeframe for entry would be quicker than de novo entry. Also, costs can be lowered if equipment and tooling can be</p>	<p>3–4 months</p>

²⁰ Examples of Asian suppliers of this machinery include [...]

²¹ See <http://www.netstal.com/>.

Business model	Likely requirements and costs	Timeframe
	shipped from the Australian plant.	
Expand the pails imported from overseas Examples: Stowers	The only cost would be the availability of working capital. Lead times for imports tend to be around 1 month (depending on product availability).	1 month
Enter and start importing pails into New Zealand Examples: Suzhou Fansheng Plastic Manufacture Co Ltd in China	The overseas manufacturer would also have to establish a relationship with a distributor, such as Stowers. As this mode of entry does not require the investment capital to set up the plant and machinery, it provides a lower risk way to test viability in the New Zealand market before setting up a manufacturing plant.	1–2 months
Enter as a distributor of imported pails	The distributor would need to establish a relationship with an overseas manufacturer and hire 2 sales representatives.	2–3 months

As shown in the table above, the requirements for entry are not prohibitive, even for greenfields entry. Further, as the typical entry model in the industry relies upon any new manufacturer having first secured a supply contract with a sizeable customer (eg, [...]) before any capital investment is made, the risks associated with entry are not significant.

20 Potential competition: factors likely to prompt or impede entry/expansion post-acquisition

As discussed above in section 10, technological developments have increased the availability and decreased the costs of both new and second hand manufacturing machinery from overseas. These developments have made it relatively easier to set up and expand, or credibly threaten to set up, a local manufacturing operation or supply in-house should it be profitable to do so.

These factors are likely to prompt further entry and expansion into the market by the candidates discussed in section 21 below.

21 LET test: likely entry candidates

One likely candidate for entry in the manufacture and supply of plastic pails in New Zealand is NCI. NCI is currently importing pails from Australia to supply in New Zealand but does not manufacture locally.

Given that NCI already has established supply relationships, the technical know-how and expertise as well as a manufacturing plant in Auckland that has space to house a new pail manufacturing line, it would only take one large customer (such as [...] or [...]) or a couple of medium-sized customers to switch to support NCI's investments.

Stowers is also a likely expansion candidate, either on its own or together in a joint venture with an overseas manufacturer. Expansion would involve a relatively small incremental capital spend and could be done in a short timeframe (if not immediately).

Finally, a large customer, such as [...], would be able to readily commence in-house manufacture or could sponsor a small manufacturer into expanding its operations in New Zealand. Indeed, Pact Group understands that [...] has considered going in-house in the past.

22 LET test: sufficiency of constraint posed by potential entry

The likely candidates discussed in section 21 above – NCI, overseas manufacturers, new distributors, Stowers or a large customer – would pose a strong competitive constraint on the merged entity post-acquisition.

A large customer going in-house, such as [...], would also pose a strong competitive constraint on competitors. This is because this customer alone amounts to almost a [...] of the total pails manufactured in New Zealand.

23 LET test: timeframe for new entry

It is estimated that new entry (or expansion) as discussed above would take less than 12 months to implement. This is a reasonably short time frame, particularly considering that a new entrant could be able to expand its operations much faster than that (eg, by initially supplying from Australia and later switching to domestic manufacture in New Zealand).

24 Countervailing power of customers

24.1 Customer profiles

There are a small number of large customers in New Zealand that have significant countervailing power –Dulux, Resene, Wattyl, [...]

Dulux

Dulux is a marketer and manufacturer of premium branded products including Dulux decorative paints, powder coatings, texture coating, wood care products as well as Selleys and Yates products. It has 12 main manufacturing sites and a comprehensive supply chain network that spans New Zealand, Australia, PNG, China and South-East Asia.²²

[...]

[...]

Resene

Resene is marketer and manufacturer of paint products with manufacturing locations in both Australia and New Zealand. [...]

²² DuluxGroup, 2010 Annual Report, p. 7.

Wattyl

The Wattyl Group is a paint and surface coatings business with manufacturing, sales and distribution operations in Australia and New Zealand. Wattyl NZ is the New Zealand operation. It has several manufacturing sites in New Zealand, and services export markets throughout the Pacific and Asia. Wattyl NZ manufactures the following branded products: Wattyl Interior Design ID paint; Solagard weather protection coating; Granosite specialist architectural coating; and Killrust metal protection coating.

[...].

[...]

24.2 Customers with countervailing power can bypass the merged entity

The customers listed above are not only large but also have sophisticated procurement processes. These customers would have the ability to completely bypass the merged entity by engaging in strategies such as:

- fostering new entry or expansion of an existing industry participant;
- switching to imported products; and
- setting up in-house manufacturing operations.

(a) 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.²³ 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.²⁴

[...]

Furthermore, as discussed earlier, there are a number of customers within the industry (eg, [...] and [...]) who acquire sufficient volume of plastic pails to enable a new entrant to set up de novo on the basis of securing a long term supply contract with them.

(b) Ability to import

As noted above, imports are an increasing trend. Imports into New Zealand typically come from Australia or Asia.

Importation from Australia

In Pact Group’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 that Pact Group, Viscount, NCI and Cospak all import products from Australia.

²³ BIS Shrapnel, *Plastic Packaging in Australia – Volume 1: Rigid Packaging*, 14th Edition, 2008-2010, at page 191.

²⁴ 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.

Importation from Asia

Imports are also readily available from Asia, both filled and unfilled. In the last 10 years, Asian-manufactured plastic pails standards and technology have vastly improved and are now comparable to New Zealand manufacturing standards. A longer lead time may be required, but significant cost savings stand to be made as imported pails are around [...] than locally manufactured pails. [...]

(c) Ability to set up in-house manufacturing operations

Setting up an in-house manufacturing operation is not difficult. Costs would be as shown for de novo entry (see discussion in section 19 above), but significant savings would be likely to be realised. There is unlikely to be technology barriers as there is readily available expertise to help set up and operate an IM plant. Indeed, in-house manufacture is very common in plastic packaging and as noted above, [...]

25 Top customers

The following is a list of the top 10 buyers by sales and volume of Pact Group's plastic pails (less than 25L in size).

Table 1 Top 10 buyers of plastic pails (less than 25L in size) from Pact Group

Customers	Sales revenue	Volume (units)
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

The following is a list of the top 10 buyers by sales of Viscount's plastic pails (less than 25L in size).

Table 2 Top 10 buyers of plastic pails (less than 25L in size) from Viscount

Customers	Sales revenue
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Customers	Sales revenue
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Note: the above information covers the year from September 2010 to August 2011.

[...]

26 Coordinated effects

The risk of coordinated effects arising post-acquisition is low. Consistent with the approach taken by the High Court in *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 (HC), the conditions for concluding that there would be effective and sustainable coordinated behaviour as a result of the acquisition do not exist in the plastics pails market.

Applying the test in the Commission's Guidelines shows that coordinated effects are unlikely to be present in the plastic pails market post-acquisition as follows:

- the high level of competitive constraint from existing competitors will continue post-acquisition;
- the presence of smaller existing competitors, such as Simaplas and Galantai Plastics and Huhtamaki (which is a global packaging provider), that are all able and willing to expand capacity readily (due to the availability of excess capacity);
- low barriers to entry and/or expansion for other parties that could enter or expand by either (a) establishing a New Zealand manufacturing presence with a low capital investment or (b) by sourcing and importing overseas manufactured product;
- the ease with which imported product can compete in the New Zealand market and the growing proportion of the market which is comprised of imports;
- the asymmetry of market share and costs between the various providers as a result of the different sized businesses in the market and the different business models that are used (for example, local manufacture, importing, wholesaling);
- the countervailing power of highly price conscious customers (such as Dulux, Resene and Watty) undermines any potential for coordinated market power;
- the price sensitivity of customers, and the ability of customers to self-supply, reduce the scope for a profitable rise in the price;
- the lack of price transparency between suppliers means that any deviation from a co-orientated price level could not be detected;
- the various different business models that are used (as illustrated in the table in section 19 above) means that a tacit understanding or common perception of terms could not be easily reached or sustained;

- the presence of fringe competition from the various demand-side substitutes for plastic pails, including tinplate pails, plastic cubes and 'bag in a box' systems, ensures there is alternative forms of supply to plastic pails; and
- there is no history of anti-competitive behaviour in this industry. Neither Pact Group nor Viscount is aware of any past or current coordination of activities with any other competitors in supply to the New Zealand market. There is no evidence of price coordination in the plastic pails industry.

For all the reasons set out above, the application of the tests in the Commission's Guidelines reveal that there would not be scope for the exercise of coordinated market power in this market and the Proposed Acquisition will not impact on Pact Group vigorous competition in the packaging industry.

27 Efficiencies

Pact Group expects that the Proposed Acquisition will allow it to realise significant back office savings and increase efficiency (reducing both fixed and variable costs).

Part 6: Further information and supporting documentation

28 Contact details

The contact details of relevant plastic packaging industry participants, including competitors, buyers and suppliers are set out in **Confidential Attachment D** to this Notice.

29 Annual Reports / Financial Statements

The most recent annual reports / financial statements of the merger parties are provided as **Confidential Attachment E** to this Notice.

Part 7: Confidentiality

Confidentiality is sought in respect of all items deleted from the public copy of this application (**confidential information**). The items are indicated in the non-public version in square brackets ([]) or in the case of attachments described as being “Confidential”.

In respect of the confidential information, confidentiality is claimed under section 9(2)(b)(ii) of the *Official Information Act 1982*, on the grounds that:

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

Pact Group and Viscount request that they be notified of any request made to the Commission under the Official Information Act for release of their own confidential information, and that the Commission seeks their views as to whether the information remains confidential and commercially sensitive, at the time responses to such requests are being considered.

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

30 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.

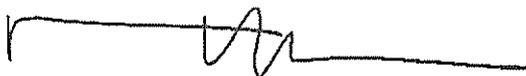
Pact Group undertakes to advise the Commission immediately of any material change in circumstances relating to the Notice.

Dated this 3rd day of October 2011

Signed by Pact Group:

Nick Perkins
General Counsel, Pact Group

I am duly authorised to make this Notice.



Authorised signatory

Confidential Attachment A — Pact Organisational Chart

[...]

Confidential Attachment B — Viscount Organisational Chart

[...]

**Confidential Attachment C —
Share Sale Agreement**

[...]

Confidential Attachment D — Contact details

Relevant contact details for competitors are provided in the table below.

Contact details of competitors

Name of company	Contact details	Relevant Contact person
NCI	80 Mount Wellington Highway Panmure, Auckland City, Auckland W: http://www.natcan.com.au	P: 09 914 9444 F: 09 914 9440
Galantai Plastics	Glendene, Waitakere Auckland 0602 W: http://www.gplastics.co.nz/	Frank Galantai General Manager P: 09 818 9558 F: 09 818 1492
Simaplas	69 Portage Road Otahuhu Auckland W: http://www.simaplas.co.nz/	Eddie Divine Snr General Manager P: 09 276 8619 F: 09 276 6595
Huhtamaki	30 Keeling Road Henderson Auckland W: http://au.huhtamaki.com/	P: 09 837 0510 F: 09 837 1195
Uniplas	201 Eastern Hutt Rd Wingate Lower Hutt W: http://www.lamnei.co.nz/	P: 04 577 8970 F: 04 567 5721
Bonson	43–47 Lansford Crescent Avondale Auckland W: http://www.bonson.co.nz/	P: 09 828 2121 F: 09 828 2433
Plastech	27 King Edward Terrace Woolston 8023 Christchurch W: http://www.plastech.co.nz/	P: 09 634 0203 F: 09 634 0338
Stowers Containment	27 Ross Reid Place East Tamaki 2013 Auckland W: http://www.plastic.co.nz/	P: 09 253 9805 F: 09 271 3431
Arthur Holmes	10–30 Horner Street Newtown Wellington W: http://www.arthurholmes.co.nz/	P: 04 389 4103 F: 04 389 1099

Relevant contact details of Pact Group’s relevant customers and suppliers are set out below.

Contact details of Pact Group's relevant customers and suppliers

Name of company	Contact details	Relevant Contact person
Customers		
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
Suppliers		
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Contact details of Viscount’s relevant customers and suppliers are set out below.

Name of company	Contact details	Relevant Contact person
Customers		
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
Suppliers		
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

**Confidential Attachment E —
Annual Reports / Financial Statements**

[...]

[...]