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Determination

Daiken New Zealand Limited and Dongwha New Zealand Limited [2018] NZCC 4

The Commission:	Sue Begg Anna Rawlings Jill Walker
Summary of application:	An application from Daiken New Zealand Limited seeking clearance to acquire, either directly or indirectly, 100% of the shares of Dongwha New Zealand Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed merger.
Date of determination:	28 March 2018

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

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The proposed merger

1. On 4 October 2017, the Commerce Commission (the Commission) registered an application under section 66(1) of the Commerce Act 1986 (the Act) from Daiken New Zealand Limited (Daiken) seeking clearance to acquire, either directly or indirectly, 100% of the shares of Dongwha New Zealand Limited (Dongwha) (the proposed merger).

2. Daiken and Dongwha are two of New Zealand's three manufacturing suppliers of raw medium density fibreboard (MDF) panels.

3. Daiken indicated that its rationale for the merger was to allow Daiken to approximately double its available raw MDF panel production volumes for export.[1]

Our decision

4. The Commission gives clearance to the proposed merger as it is satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

5. Our approach to analysing the competition effects of the proposed merger is based on the principles set out in our Mergers and Acquisitions Guidelines.[2]

The substantial lessening of competition test

6. As required by the Act, we assess mergers using the substantial lessening of competition test.

7. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[3]

8. We make a pragmatic and commercial assessment of what is likely to occur in the future, with or without the merger, based on the information we obtain through our investigation and taking into account factors such as market growth and technological changes.

9. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),[4] or reduce non-price factors such as quality or service below competitive levels.

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[1] Application at [4.3].
[2] Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).
[3] *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].
[4] Or below competitive levels in a merger between buyers.

10. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.

11. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.[5]

When a lessening of competition is substantial

12. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.[6] Some courts have used the word 'material' to describe a lessening of competition that is substantial.[7]

13. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

14. A substantial lessening of competition is 'likely' if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.[8]

The clearance test

15. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.[9] If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

Key parties

Daiken

16. Daiken is the New Zealand subsidiary of Daiken Corporation, a Japanese company specialising in the manufacture and supply of wood-based construction materials. In New Zealand, Daiken manufactures and supplies raw MDF panels from a plant it operates near Rangiora in North Canterbury.

17. In its 2017 financial year, Daiken's sales of raw MDF panels totalled $[ ], with export sales being $[ ] and New Zealand sales being $[ ]. Almost all ([ ]%) of Daiken's export sales of raw MDF panels are sales to its parent company in Japan

5 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].
6 *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].
7 *Woolworths & Ors v Commerce Commission* (HC) above n6 at [129].
8 Ibid at [111].
9 Section 66(3)(a).

and a related entity
[
].[10]

Dongwha

18. Dongwha is 80% owned by Dongwha International Co., Limited (a company incorporated in Hong Kong) and 20% owned by Laminex Group (N.Z.) Limited (Laminex). In New Zealand, Dongwha manufactures and supplies raw MDF panels from a plant it operates in Mataura in Southland.

19. In its 2016 financial year, Dongwha's sales of raw MDF panels totalled $[ ], with export sales being $[ ] and New Zealand sales being $[ ]. Approximately [ ] of Dongwha's export sales of raw MDF panels are sales to Dongwha International and [ ] of Dongwha's New Zealand sales of raw MDF panels are to its minority shareholder, Laminex.[11] [12]

Laminex

20. Laminex currently purchases raw MDF panels in New Zealand predominately from Dongwha,[13] but also purchases raw MDF panels from other suppliers.[14] Laminex owns 20% of the shares of Dongwha, and has a seat on its Board. Laminex uses about [ ]% of the raw MDF panels it purchases by volume for its own wood products business or other uses within the Fletcher Building group, and on-sells about [ ]% by volume to third parties.[15]

21. Laminex has had a supply agreement and an [ ] with Dongwha since 2007.[16] The supply agreement [ ].[17] Dongwha and Laminex
[
][18]

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10 Application at [8.14], Appendix 4 and Appendix 10.

11 Ibid.

12 [
] Application at Appendix 4.

13 Laminex has had a supply agreement with Dongwha since 2007. Application at [3.27].

14 In the last year, Dongwha supplied [ ]% of the raw MDF panels purchased by Laminex, with [ ]% being supplied by Daiken and [ ]% by Nelson Pine. In addition, over the past three years, the proportion of its raw MDF panels that Laminex has purchased from Dongwha has [ ].

15 E-mail from Bell Gully (on behalf of Laminex) to the Commerce Commission (6 October 2017) and e-mail from Bell Gully (on behalf of Laminex) to the Commerce Commission (16 October 2017).

16 Application at [3.27].

17 2007 Supply Agreement to between Laminex and Dongwha provided under the cover of an e-mail from Bell Gully (on behalf of Laminex) to the Commerce Commission (6 October 2017).

18 Letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (13 November 2017).

22. On completion of the proposed merger, Daiken and Laminex would enter into a product supply agreement under which the merged entity would continue to supply Laminex with raw MDF panels. Daiken submitted that the overall effect of this agreement is to replicate the status quo in terms of Laminex's ability to compete as a supplier of raw MDF panels in New Zealand.[19]

Nelson Pine

23. Nelson Pine Industries Limited (Nelson Pine) manufactures and supplies raw MDF panels from a plant it operates in Richmond, Nelson. Nelson Pine is New Zealand's only manufacturing supplier of raw MDF other than Daiken and Dongwha. Nelson Pine is ultimately owned by Sumitomo Forestry Co., Limited, a Japanese company involved in forestry and wood products.

24. In 2016, Nelson Pine's sales of raw MDF panels totalled $[ ], with export sales being $[ ] and New Zealand sales being $[ ]. Nelson Pine targets to sell [ ]% of its export sales of raw MDF panels to its parent company, Sumitomo [ ].[20]

Industry background and market structure

MDF

25. MDF is a reconstituted wood-based panel product used in many interior construction applications (eg, kitchens, furniture and other cabinets), and to make mouldings and door skins. The raw material required in the production of MDF is wood fibre in the form of wood chips. In simple terms, wood chips are broken down into wood fibres, resin is added, the resulting material is then dried, formed and pressed. Pressing may be either into a continuous sheet or into separate panels, depending on the technology of the particular plant. Raw MDF panels are sanded and cut as required.

26. The raw MDF panels produced by all three manufacturing suppliers in New Zealand (Daiken, Dongwha and Nelson Pine) are of similar quality. The three MDF manufacturers produce a range of raw MDF panels of different sizes and thicknesses, from three to 35 millimetres thick. Common thicknesses are 16 and 18 millimetres.

27. MDF produced can be sold as raw MDF panels, or can be painted or laminated before being sold as processed/value-added panels. Daiken does not further laminate, decorate, or treat its raw MDF panels before sale.[21] Dongwha also manufactures melamine faced board (MFB), a laminated MDF panel.[22]

28. A significant proportion of the raw MDF panels manufactured in New Zealand are exported. Approximately [ ]% of Daiken's output is exported,[23] approximately [ ]%

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19 Application at [4.13].

20 E-mail from Nelson Pine to the Commerce Commission (18 October 2017) and e-mail from Nelson Pine to the Commerce Commission (17 November 2017).

21 Application at [8.5].

22 Ibid at [3.22].

23 Ibid at [3.12].

of Dongwha's output is exported,[24] and approximately [ ]% of Nelson Pine's output is exported.[25] As noted above, for each manufacturer, a significant portion of their export sales are made to overseas parent companies and related entities, or are sales made via related overseas entities as agents. All three manufacturers advised that their export sales
[ ].[26]

Market structure

29. As already noted, there are three manufacturing suppliers of raw MDF panels in New Zealand – Daiken, Dongwha and Nelson Pine.

30. Depending on their purchase volumes, customers either purchase raw MDF panels direct from the manufacturers or purchase raw MDF panels indirectly through merchants and other distributors. Table 1 summarises the key market participants in the supply of raw MDF panels in New Zealand and their vertical relationships to the manufacturers and other parties.

Table 1: Key market participants

Vertical market segment	Entities and businesses
Manufacturers (upstream)	• Nelson Pine • Daiken • Dongwha
Direct customers of manufacturers (processors and intermediaries)	• Laminex • New Zealand Panels Group (NZPG) • Other large customers[27] • Distributors and merchants[28] • Downgrade customers[29]
Downstream customers[30] (buy off direct customers)	• Builders • Joiners, benchtop, cabinetry and shelving manufacturers • Retail customers (eg, for DIY)

24 Ibid at [3.18].
25 E-mail from Nelson Pine to the Commerce Commission (18 October 2017).
26 E-mail from Russell McVeagh (on behalf of Daiken) to the Commerce Commission (24 November 2017), letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (30 November 2017) and e-mail from Nelson Pine to the Commerce Commission (24 November 2017).
27 [ ]
28 Distributors and merchants include Bunnings, Mitre 10, Carters, Placemakers, ITM, Impey's, Anthony Shearer and Independent Building Supplies (IBS).
29 We discuss downgrade customers and downgrade MDF in the market definition section.
30 Downstream customers typically buy relatively small volumes of raw MDF panels at any one time (eg, a few panels, as opposed to full pallet or entire truck load), so it is not practical for them to buy raw MDF panels direct from the manufacturing suppliers. It is also convenient for such customers to combine their raw MDF panel purchases with other building supplies, and have a merchant or distributor deliver this all to their site in one load.

31. Laminex and NZPG are the largest buyers of raw MDF panels in New Zealand,[31] with over [ ]% of the combined domestic sales of the three manufacturers, by value (including or excluding downgrade sales), being purchased by Laminex and NZPG.[32] [33] Laminex and NZPG purchase raw MDF panels for three purposes:

31.1 to produce and supply laminated or decorative MDF panels;[34]

31.2 to on-sell raw MDF panels directly to their own customers; and

31.3 to supply raw MDF panels to their own or related distribution companies.[35]

Production capacity and sales of raw MDF

32. Table 2 summarises the production capacity of each MDF manufacturer, in terms of saleable capacity (ie, capacity to produce MDF for sale both within New Zealand and overseas). [ ][36]

Table 2: Annual raw MDF production capacity

Manufacturer	Production capacity
Daiken	2 production lines, [ ][37]
Dongwha	1 production line, [ ][38]
Nelson Pine	3 production lines, [ ][39]

33. As noted above, a significant proportion of the raw MDF panels manufactured in New Zealand are exported. The total capacity of all three manufacturers in New Zealand significantly exceeds domestic demand.[40]

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31 Application at [8.21].

32 As noted earlier, Laminex currently purchases raw MDF panels predominately from Dongwha. NZPG purchases raw MDF from Daiken ([ ]%) and Nelson Pine ([ ]%). Commerce Commission interview with NZPG (8 November 2017).

33 [ ]

34 These decorative panels are then used in the manufacture of benchtops, furniture and cabinetry. Some large benchtop, furniture and cabinetry manufacturers also decorate raw MDF panels themselves as part of their manufacturing process. Only a small proportion of raw MDF panels remain undecorated in their end-uses (eg, packaging and uses in furniture that are not visible).

35 Namely, Placemakers (in the case of Laminex) and Impey's and Anthony Shearer (in the case of NZPG).

36 Commerce Commission interview with Nelson Pine (6 November 2017), Commerce Commission interview with Dongwha (9 November 2017) and Commerce Commission interview with Daiken (23 November 2017).

37 Application at [3.11]

38 [ ] provided under the cover of a letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (6 October 2017) at 5 and Application at [3.17].

39 Commerce Commission interview with Nelson Pine (6 November 2017).

40 Application at [1.5(c)(ii)].

34. Table 3 provides a breakdown of each manufacturer's revenue from the sale of raw MDF panels in New Zealand showing sales by type of customer.

Table 3: Breakdown of 2017 sales of raw MDF panels in New Zealand by customer type and revenue

	Sales revenue ($000s)			
Customer type	**Daiken**	**Dongwha**	**Nelson Pine**	**Total**
Laminex/NZPG	[ ]	[ ]	[ ]	[ ]
Other merchants/distributors	[ ]	[ ]	[ ]	[ ]
Other large, direct customers	[ ]	[ ]	[ ]	[ ]
Total raw MDF panels (excluding downgrade)	[ ]	[ ]	[ ]	[ ]
Downgrade customers	[ ]	[ ]	[ ]	[ ]
Total	**[ ]**	**[ ]**	**[ ]**	**[ ]**

Source: Application at Figure 7, [10.4] and Appendix 4, e-mail from Bay Law (on behalf of Dongwha) to the Commerce Commission (7 December 2017) and e-mail from Nelson Pine to the Commerce Commission (7 December 2017).

35. Table 3 confirms that, compared to Daiken and Nelson Pine, Dongwha supplies very little raw MDF panels to customers in New Zealand outside of the largest customer type (which includes Laminex), and that Dongwha's largest sales of raw MDF panels (by revenue) in New Zealand after Laminex are to the few other large, direct customers it supplies.

36. Because production capacity in New Zealand significantly exceeds domestic demand, there are very little raw MDF panels imported into New Zealand. The majority of imports of MDF are imports of flat-pack furniture products made from raw or laminated MDF.

Market definition

37. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.

38. We define markets in the way that best isolates the key competition issues that arise from a merger.[41] In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider

[41] *Mergers and Acquisitions Guidelines* above n2 at [3.10-3.12].

products and services which fall outside the market but which would still impose some degree of competitive constraint on the merged entity.

Applicant's view of the relevant markets

39. Daiken submitted that the relevant markets for assessing the proposed merger are:[42]

    39.1 separate regional markets for the supply/acquisition of wood fibre; and

    39.2 the New Zealand wide market for the manufacture and supply of raw MDF.

Previous decisions

40. The Commission has previously considered acquisitions in the supply of raw MDF panels in *Sumitomo/Carter Holt Harvey (CHH)* and *Nelson Pine/Rayonier*.[43] The Commission considered the impact of those acquisitions on regional markets for the supply/acquisition of wood fibre, and the national market for the manufacture and supply of raw MDF panels.

The relevant raw MDF panels market

41. In forming our view on the relevant raw MDF panels market, we have considered whether:

    41.1 different grades of raw MDF panels should be treated as separate product markets;

    41.2 raw MDF panels of different sizes and thicknesses should be treated as separate product markets;

    41.3 particle board is a close substitute for raw MDF panels such that they fall in the same market; and

    41.4 Laminex, NZPG and merchants/distributors supply raw MDF panels in the same market as MDF manufacturers, or a different functional market.

42. For the reasons set out below, we consider that the relevant market for assessing the proposed merger is the market for the manufacture and supply of raw MDF panels. The geographic scope of this market is national given that all three MDF manufacturers supply all of New Zealand from plants located in the South Island.[44]

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[42] Application at [9.1].

[43] Sumitomo Forestry Co Ltd and Carter Holt Harvey Ltd (Building Supplies Division) (Commerce Commission Decision 637, 20 March 2008) and Nelson Pine Industries Limited and Rayonier MDF New Zealand (Commerce Commission Decision 431, 31 May 2001).

[44] While there may be some differences in the transport costs and delivery times from each MDF manufacturing plant depending on the location of a customer, this is not necessarily sufficient to mean the geographic scope of the relevant market should be narrower. However, as discussed later, we have considered whether customers in the lower South Island face different competitive dynamics than customers elsewhere (ie, are too far away from Nelson Pine to make it an economic supply option).

Grades of raw MDF panels

43. Raw MDF panels are sold in premium and downgrade qualities. Downgrade MDF is a by-product of raw MDF production of inferior quality (ie, quality defects or damage), and it is primarily used for packaging. Industry participants told us that there are several substitutes for downgrade MDF (eg, plywood and other wood products).[45]

44. The price of downgrade MDF is substantially cheaper than premium raw MDF panels, because it is of inferior quality and is a product that manufacturers seek to avoid having to dispose of at landfills. Daiken said that [ ].[46] Dongwha provided data showing that [ ].[47]

45. Based on the above, we consider that downgrade MDF is in a separate product market from premium raw MDF panels.[48] Further, because there are other substitutes to downgrade MDF for packaging, we consider that the supply of downgrade MDF is likely part of a broader packaging materials market. Given this broad market, we consider that the proposed merger is not likely to have any impact on the price of downgrade MDF. For these reasons, we do not consider further in this determination the impact of the proposed merger on the supply of downgrade MDF.

Different sizes and thicknesses of raw MDF panels are not different markets

46. As noted earlier, raw MDF panels are sold in different sizes and thicknesses. Consistent with the Commission's decision in *Sumitomo/*CHH, we have seen no need to define different product markets for different sizes or thicknesses of raw MDF panels. All three MDF manufacturers produce and supply the same core range of sizes and thicknesses of panels (ie, can substitute between making different sizes and thicknesses of panels) and, as such, the conditions of competition in relation to these various products are similar.[49]

Raw MDF panels and particle board are in different markets

47. Particle board is a similar product to raw MDF panels but is made of coarser (that is, less finely processed) wood fibre. We have considered whether it is appropriate to

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45 [ ] and Commerce Commission interview with Daiken (23 November 2017).

46 Commerce Commission interview with Daiken (23 November 2017).

47 Letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (6 October 2017) and letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (30 November 2017).

48 The Commission's decision in *Sumitomo/*CHH did not define downgrade MDF to be in a separate product market from premium raw MDF panels. However, the competition analysis conducted as part of that decision focussed on the supply of premium raw MDF panels.

49 Although, we note that differences in plant sizes can mean some manufacturers are more efficient at making certain panel sizes that other manufacturers.

broaden the raw MDF market to include particle board, or whether particle board is in a separate market to raw MDF panels.

48. Daiken submitted that the degree of substitutability between raw MDF panels and particle board has increased due to improvements in the quality of particle board.[50] Daiken further submitted that the substitutability of raw MDF panels for particle board places additional competitive constraint on the supply of raw MDF panels in New Zealand.[51]

49. In its *Sumitomo/CHH* decision, the Commission considered that raw MDF panels and particle board were in separate markets. This is because particle board:[52]

    49.1 can be used as a substitute for raw MDF panels in certain special applications only;

    49.2 is not an appropriate substitute for uses and applications that require the extra strength of raw MDF panels;

    49.3 cannot be substituted for thin sheet raw MDF panels because it is not produced in narrow thicknesses; and

    49.4 is already being used, where it can substitute for raw MDF panels, given its significantly lower price.

50. The Commission in *Sumitomo/CHH* also concluded that, given a small, but significant, non-transitory increase in price (*SSNIP)*, there would not be a significant proportion of raw MDF panels buyers who would switch to particle board.

51. We found no evidence that the degree of substitutability between particle board and raw MDF panels has significantly increased since the Commission's *Sumitomo/CHH* decision. We also found no evidence to suggest that raw MDF panels and particle board are close substitutes. In particular:

    51.1 while particle board can be a functional substitute for, and is used instead of, raw MDF panels in some specific applications (eg, kitchen cabinetry and benchtops),[53] raw MDF panels have a surface more suitable for many other applications, including fine detailing (routing), moulding, doors and painting;[54]

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50 Application at [10.39].

51 Ibid at [10.42].

52 Sumitomo Forestry Co Ltd and Carter Holt Harvey Ltd (Building Supplies Division) (Commerce Commission Decision 637, 20 March 2008) at [52].

53 [ ]

54 [ ]

51.2 evidence was mixed on whether the quality of particle board had materially increased;[55]

51.3 we obtained no evidence to suggest that sales of particle board have impacted sales of raw MDF panels or that changes in the price of particle board have affected the price of raw MDF panels;[56] and

51.4 due to reduced production costs and possibly lower willingness to pay of some customers, particle board is 5-20% cheaper than raw MDF panels.[57] However, the factors noted above, along with the specific preferences of some customers, mean that a small but significant price increase of raw MDF panels would be unlikely to result in a significant change in substitution patterns.

52. For these reasons, consistent with the Commission's decision in *Sumitomo/*CHH, we conclude that particle board and raw MDF panels are in separate markets. However, it is likely that particle board imposes some competitive constraint on raw MDF panels from outside the market, due to its functional substitutability in some applications. As noted later, we consider that the threat of customers switching to particle board provides some constraint on raw MDF panels from outside the market and we consider the extent of this constraint as part of our competition analysis.

Laminex, NZPG and distributors/merchants supply raw MDF in a different market

53. Daiken submitted that Laminex should be considered to be part of the relevant market because it is also involved in the supply (re-sale) of raw MDF panels.[58] However, we consider that Laminex and NZPG (as well as other merchants and distributors) re-sell raw MDF panels in a separate functional market to the market in which Daiken, Dongwha and Nelson Pine supply raw MDF panels in New Zealand.

54. Laminex and NZPG (as well as other merchants and distributors) supply raw MDF panels only to downstream customers that are not supplied directly by New Zealand's three manufacturing suppliers. In addition, Laminex and NZPG (as well as other merchants and distributors) sell raw MDF panels at higher prices than the three manufacturing suppliers sell raw MDF panels for (adding a margin on top of the price at which they purchase raw MDF panels from the manufacturers). Laminex and NZPG (and other merchants and distributors) differentiate themselves from MDF manufacturers by providing other services, such as bundling raw MDF panels with

55 [ ]

56 [ ]

57 [ ]

58 Application at [1.5(v)].

other products, and accepting orders for volumes that are too small for it to be economically viable for MDF manufacturers to fulfil given the handling and warehousing costs associated with small orders.

55. While Laminex, NZPG and other parties compete to re-sell raw MDF panels in a separate downstream market, we note that the boundaries of the different functional MDF markets may be somewhat blurred. We consider as part of our competition analysis whether they provide some indirect constraint on the upstream raw MDF panel market.

Wood fibre input markets

56. In the Commission's previous decisions, it identified separate regional markets for the acquisition of wood fibre. Applying these regional markets, Daiken submitted that there is no overlap among the three MDF manufacturers in the acquisition of wood fibre as each procures wood fibre in separate regions.[59]

57. The three MDF manufacturers each predominantly source their wood fibre from within the region surrounding their plants. There is no overlap between these regions. The three MDF manufacturers submitted that, due to the cost of transporting bulky chips (or logs), it is not economic for them to source wood fibre from further afield.[60]

58. We consider that there continues to be discrete regional geographic markets for the acquisition of wood fibre. Given that there is no overlap between the parties within these markets, we do not consider wood fibre input markets further in this determination.

Conclusion on market definition

59. We consider the relevant market to assess the impact of the proposed merger is the market for the manufacture and supply of raw MDF panels in New Zealand (the raw MDF market).

With and without scenarios

60. To assess whether a merger is likely to substantially lessen competition in a market, we compare the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[61]

61. As noted by the High Court in *Woolworths*, the Commission is required to consider each of the counterfactuals that are real and substantial prospects. A relevant counterfactual involves more than a possibility but it does not need to be "more

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59 Ibid at [10.2].

60 Commerce Commission interview with Nelson Pine (6 November 2017), Commerce Commission interview with Dongwha (9 November 2017) and Commerce Commission interview with Daiken (23 November 2017).

61 *Mergers and Acquisitions Guidelines* above n2 at [2.29].

likely than not".[62] We do not choose a counterfactual that we consider has the greatest prospects of occurring (ie, is the 'most likely'). Rather, a likely counterfactual is something that has a real chance of occurring.[63]

With the merger

62. With the merger, Daiken would acquire Dongwha and the number of manufacturers in the raw MDF market would reduce from three to two. The merged entity would manufacture and supply around [ ]% of the raw MDF sold domestically (by value), with Nelson Pine supplying the remaining [ ]%.

63. As noted above, on completion of the proposed merger, Daiken and Laminex would enter into a product supply agreement under which the merged entity would continue to supply Laminex with raw MDF panels. Key provisions of the supply agreement are as follows:[64]

    63.1 [ ];

    63.2 [ ];

    63.3 [ ];

    63.4 [ ] ;

    63.5 [ ]; and

    63.6 [ ].

64. Daiken submitted that it would supply Laminex with sufficient volumes of raw MDF panels to satisfy Laminex's internal needs for raw MDF panels and for Laminex to continue to compete with the merged entity and Nelson Pine in supplying raw MDF in New Zealand.[65]

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[62] *Woolworths & Ors v Commerce Commission* (HC) above n6 at [111].
[63] Ibid.
[64] Application at [4.11-4.15].
[65] Ibid at [4.13].

Without the merger

65. In considering the likely state of competition absent the merger, we assessed the likely competitive position of Dongwha absent it being acquired by Daiken. This included considering whether a different state of competition (other than the status quo) would be likely if a third party acquired Dongwha.

66. Dongwha advised that [ ].[66] Dongwha submitted that, absent sale to Daiken, [ ].[67] We consider that, absent the merger, there is a real chance that Dongwha would be acquired by a third party. However, we found no evidence to suggest that Dongwha's competitive position under third party ownership would be materially different to that under its current ownership.

67. We also consider that, absent the merger, Dongwha would continue to have a supply agreement with Laminex. As noted earlier, the supply agreement between Laminex and Dongwha [ ].[68] Laminex advised that, absent the merger, it would [ ].[69]

68. As such, we consider that the likely counterfactual is the status quo, where Dongwha (either under current or new ownership) would remain as an independent competitor in the raw MDF market, with broadly similar commitments to supply Laminex.

How the merger could substantially lessen competition

69. We have considered two possible ways in which the proposed merger would be likely to have the effect of substantially lessening competition:

    69.1 first, the merger could give rise to unilateral effects in the raw MDF market by allowing the merged entity to unilaterally raise prices; and

    69.2 second, the merger could increase the potential for the merged entity and Nelson Pine to coordinate their behaviour and collectively exercise market power such that prices increase in the raw MDF market.

Competition analysis – unilateral effects

70. A merger can substantially lessen competition if it increases the potential for the merged entity to be able to unilaterally raise prices. Where two suppliers compete in

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[66] Commerce Commission interview with Dongwha (9 November 2017).

[67] Application at [7.2]

[68] 2007 Supply Agreement to between Laminex and Dongwha provided under the cover of an e-mail from Bell Gully (on behalf of Laminex) to the Commerce Commission (6 October 2017).

[69] Commerce Commission interview with Laminex (8 November 2017).

the same market and the constraint from other competitors is limited, a merger could remove a competitor that would otherwise provide a competitive constraint, allowing the merged entity to raise prices. A merger could also reduce competition if the target was a potential or emerging competitor. In such a case, a merger could result in higher prices compared to the scenario without the merger.[70]

71. In markets where products are relatively similar ('homogeneous'), buyers are largely indifferent about the supplier from which they make their purchases. As we discuss in more detail below in our analysis of the potential coordinated effects of the merger, products in the raw MDF market are relatively homogeneous.[71]

72. In homogeneous product markets, suppliers generally affect price by varying the quantity of product they produce or make available to the market. As decreasing output can have the effect of increasing prices, we assess whether the merged entity would find it profitable to decrease output. The merged entity may find it profitable to decrease its output if:

    72.1 the merger involves the acquisition of a competitor that customers would otherwise have bought from in response to an output decrease; and

    72.2 any remaining competitors do not have sufficient capacity (or ability to expand capacity) to replace the output the merged entity removes.

73. A key consideration is therefore whether the merged entity's competitors have the ability to swiftly and cost-effectively expand their output.

74. Daiken submitted that the proposed merger would not give rise to a material lessening of competition in the raw MDF market. It said that Dongwha is a "fringe competitor", Nelson Pine would continue to exert significant competitive constraint on the merged entity, and that Laminex and NZPG would continue to compete with the merged entity and Nelson Pine.[72]

75. For the reasons below, we are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the raw MDF market due to unilateral effects.

Market shares in the raw MDF market

76. Table 4 sets out the current market shares (by revenue) for the raw MDF market.

[70] *Mergers and Acquisitions Guidelines* above n2 at [3.62-3.63].
[71] Ibid at [3.66]-[3.70].
[72] Application at [1.5(c)].

Table 4: Current market shares in the supply of raw MDF in New Zealand

Supplier	Sales ($000s)	Market share (%)
Daiken	[ ]	[ ]%
Dongwha - Laminex - Other customers	 [ ] [ ]	 [ ]% [ ]%
Merged entity	**[ ]**	**[ ]%**
Nelson Pine	[ ]	[ ]%
Total	**[ ]**	**[ ]%**

Source: Daiken, Dongwha and Nelson Pine.

77. With the merger, the number of suppliers in the raw MDF market would reduce from three to two. Table 4 indicates that the merged entity would have a market share of [ ]%, compared to Nelson Pine's market share of [ ]%.

Dongwha likely to be a limited constraint

78. Daiken submitted that Dongwha is a "fringe competitor" in the raw MDF market and is primarily export focused. Daiken said that, setting aside its sales to Laminex, Dongwha accounts for a small proportion of sales in in the market.[73] Daiken also said that Dongwha's presence in New Zealand is [ ][74] and there are no signs of Dongwha increasing its presence in the raw MDF market.[75]

79. We consider that Dongwha is competing only on a limited basis to supply raw MDF panels in the market to customers other than Laminex. The evidence suggests that most customers view Daiken and Nelson Pine as their best alternatives, with few customers viewing Dongwha as their first or second option. We found limited evidence to suggest that, absent the merger, Dongwha would become a more attractive option for customers.

80. Laminex is currently, and has been for a number of years, Dongwha's major customer in New Zealand. Laminex accounts for most of Dongwha's sales of raw MDF in New Zealand, [ ].[76] Beyond its sales to Laminex, Dongwha's sales are largely export focused. Dongwha's sales in the raw MDF market (to both Laminex and other customers) have [ ].[77] [78] Industry participants that we spoke to tended to not regard Dongwha as

[73] Ibid at [10.4-10.11].
[74] Ibid at [1.5(c)(i)].
[75] Ibid at [10.5].
[76] Data sourced from Table 4.
[77] [ ]

a competitor, or an option for them, in the raw MDF market.[79]

81. While Dongwha currently supplies raw MDF in New Zealand to few customers other than Laminex, we saw some evidence of Dongwha [ ].[80] We considered whether this means that Dongwha would be likely to provide a greater competitive constraint in the raw MDF market than its market share indicates. However, we do not consider this to be the case, for the following reasons.

81.1 [ ][81]

[ ].[82]

81.2 [ ].[83]

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78 We note that Dongwha [ ]. Commerce Commission interview with Daiken (23 November 2017) and Application at [10.21].

79 The only direct customers that considered Dongwha to be a real supply option for them were the customers that currently buy raw MDF panels from Dongwha, being [ ] out of [ ] customers interviewed.

80 [ ] Commerce Commission interview with Dongwha (9 November 2017) and letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (30 November 2017).

81 Commerce Commission interview with Dongwha (9 November 2017), letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (30 November 2017) and submission from Dongwha to the Commerce Commission (9 February 2018).

82 [ ]

83 [ ]

81.3 [ ].[84]

82. We note that, [ ].[85] [86]

Remaining competitors capable of expanding output

83. We consider that, to the extent that the proposed merger would eliminate an alternative for some customers (namely, Dongwha), any attempt by the merged entity to reduce quantity (and thereby raise price) would likely be defeated by Nelson Pine expanding supply.

84. Given the size of Nelson Pine's export volumes ([ ]) relative to the size of the raw MDF market ([ ]), Nelson Pine would only need to be able and willing to divert a relatively small fraction of its export volumes to the raw MDF market to have a significant impact on the raw MDF market.

85. Nelson Pine stated that [ ].[87]

86. Nelson Pine stated that [ ].[88]

87. Based on the above, our view is that Nelson Pine has the ability to divert export volumes to the raw MDF market if profitable opportunities to do so arose (for example, in response to the merged entity raising prices).

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84 Commerce Commission interview with Dongwha (9 November 2017) and submission from Dongwha to the Commerce Commission (9 February 2018).

85 Dongwha advised that [ ]. Letter from Bay Law (on behalf of Dongwha) to the Commerce Commission (30 November 2017).

86 [ ]

87 Commerce Commission interview with Nelson Pine (6 November 2017), e-mail from Nelson Pine to the Commerce Commission (17 November 2017) and e-mail from Nelson Pine to the Commerce Commission (24 November 2017).

88 Ibid.

88. As well as the ability to divert exports, we also consider that Nelson Pine has the incentive to do so. This is because, even if prices are [ ] for exports, exchange rate risk, transport and delivery costs are relevant factors that increase the risks and costs of exporting relative to the domestic raw MDF market. Furthermore, Nelson Pine stated that [ ].[89] Because raw MDF panels are an internationally traded product, even if export prices rose, prices in the domestic raw MDF market would also rise (because the opportunity cost of domestic sales increases). This means that there would remain an incentive to sell in the domestic raw MDF market, even as prices fluctuate.

89. We considered whether, despite Nelson Pine's general capacity to expand output to constrain price increases by the merged entity, there might be some customers currently supplied by Dongwha which would not have Nelson Pine as a sufficiently close alternative supplier. Such customers would be made more vulnerable as a result of the merger if their best pre-merger alternatives were Daiken and Dongwha.

90. However, we found no customers in the raw MDF market supplied by Dongwha who do not have Nelson Pine as an alternative supplier to constrain the merged entity. In terms of evidence on this point, we note:

    90.1 there are few raw MDF panel customers in the lower South Island (where Dongwha's plant is). Most of the customers are either in Canterbury, the upper South Island or the North Island; and

    90.2 while Dongwha supplies raw MDF to [ ] customers in the lower South Island, we consider that these customers would have both Nelson Pine and/or Daiken as an effective alternative supply options for the majority of their raw MDF needs, and note that [ ].[90]

91. For these reasons, we consider that Nelson Pine has sufficient ability and incentive to divert exports to constrain a unilateral price rise, and/or quality decrease, by the merged entity.

92. Additionally, we consider that the merged entity would face indirect constraint from Laminex (as well as other merchants and distributors) that re-sell raw MDF panels in a separate functional market. As noted earlier, Laminex on-sells about [ ]% by volume of the raw MDF it purchases to third parties, which represents around [ ]% of the volume sold in the raw MDF market. The long term supply agreement that Laminex has negotiated with Daiken ([ ]) would enable Laminex to continue to provide some indirect competitive constraint.

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89 Commerce Commission interview with Nelson Pine (6 November 2017).

90 [ ]

Conclusion on unilateral effects

93. Accordingly, we are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the raw MDF market due to unilateral effects.

Competition analysis – coordinated effects

94. A merger can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power such that quality reduces and/or prices increase across the market.

95. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the suppliers in the market to be acting in a coordinated way. Such behaviour need not be unlawful, and includes tacit collusion such as accommodating price responses or parallel conduct.

96. Daiken submitted that the proposed merger would not increase any risk of coordinated effects in the raw MDF market. It submitted that this was because:[91]

    96.1 the market is highly competitive between Daiken and Nelson Pine;

    96.2 Dongwha is a "fringe competitor", which does not exert significant pricing pressure on Daiken or Nelson Pine;

    96.3 the dynamics of import/export pricing would prevent the potential for any pricing coordination between the merged entity and Nelson Pine; and

    96.4 Laminex would continue to compete with the merged entity and Nelson Pine.

97. For the reasons set out below, we are satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in the raw MDF market due to coordinated effects.

98. In carrying out our assessment, we first set out the market shares in the raw MDF market and then apply the two stage framework set out in our Mergers and Acquisitions Guidelines:[92]

    98.1 we first asked whether the raw MDF market has features which make it vulnerable to coordination; and

    98.2 we then asked whether the merger is likely to change conditions in the raw MDF market so that coordination is more likely, more complete, or more sustainable.

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[91] Application at [10.53-10.54].

[92] *Mergers and Acquisitions Guidelines* above n2 at [3.86].

Is the raw MDF market vulnerable to coordination?

99. A range of market features are commonly accepted as making a market more vulnerable to coordination. That is, these are market features that make it more likely that suppliers would be able to successfully coordinate their behaviour to increase their profits. Not all need to be present for a market to be vulnerable to coordination. Nor does the existence of some or all of these features inevitably mean that suppliers would engage in coordinated behaviour.[93]

100. We assessed the market features that normally facilitate coordinated conduct in order to reach a view on whether the features of the raw MDF market mean that competitors could more effectively reach or sustain a coordinated outcome. We considered coordination both in terms of coordination over prices and coordination via allocation of customers or coordination over market shares.

101. We consider that the raw MDF market has some features that make it vulnerable to coordination, although it also has other features that make coordination more difficult. Features that make the raw MDF market vulnerable to coordination are:

    101.1 relatively homogeneous products – we received feedback (from interviews conducted with suppliers and customers) that there are no material differences between the raw MDF panels produced by each of Daiken, Dongwha and Nelson Pine. The raw MDF panels produced by all three manufacturers are similar, largely undifferentiated and homogeneous. In most cases, quality in the New Zealand market is similar, with all three manufacturers producing raw MDF panels from radiata pine fibre inputs;

    101.2 concentrated market – the raw MDF market is currently relatively concentrated, with only three competitors. With the merger, this will reduce from three to two;

    101.3 high barriers to entry – there are significant obstacles to entry into the raw MDF market, including access to wood supply (with evidence suggesting that [ ])[94] and the relatively large sunk cost of a greenfields plant ([ ]).[95] A new entrant into the raw MDF market would also need the expertise to export to sustain a MDF production line of efficient scale. We also note that imports currently play a limited role;

    101.4 there appears to be little innovation and relatively stable market demand over time – there is static production technology, and has been little innovation, in the manufacture of raw MDF panels. The evidence also

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93 Ibid at [3.89-3.90].

94 [ ]

95 [ ]

suggests that market demand in the raw MDF market has been stable for a number of years, with no supply shocks or volatility; and

101.5 suppliers face the same major cost drivers – there are cost similarities between MDF manufacturers in terms of production costs given that they use similar production technologies and their product ranges are almost identical. All manufacturers are exposed to the same changes in the major costs of producing MDF (ie, energy, resins and wood fibre).

102. Features that make coordination in the raw MDF market more difficult are:

102.1 limited price and volume transparency which makes direct coordination around a focal price or price changes more difficult. There are no published prices for the supply of raw MDF panels in New Zealand. [ ] Even if coordination on prices or price increases was possible (despite the limited transparency), the factors listed at [102.2] and [102.3] work to counteract that;

102.2 customers are typically sophisticated buyers who purchase large volumes, face no significant barriers to switching volumes between suppliers, and often source volumes from more than one supplier. Laminex, NZPG and the major merchant customers collectively account for [ ]% of the raw MDF market.[96] Around [ ]% of sales are made to customers who source raw MDF panels from more than one supplier. The evidence suggests that the ability of customers to play Daiken and Nelson Pine off against each other provides customers with a relatively strong bargaining position which likely makes coordination more challenging to achieve. [ ] This dynamic would likely continue with the merged entity and Nelson Pine;

102.3 manufacturers are typically incentivised to increase the volume supplied in the domestic raw MDF market, because domestic sales are generally preferred over export sales.[97] Manufacturers' incentive and ability to

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96 The remaining [ ]% of sales in the raw MDF market (totalling less than [ ] revenue) comes from other customers who are large enough to buy direct from MDF manufacturers. The largest of these is [ ] who we also consider is a sophisticated buyer.

97 [ ]

increase the volume they supply in the domestic raw MDF market provides an incentive to ‘cheat’ on any coordination. Additionally, the degree of volatility in monthly purchases by some customers makes detecting any deviation from a customer allocation strategy more difficult to immediately detect; and

102.4 Laminex and NZPG (as well as other merchants and distributors) provide some indirect constraint through re-selling raw MDF panels in a separate downstream market. Additionally, particle board provides some constraint from outside the raw MDF market. Similarly, although imports currently play a limited role in the domestic market, if domestic prices for raw MDF increased sufficiently, imports would likely impose some constraint. These factors would make it more difficult and potentially unprofitable for raw MDF manufacturers to coordinate.

103. We did not find any evidence of existing coordination in the raw MDF market. Rather, the evidence (including interviews and internal documents) suggested that there has been recent competition on price between Daiken and Nelson Pine to win/retain the business and volume of customers, and that customers have been switching between suppliers (for part or all of their volumes) in response to this competition.[98]

104. We also noted evidence indicating that prices in the raw MDF market are at, or tending towards, export parity. If coordination was occurring in the market, we would expect to see prices closer to import parity.

105. Additionally, [ ][99] [ ].[100]

Would the merger make coordination more likely, complete, or sustainable?

106. Where a merger materially enhances the prospects for any form of coordination between businesses, the result is likely to be a substantial lessening of competition. This could happen if the proposed merger is likely to change conditions in the raw

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98 [ ]

99 [ ]

100 [ ] Commerce Commission interview with Daiken (23 November 2017).

MDF market so that coordination is more likely, more complete, or more sustainable.[101]

107. We note that the proposed merger would reduce the number of suppliers in the raw MDF market from three to two. The Court of Appeal has previously stated that the theoretical or structural concerns raised by mergers in markets with high barriers to entry should be given weight.[102] This reflects standard economic theory which suggests that coordination is more likely with fewer rivals, particularly in a market with just two substantial competitors.[103]

108. However, not all mergers that increase concentration in a market are likely to increase the risk of coordinated effects, and we are required to make our assessment based on all the evidence before us. We have therefore considered whether the evidence indicates that the proposed merger would be likely to change the conditions in the raw MDF market so that coordination is more likely, more complete or more sustainable.

109. For the reasons below, we consider that the merger is not likely to materially change conditions in the raw MDF market so that coordination is more likely, more complete or more sustainable.

110. We first consider whether key characteristics of the market would be likely to change with the merger, followed by our assessment of whether the loss of Dongwha as an independent competitor would likely make coordination more likely, complete, or sustainable

Key characteristics of the market unlikely to change post-merger

111. A number of features in the raw MDF market that currently make coordination more difficult would remain post-merger, despite concentration in the market changing with the merger.

112. First, customers would continue to be able to purchase from more than one supplier, to switch suppliers, and to play suppliers off against one another in a manner that could disrupt any coordination. This ability combined with evidence of limited price transparency along with thevolatility in monthly volumes purchased by many major customers are factors that tend to make establishing a feasible and sustainable mechanism of coordination more challenging.[104]

113. While the proposed merger between Daiken and Dongwha would result in the loss of Dongwha as an alternative, we consider that it is unlikely to materially reduce the existing bargaining position of customers. The evidence we found shows that customers typically consider Daiken and Nelson Pine as their best alternatives, while Dongwha is not generally considered by customers in the bargaining process.

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101 *Mergers and Acquisitions Guidelines* above n2 at [3.86.2].
102 *Commerce Commission v Woolworths Ltd* (CA) above n3 at [200].
103 Joseph E Harrington "Evaluating Mergers for Coordinated Effects and the Role of 'Parallel Accommodating Conduct'" [2013] 78 Antitrust Law Journal 3, at 661-662.
104 *Commerce Commission v Brambles* (2003) 10 TCLR 868 at [229].

114. We expect that customers would continue to be able to effectively bargain between the merged entity and Nelson Pine, purchase raw MDF panels from both suppliers, and switch between suppliers. Most customers are large and relatively sophisticated buyers, with purchase volumes of raw MDF panels that vary month to month. These buyers are likely able to design their procurement strategies to reduce the risk of coordination, including by maximising rivals' incentives to cheat on any coordination arrangement when negotiating to supply customers. This incentive to cheat would be augmented by the ability of Nelson Pine and the merged entity to divert export sales to increase volumes sold in the raw MDF market.

115. As such, the merger would be unlikely to change the ability of most customers to effectively play the key suppliers off against each other and to disrupt any attempts to coordinate.[105] We note that the majority of customers, including all the major customers, raised no concerns about the proposed merger increasing the risk of coordination.

116. Second, the long term supply agreement that Laminex has negotiated with Daiken ([ ]) would provide a degree of constraint on any potential price increases post-merger to Laminex and also NZPG. Because NZPG competes with Laminex in a downstream market for laminated MDF products, we consider that pricing to Laminex would also effectively provide some constraint on any potential post-merger price increases on NZPG. This is because any price increases to NZPG may render it less competitive so that it would be likely to lose sales to Laminex ([ ]).

117. Third, while neither Laminex nor NZPG are a close substitute for Daiken, Dongwha and Nelson Pine in the raw MDF market, competition in downstream markets for MDF products (where Laminex and NZPG compete) likely provides some indirect constraint on the raw MDF market.[106]

117.1 The sale of raw MDF panels by Laminex directly to third parties is [ ], but nonetheless confirms that it is prepared to re-sell raw MDF panels to smaller customers in a separate downstream market. As noted earlier, Laminex on-sells about [ ]% by volume of the raw MDF it purchases to third parties, which represents around [ ]% of the volume sold in the raw MDF market.
[

105 Customers could easily switch volumes between the merged entity and Nelson Pine and are likely to have the ability to thwart attempts to coordinate post-merger by effectively inducing them to 'cheat' on any tacit coordination by playing suppliers off against each other. Such inducements could also take the form of offering to enter longer term supply arrangements (similar to Laminex's supply agreement) which would provide a manufacturer with certainty around future sales volumes. Large and lumpy contracts such as these would also increase manufacturers' incentives to cheat.

106 We note that export parity pricing may set a price floor and import parity a price ceiling on the raw MDF market. As prices in the raw MDF market are at, or tending towards, export parity, the prices at which Laminex and NZPG re-sell raw MDF panels would likely constrain any post-merger price increases to something between export and import parity prices.

].[107] While Laminex's sales account for around only [ ]% of the volume sold in the raw MDF market, it may nonetheless be capable of increased supply in response to any coordination (and, therefore, disrupting any coordination). This ongoing constraint is supported by the long term supply agreement Laminex has negotiated with Daiken,
[
]

117.2 NZPG is [ ] and, like Laminex, supplies raw MDF panels directly to customers with its own laminated MDF panels and also on-sells raw MDF through its distributors Impey's and Anthony Shearer. However, [ ].[108]

117.3 We saw evidence in Daiken e-mails indicating that
[
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117.4 We consider that the indirect constraint from Laminex and NZPG would not change with the merger.[109] As such, this may provide further constraint on any efforts by the merged entity and Nelson Pine to coordinate post-merger, at least in relation to some customers.

118. In relation to smaller customers, which account for a small portion of the raw MDF market, coordination over these customers would be relatively complex. It would require the remaining competitors to establish and monitor an effective coordination mechanism for a relatively limited gain, given the low revenue from these customers. We also received evidence that smaller customers
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107 Commerce Commission interview with Laminex (8 November 2017) and e-mail from Bell Gully (on behalf of Laminex) to the Commerce Commission (16 October 2017).

108 Commerce Commission interview with NZPG (8 November 2017).

109 The new product supply agreement that Daiken and Laminex would enter into with the merger would work to protect Laminex's ability to compete in downstream markets for MDF products. NZPG purchases raw MDF panels from both Nelson Pine and Daiken, and we do not consider that the loss of Dongwha as a supply option would make a material difference to NZPG's bargaining power with and without merger (or its abillity to compete effectively in in downstream markets for MDF products). We consider that
[
]. Commerce Commission interview with Laminex (8 November 2017) and Commerce Commission interview with NZPG (8 November 2017)

].[110] Consequently, we consider that the risk of coordination across smaller customers is unlikely and that this is unlikely to materially change with the merger.

Whether the loss of Dongwha would change conditions in the raw MDF market

119. As we discussed in our analysis of the potential unilateral effects of the proposed merger, Dongwha currently has a limited presence in the raw MDF market (except supply to Laminex). The evidence suggests that most customers view Daiken and Nelson Pine as their best alternatives, with few customers viewing Dongwha as their first or second option.

120. We consider that, even though Dongwha [ ], Dongwha does not appear to be making a significant difference in the raw MDF market or driving market outcomes (in contrast to Daiken and Nelson Pine). This is consistent with [ ][111] and [ ].

121. Consequently, the removal of Dongwha is not likely to substantially alter key characteristics of the raw MDF market and mean that coordination becomes more likely with the merger.

Conclusion on coordinated effects

122. We are satisfied that the merger is unlikely to result in a material increase in the risk of coordination. In particular, the removal of Dongwha from the raw MDF market is not likely to substantially alter the market conditions that currently make coordination difficult.

123. Accordingly, we are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the raw MDF market due to coordinated effects.

Overall conclusion

124. We are therefore satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in the raw MDF market due to either coordinated or unilateral effects.

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110 This is evidenced by information provided by the manufacturers and interview evidence.

111 See discussion and evidence on this point at [81].
[ ]

Determination on notice of clearance

125. We are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

126. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Daiken New Zealand Limited to acquire, either directly or indirectly, 100% of the shares of Dongwha New Zealand Limited.

Dated this 28th day of March 2018

Sue Begg
Deputy Chair