

**Commerce Act 1986: Business Acquisition
Section 66: Notice Seeking Clearance**

Date:

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition. Attached as an appendix to this notice is a submission prepared by the applicant and its advisers, Phillips Fox and economist Ms Rhonda Smith.

Part I: Transaction Details

1 The business acquisition for which clearance is sought

- 1.1 The acquisition by MiTek New Zealand Limited (or its related company, MiTek Australia Limited) (**MiTek**) of the assets and liabilities of Pryda New Zealand (**Pryda**) and Reid New Zealand (**Reid**) (being operating divisions of Nylex (New Zealand) Limited).
- 1.2 There is, as yet, no signed contract or agreement relating to the proposed acquisition.

2 The person giving notice

- 2.1 This notice is given by:
- Richard Poole
Managing Director
MiTek New Zealand Limited
5 Zelanian Drive
East Tamaki
AUCKLAND

- 2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Phillips Fox
Phillips Fox Tower
209 Queen Street
Auckland
Attn: Martin Wiseman/Mark Williamson
Telephone: (09) 300-3825/300-3857
Facsimile: (09) 303-2311

3 Confidentiality

The fact of the proposed acquisition?

- 3.1 Confidentiality is not sought for the fact of the proposed acquisition.

Specific information contained or attached to the notice?

- 3.2 Confidentiality is sought in respect of the information deleted on the attached "Public Copy" of the Notice unless and until the applicant confirms that particular information is no longer confidential to the participants.
- 3.3 The information has been deleted because it is commercially sensitive and contains valuable information that is confidential to the participants. In this respect the applicant relies on section 9(2)(b) of the Official Information Act 1982.

4 Details of the participants

Acquirer

- 4.1 MiTek New Zealand Limited

MiTek New Zealand Limited
5 Zelanian Drive
East Tamaki
AUCKLAND
Contact: Mr Richard Poole
Telephone: 9 274 7109
Fax: 9 274 7100

- 4.2 Nylex (New Zealand) Limited (formerly known as Austrim National Radiators P/L (Owner)

c/- Austrim Nylex Limited
Melbourne, Australia
Contact: Mr Neil Christensen, Company Secretary
Telephone: +613 9533 9333
Fax: +613 9533 9388

5 Parties interconnected to or associated with each participant

Acquirer group/associates

- 5.1 MiTek is part of an international group of companies. The company structure of the MiTek group is contained in Figure 3 of the Appendix to this notice.

Owner/group associates

- 5.2 The Owner is a wholly owned subsidiary of an Australian publicly listed company Austrim Nylex Limited. The company structure of the Austrim Nylex group insofar as it relates to the proposed acquisition is contained in Figure 4 of the Appendix to this notice.

6 Beneficial cross-entitlements

- 6.1 There are none.

7 The business activities of each participant

Background

- 7.1 The participants operate in the Australasian structural building components industry. In order to understand the general environment in which the parties operate, it is necessary to have a basic understanding of this industry.
- 7.2 Building components are the elements used to construct buildings and include wall frames, floor and roof trusses, posts and beams. They are the basic building blocks used to construct houses and commercial, industrial and institutional structures (of particular relevance to the parties is the construction of residential and light commercial structures). More specifically, building components include those items listed in Annexure 2 of the Submission appended to this application. Significantly for present purposes, they include builders' hardware products comprising connector plates and other products used to join members used to fabricate building components, brace and fix them to foundations and fix or tie the building envelope to the building structure.
- 7.3 The building components industry is, by and large, a "value-adding" industry, where end-users do not buy the components themselves but rather buy assembled packages of components (e.g. in the form of a house). To a limited extent, however, building components and related products are directly acquired by home renovators for certain applications. For example, builders' merchant stores supply everything from doors to fasteners to small machinery items (such as saws and jigs) often used in the construction of building components by "Do-it-Yourself" consumers.
- 7.4 Given the respective interests of both MiTek and Pryda, the relevant segment of the building component industry is the prefabricated structural building component industry. The prefabricated structural building component industry comprises the manufacture and distribution of building components that are used in the construction of prefabricated roof trusses, floor trusses and wall frames.

- 7.5 A detailed description of the prefabricated structural building component industry is set out in Section 4 of the Appendix.

The Acquirer

- 7.6 As stated above, MiTek operates in the structural building components industry. This industry includes builders' hardware products comprising connector plates and other products used to join members, fabricate building components, brace and fix them to foundations and fix or tie the building envelope to the building structure. MiTek manufactures and/or distributes the following building components:

- 7.7 MiTek manufactures and / or distributes:

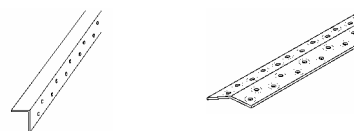
7.7.1 Fasteners:

- (a) A fastener joins two pieces of wood, steel or concrete together.
- (b) Fastener products include connector plates for joining timber members to form trusses. Other types of commonly used fasteners include. nails, screws, bolts, staples and glue. There are also 'special' fasteners with specialty fixing applications in the building industry (e.g. cyclone tie, brick tie, bottom plate anchor and pile fixings).



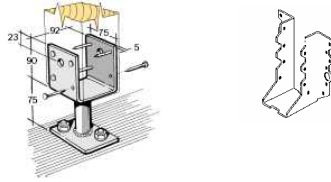
7.7.2 Bracing:

A 'brace' or bracing is a pressed metal component that is used to prevent distortion or buckling of a frame or truss.



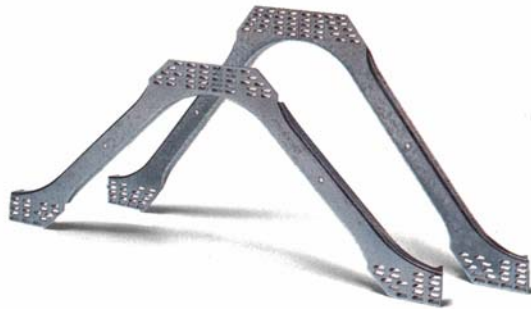
7.7.3 Brackets:

A 'bracket' is a metal product that connects or supports structural members in buildings.



7.7.4 Special structural products:

These products are designed as alternatives for certain structural members (e.g. metal webbing and steel lintels). Below is shown a Posi-STRUT® metal web:



7.7.5 Machinery:

Machinery products include specialised equipment for the prefabricated timber wall and roof truss industry (e.g. truss presses, truss jigs and saws). Below is shown a jig and press:



7.8 Some of these products are software-supported, meaning that the products are sold supported by licensed software in order to facilitate the use of the product and the design of building components. MiTek supplies the following software-supported products:

7.8.1 Fasteners

Connector plates are the main type of fasteners that are software-supported.

7.8.2 Special structural products

MiTek manufactures a number of software-supported special structural products. These include:

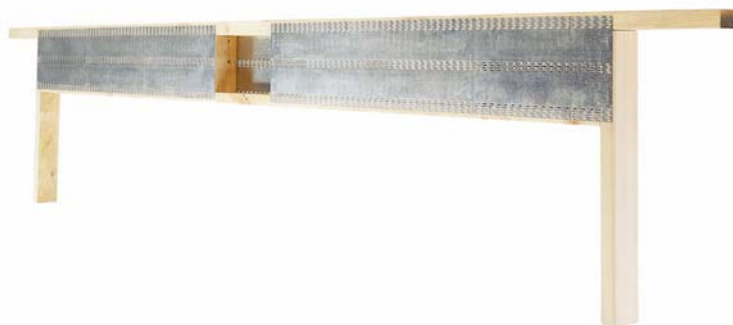
- (a) MiTek's Matrix Webs[®]: which replace traditional wooden webs in the centre of a truss with tubular steel. These steel webs, are fixed with screws to the timber chords (the main triangular structure of the truss) and result in a very strong but lightweight truss.



- (b) Posi-STRUTS[®]: V-shaped metal web components with punched teeth as an integral part of the web which are used in floor and roof trusses to replace solid joist timber, laminated veneer lumber (LVL) I-Beam products or "glue-lam" products (being laminated wood products fastened with glue).



- (c) GN Lintels[®]: lintels constructed with large connector plates and timber members to form beams to carry loads over openings such as doors and windows.



(d) Other

The usage of brackets and bracing may also be assisted by software programmes.

- 7.9 MiTek provides a truss design computer programme called MiTek 20/20[®] (which runs on a Windows based system).
- 7.10 This software system enables fast and efficient truss design for even the most complex roof shapes, as well as providing detailed production data and management information for users.
- 7.11 A programme such as MiTek 20/20[®] includes three modules:
- 7.11.1 a layout module: where the details of the job are inputted into the software programme;
 - 7.11.2 an engineering module: where the software calculates the optimal design of the trusses; and
 - 7.11.3 a detailing module: where the software specifies the details of every truss in the building, including the number of trusses required, their individual sizes and specifications (including the angle of every cut), and the number, size and positioning of connector plates.
- 7.12 Software-support products account for []
- 7.13 MiTek's full range of products is described in Annexure 4, and its supply chain is set out in Figure 5, of the Submission appended to this application.

The Owner

- 7.14 The Owner has two business units in New Zealand namely Pryda and Reid. Pryda operates a timber connecting systems business while Reid operates a concrete fastening systems business. Pryda is the only relevant business unit for the purposes of this notice because it is the only business unit that operates in markets in which there will be aggregation as a result of the transaction.
- 7.15 Pryda develops and markets manufacturing systems, equipment and timber connectors for roof truss, floor truss and wall frame prefabrication and timber jointing systems.

- 7.16 Those product ranges which Pryda manufactures and/or distributes in common with MiTek are as follows:
- 7.16.1 Fasteners.
 - 7.16.2 Bracing.
 - 7.16.3 Brackets.
 - 7.16.4 Special structural products.
 - 7.16.5 Machinery.
- 7.17 As with MiTek, some of Pryda's products are software supported including some fasteners and some structural products. Further details of Pryda's operations are set out in paragraphs 5.19 to 5.27 of the Appendix.
- 7.18 As set out in paragraph 6.13 of the Appendix, both MiTek and Pryda sell their products in New Zealand through fabricators and builders' merchant stores.

8 The reasons for the proposal and the intentions in respect of the acquired or merged business

- 8.1 The parent company of the Pryda and Reid businesses has sought indicative offers from parties interested in their acquisition. As a competing supplier of machinery, builders' hardware products and software-supported builders' hardware products, MiTek has been invited to submit an offer; given the similarities between MiTek's and Pryda's respective businesses, MiTek has accepted this invitation.
- 8.2 If the proposed acquisition were to proceed, it would also provide MiTek with the opportunity to expand into the concrete fastening business (by way of the Reid business). This is a market in which MiTek has no current presence.
- 8.3 [

]

Part II: Identification of Markets Affected

9 Horizontal aggregation

9.1 The relevant markets where there will be an aggregation of business activities as a result of the proposed acquisition, based upon a very conservative approach to market definition, are:

9.1.1 The market for the supply of building component machinery.

9.1.2 The market for the supply of builders' hardware products.

9.1.3 The market for the supply of software-supported builders' hardware products.

9.2 The geographical extent of the market of the supply of building component machinery is Australasian. The geographic extent of the other two markets is New Zealand.

9.3 The functional description of these markets could be described as manufacturing and distribution.

9.4 We submit that the relevant time period over which the Commission should assess potential impacts of the proposed acquisition is two to three years.

9.5 A more detailed description of the relevant markets, including the market participants, is set out in Part C of the Appendix.

9.6 In summary, we estimate the combined market share of MiTek and Pryda in the relevant markets is approximately:

9.6.1 In the case of the building components machinery markets, [].

9.6.2 In the case of the builders' hardware products market, [].

9.6.3 In the case of the software-supported builders' hardware products market, considering connector plates only, [].

9.7 Accordingly, this notice focuses on the likely competitive effects of the proposed acquisition on the software-supported builders' hardware products market.

10 Differentiated product markets

10.1 The products in the software-supported builders' hardware market and the building components machinery market are differentiated, with buyers making their purchase decisions largely on the basis of product characteristics as well as price. On the other hand, products in the builders' hardware market are standardised, so that buyers make their decision as to the purchase of particular building products and components largely on the basis of price.

11 Vertical integration

- 11.1 The proposal will not result in vertical integration between firms engaged at different functional levels.

12 No previous notifications to the Commission or acquisitions

- 12.1 In respect of the markets identified above in the last three years:

- 12.1.1 Neither participant has notified the Commission in relation to an acquisition.
- 12.1.2 Neither participant has undertaken any other acquisition of assets or shares.

Part III: Constraints on Market Power by Existing Competition

13 The suppliers of competing products, including imports

Introduction

- 13.1 A general description of competitors of the participants in New Zealand is set out in Section 6 of the Appendix.

Building components machinery market

- 13.2 MiTek management is not in a position to provide informed estimates of key competitors in this market as it competes only in small niche, supplying machinery to fabricators. In relation to this niche, MiTek estimates that Spida would account for 50% and Mango 25% of total sales. The remaining 25% is made up of a myriad of suppliers, the majority of whom are based overseas (for a list of known competitors, see Annexure 6 of the Appendix).

- 13.3 []

Builders' hardware products market

- 13.4 In this market there are a very large number of competitors supplying a broad range of builders' hardware products including nails, screws and bolts and a wide range of brackets, braces, lintel, spacers, hinges, springs and hooks.
- 13.5 Consequently, MiTek management is unable to provide informed estimates of the relative shares of various competitors, although companies like Illinois Tool Works (ITW) which in turn owns several businesses providing products of this sort (including Siddons, Ramset, Buildex, Duo-Fast) and nail producers such as Ajax Cooke, Hurricane and New Zealand Nail are considered to be quite large as compared to many other suppliers in this market.

- 13.6 []

Software-supported builders' hardware products market

- 13.7 Given emerging products and shifting demand curves, it is extremely difficult to estimate market shares of competing firms with any precision. Accordingly, the table below sets out estimated market shares in relation to software-supported connector plates, although we emphasise that the market, even when conservatively defined as here, is broader than this single product. Indeed, we note that MiTek itself provides a broader range of software-supported builders' hardware products, and is also currently developing new products such as a software system for design of steel roof trusses.

Table - Connector plate market share by tonnage (MiTek estimates as at 2002)

	Market share (tonnes per annum; %)
MiTek	
Pryda	
Multinail	
Total	
Merged Entity	

- 13.8 We note that Multinail is understood to have excess manufacturing capacity and is therefore in a position to build a market presence without further capital investment. Indeed, it currently appears to be attempting to enter the New Zealand market, and has recently sold machinery to a fabricator in New Zealand.

14 Other considerations

Multinail Australia Pty Limited (Multinail)

- 14.1 Although largely based in Australia, Multinail is currently pursuing business opportunities in other countries including New Zealand. Multinail has recently sold a large truss manufacturing machine to a New Zealand truss fabricator and is currently pursuing further business opportunities in New Zealand. The productive capacity that Multinail could bring to the relevant markets is significant. For further details about Multinail see Section 6 of the Appendix.

Imports

- 14.2 Both building component machinery and builders' hardware products are readily able to be imported into New Zealand, and in the case of building component machinery, imports constitute a significant proportion of sales (estimated to be in the range of 20-25%).
- 14.3 In relation to the software-supported builders' hardware market, MiTek cannot confirm that fabricators have privately imported such products for commercial use at present, although it is understood that a new fabricator is considering this option.

Export

- 14.4 Both MiTek and Pryda currently export some of the products under consideration to the Pacific Islands.

Vigorous competitor

- 14.5 Pryda is no more or less vigorous a competitor than other participants in the relevant markets.

15 Coordinated market power

- 15.1 There are no issues relating to the exercise of co-ordinated market power raised by the proposal.

Part IV: Constraints on Market Power by Potential Competition

16 Conditions of entry

Summary

- 16.1 The threat of potential competition will provide a significant constraint on the ability of the merged entity to exercise market power following the proposed acquisition.
- 16.2 The nature of all three markets is such that there are no significant barriers to entry that would affect the ability of a new firm to enter the relevant market given a sufficient price incentive. For a detailed analysis of conditions of entry, particularly in relation to the software-supported builders' hardware market, see Section 16 of the Appendix.
- 16.3 A number of potential entrants constrain the conduct of the participants in the software-supported builders' hardware market. These include:
- 16.3.1 Overseas manufacturers, who have demonstrated a capacity and willingness to enter overseas markets;
 - 16.3.2 Software development companies, who are in a position to provide software systems on a stand-alone basis (with the accompanying builders' hardware products readily available to be imported); and
 - 16.3.3 Other parties, such as those acquirers of software-supported builders' hardware products, who are well equipped to exercise countervailing power.
- 16.4 Amongst these potential entrants, we do not include Multinail which is already considered to be present in the New Zealand market. Nonetheless, we note that following a similar acquisition in Australia about 15 years ago, Multinail responded very competitively, and acquired a significant number of new customers.
- 16.5 Potential entrants, which MiTek considers to be potential entrants and detailed reasons outlining why such entrants are considered likely to consider entering the New Zealand market, are described in paragraphs 16.13 to 16.20 and 16.23 to 16.35 of the Appendix.

Likelihood, sufficiency and timeliness of entry

- 16.6 Section 16 of the Appendix sets out details of the likelihood, sufficiency and timeliness of entry in relation to each market being considered.

Part V: Other Potential Constraints

17 Constraints on market power by the conduct of suppliers

- 17.1 The conduct of suppliers of goods or services to the merged entity is unlikely to constrain the merged entity in each relevant market.

18 Constraints on market power by the conduct of acquirers

- 18.1 Details of the acquirers of goods or services supplied by the merged entity in each of the relevant markets are as follows:

Relevant Market	Acquirer	Owner(s) of the acquirer
Software-supported builders' hardware	Carters	Carter Holt Harvey/ International Paper (IP) USA
	PlaceMakers	Fletcher Building Ltd
	ITM	Privately owned separate companies which operate as a joint buying group
	Benchmark	Bunnings/ Howard Smith Pty Ltd (Australia)
Builders' hardware	Carters	Carter Holt Harvey/ International Paper (IP) USA
	PlaceMakers	Fletcher Building Ltd
	ITM	Privately owned separate companies which operate as a joint buying group
	Benchmark/ Bunnings	Privately owned separate companies which operate as a joint buying group
	Mitre 10	Mitre 10 Australia
Machinery	As above for software-supported builders' hardware products	

- 18.2 In relation to software-supported builders' hardware products, the majority of fabricators are small businesses, with few staff and relatively low annual turnover.

- 18.3 Nonetheless, as demonstrated above, there are a number of larger fabricator groups. For example, PlaceMakers and Carters (which [] and are both subsidiaries of significant listed companies) operate 21 and 18 fabricator factories respectively. [] A number of these fabricators are in fact substantially larger than the individual software system providers [].
- 18.4 Consequently, such fabricators have extensive bargaining power and, consequently, may be able to negotiate [.]
- 18.5 The strength of this bargaining power is illustrated by [].
- 18.6 In addition, such fabricators would be in a position to exercise countervailing power, by for example:
- 18.6.1 commissioning a software house to custom design software; or
 - 18.6.2 more likely, approaching overseas software suppliers directly.
- 18.7 As a third option, a consortium of smaller fabricators could commission a software house to design custom-built software. Given that there are already a number of buying groups operating in the industry, this would be considered a reasonably likely prospect in the appropriate circumstances (such as anticompetitive conduct by the existing providers of software-supported builders' hardware products).
- 18.8 A fabricator electing to obtain software separately would be able to purchase a die and commission a contract press shop to manufacture the products.
- 18.9 Alternatively, a fabricator could source connector plates directly from a variety of overseas sources, particularly the United States, where due to excess capacity and their commodity status (when sold unbundled), plates are available at considerably lower prices. It is estimated it would cost approximately NZ\$3,000 per tonne to acquire connector plates from the United States (including freight), as opposed to NZ\$6,000 per tonne when acquired with bundled software support in New Zealand. This means a fabricator would have in the range of NZ\$3,000 per tonne in product cost savings to invest in software.
- 18.10 As stated above, there are a number of software houses equipped to custom-build software systems.
- 18.11 It is estimated that it would cost \$100,000 -150,000 to commission the design of basic custom-built software, and would take up to 12 months. Such a system would not be as sophisticated as those currently offered by the likes of MiTek, Pryda and Multinail, but would be able to manage the basic design and costing of roof trusses. As noted in the Submission (at paragraph 5.11), the MiTek system has a number of modules that would not be relevant to all users. Furthermore, certain aspects of MiTek 20/20®

have been specifically designed for multiple users (e.g. networking), and these aspects - while expensive to develop - would clearly not be applicable if a version were to be custom-built for a single user.

- 18.12 In recent years, a Western Australian company, Trustek, like several other companies in the field, custom-built its own software system for steel trusses. The system was based upon AutoCAD software, with certain modifications and additional features, and is believed to have cost approximately AUD100,000 - 150,000 to commission. Again, this system offers only very basic functionality; nonetheless Trustek, when needing additional features, has been able to effectively satisfy this requirement through subcontracting to freelance programmers with appropriate experience.
- 18.13 MiTek management considers those fabricators who are sufficiently large to consider commissioning custom-built software (and a number of fabricators who are not) would be more likely to approach an overseas supplier directly. This is because such suppliers are able to efficiently provide systems with functionality equivalent to the current offerings in the New Zealand market in less time, and at significantly less expense (indeed, at no expense to the fabricator) than would be the case if custom-built software were commissioned.
- 18.14 As discussed in the submission at paragraph 16.29, an overseas provider would need to modify its software for New Zealand conditions but this is a straight forward process (we note that Australian software would not need any modification). Consequently, a fabricator would be able to access such software on short notice.
- 18.15 Current unbundled software licences are available in the United States for approximately USD150 per month per licence (approximately NZ\$3,100 per annum, based upon an exchange rate of 0.58). Given the costing for imported connector plates (above at paragraph 18.8), it is clear that this is a competitive alternative to sourcing directly from New Zealand.
- 18.16 While a software provider located overseas would not be able to provide the same degree of software support as a local provider, we note the extensive use of long distance support. For example, a significant number of New Zealand fabricators rely largely on long distance support, using telephone help desk services when problems arise as is standard for most software systems. Accordingly, they receive few site visits from the system providers. This sort of support is, of course, typical of other software systems commonly used in small (and large) businesses, such as word and data processing packages, and accounting packages.
- 18.17 Thus while site visits are a particular feature of MiTek's business model (more so than for Pryda and Multinail), it is clear these visits are not critical to a fabricator's business and should be more seen in the context of managing client relationships. In this context, it can be seen that different firms adopt different approaches to client relationship management.
- 18.18 In addition, the recent tendency towards unbundling of products as demonstrated by the e:Frame product shows a willingness by fabricators to adopt software systems that do not have the same level of support as the bundled version.
- 18.19 MiTek is aware of at least two examples of Australian fabricators approaching overseas suppliers directly. In one case, the fabricator approached a supplier of software-supported builders' products, and directly imported connector plates for its

own use on a trial basis (presumably having obtained a licence in relation to the software). In addition, approximately 12 months ago, another fabricator approached an overseas generic software provider directly (Keymark Enterprises), funding the trip to Australia of two representatives from Keymark Enterprises to demonstrate the product.

- 18.20 So far as MiTek is aware, neither fabricator has switched to the overseas product, but these examples demonstrate the ability of fabricators to bypass completely the New Zealand market.
- 18.21 Considering the building components industry as a whole, given sufficient motivation, timber suppliers may also be prompted to commission the design of custom-built software.
- 18.22 Such suppliers may do so because:
- 18.22.1 they wish to expand into fabricating (as Carter Holt Harvey has already done, via its subsidiary, Carters); and / or
- 18.22.2 they wish to protect fabricators, as key purchasers of timber.
- 18.23 Taking the example of truss prefabrication, fabricators currently provide a competitive alternative to conventional construction. Increasingly, however, timber fabricators are also competing with prefabricated steel framing (discussed in the Submission at paragraph 19.5). If timber fabricators were to become uncompetitive (due for example, to the anticompetitive conduct of providers of software-supported builders' hardware products), there would be a risk that builders would switch to steel prefabrication.
- 18.24 For example, BHP Steel has available a product called the "Lysaght Supratruss[®] Roof Framing System", which it claims "provides a lightweight alternative to timber roof framing and is unique in its bolted fabrication methods and the ability to use nails for fixing". The system is said to be "competitively priced with timber framing; however, its structural integrity leads to lower lifetime costs and protects the value of a residential investment". As with connector plates, this product is supported by design and detailing software which "models the geometry, designs the roof trusses and facilitates manufacture by licensed manufacturers".
- 18.25 A timber supplier which commissioned custom-built software, perhaps to attract fabricators as purchasers of their timber, would be likely to commence competing head to head with the likes of the Merged Entity. Indeed, such a supplier would itself be in a position to bundle the software with the purchase of timber or (if considered appropriate in the context of its business model) to provide the software as stand-alone product.
- 18.26 In MiTek's estimation, it would take four programmers approximately 12 months to develop software with similar features to MiTek 20/20[®]. MiTek estimates that total development costs would be in the range of \$1-2 million. While it would be preferable to design an entirely proprietary system, if quicker entry were considered necessary, a company such as Carter Holt Harvey would be well placed to invite an alternative supplier to enter the New Zealand market or even to seek appointment as New Zealand distributor for an overseas-based supplier.

18.27 In light of the above factors, there appears to be considerable scope for countervailing power to be exercised in the market.

THIS NOTICE is given by Richard Poole on behalf of MiTek New Zealand Limited

I hereby confirm that:

- All information specified by the Commission has been supplied.
- All information known to the applicant/s which is relevant to the consideration of this application/notice has been supplied.
- All information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of October 2003.

Signed by
MiTek New Zealand Limited

Richard Poole
Managing Director

I am an officer of the company and am duly authorised to make this application/notice.

Appendix

MiTek / Pryda

**Submission in support of an application to the Commerce
Commission for clearance pursuant to s66(1) of the Commerce
Act 1986**

**Proposed acquisition of
the Pryda / Reid Group by the
MiTek Group
1 September 2003**

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Part A EXECUTIVE SUMMARY

This submission forms part of an application for clearance made by MiTek New Zealand Limited (**MiTek**) to the Commerce Commission (**Commission**) pursuant to s66(1) of the Commerce Act 1986 for the acquisition of the Pryda Reid Group (described in more detail below at Section 1) (**Proposed Acquisition**).

An application for informal merger clearance was lodged with the Australian Consumer and Competition Commission on 12 August 2003.

For the reasons set out in this submission, MiTek and its advisers, Phillips Fox and economist Ms Rhonda Smith, have considered the likely competitive effects of the Proposed Acquisition, and are of the view that it will not have the likely effect of lessening competition in a market in contravention of section 47 of the *Commerce Act 1986* (the **Act**).

1 The Proposed Acquisition

- 1.1 Austrim Nylex Limited (**Austrim Nylex**) has called for indicative offers from interested parties in relation to the potential acquisition of the Pryda Reid Group. Offers have been invited in respect of:
 - 1.1.1 the assets and liabilities of Pryda New Zealand and Reid New Zealand (being operating divisions of Nylex (New Zealand) Limited);
 - 1.1.2 the shares of all the companies which form the Pryda Reid Group as owned by Austrim Nylex and / or its related entities, except those in New Zealand; and
 - 1.1.3 certain property owned by Austrim Nylex and / or its related entities, as occupied by the Pryda Reid Group.
- 1.2 The MiTek Group, comprising MiTek, MiTek Australia Limited (**MiTek Australia**) and other related companies, proposed to make an offer for the Pryda Reid Group, subject to regulatory approval.
- 1.3 The relevant businesses for present purposes are the Pryda and Reid divisions of Nylex (New Zealand) Limited. The Pryda division (**Pryda**) is the New Zealand element of Austrim Nylex's timber connecting systems business, while the Reid division is the New Zealand element of Austrim Nylex's concrete fastening systems business. These are the only aspects of the Pryda Reid Group to operate in New Zealand.
- 1.4 The focus of this submission will be upon Pryda, being the only New Zealand business within the Pryda Reid Group to offer substantially similar product lines to MiTek.

2 Market definition

2.1 Adopting a conservative approach, we submit that the Proposed Acquisition should be assessed in light of its effect on competition:

2.1.1 in the following product markets:

- (a) the building component machinery market;
- (b) the builders' hardware products market; and
- (c) the software-supported builders' hardware products market;

2.1.2 with the building component machinery market being Australasian in character, and the remaining markets being national in character; and

2.1.3 the relevant functional level for each market being manufacturing and distribution;

with such assessment to be made in light of the Proposed Acquisition's effect on competition over a two to three year timeframe.

2.2 We note that the third market is basically the narrowest market which may be analysed, effectively constituting a single product market (as is illustrated by the small scale of this market []). We submit that alternative market definitions - such as markets (b) and (c) considered jointly, with market (a) still constituting a separate market - may be more appropriate. Nonetheless, we consider the proposed market definitions will allow the Commission to readily identify any perceived competition issues thus facilitating an expedited analysis of the Proposed Acquisition.

2.3 Assessing these markets in turn, we estimate that the combined market share of MiTek and Pryda Reid Group (together the **Merged Entity**) would be approximately:

2.3.1 in the case of the building components machinery market, [];

2.3.2 in the case of the builders' hardware products market, [];and

2.3.3 in the case of the software-supported builders' hardware products market, *considering connector plates only*, [].

2.4 Accordingly, this submission focuses upon the likely competitive effects of the Proposed Acquisition on the software-supported builders' hardware products market.

3 Competition effects of the Proposed Acquisition

Barriers to entry

- 3.1 As stated by the Commission in Practice Note: 4 (which relates to the application of the substantial lessening of competition test to business acquisitions) (**Practice Note 4**) a business acquisition is unlikely to result in a substantial lessening of competition in a market if behaviour in that market continues to be subject to real constraints from the threat of market entry and expansion.
- 3.2 Barriers to entry to the software-supported builders' hardware products market are low, with extensive opportunity for new participants to enter the market.
- 3.3 Structural barriers are very low, with potential entrants able to enter in a short time frame with minimal sunk costs.
- 3.4 Strategic barriers are also low, as customers are not bound by long-term contracts and, when given appropriate incentive, will switch between alternative suppliers. This is demonstrated by historical data in the New Zealand market (notwithstanding that such switching has occurred in a stable market, absent the motivation often provided by a new entrant). In addition, overseas experience demonstrates that foreign competitors can successfully enter new markets and obtain significant market share within a short period of time.
- 3.5 In addition, we note that the minimal scale of efficient entry is very small, and permits a new entrant to build market share entirely by supplying start-up operations, as has occurred overseas.
- 3.6 Amongst the array of likely entrants, there are numerous established overseas competitors who may wish to use Australia and New Zealand as a base to enter the Asia-Pacific market.

Available substitutes

- 3.7 The narrow market definitions adopted for the purposes of this submission mean there are several viable alternatives to those products falling within the software-supported builders' hardware products.

Countervailing power

- 3.8 Large customers clearly have extensive bargaining power (as evidenced by the terms they are able to extract from existing suppliers), and are also in a position to exercise considerable countervailing power.
- 3.9 Other industry participants also possess significant countervailing power, primarily through approaching overseas competitors to supply into the New Zealand market.

Dynamic characteristics of the market

- 3.10 The market for software-supported builders' hardware products is in a transitional phase, due to:
- 3.10.1 emerging structural products, including engineered wood products and composite timber and steel products, which are starting to gain a foothold in markets traditionally dominated by conventional construction methods;
 - 3.10.2 the emerging threat of light-weight steel prefabricated systems; and
 - 3.10.3 the possibility that customers may, in future, wish to acquire software on a stand-alone basis, as has been the case for years in the United States and other foreign markets.
- 3.11 It is also anticipated that the Proposed Acquisition will prompt a competitive response from the main Australian competitor of MiTek and Pryda, which has recently entered the New Zealand market.

Conclusion

- 3.12 In light of these constraints, while the Proposed Acquisition will result in a high degree of concentration within the software-supported builders' hardware market, the Merged Entity will not be in a position to raise prices or reduce services without encouraging:
- 3.12.1 a competitive response from Multinail, the parties' main Australian competitor;
 - 3.12.2 entry from a new competitor;
 - 3.12.3 an exercise of countervailing power from customers, or other industry participants; and / or
 - 3.12.4 a move to alternative products.
- 3.13 Accordingly, it is submitted that the Proposed Acquisition will not have, or be likely to have, the effect of substantially lessening competition in any market in New Zealand.

Part B Background

Please note that the websites of all firms mentioned in the body of the submission are (where available) listed in Annexure 1.

For the purpose of clarification, we confirm that all references to monetary amounts in this submission are to New Zealand dollars unless otherwise stated.

4 The structural building components industry

- 4.1 The relevant industry in which the parties operate is the structural building components industry. In order to understand the general environment in which the parties operate, it is necessary to have a basic understanding of this industry.
- 4.2 Building components are the elements used to construct buildings and include wall frames, floor and roof trusses, posts and beams. They are the basic building blocks used to construct houses and commercial, industrial and institutional structures (of particular relevance to the parties is the construction of residential and light commercial structures). More specifically, building components include those items listed in Annexure 2. Significantly for present purposes, they include builders' hardware products comprising connector plates and other products used to join members used to fabricate building components, brace and fix them to foundations and fix or tie the building envelope to the building structure.
- 4.3 The building components industry is, by and large, a "value-adding" industry, where end-users do not buy the components themselves but rather buy assembled packages of components (e.g. in the form of a house). To a limited extent, however, building components and related products are directly acquired by home renovators for certain applications. For example, builders' merchant stores supply everything from doors to fasteners to small machinery items (such as saws and jigs) often used in the construction of building components by "Do-it-Yourself" consumers.
- 4.4 Given the respective interests of both MiTek and Pryda, the relevant segment of the building component industry is the prefabricated structural building component industry. The prefabricated structural building component industry comprises the manufacture and distribution of building components that are used in the construction of prefabricated roof trusses, floor trusses and wall frames.

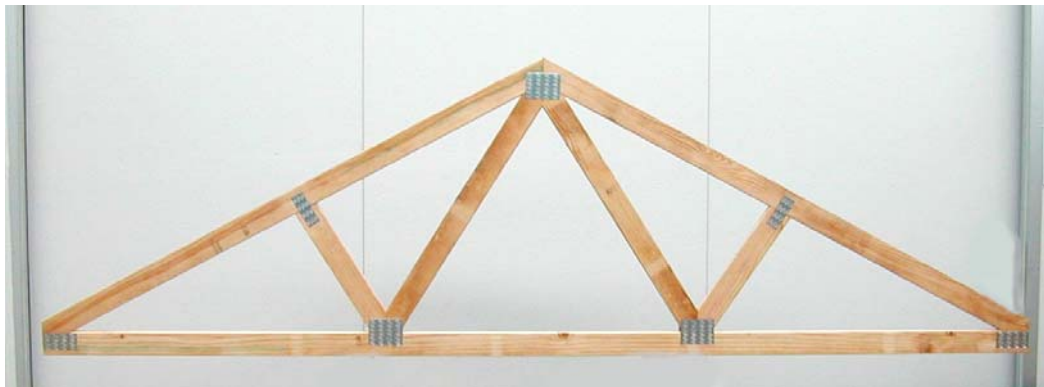
Methods of construction

- 4.5 There are two primary methods of constructing residential or small commercial buildings. Firstly, conventional or "stick" on-site construction (**conventional construction**), and secondly, prefabricated off-site construction.
- 4.6 Conventional construction involves the builder constructing the frames for the roof on-site using "stick timber" for roof rafters, under purlins, beams and ceiling joists.

It also involves framing wall frames on-site using “stick timber” for wall plates, studs and noggins, with solid joists being used in the construction of floors.

- 4.7 In the case of prefabricated off-site construction, the roof, wall and floor frames are made up of **trusses**, which are usually wooden and triangular or rectangular in shape, and comprise wooden chords which are joined to form the basic shape of the truss and webs which are shorter lengths of timber interior to the frame which join and support the chords. Figure 1 shows a photograph of a roof truss. The construction of trusses requires fasteners to join the different members together. Traditionally, members have been fastened by nails, screws and bolts. Some builders’ hardware products such as braces brackets and tie downs are also used to support the structure.

Figure 1: Roof truss



- 4.8 In the 1960s the development of a product called the Gang-Nail connector plate resulted in the emergence of prefabricated timber-framing systems (called prefabricated timber trusses) using multi-tooth connectors, to join the chords and webs of triangular or rectangular shaped trusses. These connector plates are small steel plates with integral ‘teeth’ on one side (see Figure 2; Figure 1 also shows connector plates, as used to construct a truss). They act as fasteners for trusses and have made it possible to efficiently prefabricate timber roof trusses for the first time. These connector plates were originally patented in the U.S. and introduced into New Zealand by Gang-Nail New Zealand Ltd (a predecessor of MiTek). The patents for these plate connectors expired some 30 years ago.
- 4.9 The cost of connector plates for prefabricated roof trusses represents a very small part of the overall cost of construction and is usually less than \$230 per house. As a percentage of the total cost for a new house of 150m² costing \$120,000 (\$800 per m²), the connector plate content would constitute approximately 0.2%.

Figure 2: Connector plates



- 4.10 As such, the prefabricated construction method involves the off-site (factory) manufacturing and assembling of roof and floor trusses, wall frames and other prefabricated components. These prefabricated components are then installed on-site.
- 4.11 The popularity of prefabricated component products has grown considerably since the 1960s due to a variety of reasons, including:
- 4.11.1 the availability of sophisticated software and tools enabling component manufacturers, such as roof truss fabricators, to provide higher and more consistent quality products than previously possible;
 - 4.11.2 a reduction in material content (timber) and very fast installation on-site compared to conventional construction;
 - 4.11.3 the fabrication of components off-site further reduces on-site labour costs and material wastage due to theft of “stick” materials; and
 - 4.11.4 the demand for more complex architecture with larger rooms and more open spaces in houses lends itself to prefabricated building components, which can easily be designed in truss design software and fabricated accurately and quickly in a prefabricated form.
- 4.12 In New Zealand, informed management estimates indicate that approximately 90% of new homes built each year use prefabricated roof trusses and a similar proportion use prefabricated wall framing. The remaining 10% of new homes use conventional construction. Of the 90% of prefabricated components, approximately 3% utilises light gauge steel and the remaining 87% use timber trusses and frames.
- 4.13 The principal application of trusses and other prefabricated and engineered wood components (such as laminated veneer lumber I-Beams) is in single and multi-storey residential housing. This reflects limitations on the use of prefabricated wood components in residential housing, due to issues with the strength of the components. Consequently they are not typically used in buildings larger than two storeys. Prefabricated wood components are also often found in light

commercial and industrial buildings. As with residential housing, however, there are also limitations on the use of prefabricated wood components in these buildings.

- 4.14 As indicated above at paragraph 4.12, steel is also used as a material in building components with some building component products being entirely made from steel. For example, steel framed houses are increasingly being constructed. They provide the advantages of being fire and insect resistant. Such buildings generally utilise prefabricated roof, floor and wall systems.
- 4.15 Steel trusses tend to be used more commonly in commercial and industrial buildings compared with timber, in order to achieve larger spans and to comply with fire resistance requirements.
- 4.16 Steel trusses provide the flexibility and design advantages of wood trusses, as well as the versatility of steel. Light gauge steel trusses also offer relative price stability, moisture and insect resistance, increased strength to weight ratio, and increased uniformity of material strength from member to member.
- 4.17 Concrete is also used to construct prefabricated floors, walls and roofs, but is more frequently used in high rise buildings, commercial and industrial buildings and in limited cases for housing construction.

Industry statistics

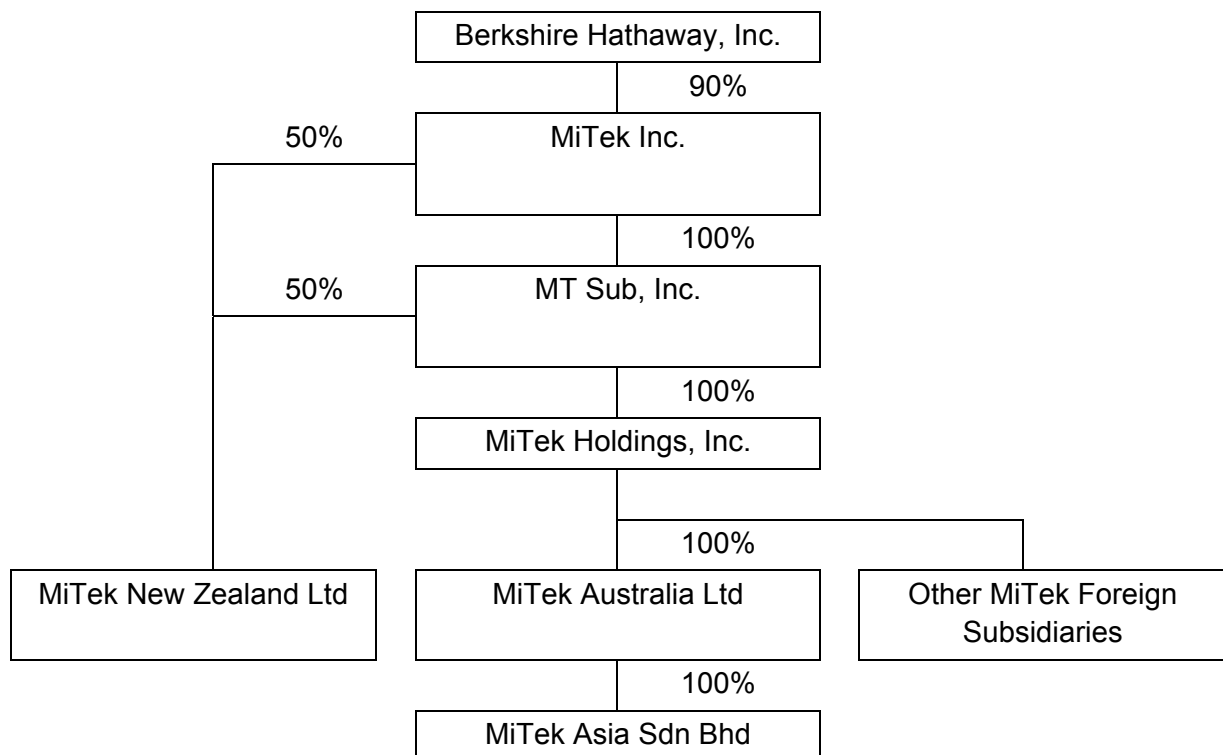
- 4.18 The businesses of the parties specifically relate to prefabricated roofs, floors and wall frames in construction. MiTek's business is largely restricted to timber prefabrication. This is a segment of the building component industry, namely the structural building component industry.
- 4.19 Informed management estimates suggest that the market for prefabricated timber roof trusses and wall frames is approximately \$303 million per annum (based upon new dwelling construction activity of around 25,000 units per annum). Annexure 3 sets out the assumptions underlying this estimate.
- 4.20 Informed management estimates indicate that the prefabricated light weight steel truss and wall frame segment is currently worth approximately \$10 million per annum. Again, Annexure 3 sets out the assumptions supporting this estimate.
- 4.21 The key determinants of demand in the building component industry are:
 - 4.21.1 the level of activity in the residential construction industry; and
 - 4.21.2 to a lesser extent, the level of activity within the non-residential building sector.
- 4.22 Growth in the structural building component industry in New Zealand appears to be moderate.

5 The parties

MiTek New Zealand Ltd

- 5.1 In 1963, Automated Building Components New Zealand Ltd (**A.B.C.**) was formed as a joint venture between Gang-Nail USA and a New Zealand businessman. At this time the business provided Gang-Nail timber connectors and engineering design services to roof truss fabricators under licence.
- 5.2 Over the next 15 years the company was subject to various takeovers, and in 1979, after another such acquisition of its parent company, A.B.C. changed its name to Gang-Nail New Zealand Ltd. In December 2000, Gang-Nail New Zealand Ltd changed its name to MiTek New Zealand Ltd.
- 5.3 On 31 July 2001, Berkshire Hathaway Inc. acquired 90% of the shares in MiTek Inc, MiTek's effective parent, with management of MiTek Inc. retaining the remaining 10%. Berkshire Hathaway Inc. is the holding company of various subsidiaries engaged in a number of diverse business activities.
- 5.4 MiTek's direct legal owners are MiTek Inc (50%), and MT Sub Inc (50%).
- 5.5 In New Zealand, MiTek has offices in Auckland and Christchurch.
- 5.6 The company structure is illustrated in Figure 3.

Figure 3: Company structure of the MiTek Group



MiTek operations and products

5.7 MiTek manufactures and / or distributes:

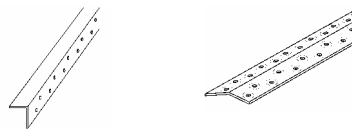
5.7.1 Fasteners:

- (a) A fastener joins two pieces of wood, steel or concrete together.
- (b) Fastener products include connector plates for joining timber members to form trusses. Other types of commonly used fasteners include. nails, screws, bolts, staples and glue. There are also 'special' fasteners with specialty fixing applications in the building industry (e.g. cyclone tie, brick tie, bottom plate anchor and pile fixings).



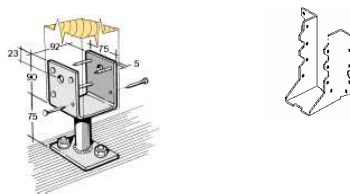
5.7.2 Bracing:

A 'brace' or bracing is a pressed metal component that is used to prevent distortion or buckling of a frame or truss.



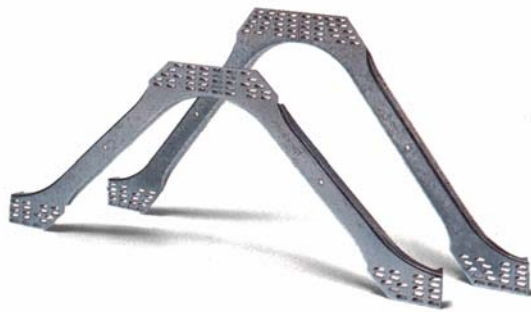
5.7.3 Brackets:

A 'bracket' is a metal product that connects or supports structural members in buildings.



5.7.4 Special structural products:

These products are designed as alternatives for certain structural members (e.g. metal webbing and steel lintels). Below is shown a Posi-STRUT® metal web:



5.7.5 Machinery:

Machinery products include specialised equipment for the prefabricated timber wall and roof truss industry (e.g. truss presses, truss jigs and saws). Below is shown a jig and press:



5.8 Some of these products are software-supported, meaning that the products are sold supported by licensed software in order to facilitate the use of the product and the design of building components. MiTek supplies the following software-supported products:

5.8.1 Fasteners

Connector plates are the main type of fasteners that are software-supported.

5.8.2 Special structural products

MiTek manufactures a number of software-supported special structural products. These include:

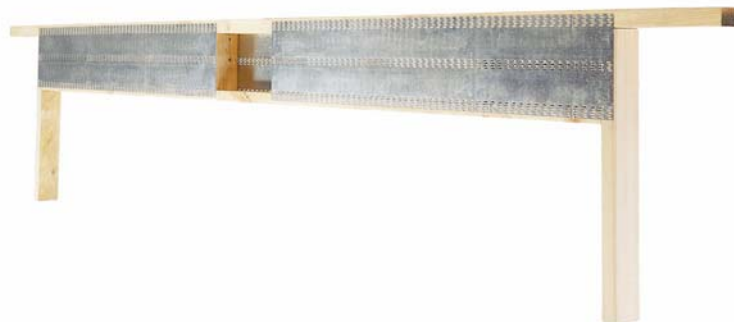
- (a) MiTek's Matrix Webs[®]: which replace traditional wooden webs in the centre of a truss with tubular steel. These steel webs, are fixed with screws to the timber chords (the main triangular structure of the truss) and result in a very strong but lightweight truss.



- (b) Posi-STRUTS[®]: V-shaped metal web components with punched teeth as an integral part of the web which are used in floor and roof trusses to replace solid joist timber, laminated veneer lumber (LVL) I-Beam products or "glue-lam" products (being laminated wood products fastened with glue).



- (c) GN Lintels[®]: lintels constructed with large connector plates and timber members to form beams to carry loads over openings such as doors and windows.



(d) Other

The usage of brackets and bracing may also be assisted by software programmes.

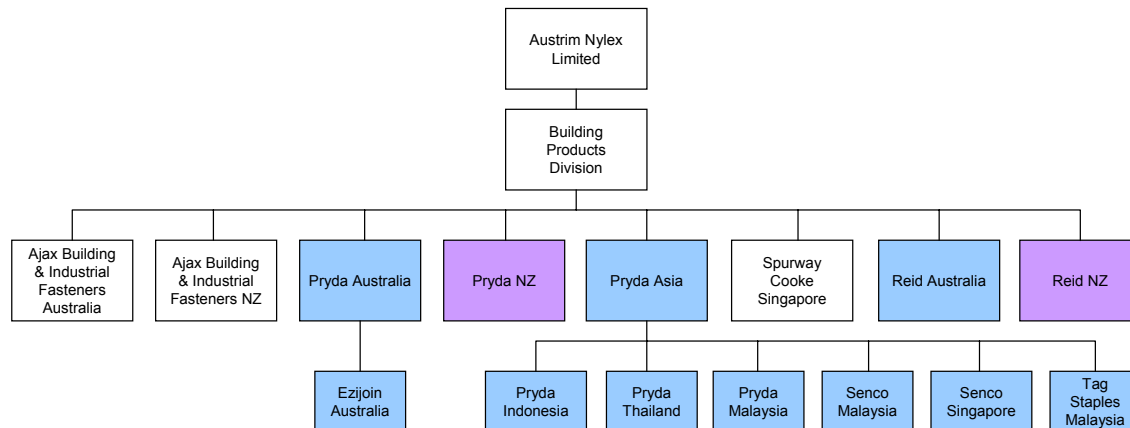
- 5.9 MiTek provides a truss design computer programme called MiTek 20/20[®] (which runs on a Windows based system).
- 5.10 This software system enables fast and efficient truss design for even the most complex roof shapes, as well as providing detailed production data and management information for users.
- 5.11 A programme such as MiTek 20/20[®] includes three modules:
- 5.11.1 a layout module: where the details of the job are inputted into the software programme;
 - 5.11.2 an engineering module: where the software calculates the optimal design of the trusses; and
 - 5.11.3 a detailing module: where the software specifies the details of every truss in the building, including the number of trusses required, their individual sizes and specifications (including the angle of every cut), and the number, size and positioning of connector plates.
- 5.12 Software-support products account for [].
- 5.13 MiTek's full range of products is described in Annexure 4.

The Pryda Reid Group

- 5.14 The Pryda Reid Group comprises a number of business units in the Building Products Division of Austrim Nylex. Austrim Nylex is a listed Australian company, which owns a range of manufacturing companies in the building, automotive engineering, plant hire and plastics industries.
- 5.15 The Building Products Division comprises several businesses that operate in New Zealand, Australia, Malaysia, Thailand, Singapore and Indonesia. These businesses include Ajax Building and Industrial Fasteners Australia, Ajax Building and Industrial Fasteners NZ, Pryda (including Ezijoin Australia), Pryda New Zealand, Pryda Asia, Spurway Cooke Singapore, Reid New Zealand, and Reid Australia.
- 5.16 In addition, there are a number of subsidiary companies operating in Asia, namely Pryda Malaysia, Pryda Thailand, and Pryda Indonesia, and also a sister company, Ajax Pryda (NZ).
- 5.17 In New Zealand, Pryda has offices in Auckland and Christchurch.

- 5.18 The company structure of Austrim Nylex, so far as it is relevant to the Proposed Acquisition, is illustrated in Figure 4 (with those businesses to be acquired as part of the Proposed Acquisition highlighted - those by way of share purchase are shown in blue, and those by way of assets purchase in purple).

Figure 4: Business units of Austrim Nylex relevant to Proposed Acquisition



Pryda operations and products

- 5.19 Established in New Zealand in the early 1970s, Pryda develops and markets manufacturing systems, equipment and timber connectors for roof truss, floor truss and wall frame prefabrication and timber jointing systems.
- 5.20 Pryda manufactures and / or distributes a similar product range to MiTek. Specifically, Pryda manufactures and / or distributes:
- 5.20.1 fasteners;
 - 5.20.2 bracing;
 - 5.20.3 brackets;
 - 5.20.4 special structural products; and
 - 5.20.5 machinery.
- 5.21 As with MiTek, some of Pryda’s products are software-supported, including:
- 5.21.1 some fasteners; and
 - 5.21.2 some special structural products.
- 5.22 The software supporting these products lines is marketed jointly under the name “Pryda Solutions”, and includes the following components:

- 5.22.1 Pryda Roof: this software is used for roof truss design, estimating, detailing, costing, production and management;
 - 5.22.2 Pryda Quote: this software is used in conjunction with Pryda Roof and allows the production of quotes;
 - 5.22.3 Pryda Wall: this software provides detailing and marking information for wall frames; and
 - 5.22.4 Pryda Floor: this software designs floor trusses.
- 5.23 These software products are only available to Pryda's licensed users.
- 5.24 Although most are sold directly to truss fabricators, some Pryda products are distributed to retail markets through Ajax Fasteners in New Zealand and Australia.
- 5.25 Pryda distributes Senco products in the Asia Pacific region and manufactures collated nails and other fasteners in New Zealand and Australia as well as TAG Staples in Malaysia. In addition, Pryda has a partnership arrangement with the Simpson Strong-Tie Co. of USA for the exclusive distribution of a range of Simpson Strong-Tie wood-to-wood connectors in New Zealand and Australia.
- 5.26 The machinery that Pryda distributes is similar to that of MiTek and includes saws, presses, and jigs for roof truss, floor truss and wall frame manufacturing.
- 5.27 Annexure 4 details those Pryda products which compete with MiTek products.
- 5.28 In addition, Pryda distributes a number of products falling outside the MiTek product range. These include:
- 5.28.1 staplers, staples and pliers;
 - 5.28.2 battery operated tools;
 - 5.28.3 compressors;
 - 5.28.4 masonry anchors;
 - 5.28.5 materials handling equipment; and
 - 5.28.6 ancillary building products such as post supports, wall ties and vents.

6 Competitors

- 6.1 In respect of the specific product range of the parties, there is only one supplier of software-supported products in direct competition with MiTek and Pryda: Multinail Australia Pty Ltd (**Multinail**), which has recently entered the New Zealand market. MiTek and Pryda's other competitors, however, need to be assessed on the basis of each particular product group. These competitors are listed below in Table 1.

Multinail

- 6.2 Although largely based in Australia, Multinail is currently pursuing business opportunities in a number of other countries, including New Zealand. Multinail has recently sold a large truss manufacturing machine to a New Zealand truss fabricator, and is currently actively pursuing further business opportunities.
- 6.3 Multinail has previously expanded into Malaysia, and is said to be considering a move into South Africa. MiTek thus views this sale of expensive machinery to a fabricator as Multinail's first move into the New Zealand market.
- 6.4 In Australia, Multinail sells the same basic product lines as MiTek and Pryda.
- 6.5 Multinail was incorporated in 1979 by Peter and Sonja Taylor. Since then, the business has grown from a husband and wife team to a workforce of nearly 100. Multinail has offices in Melbourne, Sydney, Brisbane, Cairns and Kuala Lumpur.

Multinail operations and products

- 6.6 Similar to MiTek and Pryda, Multinail manufactures and distributes the following:
- 6.6.1 fasteners;
 - 6.6.2 bracing;
 - 6.6.3 brackets;
 - 6.6.4 special structural products; and
 - 6.6.5 machinery.
- 6.7 As with MiTek and Pryda, some of these products are software-supported, such as connector plates and special structural products.
- 6.8 The products which are software-supported are sold in conjunction with the following relevant software:
- 6.8.1 Detailing software: WallSource (central input system for all detailing packages), FrameSource (specialising in engineered pre-nail timber wall panels), TrusSource (specialising in engineered timber roofing structures) and StrutSource (specialising in engineered floor trusses using metal webs); and
 - 6.8.2 Engineering software: Design 7 (this software acts as a design engine for all detailing packages, and also acts as a stand-alone package for the one-off design of complicated trusses or beams).
- 6.9 Multinail also offers the following as separate products:

- 6.9.1 Factory Management System: this software enables the factory manager to control production and monitor costs from a single terminal; and
 - 6.9.2 Machinery Interface Software: Multiview (MasterSaw interface software), Top Set (paperless pedestal positioning system for the Fast Set Jig) and Vector View (VectorSaw interface software).
- 6.10 In addition to these product lines which are similar to both MiTek's and Pryda's, Multinail also distributes other machinery products including materials handling equipment (which Pryda distributes but MiTek does not) and table presses and second-hand machinery.

General

- 6.11 We note that the industry is described in considerable detail, as are the Australian operations of both Pryda and Multinail in the case, *Multinail Australia Pty Ltd v Pryda (Aust) Pty Ltd & Anor* [2002] QSC 105 (***Multinail v Pryda***), a brief summary of which is set out in Annexure 5.

Other major competitors

- 6.12 Generally speaking, competitors in the industry vary according to the product group. Table 1 illustrates some of the major competitors within each product group, indicating which companies provide products in direct competition with MiTek and Pryda, or products with the same functional application as their MiTek and Pryda equivalent. A more detailed list of competitors can be seen in Annexure 4.

Table 1: Major competitors by product group

Product group	Major competitors
Fasteners	MiTek Pryda (including Simpson products) ITW Buildex NZ Nail MSL Fasteners EDL Fasteners Mico Fasteners Fastening Supplies Arrow Hurricane Ramset Multinail* Coventry Fasteners* Ideal Fasteners*

Product group	Major competitors
	Wilmaplex* McIntyre* Otter*
Bracing	MiTek Pryda (including Simpson products) Multinail* Carlray* Dunnings* Goodwood* McIntyre*
Brackets	MiTek Pryda (including Simpson products) Avon Rovel International Steelmasters Various steel fabricators, such as Steelmasters Multinail* Wilmaplex* Dunnings* McIntyre*
Structural products	MiTek Pryda Multinail* Carter Holt Harvey Origin
Equipment	MiTek Pryda Multinail Apex Machinery AustEng Owens Mango Tech

** These companies manufacture and distribute a range of the relevant products in Australia that are direct alternatives to MiTek products. There are no barriers to entry whatsoever that prevent these companies selling into New Zealand, whether on a company specific basis or as part of an expansion plan.*

Sales channels and customers

6.13 To MiTek's best knowledge, MiTek and Pryda sell their products through the following channels:

6.13.1 Fabricators

- (a) There are approximately 150 fabricator factories in New Zealand. Fabricators design and construct prefabricated roof trusses, floor trusses and wall frames using the building components sold by the manufacturer and the software supplied in conjunction with the products. Fabrication factories are not commonly operated as a stand-alone business; instead, they tend to be an “add-on” to a business selling a full range of builders’ hardware products. The two largest fabricators, Carters and Placemakers [], illustrate this tendency towards vertical integration.
- (b) Fabricators sell assembled building components (frames and trusses) to builders.

6.13.2 Builders’ merchant stores

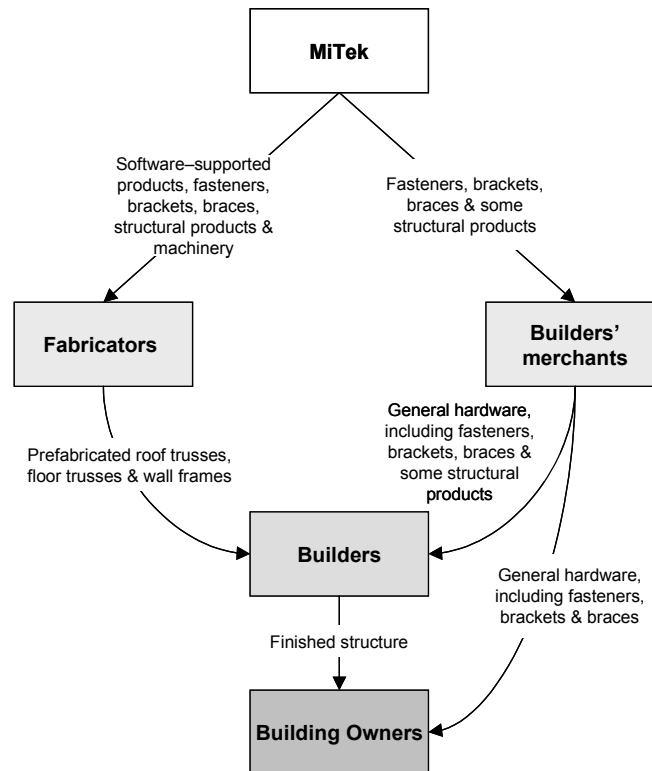
- (a) Builders’ merchant stores (such as Bunnings, Mitre 10, PlaceMakers and Carters) are supplied with various builders’ hardware product lines to service commercial builders as well as “Do-it-Yourself” consumers. No software is supplied to builders’ merchant stores for re-supply (although certain builders’ hardware stores themselves operate fabricator factories, and thus acquire software in such capacity).
- (b) Builders’ merchant stores on-sell other products to builders, building owners and end-users.

The role of builders

- 6.14 Builders acquire building components from, fabricators and builders’ merchant stores.
- 6.15 The builder almost invariably makes the final decision as to whether prefabricated or conventional construction will be used.
- 6.16 The builder then supplies prefabricated roof trusses, floor trusses and wall frames, as part of the finished structure, to building owners.
- 6.17 Figure 5 illustrates MiTek’s chain of supply from MiTek to the end consumer, the building owner.

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Figure 5: MiTek's supply chain



7 The Proposed Acquisition

7.1 If the Proposed Acquisition were to proceed, the Merged Entity would supply the following products in New Zealand:

- 7.1.1 fasteners;
- 7.1.2 brackets;
- 7.1.3 bracing;
- 7.1.4 special structural products; and
- 7.1.5 machinery.

7.2 Of these product groupings, some fasteners and special structural products are software-supported.

Part C Market definition

8 Defining the market

8.1 The Act defines a market as:

... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense are substitutable for them....

8.2 The Commission in Practice Note 4 sets out how it assesses the relevant market.

9 Product markets

9.1 Delineation of the relevant product markets requires identification of the goods and / or services supplied by the Merged Entity and the sources, or potential sources, of substitute products.

9.2 As indicated above at paragraph 7.1, the Merged Entity will together supply the following products:

- 9.2.1 machinery;
- 9.2.2 fasteners;
- 9.2.3 brackets;
- 9.2.4 bracing; and
- 9.2.5 structural products.

Of these product groupings, some fasteners and structural products are software-supported.

Summary

9.3 In light of the product offerings of the Merged Firm, and given the demand and supply-side substitutability dynamics, we submit that the relevant products markets should be defined as:

- 9.3.1 building component machinery;
- 9.3.2 builders' hardware products; and
- 9.3.3 software-supported builders' hardware products,

for present purposes.

- 9.4 In our view, these market definitions are extremely conservative. Indeed, we note that the market for software-supported builders' hardware products is, at present, essentially a single product market (being software-supported connector plates). Nonetheless, we consider these markets will allow the Commission to readily identify any perceived competition issues with the Proposed Acquisition.

Issues of economic and functional substitution

- 9.5 For each product that the Merged Entity will provide, there are any number of alternatives available. In some cases, alternatives are essentially the same products (subject to minor differences); in other cases, alternatives comprise quite different products which have the same functional application.
- 9.6 Thus, taking a simple example, in the case of screws distributed by MiTek, there are alternative screws available, but more generally there are also alternative fastening products that may be suitable (depending upon the intended application), such as nails, bolts, connector plates and even glue.
- 9.7 Annexure 4 sets out the alternative products to each MiTek product line, and indicates whether such alternatives provide direct competition (e.g. Brand A screws for Brand B screws), or whether they are a different product altogether (e.g. nails for screws).
- 9.8 As can be seen from Annexure 4, for any given product line, there is an extensive array of alternatives. It is therefore submitted that the five product groupings described in 5.7 are an accurate summation of demand-side substitutability that can and does occur.
- 9.9 Supply-side substitutability must also be taken into account. This applies both within the product groups that we have identified, and between those groups. To illustrate the first, it may be the case that while screws and bolts perform essentially the same function, a screw may not always be as appropriate as a bolt for a given application. Nonetheless, a manufacturer can switch production between the two products with relative ease.
- 9.10 As for substitution between product groups, if fasteners, brackets and braces are considered jointly, any manufacturer and distributor of fastener products is well equipped to supply brackets and braces. Each of these groupings rely on essentially the same materials, use the same sales channels (selling to basically the same customers) and require manufacturing equipment that is fundamentally similar (although modified for specific use). Accordingly, in respect of these three product groups, there is extensive scope for supply-side substitutability.
- 9.11 Indeed, this scope is reflected in the reality of the industry, whereby numerous competitors make products falling within at least two, if not all of these product groups (as well as similar product groups, as listed below at paragraph 9.18). Examples include McIntyre, Wilmaplex and Abey, each of whom manufacture and / or distribute fasteners, brackets and braces.

- 9.12 Nonetheless, the scope for supply-side substitution is limited. A manufacturer of fasteners, for example, will not necessarily be well placed to switch production to building components machinery. Accordingly, while it is appropriate to group fasteners, brackets and braces, machinery should be separately considered.

Software-supported products

- 9.13 Although there are functional substitutes available for software-supported products (discussed below at Section 17), it may be argued that these substitutes are not economic substitutes. Taking the example of pre-fabricated roof trusses and conventional construction for roofs, it is arguable that in the face of, say, a 5% rise in the price of software-supported connector plates, a builder would not bypass fabricators and choose conventional construction instead. This reflects the small price of connectors plates relative to the overall price of a roof (discussed above at paragraph 4.9), as well as the other perceived benefits of pre-fabrication such as its labour saving and enhanced safety characteristics (see also Box 1).

Box 1 - The benefits of prefabricated trusses as against conventional construction

The benefits of prefabrication are said to be:

- *trusses are generally able to span further than conventional construction, allowing larger more open construction;*
- *trusses offer more flexibility than conventional construction as they generally only require support on the outer walls;*
- *liability shifts from the builder to the fabricator (or the fabricator's suppliers); and*
- *trusses are built under factory conditions giving better control over quality than with on-site conventional construction.*

There are also cost savings associated with prefabricated construction due to:

- *the speed of supply and installation;*
- *reduction of on-site theft;*
- *reduction of on-site overheads (e.g. supervision); and*
- *increased production (unaffected by inclement weather).*

Steel (as distinct from timber) prefabrication is discussed in more detail below at paragraph 19.7.

- 9.14 In light of the high penetration of pre-fabricated roof trusses into the building market and our comments above at paragraph 9.4, it is therefore appropriate for present purposes to consider software-supported products separately.
- 9.15 Nonetheless, a firm currently supplying any form of builders' hardware products which are software-supported has extensive capability to provide other software-supported products (see example in Box 2). Accordingly, it is appropriate to recognise this degree of supply-side substitutability, and accordingly group such software-supported products together.

Box 2 - Software-supported products other than connector plates

Posi-STRUT® & I-Beams: software-supported steel webbing to support floor joists and, in the case of Posi-STRUT, roof rafters

GN Lintels® and Pryda Beams: software-supported horizontal members used as beams to support roof, floor and wall loads over openings (such as a door or window)

Matrix Webs®: software-supported metal webbing products used in manufacturing of timber roof trusses

Steel truss systems (e.g. BHP's SUPRATRUS®): software-supported steel alternative to timber roof trusses

Description of the relevant markets

- 9.16 In light of these issues of substitutability, therefore, we have adopted conservative market definitions to examine the competitive effects of the Proposed Acquisition. The relevant markets are described in greater detail below.

Building component machinery

- 9.17 In light of the substitutability issues discussed above, this market includes a number of products such as presses, jigs and saws. It also includes material handling equipment; laser projection equipment; lathes; milling machines; automated tables, mitres and mitre pins; nailing and stapling equipment; fans and blowers. Each of these machinery items provides small to medium automated solutions for manufacturers of timber and / or steel products, such as producers of building components.

Builders' hardware products

- 9.18 The builders' hardware products market encompasses the supply of products for the manufacture of building components for new buildings, extensions and renovations. Products are generally manufactured from pressed steel, and include a wide range of fasteners, brackets and braces. Additional product groups falling within the market include lintels, spacers, springs, hooks and hinges.

Software-supported builders' hardware products

- 9.19 A number of builders' hardware products are software-supported, where software provides a system for the use of the products and other materials necessary for the construction of various building components. These software systems enable fabricators to design and detail building components, such as timber roof and floor trusses, wall frames, beams, columns and lintels which incorporate these builders' hardware products.
- 9.20 The most common software-supported product is the connector plate, which is used to join timber members of building components, primarily for use in prefabricated roof and floor trusses. Other software-supported products include metal webs used in prefabricated floor trusses and sometimes in roof rafter applications. In addition, there are laminated veneer lumber (LVL) I-Beams which

serve as alternatives to prefabricated timber floor trusses that use metal and timber webs. Other computer programmes are also available for detailing and manufacturing wall frames, which are assembled in prefabrication factories, using collated nails and pneumatic nail guns.

- 9.21 The practice in New Zealand is for software to be bundled with the related builders' hardware products, although we note that this is not always the case overseas (and overseas markets, such as Australia, suggest there is a move to unbundling). Given the current customer preferences and in light of our comments above at paragraph 9.4, however, we do not include stand-alone software systems within this market.

10 Geographic market

- 10.1 Delineation of the relevant geographic market(s) involves the identification of the area(s) over which the Merged Entity and its rivals currently and could potentially supply the relevant product and the area(s) in which the consumer can practically source the product.
- 10.2 In relation to the Proposed Acquisition, this means identifying the area over which the Merged Entity and its rivals supply, and the area over which the consumer can practically acquire, in:
- 10.2.1 the product market for building components machinery;
 - 10.2.2 the product market for builders' hardware products; and
 - 10.2.3 the product market for software-supported builders' hardware products.
- 10.3 Each market is clearly no narrower than national in character.
- 10.4 In the case of the machinery market, the market is in fact Australasian, as purchasers just as readily acquire equipment directly from manufacturers in Australia as they do from New Zealand.
- 10.5 Similarly, in relation to the builders' hardware products and software-supported builders' hardware products, a purchaser of any of the above products can source the product from any provider in New Zealand and indeed in Australia, regardless of the purchaser's or provider's location. MiTek and Pryda each has a single production facility in New Zealand, while Multinail would rely on its Australian production facility for export into New Zealand. In each case, the companies apply a national pricing policy.
- 10.6 All major competitors in each market provide their products on a national basis, and certain products are increasingly the subject of international trade. In relation to software-supported connector plates, for example, Australian competitors have expanded internationally initially relying upon unmodified Australian software and their Australian production facilities (e.g. Pryda exporting to New Zealand, and MiTek and Multinail to Malaysia). Indeed, we note Pryda has also operated in

Malaysia and other South East Asian countries for many years, selling builders' hardware products imported from its Australian manufacturing plant bundled with its Australian software.

11 Functional market

- 11.1 Delineation of the relevant functional market requires identification of the vertical stages in the supply chain in order to facilitate analysis of the competition issues.
- 11.2 In the case of building components machinery and software-supported builders' hardware products, the concept of a wholesale market is not really relevant, with products supplied direct to fabricators; essentially, therefore, this constitutes a procurement market, whereby inputs are purchased for transformation into new products. Builders' hardware products, on the other hand, tend to be supplied on a wholesale basis to building supply companies and hardware stores. Builders' hardware products are also supplied directly to fabricators.
- 11.3 The relevant functional level for each market is therefore manufacturing and distribution.

12 Temporal dimension

- 12.1 We submit that the relevant time period over which the Commission should assess the potential impacts of the Proposed Acquisition is two to three years.

CONCLUSION

Adopting a conservative approach, the Proposed Acquisition should be assessed in light of its effect on competition in the following product markets:

- ***the building component machinery market;***
- ***the builders' hardware products market; and***
- ***the software-supported builders' hardware products market.***

Each market is clearly no narrower than national in character.

The relevant functional level for each market is manufacturing and distribution.

The relevant time period over which the Proposed Acquisition should be assessed is two to three years.

Part D Merger factors

13 Consideration of merger factors

- 13.1 We have considered the following factors in assessing whether the acquisition is likely to result in a substantial lessening of competition in a market:
- 13.1.1 the level of concentration in the market;
 - 13.1.2 the actual or potential level of import competition in the market;
 - 13.1.3 the height of barriers to entry to the market;
 - 13.1.4 the extent to which substitutes are available in the market or are likely to be available in the market;
 - 13.1.5 the degree of countervailing power in the market;
 - 13.1.6 the dynamic characteristics of the market, including growth, innovation and product differentiation;
 - 13.1.7 the likelihood that the Proposed Acquisition would result in the removal from the market of a vigorous and effective competitor; and
 - 13.1.8 the likelihood that the Proposed Acquisition may result in anti-competitive outcomes, such as permitting the acquirer to significantly and substantially increase prices or profit margins;
- 13.2 Accordingly, in this Part of the submission we consider the application of the merger factors to the Proposed Acquisition.

14 Market shares and market concentration

- 14.1 Market concentration is assessed for the purposes of a horizontal acquisition by the application of the concentration thresholds prescribed in Practice Note 4 to the Merged Entity at each of the horizontal stages of production and / or distribution. The Merged Entity will exceed the concentration thresholds if:
- 14.1.1 the combined market share of the three (or fewer) largest firms is 70% or less and the Merged Entity will supply at least 40% of the relevant market; or
 - 14.1.2 the combined market share of the three (or fewer) largest firms is 70% or more and the Merged Entity will supply at least 20% of the relevant market.

- 14.2 However, market concentration *is not a sufficient pre-condition* to the exercise of market power. Accordingly, where the Merged Entity exceeds the concentration thresholds in a given market, this is not conclusive of the existence of market power. Rather, where the Merged Entity exceeds the concentration thresholds in a given market, a more detailed examination of that market and the existence of any market power is necessary.

Market shares

Building components machinery

- 14.3 MiTek management is not in a position to provide informed estimates of market shares of key competitors in the market for building components machinery, as it competes only in a small niche (supplying machinery to fabricators). In relation to this niche, MiTek estimates that Spida would account for 50% and Mango 25% of total sales. The remaining 25% is made up from myriad suppliers, the majority of whom are based overseas (for a list of known competitors, see Annexure 6).

- 14.4 [

]

Builders' hardware products

- 14.5 There are a very large number of competitors supplying a broad range of builders' hardware products, including nails, screws and bolts, as well as a wide range of brackets, braces, lintels, spacers, hinges, springs and hooks.

- 14.6 Consequently, MiTek management is unable to provide informed estimates of the relative shares of various competitors, although companies like Illinois Tool Works (ITW) which in turn owns several businesses providing products of this sort (including Siddons, Ramset, Buildex, Duo-Fast) and nail producers such as Ajax Cooke, Hurricane and New Zealand Nail are considered to be quite large as compared to many other suppliers in this market.

- 14.7 []

Software-supported builders' hardware products

- 14.8 Given emerging products and shifting demand curves (discussed briefly below at paragraphs 19.1-19.10), it is extremely difficult to estimate market shares of competing firms with any precision. Accordingly, Table 2 sets out estimated market shares in relation to software-supported connector plates, although we emphasise that the market, even when conservatively defined as here, is broader than this single product. Indeed, we note that MiTek itself provides a broader range of software-supported builders' hardware products (discussed above at paragraph 5.8.2), [

].

Table 2 - Connector plate market share by tonnage (MiTek estimates as at 2002)

	Market share (tonnes per annum; %)
MiTek	
Pryda	
Multinail	
Total	
Merged Entity	

14.9 We note that Multinail is understood to have excess manufacturing capacity and is therefore in a position to build a market presence without further capital investment. Indeed, it currently appears to be attempting to enter the New Zealand market, and has recently sold machinery to a fabricator in New Zealand.

Summary

14.10 In light of the above, it is apparent that the concentration ratio for the software-supported builders' hardware product market alone falls outside safe harbours. Given the extremely low market share of the Merged Entity in the building components machinery market and the builders' hardware products market, the main focus of the remainder of this submission shall therefore be upon the software-supported builders' hardware products market.

CONCLUSION

Only in relation to the software-supported builders' hardware products market would the market share of the Merged Entity fall outside the Commission's safe harbours. Accordingly, the remainder of this submission mainly focuses upon the software-supported builders' hardware products market.

15 Import competition

15.1 Both building component machinery and builders' hardware products are readily able to be imported into New Zealand, and in the case of building component machinery, imports constitute a significant proportion of sales (estimated to be in the range of 20-25%).

15.2 In relation to the software-supported builders' hardware market, MiTek cannot confirm that fabricators have privately imported such products for commercial use

at present, although it is understood that a new fabricator is considering this option.

16 Barriers to entry and expansion

- 16.1 As Gleeson CJ and Callinan J stated the Australian High Court in *Boral Besser Masonry Limited (now Boral Masonry Ltd) v Australian Competition and Consumer Commission* ([2003] HCA 5; **Boral v ACCC**) at ¶137, “[t]he presence or absence of barriers to entry into a market will ordinarily be vital” (see also *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177 at 189; *Eastern Express Pty Ltd v General Newspapers Pty Ltd* (1992) 35 FCR 43; *Dowling v Dalgety Australia Ltd* (1992) 34 FCR 109; *Photo-Continental Pty Ltd v Sony (Aust) Pty Ltd* (1995) ATPR 41-372). If barriers to entry are low, incumbents will *not* be able to increase prices above the competitive level (or otherwise reduce the quality of their products or their level of service below the competitive level), for a sustained period without attracting new entry.
- 16.2 Barriers to entry may be structural or strategic. While structural barriers include matters such as intellectual property, capital investment, the availability of labour and materials and nature of technology, strategic barriers include “matters such as economies of scale, pricing policies and the expansion of plant to generate excess capacity” (see Kirby J in *Boral v ACCC* at ¶312).
- 16.3 In considering relevant barriers to entry and expansion, therefore, this submission will first discuss structural barriers, before turning to the issue of strategic barriers. Accordingly, we will first consider the *capability* of new entrants to supply the products, before looking at the *likelihood* that such entrants would in fact seek to do so given sufficient incentive (for example, in response to anti-competitive conduct by the Merged Entity).
- 16.4 As has been noted elsewhere, the products supplied in the market for software-supported builders’ hardware products tend to be supplied on a bundled basis. There are two elements to the bundled products:
- 16.4.1 builders’ hardware products; and
 - 16.4.2 software systems (and associated services, such as training and support).
- 16.5 While it is not the practice in New Zealand for these products to be unbundled, this does occur overseas and there are indications that it is beginning to happen in Australia. Accordingly, we submit that any analysis of barriers to entry to this market should consider each of these elements separately.

Structural barriers: builders' hardware products

Intellectual property

- 16.6 There is limited intellectual property protection in respect of the builders' hardware products which are bundled with software systems.
- 16.7 **Patents:** in the case of connector plates, while the MiTek product was originally patented, this patent expired approximately 30 years ago. This of course means the methodology for making connector plates is in the public domain. For example, both Multinail's and Pryda's competing products are a generic version of the MiTek product.
- 16.8 Some specialist software-supported builders' hardware products are patented or the subject of patent applications, e.g. Mitek's GN Lintel[®], GT Spacer[®] and Matrix Web[®]. MiTek expects that there may be other patented systems / products, of which it is not aware, in relation to those segments of the market which do not directly relate to the prefabrication of timber trusses.
- 16.9 These patents, however, have not precluded the development of alternative products by competitors. For example, Pryda and Multinail sell connector plate products to join timber which compete with Matrix metal webs[®].
- 16.10 In any event, with the exception of connector plates, software-supported products have minimal foothold in the industry. Alternatives to these other products will be considered further in Section 17.
- 16.11 **Other forms of intellectual property:** while each of the competitors use registered trade marks to market their products, there is no evidence that these trade marks of themselves constitute a barrier to entry. Issues of customer loyalty are discussed in further detail below at paragraphs 16.50ff.
- 16.12 MiTek is not aware of any products which are the subject of a registered design currently competing in the market.

Potential entrants currently equipped to enter the New Zealand market

- 16.13 In the case of builders' hardware products, barriers to entry are extremely low. As stated above at paragraphs 14.4-14.7, there are numerous companies already manufacturing builders' hardware products
- 16.14 Anyone who has a "press" (allowing metal to be pressed or folded into specified shapes) would have the capability to produce the relevant products. Firms currently producing automotive parts, tools or even cutlery would be in a position to commence manufacturing builders' hardware products with limited difficulty. Manufacturers of tools and dies would be particularly well placed to enter the market, given the similarities in distribution channels. We note that this reflects the extensive potential for supply-side substitutability and reaffirms the conservative nature of the market definitions we have adopted for the purposes of this submission.

Additional potential entrants

- 16.15 We note the manner in which the United States' Horizontal Merger Guidelines distinguish between "uncommitted entrants" - those firms capable of quickly converting their production without expenditure of significant sunk costs of entry and exit - and "committed entrants" - being those firms that would need to incur (relatively) substantial sunk costs to enter the market (see at ¶1.32 and ¶3.0ff). This section analyses the entry prospects of "committed entrants".
- 16.16 Even in the case of a new entrant with no existing manufacturing capacity, it is relatively easy to enter the market. The primary requirement for such an entrant would be the acquisition of a press. A basic press, capable of manufacturing connector plates, would be readily available second-hand for approximately \$40,000-\$60,000 (depending on capacity).
- 16.17 In addition, a new entrant would need a tool (or die) to press the desired shape - this would cost approximately \$40,000-\$60,000, depending on the speed of manufacture. Additional requirements to achieve the minimum scale of efficient entry include: a compressor, forklift, racking / storage space and workshop tools. Labour requirements would be minimal with someone needed to operate the press and a tool setter.
- 16.18 MiTek estimates that it would take four to five months in total to commence manufacturing builders' hardware products, with total capital costs being in the order of \$350,000. Entry time and capital costs could be reduced by subcontracting the manufacture of the products (by providing the tool to a press shop). It can take approximately three months to get a tool made - this would constitute the lead time for a person electing to enter the market in this manner.
- 16.19 In either case, such costs would be minimal given the active second-hand market for all these items (except the tooling). Accordingly, sunk costs would be minimal.

Conclusion

- 16.20 Accordingly, there are any number of potential (both committed and, more likely, uncommitted) entrants who would be well placed to commence manufacturing builders' hardware products upon, say, three months' notice.

Structural barriers: software systems

Intellectual property

- 16.21 The only intellectual property of note in relation to the software systems is the copyright in the systems. As the Commission would be aware, copyright serves only to protect the form of expression of an idea and not the idea itself. Accordingly, such protection does not prevent other persons from developing programmes with the same functionality (provided that, in doing so, there is no substantial reproduction of the code forming the basis of the software).
- 16.22 The fact that, in New Zealand, Australia and elsewhere, a number of software systems such as those offered by MiTek, Pryda and Multinail have been

developed and are available demonstrates that intellectual property rights do not pose a significant barrier to the development of competing systems. In essence, programming expertise combined with engineering experience is all that is required to develop competing systems.

Potential entrants currently equipped to enter the New Zealand market

16.23 Internationally, there are a large number of companies which have developed software systems to support builders' hardware products. The most significant of these include:

16.23.1 Alpine (based in the United States; distributes to the United Kingdom, South Africa, France, Belgium and Canada);

16.23.2 Eleco (based in the United Kingdom; also operates in Germany and South Africa, and distributes to Belgium, Ireland and France);

16.23.3 Wolf (based in Austria; also operates in the United Kingdom, and distributes to Germany, Finland, France, Switzerland and, for software only, South Africa);

16.23.4 Nordisk Kartro (based in Sweden; distributes to Germany, Poland and Russia); and

16.23.5 a number of competitors based in North America, including Truswal Systems, Intelligent Building Systems, Robbins Engineering, Jager Building Systems and Simpson Manufacturing.

(We note that, particularly in Europe, there is a tendency for systems to be provided either jointly with, or separately from, the related builders' hardware products, at the customer's discretion.) In addition to these competitors, there is also a number of smaller companies operating overseas. A more complete list of significant overseas-based competitors is set out in Annexure 7.

16.24 In addition, some "generic" software systems are available, where the software may be used with any brand of connector plates. MiTek is aware of the following companies which currently offer such software systems:

16.24.1 Engineering Software Solutions;

16.24.2 Keymark Enterprises;

16.24.3 Robbins Engineering;

16.24.4 Truswal Systems; and

16.24.5 Intelligent Building Systems.

16.25 Notably, Robbins Engineering already provides such systems separate from connector plates, notwithstanding that it also manufactures and distributes

connector plates (as is common in the United States). Furthermore, Keymark Enterprises is part-owned by Simpson Manufacturing, a major United States' manufacturer of builders' hardware products (e.g. Simpson Strong-Tie products, as mentioned above at paragraph 5.25). Simpson Manufacturing would be well placed to manufacturer connector plates for use with Keymark Enterprises.

- 16.26 MiTek is also aware of overseas-based companies, with no manufacturing capability, who successfully developed generic software systems, before being acquired by a connector plates manufacturer. The first, Online Data, was developed by an American company before being acquired by Robbins Engineering. The other, CSC, was a Swedish company which was acquired by MiTek Inc. CSC's software is still provided on a stand-alone basis throughout Europe. Indeed, we note that MiTek's major competitor in the United Kingdom, Eleco, has in place a licence agreement with MiTek for the CSC software.
- 16.27 Engineering Software Solutions is an Australian company which claims its product, e:Frame, "provides a powerful custom built design and production system for businesses in [the] framing and building industry". e:Frame is a fully automated design system for floors, walls, roof trusses and frames, permitting 3D visualisation, and is said to be compatible with most industry standard 3D CAD systems. This system can be purchased directly from the Engineering Software Solutions' website (and thus is available and suitable for use in New Zealand). A copy of a promotional brochure for e:Frame is attached in Annexure 8.
- 16.28 Although most of the e:Frame software has so far been used for lightweight steel framing systems, Engineering Software Systems has indicated that a timber design and detailing package for use by fabricators (with a graphical interface) could be supplied for \$80,000 without ongoing licence fees.
- 16.29 In the case of software systems developed overseas, a new entrant may need to make some slight adjustments to take into account differences in New Zealand codes and building standards (although such codes and standards are increasingly similar to their overseas counterparts). This process would be extremely straightforward, and would take not more than a couple of months. In addition, it may be necessary to convert a software system from imperial measurements to metric. Management estimates that a simple metric conversion would take at the most a month to complete with the only costs being those related to this time - say \$6,000 (being one month's wages for a programmer earning \$70,000 per annum including on-costs). Meanwhile, a new entrant may also elect to undertake a thorough modification of the system to ensure it is considered a "New Zealand" product, designed with local conditions and building methods in mind. This modification may take up to a year, and cost \$70,000 (on the basis of the assumptions set out above). We note in Europe, for example, several competitors use software developed in one market which had then been customised for use in other markets (for example Eleco in the United Kingdom uses software originally developed in Sweden, while Alpine has modified its American software for sale in the United Kingdom, France, Belgium, Canada and South Africa).

16.30 It is notable that each of the Australian competitors have successfully entered a foreign market (including New Zealand) on the basis of unmodified Australian software. For example, Pryda's New Zealand operations are based around the supply of its Australian software together with locally manufactured connector plates. In addition, MiTek, Pryda and Multinail all supply into Malaysia. MiTek and Multinail commenced having their products imported from their Australian manufacturing base before commencing to manufacture locally. On the other hand, it is understood that Pryda continues to import Australian products into the South East Asian market and also provides Australian software to its Asian customers.

Additional potential entrants

16.31 Aside from those potential entrants who have an existing capability, there is extensive scope for new entrants, who cannot currently provide software systems to support builders' hardware products, to enter the market by developing their own proprietary software.

16.32 There are an increasing number of "software houses" which custom-build software systems. Any such software house would be well placed to start supplying its own system to the market, or to custom-build a system at the behest of a third party (this issue will be considered further below at Section 18).

16.33 Below are listed some software houses with engineering experience who would be well equipped to develop a software system to support builders' hardware products:

16.33.1 Datacom Group;

16.33.2 Soft Tech Group;

16.33.3 Beca Applied Technologies;

16.33.4 Formation Design Systems Pty Ltd;

16.33.5 Engineering Systems Pty Limited;

16.33.6 DMC Software; and

16.33.7 Integrated Technical Software.

16.34 There are also some international software houses which already operate across a number of countries internationally, such as Computers & Structures Inc and Research Engineers International Inc.

16.35 In the opinion of MiTek management, depending upon the number of programmers employed and their experience, it may take 12 months to develop a software system with similar functionality to MiTek's existing programmes to support builders' hardware products. Designing such programmes is becoming

increasingly efficient, with the introduction of such products as Microsoft's .NET programming technology.

Minimum scale of efficient entry

- 16.36 Assuming the supply of a bundled product, MiTek management estimates that a minimum scale of efficient entry would require arrangements to be in place for the supply of approximately 180 tonnes/per annum of connector plates within two years of entry. This tonnage could be reached by agreements with approximately twelve small to medium fabricators or four to five large fabricators. We note that in the South African market, Hitech Roofing Systems, has continued to compete in the market supplying just six fabricators (representing a current market share of four to five percent in terms of tonnage) since at least 1989.
- 16.37 That the minimum scale for efficient entry is so small is, of course, reflective of the fact that there is limited scope for economies of scale in the market (where the economies that are available to participants can be achieved at very low levels of output).
- 16.38 As it is outside MiTek's industry experience, it is difficult to estimate the minimum scale of efficient entry required if the products are not bundled. For example, a software house developing systems for builders' hardware products would be likely to have a portfolio of software products. We note that Engineering Software Solutions, for example, supplies a number of software systems and products in addition to e:Frame. Annexure 9 includes a display of its portfolio of products. Similarly, an entrant seeking to provide builders' hardware products may supply a wide range of products, including any of those listed above at paragraph 9.18.

Conclusion: structural barriers to entry

- 16.39 In light of the above factors, structural barriers to entry appear to be low to very low.

Strategic barriers

- 16.40 As explained above at paragraph 16.2, strategic barriers are those barriers that are "created by the practices and policies of incumbent firms" (Kirby J in *Boral v ACCC* at ¶295). The existence of strategic barriers "can only be assessed by what is likely to happen in the particular market" (Kirby J in *Boral v ACCC* at ¶312). In this case, the most obvious strategic barrier would be ties, whereby the licensing of software systems is tied to the purchase of connector plates.

Bundled products

- 16.41 Fabricators, by and large, are small to medium sized businesses, and the products and software tend to be bundled in order to limit the administrative burden upon fabricators in managing their business.
- 16.42 Accordingly, a nominal licensing fee is charged annually for a software licence (being \$350 for the first "seat"; \$250 for the second; and \$100 thereafter),

- [] as a result of commercial negotiation. There is no charge for ongoing software support.
- 16.43 Essentially, bundling of this nature has traditionally occurred in the New Zealand market because it is the manufacturers of builders' hardware products which have developed the software systems, and fabricators find it convenient for the two products to be provided jointly.
- 16.44 Furthermore, the building components manufactured using the builders' hardware products and the software systems tend to be guaranteed for structural integrity by the provider (not the fabricator). Traditionally, New Zealand manufacturers of software-supported builders' hardware products have been prepared to guarantee the performance of building components only where their own builders' hardware products have been used.
- 16.45 In any event, the *current* reality of the market involves bundling. Accordingly, the Proposed Acquisition will not provide scope for the Merged Entity to force bundling upon consumers who do not wish it (perhaps for the purposes of leveraging from one market to another). Rather, bundling has emerged within a competitive market, in large part due to the wishes of fabricators. Indeed, MiTek is of the view that competitive pressures are likely to lead to the elimination of licensing fees, even given their current nominal rate.
- 16.46 Thus, the New Zealand tendency to bundle the products should not be seen to enhance a supplier's market power in the software-supported builders' products market.
- 16.47 In light of the low barriers to entry for builders' hardware products and software systems discussed above, it is clear that there are any number of current producers of builders' hardware products who could team with a software developer, perhaps by way of a joint venture arrangement.
- 16.48 Alternatively, given the emergence of generic software, there is significant scope for these products to start to be supplied separately. This has occurred overseas where major suppliers in Europe supply the software and connector plates separately or bundled, at the customers' discretion, and this approach is starting to emerge in the United States (e.g. as evidenced by Robbins Engineering). Accordingly, there appears no reason why this could not occur in New Zealand. Because the market has historically been competitive, to date there has been little call for the unbundling of the products; notwithstanding this, there has in fact been development of generic software systems sold on a stand-alone basis (e.g. e:Frame).
- 16.49 Consequently, the most significant barrier facing a potential entrant would be persuading a critical mass of fabricators to adopt their product. This issue is addressed in the next section.

Fabricators

- 16.50 As discussed above at paragraph 16.36, a minimum scale of efficient entry would require approximately five small to medium sized abricator factories to adopt the system of the new entrant.
- 16.51 In some cases, a small number of separate fabricator factories already make joint buying decisions (e.g. due to common ownership). Accordingly, it is possible for a number of fabricator factories to switch simultaneously and this has indeed occurred (as demonstrated, for example, in *Multinail v Pryda*).
- 16.52 MiTek management estimates that there are currently 150 fabrication factories operating in New Zealand, a number which has remained relatively steady over the past ten years (although, in any given year, a number of fabricators enter and exit the market - this issue will be considered in further detail below at paragraph 16.67).
- 16.53 Anecdotally, established fabricators are considered reluctant to switch between brands of software-supported builders' hardware products. Reasons for such reluctance include familiarity with their current system, and costs associated with lost production resulting from the time it takes to learn a new system and to train staff.
- 16.54 Accordingly, Chesterman J in *Multinail v Pryda* noted that "conversion is costly and disruptive and is to be avoided if reasonably possible" [at ¶136]. We note, however, that the conduct the subject of that case occurred approximately ten years ago, and certain key market characteristics (including general familiarity with computerised systems) have undergone significant change since that time.
- 16.55 In any event, providers of software-supported builders' hardware products attempt to encourage switching by a number of means. These include free training of staff, enhanced support services (which can include temporary placement of provider's staff members at the client's premises during the changeover), equipment loans, longer-term contracts at discounted prices etc. These incentives demonstrates that a new entrant can reduce the switching costs of fabricators.
- 16.56 Annexure 10 sets out an implementation plan developed by MiTek in recent years to manage the switching process for a particular client (details relating to the client have been removed). As this plan demonstrates, the training process does not take an extensive length of time, and there is considerable scope for companies such as MiTek to ease the switching process by providing in-house support.
- 16.57 In addition, we note that Keymark Enterprises (which, as discussed above, provides generic software) allows fabricators to download its software for a free 30 day trial.
- 16.58 [
-]. MiTek

is unsure of other competitors' arrangements with their contracted fabricators, but we note the long term nature of the contract in *Multinail v Pryda* seems an anomaly, with the court appearing to suggest the original contract was terminable without cause on 90 days' notice but as part of the receivership process, this early right of termination was lost.

- 16.59 In many respects, the factors discussed in paragraphs 16.55 and 16.58 reflect a commercial reality whereby suppliers and fabricators operate in what is essentially a bidding market. In such a market, suppliers do not compete for sales per se, but rather for the opportunity to be a fabricator's supplier for an (undefined) period. If at some time in the future the fabricator is dissatisfied with the supplier's performance (including the cost at which it supplies), the fabricator will seek bids from alternative suppliers and consider switching. Such a switching process also means that firms with modest sales or even no sales at all - such as a new entrant - can affect the price at which suppliers are appointed. What is relevant is not market share, therefore, but the ability to submit a credible bid.
- 16.60 **Switching in New Zealand:** In light of the incentives commonly offered by providers of software-supported products, and notwithstanding the general industry view that fabricators are reluctant to switch, an analysis of historical data indicates that fabricators do switch between suppliers.
- 16.61 Informed management estimates indicate that at least 40 fabricators have switched provider in the last ten years (constituting approximately 27% of the total market).
- 16.62 Given that these switching examples have occurred in a competitive market, fabricators appear sufficiently willing to switch to encourage new entry or to constrain the Merged Entity.
- 16.63 **Switching overseas:** In similar markets overseas, there is considerable evidence of successful entry into new markets.
- 16.64 We are aware of a number of examples where providers of software-supported products have commenced supplying into new countries over the past ten years. In addition to MiTek, Pryda and Multinail in the Asia-Pacific region, the companies to have done so include Eleco (based in the UK, now also supplies to Germany, Belgium, Ireland and various other countries); Wolf (based in Austria, now also supplies to Germany, Finland, France, Switzerland and, for software only, South Africa); Nordisk Kartro (based in Sweden, now also supplies to Denmark, Norway, Finland and Russia); Bova (based in the Czech Republic, now also supplies to Germany, Poland and Russia) and Alpine (based in the United States, now also supplies to the United Kingdom, France, Belgium and South Africa).
- 16.65 In addition, two overseas-based competitors have successfully entered the South African market over the last ten years or so despite the apparent dominance of the incumbent (see Box 3).

Box 3 - New entry into South Africa

At the beginning of the 1990s, MiTek Industries held [] of the software-supported builders' hardware market, with just two small competitors, Hitech Roofing System (using Wolf software) and Alpine Truss Systems (unrelated to the Alpine referred to above at paragraph 16.23.1), accounting for the remainder of the market.

In 1991, Eleco Industries from the United Kingdom entered the market (trading as International Truss Services or ITS). Providing a software system that was very similar to the system already in use in South Africa, ITS quickly established a sizeable customer base. It is estimated that ITS now has approximately 25% of the market [

]. Upon entering the market, ITW adopted a "service only supply strategy", subcontracting all of its manufacturing and distribution to a third party, and limiting its "on the ground" presence to software support offices. Notwithstanding ITS' now sizeable market share, this arrangement continues.

In 1997, Alpine - the world's second largest supplier of connector plates - entered the market, buying out the unrelated Alpine Truss Systems. Alpine entered the market as a full service provider, manufacturing locally, but offering quite a different (American based) software system. Nonetheless, its market share now stands at approximately 15%, which is almost entirely constituted of new fabricators (in accordance with its business plan).

During the course of these changes, Hitech Roofing Systems' portfolio of six fabricators has remained stable (in tonnage terms, it is estimated that its market share now stands at about 4-5%).

It is understood that Multinail is also considering entering the South African market.

- 16.66 Internationally, there is excess industry capacity, and given the ease with which a number of foreign competitors have successfully expanded their global operations, we would expect that a number will be well placed to expand into New Zealand if the New Zealand market was deemed sufficiently attractive.
- 16.67 MiTek anticipates that a company choosing to enter the Australian market would simultaneously expand into New Zealand (adopting a distribution system similar to Pryda's, where Australian software, unmodified for the New Zealand market, is used). Indeed, MiTek itself used Australia as a base to enter the Asian market (as did Multinail and Pryda). Given the fragmented nature of the Asian market, other international players may be expected to adopt a similar strategy. Box 4 sets out a likely entry scenario.

Box 4 - A likely entry scenario

A large international competitor, such as Alpine (from the United States) or Wolf (from Europe), decides to expand into the Asia-Pacific region adopting Australia and New Zealand as its base. Deciding to produce a "local" version of its software, it spends approximately six months modifying its existing software at a cost of approximately \$50,000. During this time, it is establishing a local software-support and sales team (head hunting key employees from the existing Australian and New Zealand competitors, so it has appropriate industry contacts).

In accordance with the Australian and New Zealand practice, the new entrant offers its software system bundled with connector plates. Relying on the excess plate manufacturing capacity in its overseas facilities, however, the entrant chooses to import its own connector plates rather than to commence manufacturing locally. This minimises set-up costs until such time as the sales base is sufficiently large to justify further expenditure. Initially targeting small fabricators, the entrant offers attractive prices, say 15% below market rates, to convince them to switch. It may also consider equipment loans, helping these small businesses to become more mechanised, and thus increasing their efficiency and competitiveness with larger fabricators.

Of 150 fabricator factories, the entrant would aim to persuade five or six (each averaging 15 tonnes/per annum) to switch in its first year. In return for the incentives offered by the entrant, the fabricators would agree to use the new entrant's system for a minimum period of, say, two years. In the meantime, the new entrant is also "running hard" at new fabricators, using its industry contacts and attractive prices to persuade new fabricators to adopt its system.

At the end of two years, the new entrant could be expected to win over at least twelve fabricators (180 tonnes / per annum), constituting a very viable business (see the comparative income statement attached in Annexure 11). At this point, it may consider establishing a manufacturing base in Australia and / or New Zealand. The entrant is now in a position to use its Australian and New Zealand bases to expand into South East Asia, using imported connector plates or products manufactured in Australia and / or New Zealand.

- 16.68 **New fabricators:** MiTek estimates that, in an average year, approximately two or three fabricators enter the market. These fabricators would not face the disincentives to adopt a new entrant's products that an existing fabricator may. Accordingly, given the minimal scale required for efficient entry, these new fabricators provide extensive scope for a new entrant to build market share and ensure successful entry. We note, for example, that Alpine's market share in South Africa, now approximately 15%, has been built over six or seven years almost exclusively through the provision of software systems to start-up fabricators (see Box 3 above).

Conclusion: strategic barriers to entry

- 16.69 Given these considerations, the strategic barriers to entry to the market appear low.

Conclusion: barriers to entry

- 16.70 In light of the above factors, both structural and strategic barriers to entry appear to be low. Accordingly, the likelihood, effectiveness, timeliness and sustainability of new entry has been demonstrated.
- 16.71 These low barriers suggest the conduct of the Merged Entity would be appropriately constrained by the threat of new entry, as there appears extensive scope for new entrants, given sufficient incentive such as anti-competitive conduct by the Merged Entity, to enter the market.

CONCLUSION

Barriers to entry to the software-supported builders' hardware products market are low, with extensive scope for new participants to enter the market.

17 Availability of substitutes

- 17.1 As is readily apparent, in light of the extremely narrow market definitions adopted for the purposes of this submission, there are a whole range of alternative products available to those fabricators and builders not wishing to use software-supported builders' hardware products, or building components using such products.
- 17.2 Table 3 considers each of MiTek's software-supported products, and explains the available alternatives. Annexure 4 also provides details of major suppliers of the identified substitutes.

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Table 3 - Available substitutes for software-supported builders' hardware products

MiTek software-supported product	Functional application	Alternative products with some functionality
Connector plates	Fastening product used in manufacture of timber roof and floor trusses	Conventional roof construction; steel trusses and prefabricated I-Beam floor components
Posi-STRUT® and related products	Steel webbing to support floor joints and roof rafters	I-Beam floor joist alternatives; steel floor joist alternatives and conventional on-site construction
GN Lintels®	A horizontal member above an opening such as a door or window	Steel lintel alternatives; timber lintels
Matrix Webs®	Webbing product used in manufacture of timber roof trusses with steel webs	Timber truss alternatives; steel truss roof alternatives and conventional on-site construction

CONCLUSION

The narrow market definitions adopted for the purposes of this submission mean there are numerous viable alternatives to those products falling within the software-supported builders' hardware products.

18 Countervailing power

Fabricators

- 18.1 The majority of fabricators are small businesses, with few staff and relatively low annual turnover.
- 18.2 Nonetheless, there are a number of larger fabricator groups. For example, PlaceMakers and Carters (which [] and are both subsidiaries of significant listed companies) operate 21 and 18 fabricator factories respectively. [] A number of these fabricators are in fact substantially larger than the individual software system providers []].
- 18.3 Consequently, such fabricators have extensive bargaining power and, consequently, may be able to negotiate []].

- 18.4 The strength of this bargaining power is illustrated by []].
- 18.5 In addition, such fabricators would be in a position to exercise countervailing power, by for example:
- 18.5.1 commissioning a software house to custom design software; or
- 18.5.2 more likely, approaching overseas software suppliers directly.
- 18.6 As a third option, a consortium of smaller fabricators could commission a software house to design custom-built software. Given that there are already a number of buying groups operating in the industry, this would be considered a reasonably likely prospect in the appropriate circumstances (such as anticompetitive conduct by the existing providers of software-supported builders' hardware products).
- 18.7 A fabricator electing to obtain software separately would be able to purchase a die and commission a contract press shop to manufacture the products.
- 18.8 Alternatively, a fabricator could source connector plates directly from a variety of overseas sources, particularly the United States, where due to excess capacity and their commodity status (when sold unbundled), plates are available at considerably lower prices. It is estimated it would cost approximately NZ\$3,000 per tonne to acquire connector plates from the United States (including freight), as opposed to NZ\$6,000 per tonne when acquired with bundled software support in New Zealand. This means a fabricator would have in the range of NZ\$3,000 per tonne in product cost savings to invest in software.

Custom-built software

- 18.9 As mentioned above at paragraphs 16.32-16.35, there are a number of software houses equipped to custom-build software systems.
- 18.10 It is estimated that it would cost \$100,000 -150,000 to commission the design of basic custom-built software, and would take up to 12 months. Such a system would not be as sophisticated as those currently offered by the likes of MiTek, Pryda and Multinail, but would be able to manage the basic design and costing of roof trusses. As noted above at paragraph 5.11, the MiTek system has a number of modules that would not be relevant to all users. Furthermore, certain aspects of MiTek 20/20[®] have been specifically designed for multiple users (e.g. networking), and these aspects - while expensive to develop - would clearly not be applicable if a version were to be custom-built for a single user.
- 18.11 In recent years, a Western Australian company, Trustek, like several other companies in the field, custom-built its own software system for steel trusses. The system was based upon AutoCAD software, with certain modifications and additional features, and is believed to have cost approximately AUD100,000 - 150,000 to commission. Again, this system offers only very basic functionality;

nonetheless Trustek, when needing additional features, has been able to effectively satisfy this requirement through subcontracting to freelance programmers with appropriate experience.

- 18.12 MiTek management considers those fabricators who are sufficiently large to consider commissioning custom-built software (and a number of fabricators who are not) would be more likely to approach an overseas supplier directly. This is because such suppliers are able to efficiently provide systems with functionality equivalent to the current offerings in the New Zealand market in less time, and at significantly less expense (indeed, at no expense to the fabricator) than would be the case if custom-built software were commissioned.

Direct approaches to overseas software suppliers

- 18.13 As discussed above at paragraph 16.29, an overseas provider would need to modify its software for New Zealand conditions but this is a straight forward process (we note that Australian software would not need any modification). Consequently, a fabricator would be able to access such software on short notice.
- 18.14 Current unbundled software licences are available in the United States for approximately USD150 per month per licence (approximately NZ\$3,100 per annum, based upon an exchange rate of 0.58). Given the costing for imported connector plates (above at paragraph 18.7), it is clear that this is a competitive alternative to sourcing directly from New Zealand.
- 18.15 While a software provider located overseas would not be able to provide the same degree of software support as a local provider, we note the extensive use of long distance support. For example, a significant number of New Zealand fabricators rely largely on long distance support, using telephone help desk services when problems arise as is standard for most software systems. Accordingly, they receive few site visits from the system providers. This sort of support is, of course, typical of other software systems commonly used in small (and large) businesses, such as word and data processing packages, and accounting packages.
- 18.16 Thus while site visits are a particular feature of MiTek's business model (more so than for Pryda and Multinail), it is clear these visits are not critical to a fabricator's business and should be more seen in the context of managing client relationships. In this context, it can be seen that different firms adopt different approaches to client relationship management.
- 18.17 In addition, the recent tendency towards unbundling of products as demonstrated by the e:Frame product shows a willingness by fabricators to adopt software systems that do not have the same level of support as the bundled version.
- 18.18 MiTek is aware of at least two examples of Australian fabricators approaching overseas suppliers directly. In one case, the fabricator approached a supplier of software-supported builders' products, and directly imported connector plates for its own use on a trial basis (presumably having obtained a licence in relation to the software). In addition, approximately 12 months ago, another fabricator

approached an overseas generic software provider directly (Keymark Enterprises), funding the trip to Australia of two representatives from Keymark Enterprises to demonstrate the product.

- 18.19 So far as MiTek is aware, neither fabricator has switched to the overseas product, but these examples demonstrate the ability of fabricators to bypass completely the New Zealand market.

Other sources

- 18.20 Considering the building components industry as a whole, given sufficient motivation, timber suppliers may also be prompted to commission the design of custom-built software.
- 18.21 Such suppliers may do so because:
- 18.21.1 they wish to expand into fabricating (as Carter Holt Harvey has already done, via its subsidiary, Carters); and / or
- 18.21.2 they wish to protect fabricators, as key purchasers of timber.
- 18.22 Taking the example of truss prefabrication, fabricators currently provide a competitive alternative to conventional construction. Increasingly, however, timber fabricators are also competing with prefabricated steel framing (see below at 19.5). If timber fabricators were to become uncompetitive (due for example, to the anticompetitive conduct of providers of software-supported builders' hardware products), there would be a risk that builders would switch to steel prefabrication.
- 18.23 For example, BHP Steel has available a product called the "Lysaght Supratruss[®] Roof Framing System", which it claims "provides a lightweight alternative to timber roof framing and is unique in its bolted fabrication methods and the ability to use nails for fixing". The system is said to be "competitively priced with timber framing; however, its structural integrity leads to lower lifetime costs and protects the value of a residential investment". As with connector plates, this product is supported by design and detailing software which "models the geometry, designs the roof trusses and facilitates manufacture by licensed manufacturers".
- 18.24 A timber supplier which commissioned custom-built software, perhaps to attract fabricators as purchasers of their timber, would be likely to commence competing head to head with the likes of the Merged Entity. Indeed, such a supplier would itself be in a position to bundle the software with the purchase of timber or (if considered appropriate in the context of its business model) to provide the software as stand-alone product.
- 18.25 In MiTek's estimation, it would take four programmers approximately 12 months to develop software with similar features to MiTek 20/20[®]. MiTek estimates that total development costs would be in the range of \$1-2 million. While it would be preferable to design an entirely proprietary system, if quicker entry were considered necessary, a company such as Carter Holt Harvey would be well

placed to invite an alternative supplier to enter the New Zealand market or even to seek appointment as New Zealand distributor for an overseas-based supplier.

Conclusion

- 18.26 In light of the above factors, there appears to be considerable scope for countervailing power to be exercised in the market.

CONCLUSION

Large fabricators and major timber suppliers are well placed to exercise considerable countervailing power, primarily through approaching overseas competitors to supply into the Australian market.

19 Dynamic characteristics of the market

Shifting demand curves

Conventional construction to prefabrication

- 19.1 As demonstrated by the extent of market penetration for prefabricated trusses (above at paragraph 4.12), there has been a distinct trend in the industry to move from conventional construction to prefabrication. For example, MiTek estimates that over 90% of new houses use prefabricated roof trusses.
- 19.2 Given that connector plates have now been available for more than 40 years, we expect this degree of penetration reflects a mature market, with little scope for much further expansion by prefabricated timber roof trusses.

Conventional construction to engineered wood products

- 19.3 Similarly, there is an increasing number of engineered wood products (some software-supported and others that are not) that are seeking to replace conventional construction. These products include software-supported laminated veneer lumber I-Beams and glue-lam products.
- 19.4 These products offer similar advantages to prefabrication, although they have been more recently developed, and so have not yet achieved the same degree of market penetration.

Timber construction to steel construction

- 19.5 Steel prefabrication is also increasingly attaining a market foothold. Accordingly, it is possible to construct prefabricated roofs using steel framing (as discussed above at paragraph 18.23).
- 19.6 Similarly, products such as MiTek's Matrix Web[®] are effectively seeking to replace timber structural components; similarly, the GN Lintel[®] is providing a pressed metal alternative to timber lintels. These products are new to the market, and yet to be the subject of extensive adoption.

- 19.7 There are a number of perceived benefits of steel construction. Among the benefits of its steel roof trusses, BHP Steel states that they:
- 19.7.1 will not warp, twist, shrink or rot, and have no inherent weaknesses such as knots or cracks;
 - 19.7.2 reduce builder call-backs, as there is no shrinkage, popping nails or rippled walls, ceiling or roofs;
 - 19.7.3 are insect resistant;
 - 19.7.4 are fire resistant, as they are non combustible;
 - 19.7.5 are straight and true, and their “exact tolerances aid fitting of internal linings and cupboards”;
 - 19.7.6 eliminate roof sag; and
 - 19.7.7 are easy to construct, providing lightweight and accurate frames which are safe to handle and nail on-site.
- 19.8 Accordingly, it is expected that prefabrication will increasingly rely upon steel rather than timber. Indeed, this expectation is reflected in MiTek’s own business strategy, which over recent years has resulted in the creation of a number of steel-based products (such as the webbing and lintels referred to earlier). [

]

Conclusion

- 19.9 In light of these emerging products, it is difficult to predict the future demand for software-supported builders’ hardware products in the medium to long term. It may be the case that connector plates are increasingly superseded, as steel prefabrication replaces its timber equivalent.
- 19.10 While predicting the future direction of the market with any certainty is very difficult, it is clear that the emerging presence of steel prefabrication will increasingly become a constraint upon all participants in the timber structural building components industry.

Unbundling

- 19.11 It may be the case that generic software-support, provided on a stand-alone basis, becomes an increasingly prominent feature of the industry. Given the commodity nature of builders’ hardware products, entering the market by way of software alone appears a sound business decision (for example, by reducing even further the entry costs). This may particularly occur as software houses, especially those with an engineering focus, develop a portfolio of software engineering and design products for those in the construction industry (see above at paragraph 16.38).

- 19.12 As discussed above at paragraph 18.15, the degree of on-site support offered by MiTek to its customers is not essential to the provision of software support. Assuming a system's pricing is adjusted accordingly, there seems to be an opportunity for software systems to be offered as a stand-alone product with only long distance support provided (as for most other software systems, e.g. MYOB® and equivalent packages, that fabricators currently use in their businesses). Nonetheless, given industry experience and the demanding nature of its fabricators, it appears likely that MiTek would be punished if it were to cut back upon the support services it offers, as this is a key distinguishing feature of MiTek products.

Switching and convergence

- 19.13 If the rate of switching increases in light of appropriate incentives (e.g. anticompetitive conduct by the current providers of software-supported builders' hardware products and / or new entry), it may mean there is convergence in the alternative software systems to encourage switching (and switching back). For a description of this process, see Box 5.

Box 5 - Switching to convergence

As customers switch from Product A to Product B, the manufacturer of Product A modifies its product to adopt the attractive features of Product B in order to encourage its customers to return. Product B's manufacturer in turn modifies its products. Consequently, Products A and B become more alike, with each adopting the best features of the other.

Such a process is illustrated by the convergence in the development of Apple Macintosh and IBM (and IBM-compatible) computers over the course of the last decade. Similarly, word processing programmes have converged, for example, through the adoption of menu-based systems.

General characteristics of the market

- 19.14 As with any market dependent upon technology, the competitive characteristics of the market for software-supported builders' hardware products are rapidly changing.
- 19.15 Furthermore, as demonstrated by the *Multinail v Pryda* case, Multinail is a very vigorous competitor. While in recent years, its focus has been increasingly upon overseas markets (such as Malaysia and now apparently South Africa), it seems likely that Multinail would view the Proposed Acquisition as an opportunity to convince New Zealand fabricators to adopt its systems / product. As explained above, Multinail is currently endeavouring to establish itself in the New Zealand market, having recently sold a large truss manufacturing machine.
- 19.16 We note for example that when MiTek Australia acquired the truss division of Stanley Bostitch in 1997, [.]
- 19.17 Accordingly, it appears likely that the Proposed Acquisition will prompt a vigorous response from Multinail.

CONCLUSION

The market for software-supported builders' hardware products is in a transitional phase, due to:

- *emerging structural products, which are starting to gain a foothold in markets traditionally dominated by conventional construction methods;*
- *the emerging threat of steel prefabrication; and*
- *the possibility that New Zealand fabricators may, in future, wish to acquire software on a stand-alone basis.*

It is also anticipated that the Proposed Acquisition will prompt a competitive response from Multinail, providing an ideal foundation upon which to formalise its entry into the New Zealand market.

Part E Possible anti-competitive effects of the Proposed Acquisition

20 Likelihood of non-transitory market power

- 20.1 In light of the constraints identified above at Sections 16, 17, 18 and 19, while the Proposed Acquisition will result in a high degree of concentration within the software-supported builders' hardware market (bearing in mind that management estimates are restricted to the provision of software-supported connector plates), the Merged Entity will not be in a position to raise prices or reduce services without encouraging:
- 20.1.1 a competitive response from Multinail;
 - 20.1.2 entry from a new competitor;
 - 20.1.3 an exercise of countervailing power from fabricators, including the large fabricator groups, or other industry participants; and / or
 - 20.1.4 a move to alternative products.
- 20.2 Particularly given the extensive array of alternative products available to market participants (again emphasising the conservative market definitions adopted in this submission), the Proposed Acquisition will not have the likely effect of substantially lessening competition.

ANNEXURE 1

List of Company Websites

MiTek <http://www.mii.com/New Zealand/>

Pryda <http://www.pryda.com.au/>

Company	Website	Description
Abey Australia	http://www.abey.com.au	Australian manufacturer and distributor of builders' hardware products
Alpine Engineering Products Inc Part of Dorbyl group http://www.dorbyl.co.za/	http://www.alpeng.com/	International manufacturer of software-supported builders' hardware products
Apach Industrial	http://www.apach.com.tw/index.html	International manufacturer of builders' hardware products
Apex Machinery Corporation	http://www.apexm.com/	International manufacturer of building component machinery
Austeng (Australian Engineering Solutions Pty Ltd)	http://www.austeng.net.au/	Australian designer and manufacturer of building component machinery
BHP Lysaght Supratruss Roof Framing System	http://www.bhpsteel.com.au/index.cfm/objectID.EFAB3FDB-820C-4983-84AD5E9E413C3F3F	Australian software-supported builders' hardware product
Blackwoods	http://www.blackwoods.co.nz	Supplier of engineering and industry fasteners
Bunnings	http://www.bunnings.co.nz	Builders merchant store
Carter Holt Harvey	http://www.chh.co.nz	New Zealand vertically integrated wood products system manufacturer, fabricator and builders' merchant store
Computers & Structure Inc	http://www.csiberkeley.com/ETABS_Software.html	Engineering software house

Company	Website	Description
Coventry Fasteners	http://www.coventry	Supplier of engineering and industrial fasteners
Delta Machinery	http://www.deltawoodworking.com/	International manufacturer, distributor and retailer of building component machinery
DeWALT Industrial Tool Co	http://www.dewalt.com/	International manufacturer of building component machinery
Dunnings Engineering Pty Ltd	http://www.dunnings.co.au	Australian manufacturer of builders' hardware products
DUO-FAST	http://www.duofast.com/	International manufacturer of building component machinery and builders' hardware products. Subsidiary of ITW
Eagle Wire Products Limited	http://Www.eaglewire.co.nz	Manufacture of builders' hardware products
EDL Fasteners Ltd	http://www.teamsweeny.co.nz/	Suppliers of industrial fasteners
Eleco plc	http://www.elecopl.co.uk/	International supplier of software-supported builders' hardware products
Engineering Software Solutions Pty Ltd	http://www.ess.com.au/	Australian engineering software house
Fasco	http://www.fasco.com/	International manufacturer of building component machinery
Fastening Supplies Ltd	http://www.steelandtube.co.nz	Distributor of industrial fasteners
Fletcher Steel	http://www.easysteel.co.nz	Supplier of steel raw material and product
Formation Design Systems (Multiframe - structural analysis and design software)	http://www.formsys.com/Multiframe/MFIndex.html	Australian engineering software house
Frame and Trust Manufacturers Association of New Zealand	http://www.ftma.co.nz/	Industry association
Haubold	http://www.stainless-nails-brads-staples.com/haubold.htm	International manufacturer of builders' hardware products
Hitachi	http://www.hitachi.com	International manufacturer of building component machinery

Company	Website	Description
Holtec	http://www.holtecusa.com/ http://www.holtec.co.nz/	International manufacturer of building component machinery
Holytek	http://www.holytek.com/	International manufacturer of building component machinery
Illinois Tool Works	http://www.itwinc.com/	International manufacturer of builders' hardware products and building component machinery
Intelligent Building Systems	http://www.intelbuildsys.com/	International engineering software house
International Truss Systems, South Africa	http://www.rooftruss.co.za/	International supplier of software-supported builders' hardware products
ITW	http://www.ramset.co.nz	Suppliers of builders hardware products and building components
Jager Building Systems Inc	http://www.jagerbuildingsystems.com/	International manufacturer of builders' hardware products and software-supported builders' hardware products
Keymark Enterprises, LLC	http://www.keymark.com/	International engineering software house
Leda	http://www.leda.com/	International manufacturer of building component machinery
Makita	http://www.makita.com/	International manufacturer of building component machinery
MangoTech Australia	http://www.mangotech.com.au/index.htm http://www.hvm.co.nz/mango.htm	International manufacturer of building component machinery
Mechatronics	http://www.mechatronics.com/	International manufacturer of building component machinery
Metabo	http://www.metabo.com/com/english/	International manufacturer of building component machinery
Mico Metals	http://www.micometals.co.nz	Suppliers of builders' hardware products
Mitre 10	http://www.mitre10.co.nz	Builders' merchant store

Company	Website	Description
MSL	http://www.fortressfasteners.co.nz	Suppliers of builders' hardware products
Nordisk Kartro	http://www.kartro.dk/	International manufacturer and / or distributor of building component machinery, builders' hardware products and software-supported builders' hardware products
Omga	http://www.omgainc.com/	International manufacturer of building component machinery
Origin Timber	http://www.origin.co.nz	New Zealand manufacturer of structural products (providing wood product systems)
Owen, R.J. & J.J.	http://www.rooftruss.com.au/	Australian manufacturer and distributor of building component machinery and truss fabricator
Paslode (Division of Illinois Tool Works)	http://www.paslode.com/	International manufacturer of building component machinery and builders' hardware products
PlaceMakers	http://www.placemakers.co.nz/	New Zealand vertically integrated fabricator and builders' merchant store
Ramset	http://www.ramset.co.nz	Manufacturer of builders' hardware products. Subsidiary of ITW
Rawl Plug	http://www.powers.com.au	Suppliers of builders' hardware products
Robbins Engineering Inc.	http://www.robbinseng.com/index.html	International manufacturer of builders' hardware products and software-supported builders' hardware products
Ryobi	http://www.ryobitools.com/	International manufacturer of building component machinery
Senco Products, Inc.	http://www.senco.com/	International manufacturer of building component machinery
Simpson Manufacturing Simpson Strong-tie (subsidiary)	http://www.simpsonmfg.com/ http://www.strongtie.com/	International manufacturer of builders' hardware products and software-supported builders' hardware products

Company	Website	Description
Spida	http://www.spida.co.nz/	International engineering software house
Steel and Tube	http://www.steelandtube.co.nz	Supplier of steel raw materials and product
Steelmasters	http://www.steelmasters.co.nz	Manufacturers and suppliers of builders' hardware products
Southward Tube	http://www.southward.co.nz/tube	Manufacturers and suppliers of steel tubing
Truswal Systems	http://www.truswal.com/	International manufacturer of builders' hardware products and software-supported builders' hardware products
Trustek Steel Roofing Systems	http://www.trustek.com.au/	Australian fabricator
Wadkin Bursgreen	http://www.wadkinmoulders.com/	International manufacturer of building component machinery
Winstone Gib	http://www.gib.co.nz	Manufacturer and supplier of wall bracing systems

ANNEXURE 2

Industry Background

Building components - include:

- 20.3 the building envelope: which is the cladding material that protects occupants from outdoor conditions. This includes the roof tiles or sheeting, brick or timber cladding, doors, windows and insulation;
- 20.4 the building structure: which provides support for the building envelope and includes building components such as roof trusses, wall frames, floor trusses, posts and beams;
- 20.5 foundations which support the building structure;
- 20.6 appliances and equipment;
- 20.7 plumbing;
- 20.8 heating and cooling systems;
- 20.9 lighting; and
- 20.10 builders' hardware products which comprise connectors and other products used to join members used to fabricate building components, brace and fix them to foundations and fix or tie the building envelope to the building structure.

ANNEXURE 3

MiTek Assumptions Relating to Market Size Estimates

Based on an average new dwelling market of 25,000 units per year (the average of the past five years):

The average value of the roof and frame market (residential construction), which includes prefabricated timber, light weight steel and conventional on-site construction, exceeds \$330 million – see table below.

Roof and wall frame market (residential) \$ millions

	Trusses/Roofs	Wall Frames	Total
Prefabricated timber	\$123	\$180	\$303
Prefabricated steel	\$4	\$6	\$10
Conventional on-site	<u>\$6</u>	<u>\$14</u>	<u>\$21</u>
Total market	<u>\$133</u>	<u>\$200</u>	<u>\$334</u>

Market values have been estimated at the builder price level.

The connector plate value for prefabricated trusses (at the builder price level) is estimated to represent [] of this market.









In terms of the cost of a small house (150m² in area), the connector value is about \$230, which is significantly less than 1% of the cost of the house.

ANNEXURE 4

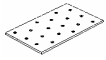




MiTek Product Lines

Please see the following pages.





MiTek New Zealand Ltd. Description of Functional Product Groups

Functional Product Groups	MiTek Product Name		Pryda Equivalent	Other Competitors	Competition Type
Fasteners	Nails		Pryda Nails	ITW Hurrican Arrow NZ Nail	Direct Direct Direct Direct
	MiTek Screws		Ajax Screws	ITW MSL EDL Mico Fastening Supplies	Direct Direct Direct Direct
	Bolts		Ajax Bolts	ITW Blackwoods Steelmasters MSL EDL Fastening Supplies	Direct Direct Direct Direct
	Gang-Nail Plates		Claw Plates	Multi-Nail Tri-Steel Steel Building Systems Steel Framed Homes Roll Formers Bolts (as above) Conventional Roof Framing	Ex Australia Substitute Substitute Substitute Substitute Substitute Substitute
	Special Fasteners				
	Little Grippers		Foil Fix	Abey Wilmaplex McIntyre Dunnings Blue Banding	Ex Australia Ex Australia Ex Australia Ex Australia Substitute
	Strapnails		Strapnails	Multinail Abey Wilmaplex McIntyre Dunnings Simpson	Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Direct
	Cyclone Tie		Cyclone Straps	Multinail ITW Buildex Coventry Fasteners Simpson	Ex Australia Ex Australia Ex Australia Direct
	Tylok		Knuckle Plate	Wilmaplex	Ex Australia






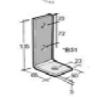
MiTek New Zealand Ltd.
Description of Functional Product Groups

Nail-On Plate 12KN Subfloor Fixings		Nail-On Plate 12 KN Subfloor Fixings	Multinail Timberlink Bolts (as above) Concrete Floors	Ex Australia Direct Substitute Substitute
Screw Tie			Eagle Wire La Pale Tie	Direct Direct
Closet Rail Closet Tube		Closet Bar Closet Rail	BHP Tube Southward Tube Boston Wardrobe	Direct Direct Direct
Bottom Plate Anchor		Bottom Plate Anchor	ITW Rawl Plug Reid	Substitute Substitute Substitute
Wire Dog		Z Nail	Arrow Multi-Nail Abey McIntyre Coventry	Direct Substitute Substitute Substitute




MiTek New Zealand Ltd.
Description of Functional Product Groups

Functional Product Groups	MiTek Product Name		Pryda Equivalent	Other Competitors	Competition Type
Bracing	Wall Bracing				
	Angle Brace		Angle Brace	Multinail Abey Wilmaplex McIntyre Dunnings Winstone Gib Hardies CHH Plywood	Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Substitute Substitute Substitute
	Roof Bracing				
	Strip Brace		Strap Brace	Multinail Abey Wilmaplex McIntyre Dunnings Carlray Creeks Goodwood CHH Timber Oregon Timber	Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Substitute Substitute
	Tensioners		Tensioners	Multinail McIntyre Dunnings Carlray Abey	Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia
Multibrace		Industrial Strap	Fletcher Steel Steel & Tube Other Steel Suppliers	Substitute Substitute Substitute	

MiTek New Zealand Ltd. Description of Functional Product Groups

Functional Product Groups	MiTek Product Name		Pryda Equivalent	Other Competitors	Competition Type
Brackets	I-Beam Hanger		I-Beam Hanger	Simpson Strong-Tie	Direct
	Joist Hanger		Framing Bracket	Arrow Multinail Simpson Strong-Tie USP Wilmaplex Otter Maxi Metals Goodwill Industries	Direct Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia Ex Australia
	Multigrip		Triple Grip	Multinail	Ex Australia
	Post Brackets		Post Brackets	Avon Rovel International Various Steel Fabricators	Direct Direct Direct
	Straps		Straps	Avon Various Steel Fabricators	Direct Direct
	Angle Brackets		Angle Brackets	Avon Zenith Steel Fabricators	Direct Direct

MiTek New Zealand Ltd.
Description of Functional Product Groups

Functional Product Groups	MiTek Product Name		Pryda Equivalent	Other Competitors	Competition Type
Substitution Products	Posi-STRUT		Pryda Metal Webs	Twinaplate Hyspan Oregon Hybeam Powerjoist Solid Timber Roll Formers	Direct Substitute Substitute Substitute Substitute Substitute Substitute
	Trifold Lintel	 Patented		Solid Timber Glulam Timber Hy 90 (CHH) Steel Lintels	Substitute Substitute Substitute Substitute
	Matrix Webs	 Patented	Claw Plate	Multinail Tri-Steel Steel Building Systems Steel Framed Homes Roll Formers	Substitute Substitute Substitute Substitute Substitute

MiTek New Zealand Ltd.
Description of Functional Product Groups

Functional Product Groups	MiTek Product Name		Pryda Equivalent	Other Competitors	Competition Type
Equipment	Truss Presses		Truss Presses	Multinail Apex Machinery AustEng Owens	Direct Direct Direct Direct
	Truss Jigs		Truss Jigs	Multinail Apex Machinery AustEng Owens MangoTech	Direct Direct Direct Direct Direct
	Truss Saws		Truss Saws	Multinail Apex Machinery AustEng Owens MangoTech Spida Mechatronics	Direct Direct Direct Direct Direct Direct Direct

ANNEXURE 5

Multinail v Pryda casenote

In 2002, Chesterman J's judgment was handed down in the Queensland Supreme Court in *Multinail Australia Pty Ltd v Pryda (Aust) Pty Ltd & Anor* [2002] QSC 105. The proceedings were commenced after Pryda Australia successfully convinced Campbells Timber and Hardware (**Campbells**) to switch to Pryda Australia software and connector plates (called "nailplates" in the decision) when Campbells was seeking to update equipment used in a number of its fabrication factories.

At the time, Campbells had in place a long term arrangement with Multinail for the provision of software-supported connector plates. The agreement was terminable without cause on 90 days' notice. Campbells was experiencing financial difficulties, however, and a receiver was appointed over its assets, resulting in the termination of this agreement. A replacement agreement was agreed between Multinail and the receiver, with Campbells agreeing to acquire its total connector plate requirements from Multinail for a further 2 1/2 years. For reasons not explained in the judgment, however, the original 90 day termination right was not reinserted.

Ultimately, Pryda Australia was found to have induced a breach of this contract by Multinail and the majority of the judgment concerns establishing the elements for inducing breach of contract.

In reaching this decision, Chesterman J makes some interesting observations about the market and the competitors within that market. He notes, for example, that "the business of making and selling nailplate is fiercely competitive" (at ¶18), with Multinail being "a fierce contender for available business" (at ¶157).

Interestingly, Chesterman J observes: "At times relevant to this action there were essentially three manufacturers: the plaintiff, the first defendant and MiTek Australia. The plaintiff was the smallest of the three. MiTek Australia was the largest though its management had lost energy and it was losing sales to its competitors who competed not only in price but in the variety and cost of services they provided..." (at ¶18).

Chesterman J also states that, "fabricators avoid changing suppliers and do not do so except for particular reasons", citing the costly and disruptive nature of conversion as a "powerful disincentive" (at ¶136; see also at ¶9).

We note that while the judgment was handed down only last year, the conduct the subject of the proceedings actually took place almost ten years ago. Accordingly, some of the observations of Chesterman J could no longer be considered current. (And we note that - for obvious reasons - many of his observations were based solely upon evidence adduced by the parties to the proceedings, and did not take into account the views of other industry participants, including MiTek Australia and any fabricators).

Indeed, the anecdotal evidence before the court suggesting that fabricators were unwilling to switch (which did not appear to be challenged) is not supported by the statement that

MiTek Australia was losing sales to its competitors (at ¶18) nor by the evidence of switching shown over recent years in both Australia and New Zealand (as discussed above at paragraph 16.61 above). The considerable incidence of switching over recent years, however, may reflect a growing familiarity with software systems generally, and hence a greater propensity to switch suppliers (as has been the case between, for example, users of Apple Macintosh computers vis-à-vis IBM-compatible computers).

We also note that the circumstances of the case were somewhat unusual, given the involvement of receivers. For its own part, MiTek's contracts with its fabricators are all terminable without cause on no more than 90 days' notice. We do not know whether Campbell's inability to terminate early was due only to the involvement of the receivers, or whether such arrangements commonly form part of Multinail's business model.

Finally, we note that the case was appealed, but it settled prior to hearing.

ANNEXURE 6

Competitors in the Building Components Machinery Market

Immediate competitors servicing the fabricators' niche

Apex
AustEng
Mango-Tech
Mechatronics
Multinail
Owen RJ & JJ
Spida

Remaining competitors in the market taken as a whole

(Please note, this list is not exhaustive)

Apach
Delta
Dewalt
Doen Engineering
Duo-Fast
Electra Beckum
EMS
Fasco
Haubold
Hitachi
Holtec
Holytek
Leda
Makita
Metabo
N & K Dalziel
Nortruss
Omga
Paslode
Ryobi
Senco
Stanley Bostitch
Wadkin Bursgreen

ANNEXURE 7

Significant Overseas Competitors

Name	Software	Countries of operation (where known, the date of entry and current market share are shown in brackets)	Products
Aginco	Ediplan	France (1970); Belgium	Proprietary software and connector plates
Alpine	View	United States (15%); UK; France; South Africa; Belgium	Proprietary software and connector plates
Barre	Barre	France	Software only
Bjerkings	BITRAN	Sweden	Software only
Bova		Czech; Germany; Poland; Russia	Proprietary software and connector plates
Cherokee	No software	United States (less 1%)	Connector plates only
Computrus		United States (3%)	Proprietary software and connector plates
Data Design Software AS	DDS	Sweden	Software only
Eagle	Keybuild®	United States (1983; less 1%)	Connector plates
Eleco	Trusscon; Roofcon	Germany (1990; 44%); UK; France Belgium; South Africa; Ireland	Proprietary software and connector plates
Eurotruss	Eurotruss	Sweden	Proprietary software and connector plates
Fine	Truss	Czech	Proprietary software and connector plates
Jager	On-Line Plus™	Canada; United States	Third party supplied software and connector plates

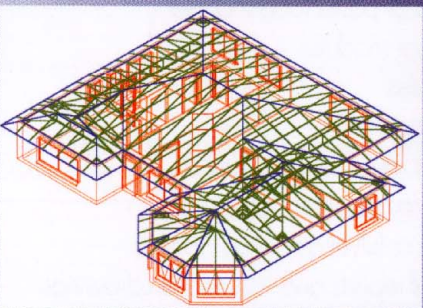
Keymark	KeyBuild®	United States (1975)	Software and engineering services
KPM Engineering Oy	WoDe2000	Finland	Software only
Merit F		Poland	Proprietary software and connector plates
Nordisk Kartro	TakCAD	Sweden; Norway; Denmark; Finland; Russia	Proprietary software and connector plates
Robbins	On-Line Plus™	United States (5%)	Proprietary software and connector plates
Roboba	Robobat	France	Software only
Sepa Oy	Sepa Roof-Cad	Finland	Uses own software
Tampereen Rakenneteknikka Oy	Tvertex	Finland	Software only
Tampervek		Denmark	Proprietary software and connector plates
Truswal	TrusPlus™ Intelligent Building Systems	United States (6%); Canada	Proprietary software and connector plates
Wolf	Wolftruss; Wolfplan; Wolfcut	Germany (1966; 14%); UK; France (1980); Austria; Finland; Switzerland; Belgium; Poland; Ireland; South Africa (software only)	Proprietary software and connector plates
Woteca Oy	TrussCon; RoofCon	Finland	Software only

ANNEXURE 8

e:Frame's Brochure

Please see the following pages.

e:Frame



DISCOVER THE DOORWAY TO IMPROVING YOUR FRAMING SYSTEM

- *Cost Effective*
- *Built to Your Needs*
- *Design, Engineering & Production Combined*
- *Addresses Local & International Standards*
- *Intuitive 3D Graphical Environment*
- *Multi and Single Storey*
- *Designs in Minutes, not Hours*
- *No Risk - Guaranteed*
- *Fixed Pricing*

We Have The Winning Solution!



**ENGINEERING
SOFTWARE SOLUTIONS**

Can you afford **NOT** to automate your design and production process?



Imagine your unique framing standard being fully automated from design, 3D visualisation, and documentation through to numeric control of your plant.

Many of our clients have taken advantage of using cost effective technology to make them industry leaders.

You want...

- an easy to use design system that minimises errors and reduces re-work.
- a system that matches your unique framing and manufacturing system.
- to reduce the turnaround time and cost in producing quotations and production plans.
- to provide professional presentations to win that important project.
- to build quality and standardisation into your product.
- flexibility to modify existing projects with ease.
- instant detailed fabrication drawings and site layout plans.
- to safeguard against design limits being exceeded.
- to take control of your cost/profit levels and know your resource demands.
- to reduce administration cost when detailing Bills of Materials and placing orders.
- to provide a better service to your clients.
- to produce numeric control code for plant.

If you're serious about your business, talk to our team today on 08 8241 0575 and ask how we can help you.



1-5 Hawke Street, Albert Park, SA 5014
PO Box 2150, Port Adelaide, SA 5015
Phone: 08 8241 0575 Fax: 08 8241 0070
Email: ess@ess.com.au ABN 62 063 969 059
www.ess.com.au

We Offer...

All you want and more. For many years Engineering Software Solutions has been developing framing design systems for large and small framing companies.

We understand the importance of providing a solution that meets your exact needs with real benefits that can be measured from your balance sheet.

e:Frame is a unique service whereby we take your design and production methodology and build that onto our core 3D framing modules. The benefit to you is fast development time and low entry cost.

If you have an existing system that prevents you from completing a design within an hour, we can provide a quicker and compatible alternative to interface directly to your plant.

e:Frame is a single intuitive interface that does the lot. No more transferring data between software products with the potential of creating errors or losing valuable data.

From single to multi level, to a partly or fully automated design system, we can address your framing design, engineering and product requirements.

The level of entry is in your control as we can address your immediate needs and, as your business grows, we can address complex designs.

Some of the features of e:Frame:

- Conventional truss or panel roofs module
- Floors and sub floor modules
- Wall frame modules
- Wide range of attachments
- Roll form steel, hot rolled sections, timber
- Multi or single storey modules
- Design with table or full engineering analysis
- Extensive range of reports and visualisation drawings
- Bill of material/work and quotation
- Direct interface to plant
- 3D intelligent graphical environment
- On line documentation
- Easy to use and quick to be productive

No Risk... We guarantee that our service will meet or exceed your expectations.

ANNEXURE 9

e:Frame's Portfolio of Products

Please see the following page.

WE'VE BUILT A STABLE OF WINNERS FROM THE GROUND UP.

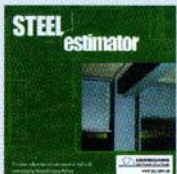
By concentrating on the engineering market we have broadened our knowledge and understanding of the needs in this area. Whilst most clients have a particular problem or requirement, their basic demands are similar, so we have been able to take our proven ideas and develop basic software packages that can be adapted to solve individual needs.

STEEL 41



The No. 1 selling AS4100 Structural Design Software for industry. Developed for engineers, drafters and architects, it is a quick and easy design tool that works like a spreadsheet but eliminates that "black box" feeling.

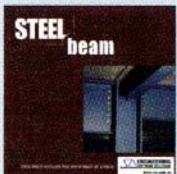
STEELestimator



Developed in response to requests from designers and fabricators for a package that would fully embrace the Rational Costing Method.

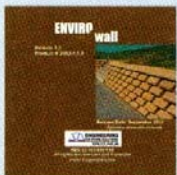
With STEELestimator you have the power to produce fast and accurate estimates for structural steel with a package that makes the most rigorous cost estimate simple.

STEELbeam



The quickest and easiest way to analyse the performance of any beam. Caters for almost any material including steel, aluminium and wood. Displays shear force, bending movement, deflection, bending stress at any point along the beam and provides comprehensive and professional documentation.

ENVIROwall



Especially developed for civil engineers, contractors and constructors involved in the design and construction of retaining walls for roads, riverbeds and industrial and commercial buildings. Provides a simple and accurate method to determine all of the forces applied in retaining walls, while using a range of various materials.

e:Design

Makes software work for you! Don't run your business around generic software when we can develop smart and intuitive software that will enhance your business and evolve as you grow.

Whatever your software development needs e:Design will provide a quality controlled solution engineered to suit **your** exact needs.



e:Frame

An advanced 3D steel framing design and engineering system to take building plans through to completion.

A complete framing solution in minutes with NC code output for forming and assembly.

A winning solution for the framing industry.



e:Assist

Your corporate assistant to help you manage change.

e:Assist will provide your business with sound IT advice and support services. e:Assist is business driven to supply reliable solutions, will focus on your goals and deadlines, and will let **you** control your information technology.



e:InfoSoft

Your personal online business management system,

e:InfoSoft offers substantial savings in the collection and distribution of corporate information. Intranet is a smaller, private version of the Internet and

e:InfoSoft has been created to combine these two technologies to provide your company with a paperless knowledge system.



In so many ways we can help you create and maintain the "competitive edge".

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ANNEXURE 11

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