

## Determination

### Rhone Capital LLC and Fluidra, S.A. [2018] NZCC 3

**The Commission:** Dr Mark Berry  
Dr Stephen Gale  
Elisabeth Welson  
Sarah Court

**Summary of application:** An application from Rhone Capital LLC to acquire up to 100% of the shares in or the assets of Fluidra, S.A.

**Determination:** Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to grant clearance for Rhone Capital LLC (or an interconnected body corporate) to acquire up to 100% of the shares in or the assets of Fluidra, S.A.

**Date of determination:** 21 March 2018

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

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## The proposed transaction

### Summary of the proposed transaction

1. On 5 February 2018, the Commerce Commission registered an application (the Application) seeking clearance for Rhone Capital LLC (Rhone or the Applicant) (or an interconnected body corporate) to acquire up to 100% of the shares in or the assets of Fluidra S.A. (Fluidra).
2. The transaction is subject to regulatory approval in a number of jurisdictions including Australia, South Africa and the European Union.

### Our decision

3. 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

4. Our approach to analysing the competition effects of the merger is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).<sup>1</sup>

### The substantial lessening of competition test

5. As required by the Act, we assess mergers using the substantial lessening of competition test.
6. 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).<sup>2</sup>
7. 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'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.

### When a lessening of competition is substantial

8. 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.<sup>4</sup> Some courts have used the word 'material' to describe a lessening of competition that is substantial.<sup>5</sup>

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

<sup>4</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

<sup>5</sup> *Ibid* at [129].

9. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.<sup>6</sup>
10. A lessening of competition or an increase in market power may manifest itself in a number of ways, including higher prices or reduced services.<sup>7</sup>

### **When a substantial lessening of competition is likely**

11. 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.<sup>8</sup>

### **The clearance test**

12. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>9</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.
13. In *Woolworths* the Court held that "the existence of a 'doubt' corresponds to a failure to exclude a real chance of a substantial lessening of competition".<sup>10</sup>
14. The burden of proof lies with the Applicant to satisfy us on the balance of probabilities that the proposed merger is not likely to have the effect of substantially lessening competition.<sup>11</sup> The decision to grant or refuse a clearance is necessarily to be made on the basis of all the evidence.<sup>12</sup> We will sometimes have before us conflicting evidence from different market participants and must determine what weight to give the evidence of each party.<sup>13</sup>

### **Key Parties**

15. The proposed merger would bring together Rhone and Fluidra, two global suppliers of swimming pool equipment.

### **Rhone / Zodiac**

16. Rhone is a New York-based private equity firm that owns a number of entities, including the Zodiac group of companies (Zodiac). Zodiac supplies a range of swimming pool equipment globally. In New Zealand, Zodiac imports and distributes a range of equipment used in residential pools, including pumps, filters, cleaners, heating, and automation systems. It also manufactures a range of residential pool

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<sup>6</sup> *Mergers and Acquisitions Guidelines* above n1 at [2.23].

<sup>7</sup> *Mergers and Acquisitions Guidelines* above n1 at [2.21].

<sup>8</sup> *Ibid* at [111].

<sup>9</sup> Section 66(3)(a).

<sup>10</sup> *Commerce Commission v Woolworths Ltd* (CA) above n2 at [98].

<sup>11</sup> *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7] and *Commerce Commission v Woolworths Ltd* (CA) above n2 at [97].

<sup>12</sup> *Commerce Commission v Woolworths Ltd* (CA) above n2 at [101].

<sup>13</sup> *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 at [64].

covers in Auckland. While Zodiac markets its products internationally under a number of different brands, in New Zealand it uses the Zodiac brand. Zodiac's sales of swimming pool equipment are confined to residential pools; it does not supply commercial pool equipment.

### Fluidra

17. Fluidra is a global manufacturer of residential and commercial swimming pool equipment, based in Spain. Fluidra has neither a physical nor a corporate presence in New Zealand but supplies a range of pool equipment through a New Zealand-based distributor, Aqua Clear Products Limited (Aqua Clear), under the brand name AstralPool. [ ]<sup>14</sup>  
[ ]<sup>15</sup>

## Industry background

### Product overview

18. The parties are both active in the manufacture and supply of equipment used in residential swimming pools. While Fluidra supplies equipment used in commercial swimming pools in other countries, it does not do so in New Zealand. Zodiac is not involved in commercial pool equipment.<sup>16</sup> Our analysis has therefore focussed on residential pool equipment only. Commercial and residential pools differ significantly in terms of water volumes and requirements for water treatment and reliability, all of which mean that different types of equipment are used for commercial and residential pools.
19. Figure 1 shows the make-up of a typical residential swimming pool system, containing the core pieces of equipment mentioned below.

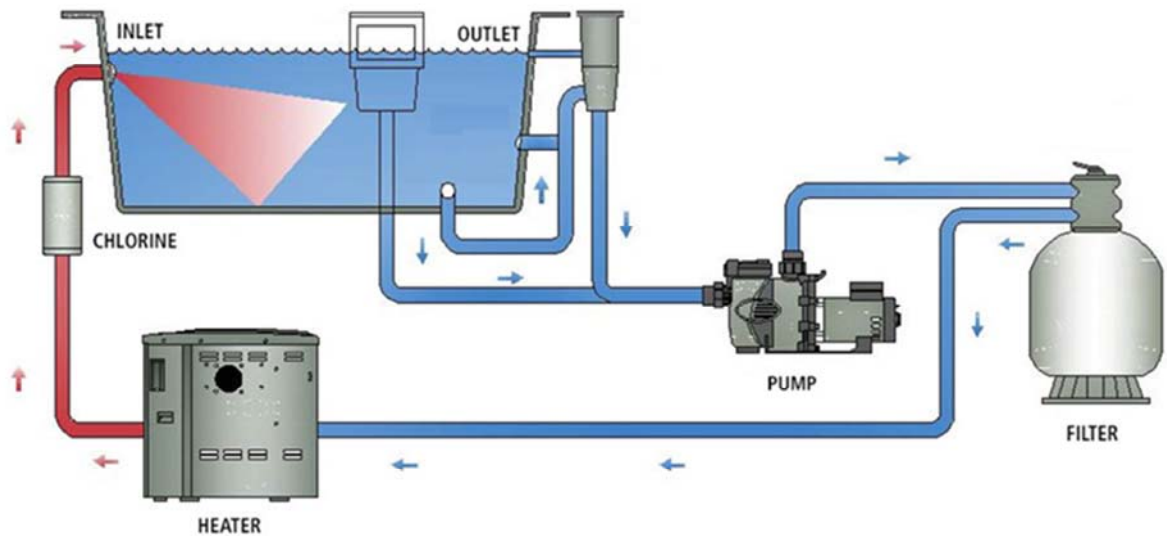
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<sup>14</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [3.7].

<sup>15</sup> Commerce Commission interview with Aqua Clear (9 March 2018).

<sup>16</sup> [ ]

**Figure 1: residential swimming pool system**



Source: Commission-modified diagram from [www.betzpools.com](http://www.betzpools.com)

20. In New Zealand, the parties overlap in the supply of the following categories of pool equipment, which we refer to in these reasons as “core” equipment.<sup>17</sup>
- 20.1 Electric pumps draw water from the pool, circulate it through a water conditioning system and return it to the pool.
- 20.2 Filters remove unwanted solid particles from the pool water.
- 20.3 Water treatment procedures sanitise the pool water by adding chemicals, typically chlorine. While the pool owner may mix and add chemicals to the pool manually, there is a range of equipment available to automate the process including dosing pumps, tablet feeders and automatic regulators. An increasingly common method of water treatment is to use a salt water chlorinator (SWC), which adds chlorine to the pool by electrolysis.<sup>18</sup>
- 20.4 While heated water is not essential, many new residential pools in New Zealand are heated and a heater forms a part of a pool’s core system. There are a wide variety of heating methods available such as heat pumps, solar heating, electric heating and gas heating. Heat pumps are the most common heating method in New Zealand.
21. In addition to core pool equipment there is a range of optional items such as lighting, pool covers, water features, pool cleaners and pool automation controllers. In New Zealand, the parties overlap in the supply of some of this equipment.
- 21.1 Pool cleaners can be used to remove debris from the floor and walls of the pool. Cleaners range from manual vacuums that plug into the pool’s

<sup>17</sup> As these are the typical items that make up a residential swimming pool system.

<sup>18</sup> Salt is added to the pool water. The SWC’s cell then induces an electrolytic reaction, which breaks down the salt molecules to release chlorine.

circulation system to fully automated electric cleaners that operate independently from the pool's system.

- 21.2 Water features are decorative features that draw water from the pool's circulation system to a spout, which ejects it back into the pool.
- 21.3 Pool automation controllers are recently-developed technology which enables the functioning of the entire pool system to be coordinated remotely through a central controller such as a smart phone app. While the core function of the controller is activating the pool pump, automation products can also allow the harmonised control of all compatible electronic pool functions such as lighting, heating, chemical dispensing, filtration and water features, and provide information about water quality and other data to the user.

### Industry structure

22. The supply of residential pool equipment in New Zealand can be divided into four levels: suppliers,<sup>19</sup> distributors, wholesale customers and end consumers.
23. Suppliers typically use a mix of their own manufacturing and third-party contract manufacturing. Some residential pool equipment is manufactured in New Zealand. For example, PoolQuip Limited (PoolQuip) manufactures pump housings and cleaning equipment, as well as a variety of plastic products such as valves and pipes, in New Zealand.<sup>20</sup> Hot Water Heat Pumps Limited (Hot Water Heat Pumps) also manufactures a range of swimming pool heat pumps at its facility in Auckland.<sup>21</sup> However, the majority of residential pool equipment sold in New Zealand is manufactured overseas, typically in Australia,<sup>22</sup> North America and Asia.
24. Suppliers compete in the sale of pool equipment both to distributors and direct to wholesale customers. Zodiac and Fluidra's competitors in the manufacture/import/supply of residential pool equipment include (but are not limited to):
- 24.1 Hayward Industries, Inc (Hayward), a global manufacturer of a range of swimming pool equipment, that is headquartered in the USA but does not have a physical presence in New Zealand, so relies on distributors;
- 24.2 Pentair Plc (Pentair), a global manufacturer of a range of swimming pool equipment, that is headquartered in the USA but does not have a physical presence in New Zealand, so relies on distributors;
- 24.3 Waterco Limited (Waterco), an Australian manufacturer of swimming pool products that exports globally;

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<sup>19</sup> When we refer to "suppliers" in these reasons we include both manufacturers and importers.

<sup>20</sup> Commerce Commission interview with PoolQuip (15 February 2018).

<sup>21</sup> Commerce Commission interview with Hot Water Heat Pumps (5 March 2018).

<sup>22</sup> Fluidra manufactures its AstralPool products in Australia.



- 24.4 Filtermaster (NZ) Limited (Filtermaster), a New Zealand owned and operated manufacturer and supplier of filters, pumps, heat pumps and SWCs; and
- 24.5 other specialist suppliers such as SPECK Pumpen Verkaufsgesellschaft GmbH (Speck Pumps), Hot Water Heat Pumps and Pool Controls.
25. There are number of distributors of swimming pool products in New Zealand that source products from manufacturers and sell to wholesale customers only. These include Aqua Clear, which is Fluidra's distributor of its AstralPool branded products, and Austral Distributors Limited (Austral), which distributes products from a variety of manufacturers. Distributors compete with one another as well as with suppliers that sell directly to wholesale customers.
26. The wholesale customers of suppliers and distributors are retailers, pool builders and pool servicers. These channels provide the point of contact with the end consumer and often have significant influence over which products are used in a pool. This is because residential pool owners typically have little brand awareness, focussing instead on the overall aesthetic of the pool.<sup>23</sup>

### **New pool builds vs replacement**

27. The demand for residential swimming pool equipment in New Zealand has two drivers: new pool builds and aftermarket product replacement. New pool builds typically involve the end consumer contracting a pool builder to manage a project from start to finish, including constructing the pool and installing a full suite of pool equipment. Pool builders often make the decision about which brands of equipment are used. Pool builders consistently told us that cost and reliability are the most important factors when selecting a brand of pool equipment.
28. Replacement sales account for a significant proportion of the total sales of pool equipment in New Zealand. Pool owners can replace equipment such as pumps, filters and heaters by purchasing from a retailer or by contracting a pool maintenance provider. Core equipment such as pumps, filters and water treatment units are likely to need replacing around every 10 years.
29. Replacement typically involves the purchase of a single piece of equipment, while a new build involves the purchase of a suite of products. However, there do not appear to be material differences between how sales are made in each of these situations.

### **Theories of harm**

30. We have considered how the proposed merger may harm competition. In the context of this application, we have focussed on whether the proposed merger would be likely to substantially lessen competition in the relevant markets by giving rise to:

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<sup>23</sup> Commerce Commission interview with [ ].

- 30.1 unilateral effects – whether the merger would lessen competition by eliminating the constraint that the two entities impose upon one another and enable the merged entity to raise prices or decrease quality; and/or
- 30.2 conglomerate effects – whether there are any “must have” products in the ranges of either of the merging parties that would result in the merged entity having greater ability and/or incentive to prevent or hinder rivals from competing effectively by bundling and/or tying products.

## **Market definition**

### **Our approach to market definition**

- 31. 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.
- 32. We define markets in the way that 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. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market but which still impose some degree of competitive constraint on the merged entity.
- 33. In general, the more closely substitutable two products are, the closer the competition and the greater the competitive constraint between the products.
- 34. As the buyers of residential pool equipment from suppliers such as Zodiac and Fluidra are distributors, retailers, pool builders and pool renovators, as opposed to the pool owner, the relevant question in defining these markets is the extent to which these customers view alternative products as close substitutes. One way to determine this is to consider the ability of customers to switch to alternative products should the price of a product increase by a small but significant amount.

### **Applicant’s view of the relevant markets**

- 35. The Applicant submitted that the proposed acquisition would result in overlap in the national markets for the supply of each of the following products used in residential swimming pools:<sup>24</sup>
  - 35.1 pool filters;
  - 35.2 pool pumps;
  - 35.3 pool heating equipment;
  - 35.4 pool water treatment products;

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<sup>24</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [13.1].

- 35.5 pool cleaning equipment;
  - 35.6 pool water features; and
  - 35.7 pool automation systems.
36. The Applicant's proposal implies separate product markets for each of the major components of a residential pool i.e. that the competitive effects of the merger should be analysed for each product in isolation rather than in terms of competition for complete pool systems.

#### **Our view of the relevant markets**

37. For the purposes of this application, we consider the relevant markets to be the national markets for the manufacture/importation and wholesale supply of residential pool:

- 37.1 filters (the filters market);
- 37.2 pumps (the pumps market);
- 37.3 heating equipment (the heating equipment market );
- 37.4 cleaning equipment (the cleaning equipment market);
- 37.5 automatic chlorination products (the automatic chlorinator market);
- 37.6 water features (the water features market); and
- 37.7 automation controllers (the automation controller market).

38. Our reasoning for defining these relevant markets is set out below.

#### *Separate product markets versus a pool equipment system market*

39. Before we assessed the scope of each of the individual product markets, we first considered whether a wider market for pool equipment systems, which would encompass all the individual core pieces of residential pool equipment, would be appropriate.
40. Zodiac, Fluidra and many other manufacturers supply a full range of the core pieces of equipment that are installed in a residential pool. For new pool builds, end consumers typically buy a package of core equipment selected by a pool builder. When a supplier does not manufacture a particular piece of equipment itself, it often resells another manufacturer's product to enable it to supply a complete pool equipment package to buyers (particularly those buyers building new pools).<sup>25</sup> This could suggest that there is a product market for complete pool equipment systems.

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<sup>25</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [24.3]; Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

41. However, all of the industry participants contacted by the Commission stated that core equipment from different manufacturers is interchangeable. For example, each individual piece of equipment in a pool system can be replaced with another manufacturer's product relatively easily.<sup>26</sup> Products from different manufacturers are compatible and can connect to one another.<sup>27</sup> This is relatively common in practice as most pieces of equipment need to be replaced over the life time of a pool.<sup>28</sup>
42. Buyers of residential pool equipment noted that different manufacturers have their own strengths and weaknesses and that these can vary across the different products they supply.<sup>29</sup> For example, a pool builder might have a preference for one particular brand of filter but this does not constrain or limit that builder's choice of pump, given the interoperability of the products. In addition, there are a number of speciality manufacturers who only supply a limited range of pool equipment.
43. Competition at the wholesale level appears to occur predominantly between different offerings within each product category listed above, as opposed to between entire pool systems. Accordingly, as the starting point for assessing the relevant product markets, the Commission has focussed on the individual product categories where there is overlap between Zodiac and Fluidra.

*Product market for residential pool filters*

44. The purpose of a pool filter is to remove solid impurities from the water, which passes through the filter via the pump. The two main types of filter supplied in New Zealand are sand filters and cartridge filters.<sup>30</sup>
- 44.1 A sand filter comprises a vessel containing sand. The sand removes the dirt and impurities from the water as it is pumped through the filter. Sand filters are the most commonly installed filter in New Zealand.<sup>31</sup>
- 44.2 A cartridge filter uses a synthetic cartridge as the filtration medium. Cartridge filters require more maintenance than equivalent sand filters, with the

<sup>26</sup> For example, Zodiac specifically lists some of the other manufacturers' products that its products can replace. See [www.zodiac.co.nz/products](http://www.zodiac.co.nz/products).

<sup>27</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>28</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>29</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>30</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.14]. We understand that some manufacturers also supply a limited number of another type of filter in New Zealand, namely a diatomaceous earth filter. However, neither Zodiac nor Fluidra supply this type of filter and we have not considered this type of filter any further.

<sup>31</sup> For example, [ ] of the filters that Filtermaster supplies in New Zealand are sand filters, with Pentair also supplying a [ ] ratio of sand filters - Commerce Commission interview with Filtermaster (13 February 2018); Commerce Commission interview with Pentair (12 February 2018).

cartridge needing to be more regularly replaced. Cartridge filters tend to be more common in smaller residential pools.<sup>32</sup>

45. There is some differentiation between the different types of filters. For example, cartridge filters are considered to be more eco-friendly than sand filters as they require less water to clean.<sup>33</sup> Sand filters are also more expensive than cartridge filters as they are usually made of fibreglass and require a longer manufacturing process.<sup>34</sup> Cartridge filters for residential pools retail for approximately NZD\$350-\$700, while the retail price for sand filters is approximately NZD\$600-\$1500. In a residential context, however, the different types of filter are functionally substitutable. Further, while we note these aspects of differentiation, the competitive constraints are similar for each type of filter. Accordingly, we have considered all types of residential pool filters as forming part of the same market.

#### *Product market for residential pool pumps*

46. The purpose of a pool pump is to ensure water is constantly circulated throughout the pool system, enabling the water to be passed through the filter, heater and chlorinator. Industry participants spoken to by the Commission indicated that there is only limited price and quality differentiation between residential pool pumps produced by different suppliers.<sup>35</sup> Consumers typically do not have a preference for any specific type of pump, leaving the pool builder or retailer to decide which supplier it uses.
47. A pump needs to be of sufficient capacity to pump all the water in the pool through the filter at least once per day. As such, the water capacity of the pool determines the size of the pump. All manufacturers supply a range of pumps with different capacities, with the key difference being the size of the motor within the pump.<sup>36</sup> To this extent, the competitive constraints appear to be the same for each of the different sizes of pump.
48. Accordingly, we consider all the different types of residential pool pumps to be in the same product market.

#### *Product market for residential pool heating equipment*

49. Some residential pools in New Zealand have heated water. A heat pump is the most common heating method in New Zealand; alternative methods include solar heating, electric heaters and gas heaters.

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<sup>32</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>33</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.14].

<sup>34</sup> Commerce Commission interview with [ ].

<sup>35</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>36</sup> Most residential pumps are required to pump between 100 lpm and 500 lpm. As a result, manufacturers supply pumps with capacities to pump varying amount of water, with the motors within the pump ranging from 0.5 horsepower (hp) to 2.0 hp. We also understand that some pumps can have a higher hp motor installed without changing the physical size of the pump or any of the other components. For example, see [www.Filtermaster.co.nz/productsR1.html](http://www.Filtermaster.co.nz/productsR1.html)

50. The Applicant submitted that all methods of pool heating form one market as all perform the same function and are substitutable from a consumer perspective.<sup>37</sup> Zodiac and Fluidra overlap in the supply of heat pumps and gas heaters only.<sup>38</sup>
51. Industry participants advised that, for the majority of customers, the choice of heating device comes down to cost. For those that decide to heat their pool, heat pumps are the most popular method due to their cost efficiency. While gas heaters provide faster heating, running costs, installation and replacement costs are significantly higher.<sup>39</sup>
52. While we recognise the significant price differentiation between these types of pool heaters, there is a degree of substitutability between them. In addition, the competitive constraints appear to be similar for suppliers of each type.
53. Accordingly, for the purposes of this application, we have considered heat pumps and gas heaters in the same product market for residential pool heating equipment.

*Product market for residential pool cleaning equipment*

54. Pumping, filtration and water treatments are typically not sufficient in themselves to maintain the cleanliness of the water in a residential pool. In particular, the concrete or fibreglass surface of the pool needs to be regularly cleaned. As such, there is a range of different cleaning equipment and devices that are aimed at scrubbing and removing debris, algae and other contaminants from the surface of a residential pool. These devices act as a broom or a vacuum cleaner for the surface of the pool and range from manually operated equipment to fully automatic robotic cleaners.
55. The Applicant submitted that it is possible to consider all of the different equipment used to clean the surface of a pool in a single market as all are functionally interchangeable.<sup>40</sup> In much the same way as water treatment products, industry participants, such as [ ], advised that the choice of cleaning equipment comes down to cost and convenience.
56. Both Zodiac and Fluidra manufacture a range of automatic suction cleaners and electric robotic cleaners, although Fluidra does not currently import its suction cleaner into New Zealand. As with a number of other core pool equipment markets, while there is functional substitutability there is also price differentiation, with robotic cleaners being significantly more expensive than suction cleaners. However, as the competitive constraints are similar for each type of cleaner, we have considered all types of residential pool cleaners as forming part of the same market.

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<sup>37</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.35].

<sup>38</sup> We have not found it necessary to consider constraint from other methods of residential pool heating, so have confined our analysis to heat pumps and gas heaters.

<sup>39</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>40</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.23].

*Product market for residential pool automatic chlorinators*

57. While the pool filter removes many solid impurities, additional water treatments need to be added to residential pools to ensure the water remains clean and sanitised. This is typically done by adding chemicals to the pool to eliminate the development of bacteria and algae, with the most commonly used chemical being chlorine.
58. One way to treat the water is to add diluted liquid chlorine directly into a pool. However, given the manual labour involved and the hazardous nature of chlorine, there exist a number of products and devices to make the administration of chlorine easier and safer. These include:
- 58.1 chlorine tablets (and other slow release tablets) that are dispensed by a floating feeder;
- 58.2 automatic salt water chlorinators (SWCs); and
- 58.3 automatic regulators and chemical dosing equipment.
59. The Applicant submitted that it is possible to consider all of the different water treatment products, ranging from the manual administration of chlorine to the fully automated devices, in the same product market, as all products meet the same demand and face competition from each other.<sup>41</sup>
60. The main criteria in selecting a water treatment method are cost and convenience.<sup>42</sup> Manually adding chemicals and tablets is the cheapest but most time consuming method, while the converse is true for automatic dosing equipment.
61. Industry feedback indicated that, though they use different technology, the various residential water treatment products have the same purpose; adding chlorine to the pool water and achieving optimal pH balance. Consumers are not typically concerned with the technology used to treat their pools, instead simply wanting some form of automatic device. There are low barriers to switching between different methods, such as between an SWC and an automatic dosing pump. Further, our understanding is that these different methods of water treatment are largely similar in cost. Therefore we consider the different methods of automatic chlorination to be close substitutes.
62. We do not consider manually adding chlorine to be a substitute for automated water treatment products. Accordingly, for the purposes of our analysis we have considered a market for automated residential pool chlorinators, covering SWCs along with the full range of automatic chemical dosing equipment.
63. While Zodiac and Fluidra both supply a range of liquid chlorine (and other related pool chemicals) and chlorine tablets, there are a range of other suppliers of these

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<sup>41</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.10].

<sup>42</sup> Commerce Commission interview with [ ].

products in New Zealand<sup>43</sup> and, for the purpose of this application, we have not considered these products any further.

*Product market for residential pool water features*

64. The Applicant submitted that it and Fluidra both supply water features (in particular a range of 'sheet waterfalls', which give the illusion of a sheet of falling water) that can be incorporated into the design of a residential pool if desired by the pool owner.
65. Water features are more about the aesthetic of a pool, rather than its function, and to this extent they are not substitutable with any of the core pool equipment. Within the category of water features there appear to be a number of different types, one of which is sheet waterfalls. Suppliers of pool water features advised us that sheet waterfalls are one of the many types of water feature and are not necessarily more mechanically complicated or more or less expensive. We consider the different types of water features to be close substitutes.
66. Accordingly, consistent with the Applicant's submission, for the purpose of this application, we have considered a product market for residential pool water features.

*Product market for residential pool automation controllers*

67. Most of the pieces of equipment used in residential pools can be individually programmed to operate automatically. For example, a heat pump can be set to switch on (or off) at a particular time; the same can also be done with a pool pump.
68. Both Zodiac and Fluidra supply pool automation controllers which enable all of the different pieces of equipment to be connected electronically with one another and controlled from a central unit. The central control unit can also be controlled through the internet, allowing multiple pieces of pool equipment to be operated and monitored by a smartphone app. The ability to automate all of the equipment in a swimming pool is emerging technology.
69. The Applicant advised that so far there is limited demand for pool automation in New Zealand, which is why it only sold [ ] automation controllers during the 2016 calendar year. This compares to over [ ] new residential pools built each year and a total of [ ] existing residential pools in New Zealand.<sup>44</sup>
70. Industry feedback indicated that demand for automation controllers is currently limited as most pool owners only require the ability to program the pump to switch on and off when required.<sup>45</sup> However, some builders noted that there is growing

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<sup>43</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>44</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [28.1]. Fluidra also sells a limited number of automation controllers each year; [ ].

<sup>45</sup> Commerce Commission interview with [ ].



demand for such products and they are increasingly being installed as part of new residential pool builds.<sup>46</sup>

71. We understand that the effectiveness of automating a pool system can change, to some extent, with the compatibility (or otherwise) of products from different suppliers. Where an automation controller from one supplier is used to control a piece of equipment from a different supplier, some functionality may be lost. Therefore there is likely to be some advantage to sourcing both the automation controller and all of the core swimming pool equipment from one supplier. For this reason, we considered defining a market for automated pool systems, including both the automation controller and all of the core pieces of swimming pool equipment.
72. However, feedback from suppliers indicated that any loss of functionality is likely to be minimal (around 5%) and confined to newer, high-end products. For example, the ability to automatically adjust the speed of a variable speed pump may be reduced if it is sourced from a different manufacturer to that of the automation controller. However, the pump will still be able to be switched on and off through the automation controller. [ ] advised that their automation controllers can be and are used with pool equipment from other suppliers without issue, and can be easily retrofitted to pools containing equipment from different suppliers.<sup>47</sup> There is no requirement for a customer to source all its pool equipment from the same supplier as the automation controller. To this extent, competition between suppliers appears to be between different individual automation controllers rather than between whole automated systems of pool equipment.
73. Accordingly, for the purposes of this application, we have defined a market for residential swimming pool automation controllers.

#### *Functional market*

74. Despite the fact that the majority of products are currently imported, there does not appear to be any difference in the overall substitutability of imported products and those manufactured locally. Therefore we consider that the functional level for all the relevant markets is manufacture/importation for wholesale supply.

#### *Geographic market*

75. All parties supply their products nationally and there is no evidence that transport costs or other geographic differences limit the scope of competition, so we consider that the geographic dimension of all the relevant markets is national.

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<sup>46</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>47</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

## With and without scenarios

76. To assess whether competition is likely to be substantially lessened in any market, we compare the likely state of competition with the acquisition to the likely state of competition without the acquisition.<sup>48</sup>

### With the merger

77. With the merger, Rhone and Fluidra would merge their businesses in New Zealand and globally, bringing together Zodiac and Fluidra, two suppliers of equipment for residential swimming pools.

### Without the merger

78. Fluidra advised that, absent the merger, [ ].  
Fluidra advised that it would likely continue to supply New Zealand [ ].<sup>49</sup>

79. The Applicant similarly submitted that the status quo would prevail absent the merger, with the parties continuing to compete in the supply of residential swimming pool equipment in the relevant markets.<sup>50</sup>

80. We consider that the relevant counterfactual is the status quo.

## How the merger could substantially lessen competition

81. We assessed whether the proposed merger would be likely to result in a substantial lessening of competition as a result of horizontal unilateral effects.
82. Unilateral effects refer to the ability of the merged entity to raise prices or reduce quality due to the merger removing a competitor that would otherwise have acted as a competitive constraint in the market. In this case, we assessed whether the removal of Zodiac as a competitor would enable the merged entity to raise the prices of swimming pool equipment and/or reduce the quality of those products.
83. We also considered whether the proposed merger would likely result in conglomerate effects. In our assessment of the relevant markets, we have not found any “must have” products which the merged entity would be able to bundle or tie with other products to the detriment of its rivals. Further, as discussed, we consider competition to occur in each of the markets for individual pool components rather than in a combined market for pool systems. As such, we are of the view that the proposed merger is unlikely to give rise to conglomerate effects; this is not discussed further in these reasons.

<sup>48</sup> *Mergers and Acquisitions Guidelines* above n 1 at [2.29]; *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>49</sup> Commerce Commission interview with Fluidra (8 March 2018).

<sup>50</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [25.1].

## Competition analysis – unilateral effects

84. In all the relevant markets, the merged entity would be constrained by the presence of a number of existing competitors who supply equivalent products. Given the number of competing manufacturers we have identified, and the strength of the competition that the merged entity would face, we have not considered it necessary to assess the constraint from potential entry or the countervailing power of buyers.<sup>51</sup>
85. We have used the market share estimates provided by the Applicant as the starting point for our competition analysis. During our investigation we obtained sales figures from several competing suppliers in order to cross-check the accuracy of those estimates. While we acknowledge that accurate market shares are difficult to gauge, we are satisfied that the Applicant's estimates approximate the parties' market shares in all of the relevant markets to a sufficient extent for the purposes of our analysis. In particular, we note that we did not find significantly higher aggregation than that submitted by the Applicant in any of the relevant markets.

### The filters market

86. The merged entity would be constrained by the presence of a number of different filter manufacturers who supply equivalent products.
87. Table 1 shows the number of filtration units sold by the main suppliers of filters in New Zealand in 2016. As indicated by the table, the Applicant submitted that there is limited overlap in the supply of filters and the merged entity would be constrained by the presence of a number of different suppliers.

**Table 1: Estimated market shares of residential pool filters supplied in New Zealand in 2016**

Supplier	Units sold	Market share (%)
Zodiac	[	
Fluidra	[	
<i>Merged entity</i>	[	
Filtermaster	[	
Waterco	[	
PoolQuip	[	
Others (including Pentair, Hayward)	[	
<b>Total</b>	<b>[ ]</b>	<b>100</b>

Source: Application

88. Residential pool filters are a low-technology product. Suppliers typically import their filters from third party, overseas manufacturers. Industry feedback supports the Applicant's submission that there are several strong competing suppliers of residential pool filters in New Zealand, such as Filtermaster, Waterco and PoolQuip. These suppliers offer equivalent products to both Zodiac and Fluidra.

<sup>51</sup> The automation controllers market is the only product market for which we have considered likely entry and/or expansion as a constraint on the merged entity.

- 88.1 [ ], a pool builder, renovator, servicer and online retailer, advised that there are a “significant number of suppliers” of filters, all of which supply comparable products.<sup>52</sup> The different suppliers’ filters are interchangeable for one another, so when replacing an installed filter, there are no significant issues with replacing a Zodiac or a Fluidra filter with a product from another supplier.
- 88.2 Austral, a wholesaler, sources its own brand of sand filter, Filtron, [ ], it also sells filters from other suppliers such as Zodiac and PoolQuip.<sup>53</sup>
- 88.3 [ ] both advised that they currently install Fluidra filters in the new pools that they build but that there are a number of other filter suppliers, of equal quality, that they could switch to if they were incentivised to do so.<sup>54</sup>
89. No industry participant considered that Zodiac and Fluidra were each other’s closest competitors, so the loss of any existing constraint between the two parties is unlikely to be significant.
90. Existing suppliers of filters do not appear to be constrained in their ability to expand.
- 90.1 [ ] advised that it has a range of sand filters which it imports from China. Its Chinese manufacturer builds the filters to [ ] required specifications. [ ] advised that there was nothing constraining it from increasing the amount of sand filters it imports.<sup>55</sup>
- 90.2 [ ] advised that it has [ ], which supplies it with a range of filters. [ ] advised it could increase the amount of filters it supplies in New Zealand relatively easily, if incentivised to do so.<sup>56</sup>
- 90.3 [ ] advised that it supplies a full range of filters in New Zealand, which it imports from its manufacturing facility [ ]. There are no significant constraints on [ ] expanding the amount of filters it currently imports.<sup>57</sup>
91. Given the presence of a number of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition due to unilateral effects in the filters market.

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<sup>52</sup> Commerce Commission interview with [ ].

<sup>53</sup> Commerce Commission interview with Austral (14 February 2018).

<sup>54</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>55</sup> Commerce Commission interview with [ ].

<sup>56</sup> Commerce Commission interview with [ ].

<sup>57</sup> Commerce Commission interview with [ ].

## The pumps market

92. The merged entity would be constrained by the presence of a number of different pump manufacturers who supply substitutable products.
93. Table 2 shows the main suppliers of pumps in New Zealand. As indicated in the table, the Applicant submitted that there is limited overlap in the supply of pumps and the merged entity would be constrained by the presence of a number of different suppliers.

**Table 2: Estimated market shares of residential pool pumps supplied in New Zealand in 2016**

Supplier	Units sold	Market share (%)
Zodiac	[ ]	
Fluidra	[ ]	
<i>Merged entity</i>	[ ]	
Filtermaster	[ ]	
Waterco	[ ]	
Hayward	[ ]	
Speck Pumps	[ ]	
Pentair	[ ]	
Others (including PoolQuip, Davey and multiple others)	[ ]	
<b>Total</b>	<b>[ ]</b>	<b>100</b>

Source: Application

94. Industry feedback supports the Applicant's submission that there are a number of competing suppliers of residential pool pumps. These suppliers all offer equivalent ranges of different sized pumps.
- 94.1 [ ] advised that it sources pumps from Zodiac, Waterco and Filtermaster. It considers that, post-acquisition, there would be no particular type of pump that it could not source from a competing supplier to Zodiac because the different suppliers' pumps are comparable to one another.<sup>58</sup>  
[ ] also advised that once an installed pump needs replacing there are no significant issues in replacing a pump with a model from a different manufacturer.<sup>59</sup>
- 94.2 Austral wholesales pumps supplied by Speck Pumps, Zodiac and Pentair. It advised that it has a number of pump suppliers because some of its customers prefer particular brands even though the pumps are largely interchangeable.  
[ ]

<sup>58</sup> Commerce Commission interview with [ ]

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<sup>59</sup> Commerce Commission interview with [ ] and Commerce Commission interview with [ ]

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].<sup>60</sup>

- 94.3 [ ], a retailer, advised there are a number of pump suppliers it can choose from and that different suppliers' pumps are interchangeable. For example, it currently retails and installs pumps supplied by Zodiac, Speck Pumps, and Pentair but it could switch to alternative pump suppliers, if incentivised.<sup>61</sup>
95. No industry participant considered that Zodiac and Fluidra were each other's closest competitors, so the loss of any existing constraint between the two parties is unlikely to be significant.
96. Existing suppliers do not appear to be constrained in their ability to expand.
- 96.1 [ ] advised that it competes strongly with both Fluidra and Zodiac in the supply of pumps and it would not be prevented from expanding its sales in New Zealand post-merger.<sup>62</sup>
- 96.2 PoolQuip advised that it manufactures a range of pumps in New Zealand which it installs in the pools that it builds as well as wholesaling them to other suppliers. It considers its pumps are interchangeable with the pumps from the other main suppliers in New Zealand [ ].<sup>63</sup>
- 96.3 [ ] considers that it has an equivalent range of pumps in terms of quality and price as Zodiac and Fluidra and that there are no significant constraints on it expanding the number of pumps it currently imports.<sup>64</sup>
97. Given the presence of a number of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition in the pumps market.

### **The heating equipment market**

98. Post-merger, the merged entity would be constrained by the presence of a number of different manufacturers that supply substitutable products.
99. Table 3 shows the main suppliers of residential pool heating equipment in New Zealand. As indicated in the table, the Applicant submitted that there is limited overlap in the supply of heating equipment and the merged entity would be constrained by the presence of a number of different suppliers.

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<sup>60</sup> Commerce Commission interview with Austral (14 February 2018).

<sup>61</sup> Commerce Commission interview with [ ].

<sup>62</sup> Commerce Commission interview with [ ].

<sup>63</sup> Commerce Commission interview with PoolQuip (15 February 2018).

<sup>64</sup> Commerce Commission interview with [ ].

**Table 3: Estimated market shares of residential pool heating equipment supplied in New Zealand in 2016**

Supplier	Units sold	Market share (%)
Zodiac	[ ]	
Fluidra	[ ]	
<i>Merged entity</i>	[ ]	
Hot Water Heat Pumps	[ ]	
Rheem	[ ]	
Oasis	[ ]	
Hayward	[ ]	
Others (including Filtermaster, Waterco, Pentair, Davey)	[ ]	
<b>Total</b>	<b>[ ]</b>	<b>100</b>

Source: Application

100. The Applicant submitted that there is limited overlap in the supply of heating equipment and that the merged entity would be constrained by the presence of a number of different suppliers.
101. Industry participants consider that there are a number of manufacturers of different types of heating equipment for residential pools.
- 101.1 [ ] advised that it distributes heating equipment supplied by Oasis Technologies Limited (Oasis), Zodiac, Filtermaster and Waterco and they are all of a similar quality, although it views Oasis as the market leader on account of its pricing and quality.<sup>65</sup>
- 101.2 [ ] has a similar view of Oasis and also does not consider that Zodiac and Fluidra are close competitors to one another, given that there are a number of more prominent suppliers of heating equipment New Zealand.<sup>66</sup>
102. No industry participants consider that Zodiac and Fluidra are each other's closest competitors and so the loss of any existing constraint between the two parties is unlikely to be significant.
103. Existing suppliers do not appear to be constrained in their ability to expand.
- 103.1 [ ] told us that the majority of residential pool heating equipment is supplied by [ ], although there are a number of other parties importing heat pumps directly from China. [ ] considers the quality of its heat pumps is very similar to those supplied by Zodiac and Fluidra because the core equipment is contract manufactured by the same manufacturers in China. However, [ ] raised a concern that the increased

<sup>65</sup> Commerce Commission interview with [ ].

<sup>66</sup> Commerce Commission interview with [ ].

purchasing power of the merged entity could put it at advantage when negotiating with manufacturers.<sup>67</sup>

103.2 [ ] advised that it does not consider that Zodiac is a close competitor to it or any of the other main suppliers of pool heating equipment in New Zealand. Rather, its main competition is from [ ]. It considers it has an advantage over other suppliers because [ ].<sup>68</sup>

103.3 [ ] advised that heat pumps are the most popular way to heat a residential pool and that their range of heap pumps is comparable to a number of other heating equipment suppliers. Both advised that they could expand their existing sales of heating equipment, if incentivised to do so.<sup>69</sup>

103.4 [ ] advised that it sells only a limited number of gas heaters in New Zealand, given the small demand for gas heaters compared to heat pumps. It considers its gas heaters are equivalent to those supplied by the other suppliers in New Zealand [ ].<sup>70</sup> If incentivised, [ ] could expand the number of units it supplies in New Zealand.<sup>71</sup>

103.5 [ ] advised that, because of the increasing popularity of pool heat pumps, it recently started supplying heat pumps [ ]. [ ].<sup>72</sup>

104. Given the presence of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition in the heating equipment market.

### **The cleaning equipment market**

105. The merged entity would be constrained by the presence of a number of different manufacturers of pool cleaning equipment who supply a range of substitutable products.

106. Table 4 shows the main suppliers of pool cleaning equipment in New Zealand. As indicated in the table, the Applicant submitted that there is limited overlap in the

<sup>67</sup> Commerce Commission interview with [ ].

<sup>68</sup> Commerce Commission interview with [ ].

<sup>69</sup> Commerce Commission interview with [ ]. Commerce Commission interview with [ ].

<sup>70</sup> [ ].

<sup>71</sup> Commerce Commission interview with [ ].

<sup>72</sup> [ ].



supply of pool cleaning equipment and the merged entity would be constrained by the presence of a number of different suppliers.

**Table 4: Estimated market shares of residential pool cleaning equipment supplied in New Zealand in 2016**

Supplier	Units sold	Market share (%)
Zodiac	[ ]	
Fluidra	[ ]	
<i>Merged entity</i>	[ ]	
Hayward	[ ]	
Dolphin	[ ]	
Davey	[ ]	
Waterco	[ ]	
Others (including Filtermaster, Pentair)	[ ]	
<b>Total</b>	<b>[ ]</b>	<b>100</b>

Source: Application

107. The Applicant submitted that there is limited overlap in the supply of pool cleaning equipment and the merged entity would be constrained by the presence of a number of different suppliers.
108. Industry participants consider that, while Zodiac has a prominent range of cleaning equipment (in particular with its 'Barracuda' range of automated cleaners), there are a range of different manufacturers for all of the different pieces of pool cleaning equipment that are commonly used in New Zealand. Further, Fluidra supplies only a very limited number of products compared with Zodiac, Hayward and Dolphin Pacific Limited (Dolphin), who are the main cleaning equipment suppliers in New Zealand.
- 108.1 [ ] both advised they on sell a range of different suppliers' cleaning equipment and would have a number of alternatives to the merged entity.<sup>73</sup>
- 108.2 [ ] advised that the main competition for pool equipment in New Zealand is between Zodiac and Dolphin who both supply very similar products. For example, both resell robotic cleaners produced by the same manufacturer, Maytronics.<sup>74</sup>
109. Given the presence of a number of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition in the pool cleaning equipment market.
110. Existing suppliers do not appear to be constrained in their ability to expand.

<sup>73</sup> Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

<sup>74</sup> Commerce Commission interview with [ ].

110.1 [ ] advised that it has a range of pool cleaning equipment and there are no significant barriers to it expanding in its supply.

[ ]<sup>75</sup>

110.2 [ ] advised that it supplies a range of different pool cleaning equipment and that it could increase the supplies for these products if incentivised to do so. However, it supplies only a limited amount of some products, such as robotic cleaners, because it doesn't consider that these types of cleaners are part of the core 'package' that customers need for a pool.<sup>76</sup>

110.3 [ ] advised that it intends to extend its existing range of cleaning equipment to include a robotic cleaner and has already tested a few models.<sup>77</sup>

110.4 [ ] advised that it has a range of cleaners but does not supply all of these into New Zealand. For example, it does not supply a robotic cleaner in New Zealand because Dolphin is the leading supplier of robotic cleaners and has a well-established presence in New Zealand.<sup>78</sup>

111. Given the presence of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition due to unilateral effects in the pool cleaning equipment market.

#### The automatic chlorinator market

112. The merged entity would be constrained by the presence of a number of different manufacturers of automatic chlorinators who supply a range of substitutable products.

113. Table 5 shows the main suppliers of automatic chlorinators in New Zealand.<sup>79</sup> The Applicant submitted that there is limited overlap and that the merged entity would be constrained by the presence of a number of different suppliers.

**Table 5: Estimated market shares of residential pool automatic chlorinators supplied in New Zealand in 2016**

Supplier	Units sold	Market share (%)
Zodiac	[ ]	
Fluidra	[ ]	
<i>Merged entity</i>	[ ]	
Evolution	[ ]	
Filtermaster	[ ]	

<sup>75</sup> Commerce Commission interview with [ ] .

<sup>76</sup> Commerce Commission interview with [ ] .

<sup>77</sup> Commerce Commission interview with [ ] .

<sup>78</sup> Commerce Commission interview with [ ] .

<sup>79</sup> This table combines the Applicant's market share estimates for SWCs and sanitising/dosing equipment.

<b>Hayward</b>	[	
<b>Pool Controls</b>	[	
<b>Others (including Waterco, Davey, Pentair)</b>	[	
<b>Total</b>	[ ]	<b>100</b>

Source: Application

114. As noted above, automated pool water treatment is achieved using a range of products, most of which have the ultimate goal of adding chlorine to the pool water. In New Zealand, SWCs are the most popular method of automated water treatment in residential pools and are installed in most new pools. The Applicant submitted that the merged entity would be constrained in its pricing of water treatment products because:<sup>80</sup>
- 114.1 there is strong existing competition in the supply of water treatment products. A number of suppliers such as Hayward, Australian Innovation Systems Pty Limited (AIS) and Evolution Water and Lighting Solutions (Evolution) offer competing products, all of which are substitutable;
- 114.2 the parties' customers are easily able to switch suppliers of water treatment products or stock an additional brand as the parties do not have any exclusivity arrangements with their customers in New Zealand; and
- 114.3 there are low barriers to entry and expansion in the supply of automated water treatment products in New Zealand and multiple global suppliers stand ready to expand their sales into New Zealand should the merged entity attempt to raise prices.
115. Our investigation revealed that there are a large number of suppliers of SWCs in New Zealand. In addition to the main multi-product suppliers such as Waterco, Hayward, Davey Water Products Pty Limited (Davey) and Filtermaster, there are several specialist water treatment suppliers serving the New Zealand market. These include Evolution, Pool Controls and AIS. Industry feedback indicates that, while Zodiac is the market leader in water treatment products in New Zealand, products offered by other suppliers are equivalent as they all have the same basic function of adding chlorine to the pool.<sup>81</sup> Customers appear to have the ability to easily switch between suppliers of SWCs in the event of a price rise.
- 115.1 Austral stocks SWCs from three different suppliers; Zodiac, Pool Controls and Evolution.
- 115.2 [ ] advised that other suppliers such as Waterco and Filtermaster supply similar SWCs to Zodiac. It said that it is "absolutely confident" in its

<sup>80</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [27].

<sup>81</sup> Commerce Commission interview with [ ].

ability to source comparable water treatment products from competing suppliers to Zodiac.<sup>82</sup>

- 115.3 [ ] mostly use SWCs from Fluidra and Zodiac respectively. However, both were confident in their ability to source supply elsewhere if necessary.<sup>83</sup>
116. Suppliers of SWCs do not appear to be restricted in their ability to expand sales in New Zealand. [ ] all advised that they could expand their supply in response to increased demand. In addition, [ ]<sup>84</sup> [ ]. It would likely be well placed to enter the New Zealand automated water treatment market post-merger if incentivised to do so.
117. Further, there are a number of alternative suppliers of automatic chemical dosing equipment in New Zealand. These suppliers have the ability to expand their supply easily if required. For example:
- 117.1 Pool Controls offers an equivalent automatic dosing system, Chemigem. Pool Controls is the market leader in automatic dosing equipment in Australia<sup>85</sup> and [ ], suggesting that Pool Controls is able to expand supply in New Zealand; and
- 117.2 [ ] advised that it could easily expand its supply of automatic chlorine dosing equipment in New Zealand in response to increased demand.<sup>86</sup>
118. Given the presence of strong existing competitors with the ability to expand, the proposed acquisition is unlikely to result in a substantial lessening of competition due to unilateral effects in the automated water treatment market.

### The water features market

119. In the water features market, the merged entity would be constrained by the presence of a number of different manufacturers such that the proposed acquisition is unlikely to result in a substantial lessening of competition in this market.
120. Our estimate of the merged entity's market share in this market is around [ ]<sup>87</sup>, this is well inside our concentration indicators. The merged entity would be constrained by a number of different suppliers including Ian Coombes Limited [ ], Aqua Clear

<sup>82</sup> Commerce Commission interview with [ ].

<sup>83</sup> Commerce Commission interview with [ ]. Commerce Commission interview with [ ].

<sup>84</sup> Commerce Commission interview with [ ].

<sup>85</sup> [ ].

<sup>86</sup> Commerce Commission interview with [ ].

<sup>87</sup> Based on the Applicant's submissions and market enquiries.

[ ]<sup>88</sup> and Clearpond NZ Limited [ ] and Pentair [ ], all of whom currently supply a range of water features. The very low barriers to entry and/or expansion in this market would also constrain the merged entity; the components of a residential pool water feature can be supplied easily by any injection-mould plastics manufacturer.<sup>89</sup>

121. Given the presence of a number of strong existing competitors and low barriers to entry and expansion, the proposed acquisition is unlikely to result in a substantial lessening of competition in the pool cleaning equipment market.

#### **The automation controller market**

122. The merged entity would be constrained by the presence of both existing and emerging competitors.
123. The Applicant submitted that the merged entity would be constrained by the presence of Pentair and Hayward, both of which supply good swimming pool automation controllers with no barriers to expanding in New Zealand.
124. All industry participants interviewed advised that the demand for pool automation controllers is very limited and that it is not usually included in a standard residential pool.
- 124.1 [ ] it does not currently supply an automation product and to date it has not had the incentive to offer one.<sup>90</sup>
- 124.2 [ ] advised that at present it has no demand for residential swimming pool automation and this is why it does not currently supply an automation product.<sup>91</sup>
125. Nevertheless, the Applicant stated that it expects significant growth in the demand for automation controllers. [ ] noted that demand for such products is increasing and it is becoming more common for it to install these types of systems.<sup>92</sup>
126. Zodiac and Fluidra appear to be the two most well-established suppliers of automation controllers and both have a network of trained installers in New Zealand. However, the merged entity is likely to be constrained by imminent expansion from existing suppliers. In particular, we understand that [ ] are likely to expand their current automation offerings in New Zealand within the next two years by adding products that will compete more closely with Zodiac and Fluidra.

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<sup>88</sup> This market share estimate excludes Fluidra branded water features.  
[ ]

<sup>89</sup> Clearance Application from Rhone Capital LLC (2 February 2018) at [15.53].

<sup>90</sup> Commerce Commission interview with [ ].

<sup>91</sup> [ ].

<sup>92</sup> Commerce Commission interview with [ ].

126.1 [ ]<sup>93</sup>

126.2 [ ]<sup>94</sup>

- 127. In addition, the merged entity is likely to be constrained to some degree by the prospect of new entry. For example, [ ] advised that, if sufficient demand for automation emerged, it would have one of its supply partners design and manufacture a system for it.<sup>96</sup> Based on industry feedback, we accept the Applicant’s submission that competition in this market is emerging and is likely to increase.
- 128. Given the presence of existing and emerging competitors, the proposed acquisition is unlikely to result in a substantial lessening of competition in the automation controller market.

**Overall conclusion**

- 129. We are satisfied that the proposed merger will not have, or would not be likely to have, the effect of substantially lessening competition due to unilateral or conglomerate effects in any of the relevant markets.

<sup>93</sup> Commerce Commission interview with [ ]

<sup>94</sup> [ ]

<sup>95</sup> [ ]

<sup>96</sup> Commerce Commission interview with [ ]

### **Determination on notice of clearance**

130. 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.
131. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance for Rhone Capital LLC (or an interconnected body corporate) to acquire up to 100% of the shares in or the assets of Fluidra, S.A.

Dated this 21<sup>st</sup> day of March 2018



Dr Stephen Gale  
Telecommunications Commissioner