

## COMMERCE COMMISSION

### Decision No. 510

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**ITW NEW ZEALAND LIMITED**

**and**

**PRYDA AND REID DIVISIONS OF NYLEX (NEW ZEALAND)  
LIMITED**

**The Commission:**            **Peter JM Taylor (Chair)**  
   **Denese Bates**  
   **Donal Curtin**

**Summary of Application:**    The acquisition by ITW New Zealand Limited ("ITW NZ") or a related company nominated by ITW NZ of all the assets and liabilities of the Pryda and Reid divisions of Nylex (New Zealand) Limited ("Nylex").

**Determination:**               Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

**Date of Determination:**     9 October 2003

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## EXECUTIVE SUMMARY

### The Proposal

1. A notice pursuant to section 66(1) of the Commerce Act 1986 ("the Act") was received on 17 September 2003. The notice sought clearance for an application from ITW New Zealand Limited ("ITW NZ") or a related company nominated by ITW NZ to acquire all the assets and liabilities of the Pryda and Reid divisions of Nylex (New Zealand) Limited ("Nylex").

### Market Definition

2. The Commission concludes that, for the purpose of analysing this application, the relevant markets are:
  - The national market for the supply of general fastener systems;
  - The national market for the supply of concrete fastener systems; and
  - The national market for the supply of concrete lifting systems.

### Counterfactual

3. [ ]]. The Commission therefore considers that the appropriate counterfactual is the Reid & Pryda business being acquired by a party that does not raise competition concerns.

### Competition Analysis

#### *Existing Competition*

4. The acquisition will result in a relatively low aggregated market share of approximately [ ] in the market for general fastener systems. There is sufficient competition provided by existing competitors in this market.
5. The Commission considers that the merged entity will be constrained in the concrete fastener systems market by the presence of existing competitors who have been vigorously competing with Reid and Ramset and who could respond rapidly in the event of a price increase by the merged entity. Products can be quickly imported to counter any effort by the merged entity to increase prices.
6. With respect to the concrete lifting systems market, the acquisition would result in Ramset becoming the only existing supplier of concrete lifting systems.

#### *Potential Competition*

7. The Commission considers that there are not sufficient barriers to entry to deter expansion or new entry into the concrete fastener and lifting markets. Potential competition is likely to provide a constraint on the merged entity, and the industry as a whole.

8. The Commission considers that entry into the concrete lifting systems market is likely and will be of sufficient extent to constrain the merged entity.

#### *Countervailing Power*

9. Retailers and end-users of concrete fastener products would have a degree of countervailing power in the concrete fastener market given the presence of several existing suppliers capable of providing products.
10. Major end-users in the concrete lifting systems market have a degree of countervailing power based on their ability to source concrete lifting system products directly.

#### **Overall Conclusion**

11. In the market for the provision of general fastener and concrete fastener systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as there will be sufficient competition provided by existing competitors and potential competition from entry.
12. In the market for the provision of concrete lifting systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as the merged entity would be constrained by potential competition from entry.

## THE PROPOSAL

1. A notice pursuant to section 66(1) of the Commerce Act 1986 ("the Act") was received on 17 September 2003. The notice sought clearance for an application from ITW New Zealand Limited ("ITWZN") or a related company nominated by ITWZN to acquire all the assets and liabilities of the Pryda and Reid divisions of Nylex (New Zealand) Limited ("Nylex").

## THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. Accordingly, an extension of time was sought and agreed to by the Applicant. A decision on the application was required by 9 October 2003.
3. In its application, ITWZN has sought confidentiality for aspects of the application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's determination is based on an investigation conducted by staff.
5. The Commission's approach is based on principles set out in the Commission's *Practice Note 4*.<sup>1</sup>

## THE PARTIES

### ITWZN

6. ITWZN trades as Ramset New Zealand ("Ramset"). For the purposes of this report Ramset means the legal entity ITWZN. Ramset is ultimately owned by Illinois Tools Works Inc, a company listed on the New York Stock Exchange and is part of the ITW Group.
7. Ramset provides products and services in the New Zealand concrete industry, and in particular provides concrete fastener systems and concrete lifting systems. Ramset also provides general construction products such as plaster board and cavity fasteners, power tools and accessories, diamond drilling and cutting products, construction chemicals, and metal and timber fastening products.
8. Ramset is the largest supplier of fasteners for securing steel and timber components to concrete. Ramset operates a national network of 17 branches and sells stock in over 1,000 retail hardware outlets.

### Nylex

9. Nylex is wholly owned by an Australian company Eilloc Pty Limited. Nylex is ultimately owned by Austrim Nylex Limited which is listed on the Australian Stock Exchange.

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<sup>1</sup> Commerce Commission, *Practice Note 4: The Commission's Approach to Adjudicating on Business Acquisitions Under the Changed Threshold in section 47 – A Test of Substantially Lessening Competition*, May 2001.

10. Nylex is selling the business assets of Pryda and Reid, which are trading divisions of Nylex. The Pryda and Reid businesses are operated as one division under common management.

#### *Pryda*

11. Pryda manufactures and supplies timber connecting systems to the Australian, New Zealand, Indonesian, Thai, Malaysian and Singaporean building industries. In particular, Pryda supplies integrated systems for the fabrication of roof trusses, floor trusses and wall frames, primarily used in domestic house and light timber framed buildings. Its principal customers are roof truss, floor truss and wall frame fabricators. Other customers include retail hardware merchants, timber merchants and timber millers, pallet manufacturers and other users of timber.
12. Pryda also supplies the software that fabricators require to design and construct roof trusses, floor trusses and wall frames. Fabricators are licensed to use the Pryda intellectual property. The software provides fabricators with detailing and marking information for the cutting of sections, which can be downloaded to saws and assembly equipment.

#### *Reid*

13. Reid manufactures and supplies concrete fastener and concrete lifting systems to the Australian and New Zealand building industries. Concrete lifting systems represent less than [ ] of the combined Pryda Reid business in New Zealand. Reid also markets and sells construction systems, masonry fastening and handling products for the building and construction industry.
14. Reid specialises in concrete connecting and reinforcement, anchoring, fastening and fixing technologies, in addition to the design of precast concrete and tilt-up lifting systems, primarily used in commercial build construction (predominantly factory and warehouse construction, but also in flats and apartments). Of these products, the sale of concrete fastener systems is the most significant for the business.
15. Reid sells products directly to "precasters" and commercial building companies such as Firth Industries, Humes Industries, and the Fletcher Group.

### **Other Relevant Parties**

#### *Powers Fasteners Australasia Limited ("Powers")*

16. Powers is a privately owned United States company specialising in a wide range of fastening solutions for concrete and masonry applications in both Australia and New Zealand. Powers supplies products to hardware retailers and other re-sellers.

#### *Manufacturing Suppliers Limited ("MSL")*

17. MSL is a New Zealand owned and operated supplier in the nut, bolt, screw and fastener market and supplies the Fortress brand of products. MSL supplies products to hardware retailers and other re-sellers.

*Macsim Fasteners Limited (“Macsim”)*

18. Macsim is a New Zealand owned and operated supplier in the nut, bolt, screw and fastener market. Macsim supplies products to hardware retailers and other re-sellers.

*Hilti (New Zealand) Limited (“Hilti”)*

19. Hilti is a major global company involved in the construction and building industry. Hilti corporation delisted from the Swiss Exchange early in 2003 and is privately owned by a family trust.
20. In New Zealand, Hilti provides products through direct sales to end-users.

*Halfen-Deha Pte Limited (“Halfen-Deha”)*

21. Halfen-Deha is the largest international concrete lifting systems supplier outside the United States. Halfen-Deha has a regional office based in Singapore which manages its activities in the Asia-Pacific region. Halfen-Deha has recently established a new factory in Malaysia from which to supply customers in the Asia-Pacific, including New Zealand.
22. Until the introduction of its new Ramset Australia sourced face-lift and edge lift anchors about six years ago, [ ]. Halfen subsequently merged with Deha – [ ].

*Major Retailers/Re-sellers*

23. A significant proportion of products sold in the concrete fastener market are sold by retailers supplied by the companies listed above. Notable retailers include:
- Placemakers;
  - Mitre 10;
  - Carters;
  - Bunnings/Benchmark; and
  - ITM.

**INDUSTRY BACKGROUND****The Timber Connecting Industry**

24. Ramset does not operate a timber connector business. Thus, the proposed acquisition will only result in aggregation in concrete fastener and lifting systems in which Reid and Ramset operate. As there will be no aggregation between the operations of Pryda and Ramset the timber connecting market will not be considered further.



## The Concrete Casting Industry

### *Structure*

25. The acquisition of Reid by Ramset involves concrete fastener products and concrete lifting systems.
26. The products and services provided by Ramset and Pryda are used by the concrete casting industry. There are three sectors within the concrete casting industry:
  - yard precasting;
  - site casting; and
  - component precasting.

### *Concrete Lifting Systems*

27. All three sectors employ void-formers, anchors and clutches. When concrete is poured, void formers are used to form a space between the steel reinforcing in the centre of the concrete slab and the base of the concrete slab in order to assist placement of the anchor. An anchor is a bolt, often fixed into the steel reinforcing in the centre of concrete before the concrete is set, used to provide (amongst other things) a means with which to lift the finished concrete slab. Clutches are used as an attachment to connect the lifting equipment (e.g. a clutch is attached to the hook of a crane) to a concrete slab (via the anchor) in order to provide a tool with which to lift the concrete slab while also allowing the slab to be rotated and titled into position. The void-formers/anchors (and, to a much lesser extent, the clutches) are differentiated according to the lifting task involved.
28. The key items of precast lifting systems are the lifting anchor systems and clutches. There are various types of anchors and clutches and the choice of the relevant system depends on the industry in which they used in.
29. Concrete lifting systems and components also include:
  - void-formers to assist placement of anchor;
  - concrete inserts (such as threaded "ferrules") to attach reinforcing or metal fabrications such as beams after placement of the panel;
  - cover plates and end caps (to fill or cover holes);
  - bondbreaker concrete-to-concrete release agents;
  - panel shims for leveling panels; and
  - various concrete working tools.
30. These are all products supplied directly to companies in the three sectors of the market. They are often supplied as a package because the products are complementary.
31. In addition, there are different accessories used in each sector. In both site and yard casting, practitioners use reinforcing support systems, concrete inserts (such as threaded inserts called "ferrules"), and various concrete working tools and "shims". Site casters also use a chemical bondbreaker. The applicant considers that the concrete lifting systems and component market (defined below) comprise all these products. The sections below describe how these products are used.

32. Manufacturing in New Zealand is currently limited to anchor plates. There has been local manufacturing of pinhead/swiflight anchors although these are currently sourced from China and France. Ramset has all its edge lift anchors cut from sheet steel and powder coated in New Zealand by Donovan Group New Zealand Limited. The majority of products are imported. Ramset primarily imports from Australia. Imports are also available from Europe, United States, China and Taiwan.

#### *Concrete Fastener Systems*

33. Concrete fastener systems are used to attach timber and steel to concrete. Generally, fasteners are mechanical or chemical anchors.
34. The applicant submits all fasteners within the relevant market are imported from Australia, Europe, Taiwan, China and the United States.
35. It is estimated that between 60-70% of concrete fastener systems are sold to end-users through intermediaries such as hardware retailers and industrial distributors, with the remainder being sold direct to the end-user. There are a large number of intermediary retailers in the New Zealand market, which include national chains such as Placemakers, Mitre 10, Bunnings/Benchmark, ITM, Hammer Hardware, the Building Depot, and Carters.

#### *End-Users*

#### Yard Precasting

36. Yard precasting primarily involves the manufacture of concrete wall panels in a factory-like casting yard.
37. A casting yard will include a series of steel moulds, within which are placed reinforcing wire ("reo"), in addition to a number of features required for the lifting and performance of the wall panel. To facilitate the lift of the panel, anchors and void-formers are placed at the edge of the panel (edgelif anchors). The ITW Group product is called a "plate anchor". After the panel dries, the void-former is torn away, leaving the anchor exposed, but not protruding beyond the surface of the panel.
38. The panel is lifted in the factory using a crane. The anchor is connected to the crane using a "clutch". The panel can then be loaded onto the specially-designed truck (generally a heavy-duty flat-bed truck). The wall panels are then delivered to the construction site. A portable crane (often owned by the precasting yard operator) unloads the panel from the truck and puts it in place. "Shims" are placed in the trench to level the surface. The building company places the wall panels in the trench and fixes them in place with braces. The building is designed in such a way that the walls create the appropriate stresses and loads to hold the wall panels in place (although there is additional fastening of the panels in place).
39. Threaded inserts or "ferrules" are another concrete product used in the manufacture of yard cast wall panels. They are placed within the mould prior to the concrete pour. They sit on a cradle which holds them in place while the concrete is poured.
40. Yard precast wall panels achieve a high degree of precision in sizing and a particularly high finish. They are demanded in the construction of shopping centers, high-rise apartments, hospitals and schools. However, the demands of transport and the casting

yard limit the size of yard cast wall panels. They generally cannot be larger than 3.5 meters by 8 meters.

41. Yard casters tend to be large, well capitalised organisations (given the investment in plant required).

### Site Casting

42. Site casting involves pouring wall panels on site. It takes place directly on the concrete slab on which the building is to be constructed. One panel is poured on top of the other, separated with a chemical separating agent (generally known in the industry as "bondbreaker"). The panels are then separated. Each panel is cast with anchoring systems in place. The panels are lifted by crane and are each stood on end and fixed in place to form the building.
43. Site cast wall panels can be significantly larger than yard cast wall panels. Indeed, there is an incentive to produce panels of the maximum possible size to get the job done, as that maximises the efficient use of the crane the builder needs to rent to lift the wall panels in place. Because of the way these panels are cast and the circumstances in which they are cast, the quality of the finished product is not nearly as high as panels manufactured in a casting yard. They are typically used in the construction of factories, warehouses and industrial parks.
44. The larger-sized panels necessitate a different method of lifting and manipulation. Generally, larger panels are lifted using "facelift" anchors (as compared with the edgelifit anchors used in yard precast panels). The ITW Group product is a piece of pressed metal, sitting on a plastic cradle - which sits in the concrete mould. There could be a series of these anchors placed in the face (as opposed to the edge) of the panel. The panel is connected to the crane using the same clutch used for yard cast wall panels.
45. Site casters tend to be small operations. A typical example will be a small concreter that specialises in the manufacture of wall panels. It may extend to the manufacture of floor slabs. A builder will subcontract the panel construction to such a specialist. Some builders have that expertise in-house.

### Component Precasting

46. Component precasting involves manufacturing various large concrete components, such as pipes, bridge lengths, columns and site barriers. They generally require considerably more engineering input than wall panel manufacture.
47. They are produced in factories by pouring concrete into appropriate moulds. As in the case of wall panels, anchors are inserted in the concrete component in the manufacturing process, allowing them to be moved and delivered to construction sites. Generally, "pin head" type anchors (and a claw type clutch) are used. This is because of the different requirements for lifting and moving precast concrete components. In the case of wall panels, they need to be rotated from a horizontal to perpendicular position. That creates considerable stresses on the anchoring equipment, requiring particularly designed anchors. Most concrete components are lifted as a deadweight. A number of "pin head" anchors placed at strategic points of the concrete component is the most efficient method of achieving this.
48. Component precasters are generally major companies, given the requirements of construction in terms of engineering capacity and capital equipment.

### Conduct

49. Suppliers of concrete lifting and fastener systems compete on price, quality and service. The Applicant has indicated that brand awareness, reputation for safety, and location of activity are all points of differentiation that industry participants rely on for competitive advantage.
50. A large portion of the major suppliers' business is driven by large projects. A contractor will bid for a construction project with an estimated cost for the concrete fastener and concrete lifting system products. This cost is typically between 1-5% of the total project cost. Contractors will often seek to obtain the entire complement of fastening products from one of the major wholesalers or directly from Ramset or Hilti.
51. End-users purchase products based on either a historical preference for a certain brand or based on the specifications required by the architect/project manager of a project.
52. Suppliers provide wholesalers with rebates based on historical sales/volume. Suppliers target significant marketing resources towards contractors and other end users. Rebates and promotions (e.g. product give-aways) are used to build brand awareness and generate customer loyalty.
53. Suppliers, wholesalers and end users indicate that price is the main driver in the industry with quality a close second. Safety is also an important consideration for concrete lifting systems. Industry participants emphasised the importance of brand loyalty among end-users. Industry participants indicated that brand loyalty is sufficient only as long as the product remains price competitive. Given the importance of brand loyalty it is important for new entrants to establish a brand presence in order to acquire market share. The presence of several smaller competitors suggests it is possible to achieve a foothold in the market and with sufficient marketing a new brand can gain market share.

### MARKET DEFINITION

54. 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.*

55. For the purpose of competition analysis, a relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry, could impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the 'ssnip test'). For the purpose of determining relevant markets, the Commission will generally consider a *ssnip* to involve a five percent increase in price for a period of one year.
56. The Commission defines relevant markets in terms of four characteristics or dimensions:
  - the goods or services supplied and purchased (the product dimension);
  - the level in the production or distribution chain (the functional level);
  - the geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic extent); and

- the temporal dimension of the market, if relevant (the timeframe).

### **The Applicant's Market Definition**

57. The applicant submits that the acquisition of Pryda and Reid will result in aggregation in the following markets:
- The New Zealand market for the supply of general fastener systems;
  - The New Zealand market for the supply of concrete fastener systems; and
  - The New Zealand market for the supply of concrete lifting systems.
58. The applicant submits that this is a conservative view of the relevant markets, and the ACCC has previously adopted broader market definitions, namely concrete products<sup>2</sup> and building products<sup>3</sup>.

### **Product Markets**

#### *General Fastener Systems*

59. The applicant submits that the market aggregation in the general fastener systems market will be less than [ ], and considers this aggregation is too small to require clearance from the Commission.
60. Investigations by the Commission confirm the relatively low market share of Reid and Ramset in this market, and the presence of strong competitors. Consequently, this market will not be considered further.

#### *Concrete Fastener Systems*

61. Concrete fastener systems are used for fixing timber steel and steel to concrete. Concrete fastener systems include:
- a) powder-actuated fastener systems;
  - b) mechanical masonry anchoring systems;
  - c) structural concrete anchors; and
  - d) chemical anchoring systems.

#### *Concrete Lifting Systems*

62. The key items of precast concrete lifting systems are the lifting anchor systems and clutches. There are various types of both anchors and clutches, depending on the

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<sup>2</sup> *Construction Materials (Australia) Pty Limited*, C5058, 2 May 1975

<sup>3</sup> *Shell Company of Australia Limited*, C23157, 10 May 1976.

application. Much depends on the sector of the industry involved, as most suppliers offer specifically designed products for each sector.

63. Concrete lifting systems and components also include:
- a) void-formers to assist placement of anchor;
  - b) concrete inserts (such as threaded "ferrules") to attach reinforcing or metal fabrications such as beams after placement of the panel;
  - c) cover plates and end caps (to fill or cover holes);
  - d) bondbreaker concrete-to-concrete release agents;
  - e) panel shims for leveling panels; and
  - f) various concrete working tools.

#### *Supply Side Substitution*

64. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change in their relative prices
65. The applicant submits that there is some basis for maintaining that the relevant markets are broader than presented in its submissions on the basis of supply side substitutability, as virtually all products are imported and the customer base is generally similar. The applicant acknowledges that concrete lifting and concrete fastener systems are not substitutable from a demand side perspective.
66. The Commission accepts that there is a degree of supply side substitutability between products in the concrete fastener systems market and the general fastener systems market. This is also true to a lesser degree in the concrete lifting systems market, although the substitutability is reduced by the additional costs of providing engineering expertise that a competitor would require to successfully compete in the concrete lifting systems market.

#### *Demand Side Substitution*

67. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
68. The products used in concrete fastener systems are not substitutable from a demand side perspective with products from the general fastener systems market, as their form and function are specific for the purpose to which they are put. Similarly, products used in the concrete lifting systems market are not substitutable with concrete fastener system products or products in the general fastener systems market.
69. While it may be possible to define separate product markets for the individual products used in concrete lifting systems and concrete fastener systems, the Commission considers that the competition effects of the proposed acquisition are sufficiently captured by an assessment based on aggregating products within these markets. Therefore, the Commission considers the appropriate product markets are:
- The market for concrete fastener systems; and

- The market for concrete lifting systems.

### **Functional Market**

70. Reid and Ramset sell concrete lifting systems directly to end users.
71. Reid and other suppliers of concrete fastener systems (with the exception of Hilti) sell their product to retailers, who in turn sell the product on to end users. Ramset differs in this respect as it sells to retailers and via its own retail branch network. Hilti supplies product directly to end users. For a pictorial representation of this market see Appendix 1.
72. Where a company supplies goods or services at various functional levels the Commission is likely to consider each functional level as a separate market. In the current situation the functional level appropriate to the market definition is that of wholesale or retail supply.
73. The Commission therefore considers the appropriate functional level is the supply of concrete fastener systems to wholesalers and end-users, and the supply of concrete lifting systems to end-users.

### **Geographic Market**

74. The applicant considers both markets to be national. This is on the basis that the concrete fastener products are imported into New Zealand and distributed through national distribution networks, and in the case of concrete lifting systems distributed direct to end-users on a national basis.
75. The Commission's investigations support this claim. Therefore, the Commission considers the appropriate geographic area to be national.

### **Conclusion on the Relevant Markets**

76. The Commission concludes that, for the purpose of analysing this application, the relevant markets are as follows:
  - The national market for the supply of concrete fastener systems ("the concrete fastener systems market"); and
  - The national market for the supply of concrete lifting systems ("the concrete lifting systems market").

### **FACTUAL**

77. The Commission uses a forward-looking, counterfactual, type of analysis in its assessment of business acquisitions, in which two future scenarios are postulated: that with the acquisition in question (the factual), and that in the absence of the acquisition (the counterfactual). The impact of the acquisition on competition can then be viewed as the difference between those two scenarios. It should be noted that the status quo cannot necessarily be assumed to continue in the absence of the acquisition, although that may often be the case. For example, in some instances a clearly developing trend may be evident in the market, in which case the appropriate counterfactual may be based on an extrapolation of that trend.

78. In the factual scenario Ramset and Reid will be the only suppliers of concrete lifting systems in New Zealand. In the concrete fastener market several smaller players will remain, including MSL, Macsim, Hilti and Powers.
79. Ramset has advised the Commission that the primary reason for the acquisition is [ ].

## COUNTERFACTUAL

80. The applicant has not suggested a counterfactual in its clearance application.
81. [ ].
- ]. The Commission therefore considers that the appropriate counterfactual is the Reid & Pryda business being acquired by a party that does not raise competition concerns.

## COMPETITION ANALYSIS

82. For each relevant market, the Commission will assess:
- the probable nature and extent of competition that would exist in a significant section of the market, but for the acquisition (the counterfactual);
  - the nature and extent of the contemplated lessening by considering market concentration, existing competition and potential competition and other competition factors such as countervailing power; and
  - whether the contemplated lessening is substantial.<sup>4</sup>
83. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used. All measures may yield similar results in some cases. Where they do not, the Commission may, for the purposes of its assessment, adopt the measure which yields the highest level of market share for the combined entity. The Commission considers that this will lead to an appropriately conservative assessment of concentration, and that the factors which lead to the other different market share results are more appropriately considered elsewhere during the assessment of the acquisition.<sup>5</sup>
84. In determining market shares, the Commission will take into account the existing participants (including ‘near entrants’), inter-firm relationships, and the level of imports. This is followed by an application of the Commission’s ‘safe harbours’.
85. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

<sup>4</sup> See *Dandy*, supra n 5, pp 43–887 to 43-888 and adopted in New Zealand: *ARA v Mutual Rental Cars* (1987) 2 NZLR 647; *Tru Tone Ltd v Festival Records Retail Marketing Ltd* (1988) 2 NZLR 352; *Fisher & Paykel Ltd v Commerce Commission* (1990) 2 NZLR 731; *Commerce Commission v Carter Holt Harvey*, unreported, High Court, Auckland, CL 27/95, 18/4/00.

<sup>5</sup> See the Commission’s Practice Note 4 for further explanation of the Commission’s approach to market share.



- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of a 40% share; or
  - where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
86. However, market shares are insufficient in themselves to establish whether competition in a market has been lessened. Additional factors must also be considered before a conclusion is reached. These factors are:
- existing competition;
  - potential competition; and
  - other competition factors such as countervailing power.
87. These factors, along with market concentration, are considered in subsequent sections for each of the relevant markets.
88. After considering the additional factors outlined above, the Commission will assess whether the merger is likely to result in a substantial lessening of competition ("SLC").
89. Section 2(1A) of the Act provides that substantial means real or of substance. Substantial was considered by McGechan J in *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 434. He observed:
- "substantially lessening competition" is taken as meaning "lessening competition in a way which is more than insubstantial or nominal". The merely ephemeral and minimal will not suffice. Inevitably, that will involve some attention to relativity; and in the end be a question of judgment on a matter of degree."
90. The Commission considers that it is necessary to identify a real lessening of competition that is not nominal, rather than a quantifiable measure of lessening. The lessening needs to be of such a size, character and importance that it is worthy of consideration<sup>6</sup>. Overall, the Commission considers that substantially lessening competition concerns a real or substantial impact on a market in a way of a lessening, hindering and preventing the process of workable and effective competition.

## THE MARKET FOR CONCRETE FASTENER SYSTEMS

### Market Concentration

91. The Commission has defined a market for the supply of concrete fastener systems. The Commission intends to use the dollar value of sales made of the products represented in this market. The table below reflects the estimated market shares of the merged entity and other competitors in the concrete fastener market based on figures provided by the Applicant and information gained in the course of the Commission's investigation.

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<sup>6</sup> *Dandy Power Equipment Pty Ltd v Mercury Marina Pty Ltd* (1982) ATPR 40-315, 43-888.

**Table 1: Market Shares in the Concrete Fastener Systems Market**

<b>Firm</b>	<b>Value in \$</b>	<b>Market Share</b>
Ramset	[ ]	[ ]
Reid	[ ]	[ ]
<i>Merged Entity</i>	[ ]	[ ]
Hilti	[ ]	[ ]
Powers	[ ]	[ ]
MSL	[ ]	[ ]
Macsim	[ ]	[ ]
<b>Total</b>	[ ]	100

92. The current three firm concentration ratio is [ ]. Post acquisition the three firm concentration ratio is [ ]. The market shares in the concrete fastener market fall outside the Commission's safe harbour guidelines.
93. However, market shares are insufficient in themselves to establish whether competition in a market has been lessened. It is the interplay between a number of competition factors, of which seller concentration is only one, that has to be assessed in determining the impact of a business acquisition on competition. Other competition factors include the constraint provided by existing or potential competitors as well as other competition factors such as the countervailing power of buyers and suppliers. These are considered for the relevant market in subsequent sections.

### **Existing Competition**

94. Post acquisition, the Applicant will be the largest provider of products in the concrete fastener systems market. Despite this, the merged entity will continue to face strong competition from existing competitors such as Hilti, MSL, Macsim and Powers.
95. Hilti will be the largest competitor in the market post acquisition. Hilti entered the market three years ago [ ].
96. Smaller competitors like Powers, MSL and Macsim also provide significant competition with their ability to provide products to the market. These companies all entered the New Zealand market within the last six years and have been vigorously competing for market share since. As an example of the success of these smaller players, [ ]. Smaller players also act as secondary suppliers to the major hardware retail chains, and thus provide competition to the pricing of the major suppliers.
97. Most participants in the market source their range of products into New Zealand from Asia - predominantly from China or Taiwan. This allows the smaller participants to source their products at comparatively competitive rates and thus affect the pricing behaviour of larger competitors by acting as a viable source of supply.

### *Conclusion on Existing Competition*

98. The Commission considers that the level of existing competition does not substantially change post acquisition due to Reid's small market share, the presence of Hilti as a vigorous competitor and the presence of a number of smaller firms in the market able to respond rapidly in the event of a price increase by the merged entity. Products can be quickly imported to counter any effort by the merged entity to increase prices. These factors will ensure significant competition exists for the combined entity post acquisition.

### **Potential Competition**

99. While the Commission considers that the level of existing competition is likely to constrain the merged entity, in order to assess fully the impact of the acquisition in the relevant markets the Commission has gone on to consider potential competition.
100. The likely effectiveness of the threat of new entry in constraining the conduct of market participants, following a business acquisition that might otherwise lead to a substantial lessening of competition in a market, is determined by the nature and height of barriers to entry into that market.
101. The Commission considers that, for the purpose of considering this issue, a barrier to entry is best defined as an additional or significantly increased cost or other disadvantage that a new entrant must bear as a condition of entry.
102. In order for the threat of market entry to be such a constraint on the exercise of market power as to alleviate concerns that a business acquisition could lead to a substantial lessening of competition, entry of new participants in response to the exercise of market power must be likely, sufficient in extent and timely (the *let* test). If they are to act as a constraint on market participants following a business acquisition, which might otherwise lead to a substantial lessening of competition in a market, entry must be relatively easy, or to put it another way, barriers to entry must be relatively low.

### *Barriers to Entry*

103. The easiest and most common method for an entrant to enter the concrete fastener market is by sourcing a supplier from a foreign supply source and importing those products into New Zealand.
104. The key criteria for a potential entrant seeking to supply the market are a degree of expertise with respect to the products' uses, a source of reliable product that meets relevant building codes and industry codes of practice, industry contacts and a warehouse from which to distribute the product.
105. The size and geographical coverage of the major resellers provide a new entrant with the means of distributing products throughout New Zealand. A new entrant does not have to incur sunk costs in a retail distribution network to supply end-users. Alternately, a new entrant can employ regionally based sales teams to supply product directly to end-users, as Hilti and Ramset currently do.
106. The applicant contends that a new entrant would only require stock to the value of \$50,000 to \$100,000 to commence operations. Industry participants varied in their estimate of start-up costs but generally agreed that a small operator could commence operations with minimal capital input. A new entrant would require small commercial premises but these can be leased with minimal sunk costs.

*Likelihood of Entry*

107. The Applicant and other industry participants considered that competition by expansion by existing concrete fastener suppliers is as likely as greenfields entry. The applicant considered that there were no significant constraints to expansion. This is evidenced by MSL's recent expansion into a new product line in the general fastener systems market which might easily be replicated by expansion into a new product range in the concrete fastener systems market. The Commission considers that there are no significant impediments preventing a current or new entrant from expanding operations.
108. Products sourced from Taiwan and China are generally of similar quality and new entrants would be competing with existing participants on an equal footing in terms of quality. The most difficult obstacle for a new entrant would be developing brand awareness of new products, which would typically require a targeted marketing effort aimed at end-users. However, the success of new entry in the previous six years, and Hilti in the previous three years, indicates that this is not a particularly onerous requirement.
109. The Commission therefore considers entry or expansion would be likely in the concrete fastener systems market if the combined entity raised prices or reduced quality post-acquisition.

*Extent of Entry*

110. A new entrant requires the ability to source a product range that is price and quality competitive with existing products. The Commission considers that a new entrant would not find it difficult to set up a distribution warehouse that provides sufficient inventory to meet retailers' needs. A new entrant could also easily set up a small office operation and sell direct to end-users.
111. The sales and marketing function can be performed by a small sales staff that travels throughout New Zealand building brand awareness and "customer pull" that will pressure wholesalers to stock the entrant's product.
112. Given the ease with which concrete fastener products can be imported, a small operation can contest for both large projects and the smaller maintenance and DIY projects. The presence of firms like Macsim, Powers, MSL and Hilti illustrates the ability of new entrants to enter the market and provide a realistic alternative to larger firms like Reid and Ramset.
113. Although it is unlikely a new entrant will initially carry the full product range that Ramset currently supplies into the market, there is little to limit a new entrant's expansion of its range once it has established a competitive position.
114. The Commission considers that a new entrant can establish a supply operation of sufficient scale to effectively compete with the merged entity post acquisition in the concrete fastener market.

*Timeliness of Entry*

115. The Commission considers that based on evidence of previous new entry, for example the entry of Hilti, an entrant can establish a supply operation capable of providing the industry with concrete fastener products within 12 months.

### *Conclusion on Constraint from Potential Competition*

116. The Commission concludes that there are not sufficient barriers to entry to deter expansion or new entry. Potential competition is likely to be sufficient to constrain the merged entity, and the industry as a whole.

### **Countervailing Power**

117. Market participants considered that major retailers of concrete fastener systems have a significant degree of countervailing power. Approximately 60-70% of concrete fastener products are sold to end-users through retailers. The Commission's investigations indicated that the major retailers aggressively negotiated lower prices of supply and were willing to switch suppliers. There is also no restriction on major retailers sourcing concrete fastener systems directly should they consider that prices in the market were not competitive.

118. Major end-users of concrete fastener product such as Stresscrete (a division of Fletcher Building) also possess a degree of countervailing power. Ramset submits there have been instances of Australian owned customers threatening Ramset with importing fasteners as a way of forcing Ramset to decrease its prices. [

].

119. Also, as large users of concrete fastener systems in New Zealand operate under fixed price contracts, any price rise by the merged entity is likely to lead to a user switching. Competing suppliers considered that any effort by the merged entity to increase prices would result in an opportunity to increase market share by winning major contracts.

120. The presence of several existing suppliers in the market capable of providing product and the potential for retailers to purchase directly from overseas would act as a constraint on the merged entity in the market for concrete fastener products.

### **Conclusion on SLC on the Concrete Fastener Systems Market**

121. In the market for the supply of concrete fastener systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as there will be sufficient competition provided by existing competitors and potential competition from entry.

## **THE CONCRETE LIFTING SYSTEMS MARKET**

### **Market Concentration**

122. The Commission has defined a market for the supply of concrete lifting systems. The Commission intends to use the dollar value of sales made of the products represented in this market. The table below reflects the estimated existing market shares of the participants in the concrete lifting systems market and the merged entity based on figures provided by the applicant.

**Table 2: Market Shares in the Concrete Lifting Systems Market**

<b>Firm</b>	<b>Value in \$</b>	<b>Market Share</b>
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Ramset	[ ]	[ ]
Reid	[ ]	[ ]
<i>Merged Entity</i>	[ ]	[ ]
<b>Total</b>	[ ]	100

123. The current three firm concentration ratio is [ ]. Post acquisition the three firm concentration ratio is [ ]. The market shares in the concrete fastener market fall outside the Commission's safe harbour guidelines.

### Existing Competition

124. The acquisition would result in the merged entity becoming, to the knowledge of the applicant, the only supplier of concrete lifting systems in New Zealand.

125. However, the applicant notes that there may be other small importers in New Zealand supplying concrete lifting systems, although is currently unable to provide evidence to support this belief.

126. [

].

### Potential Competition

#### *Barriers to Entry*

127. The applicant submits that barriers to entry into the concrete lifting systems market are similar to those into the concrete fastener systems market. The Commission agrees with this statement but with a number of key exceptions.

128. Firstly, the distribution method of concrete lifting system products is different from concrete fastener system products, as end-users are supplied directly by suppliers without an intermediary retailer. The rationale behind this direct contact is also the second distinction between the concrete lifting systems and concrete fastener systems markets, namely, the products sold to end-users in the concrete lifting systems market are sold with a degree of engineering support that is not required for products sold in the concrete fastener systems market. Thirdly, there may be a switching cost in encouraging new entrants to switch systems as the non-disposable component of the lifting system, the clutch, would need to be compatible with the anchors set into the pre-cast concrete. Finally, brand may play a more significant role due to the safety aspects of products in the concrete lifting systems market.

129. With respect to the first distinction, Ramset and Reid utilise small teams of sales reps to sell their product in the regional centres, with each sales rep having a wide geographical coverage. Reid employ [ ] sales staff who are based on their four warehouses, located in Dunedin, Christchurch, Wellington and Auckland. [ ] of its sales team are based in Auckland. Ramset employs a sales staff of [ ] which operates from its branches in the major urban centres. A new entrant could successfully compete initially by limiting its

sphere of operations to the Auckland region where the bulk of pre-casting is currently occurring, and targeting nationwide contracts on an ad-hoc basis. Alternately, it could replicate the Reid network if it decided to compete on a national basis.

130. [ ] stated that it considers the key barrier to entry is identifying a suitable stock holding distributor with offices around New Zealand capable of servicing fully the customer base for concrete lifting systems. [ ] considers this could best be accomplished through a relationship with a company with current distribution to the precast and general construction sectors, most likely a supplier of fixing bolts. The most likely candidates in the concrete fastener systems market are [

]

131. [

]. As in the concrete fastener market, a new entrant would incur minimal sunk costs in relation to a distribution network to supply end-users as suitable warehouse facilities could be leased. Stock is moved between central warehouses and end-users by commercial arrangements with distribution companies such as Courier Post and Mainfreight. The Commission does not consider that the requirement to set up a distribution system in the concrete lifting systems market represents a significant barrier to entry.

132. Engineering support is provided as a free service by Ramset and Reid, who advise end-users on the correct use of their products. End-users typically provide Ramset and Reid with the specifications of the pre-cast concrete in which anchors will be inserted, and then Ramset and Reid compute the appropriate places in which to insert concrete anchors. Ramset and Reid also provide a technical booklet which allows engineers to make their own assessment of where to place concrete anchors in pre-cast concrete. A new entrant would have to replicate this degree of expertise in order to be considered a credible supplier by end-users. However, this could be accomplished relatively simply by employing a qualified engineer who can use programmes such as Qik Panel to plot the critical points for anchors given inputs of weight, size etc. This programme is available at a cost of AUS\$1500.

133. With respect to switching cost, the clutch is a relatively inexpensive component and can be re-used relatively often. Tilt-Lift, an Australian based supplier of concrete lifting systems, avoids the switching cost associated with different systems by loaning or renting clutches to companies who purchase their concrete lifting system. The Commission therefore considers the switching cost of utilising an alternative concrete lifting system to be minimal.

134. The Commission also considers that brand may play a more significant role in the concrete lifting systems market due to the use to which the products are put. End-users engaged in concrete lifting are especially concerned with the safety aspects of the products they purchase and have developed trust in the Ramset and Reid brands. However, there are a number of ways in which a new entrant could overcome brand advantage. A new entrant could increase the credibility of their product with a BRANZ certification – a certification known and respected in the building industry. Such

certification would cost around \$7000 and take three months for a product where detailed testing information is available from the manufacturer.

135. Also, Halfen-Deha stated that they have been actively engaging in brand promotion in New Zealand through trade magazines even though their product is not sold under the Halfen-Deha brand in New Zealand. The Commission considers that targeted marketing such as this would be a successful way in which a new entrant could overcome brand loyalties and gain market share.

136. The Commission also notes that there may be a competitive advantage for a competitor in the concrete fastener market to offer concrete lifting systems, as a supplier could offer a broader range of concrete products to end-users and therefore potentially gain advantages from supplying bundled products.

137. Overall, the Commission is of the opinion that barriers to entry into the concrete lifting systems market are low.

*Likelihood of Entry*

138. [ ]

139. [ ]

]

140. [ ]

]

141. [ ]

]

142. The Commission therefore considers entry into the concrete lifting systems market by [ ] is likely, and possible by [ ].

*Extent of Entry*

143. [ ]



]

144. The Commission considers that extent of entry would be determined primarily by the success of a new entrant's branding and marketing campaigns, the competitiveness of the price at which a new entrant offered its products, and the quality of the service it provided. The Commission considers that a new entrant which succeeded in providing a quality product at a competitive price could enter the concrete lifting systems market to a significant extent.
145. The Commission considers that a new entrant could quite easily establish a supply operation of sufficient scale to provide significant competition to the merged entity in the concrete lifting systems market post acquisition.

#### *Timeliness of Entry*

146. The Commission considers that, based on evidence provided by [ ], an entrant could establish a supply operation capable of providing the industry with concrete lifting system products within the two year time frame considered by the Commission in assessing the degree of constraint a new entrant would impose on the combined entity.

#### *Conclusion on Constraint from Potential Competition*

147. The Commission concludes that there are not sufficient barriers to entry to deter expansion or new entry. Potential competition is likely to provide a constraint on the merged entity, and the industry as a whole.

#### **Countervailing power**

148. The major end-users of concrete lifting systems, particularly in the yard precast and component sectors, possess a degree of countervailing power. Although the acquisition would result in only one supplier of concrete lifting systems, there is nothing to prevent major end-users from importing the product directly for their own purposes. Indeed, Stresscrete used to do this until it began outsourcing concrete lifting systems as part of its drive to divest non-core business operations. [ ] However, as concrete lifting system products typically make up only 1% of the total end cost of a pre-cast concrete, the willingness of end-users to source products themselves is likely to be limited by a degree of price insensitivity. However, [

]

149. The Commission therefore considers that major end-users of concrete lifting systems would have some degree of countervailing power, although their willingness to use this would be limited to some extent by a degree of price insensitivity.

#### **Conclusion on SLC on the Concrete Lifting Systems Market**

150. In the market for the provision of concrete lifting systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as the merged entity would be constrained by

potential competition from entry and to some degree the countervailing power of end-users.

## **OVERALL CONCLUSION**

151. The Commission has considered the probable nature and extent of competition that would exist in the following markets:
- The national market for the supply of general fastener systems;
  - The national market for the supply of concrete fastener systems; and
  - The national market for the supply of concrete lifting systems.
152. The Commission considers that the appropriate counterfactual for comparison is the Reid and Pryda businesses being sold to a party that did not raise competition concerns.
153. The Commission has considered the nature and extent of the contemplated lessening. In the general fastener systems market, the proposed acquisition would result in the merged entity obtaining a market share which falls within the Commission's safe harbour guidelines. In the concrete fastener and concrete lifting systems markets, the proposed acquisition would result in the merged entity obtaining a market share which falls outside the Commission's safe harbour guidelines
154. The Commission has also considered the nature and extent of the contemplated lessening, in terms of the competitive constraints that would exist following the merger from:
- Constraint posed by existing competition;
  - Ease of entry by potential competitors; and
  - The countervailing power of customers.
155. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
- The national market for the supply of general fastener systems;
  - The national market for the supply of concrete fastener systems; and
  - The national market for the supply of concrete lifting systems.
156. In the market for the supply of general fastener systems and concrete fastener systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as there will be sufficient competition provided by existing competitors and potential competition from entry.
157. In the market for the supply of concrete lifting systems, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, as the merged entity would be constrained by potential competition from entry and to some degree the countervailing power of end-users.

**DETERMINATION ON NOTICE OF CLEARANCE**

158. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by ITW New Zealand Limited ("ITWNZ") or a related company nominated by ITWNZ of all the assets and liabilities of the Pryda and Reid divisions of Nylex (New Zealand) Limited ("Nylex").

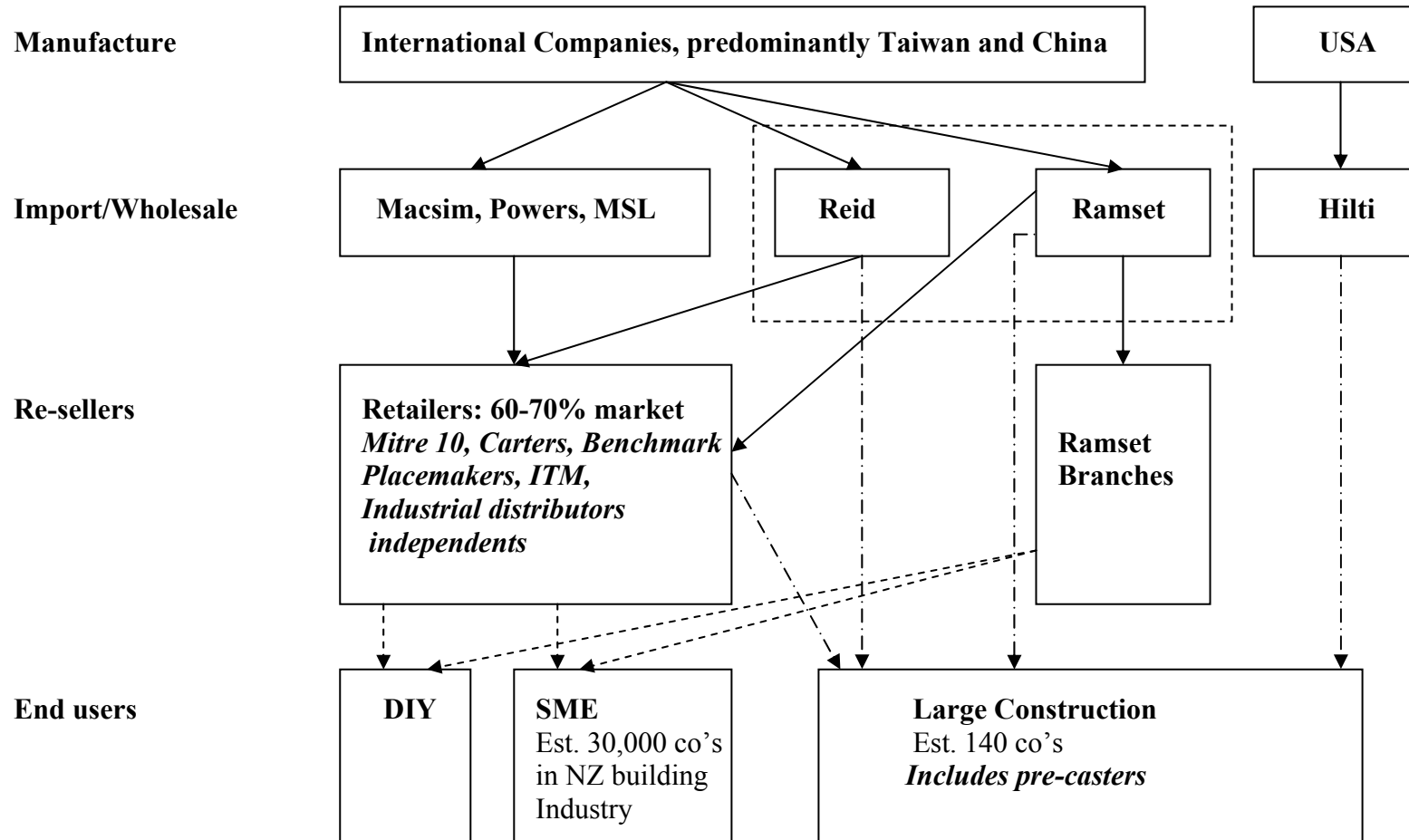
Dated this 9<sup>th</sup> day of October 2003

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Peter JM Taylor

Division Chair

## Appendix 1: Simplified Industry Structure of the Concrete Fastener Market



N.B. Not all participants in the import/wholesale functional level supply product to all retailers at the re-sell level.