

## Determination

### USG Corporation and Boral Limited [2014] NZCC 4

<b>The Commission:</b>	Dr Mark Berry Sue Begg Elisabeth Welson
<b>Summary of application:</b>	A joint application from USG Corporation and Boral Limited seeking clearance to form a joint venture relating to the supply of plasterboard, ceiling tiles and ancillary building products.
<b>Determination:</b>	Under s 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed joint venture.
<b>Date of determination:</b>	20 February 2014

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## Executive summary

- E1. On 4 December 2013, we received a joint application from USG Corporation (USG) and Boral Limited (Boral) seeking clearance to form a joint venture. The proposed joint venture encompasses the two parties' operations in Asia, India, the Middle East and Australasia for the supply of plasterboard, ceiling tiles and ancillary building products such as metal studs and tracks, metal ceiling grids and metal ceiling battens.
- E2. The Commission gives clearance to the proposed joint venture as it is satisfied that it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
- E3. The Commission considers there is no significant overlap between USG and Boral in the supply of plasterboard and ceiling tiles and focused its investigation on the supply of metal building products because the proposed joint venture would give USG an interest in Rondo Building Services Pty Limited (Rondo). At present, both USG and Rondo supply a range of metal building products in New Zealand.
- E4. In respect of the different metal building products, for purposes of this transaction, we consider there to be separate national markets for the manufacture/importation of metal studs and tracks, metal ceiling battens, and metal ceiling grid.
- E5. With the acquisition, the proposed joint venture would have an interest in Rondo, through Boral's 50% interest in Rondo. Accordingly, in respect of all three of the relevant markets, the Commission considered whether as a result of the acquisition USG's and Boral's incentives would change such that Rondo and USG would no longer sufficiently constrain each other.
- E6. The Commission considers that, in respect of all three of the relevant markets, domestic competitors with excess capacity, together with imports, would act as a strong competitive constraint on the proposed joint venture.
- E7. Accordingly, the Commission is satisfied that the proposed joint venture will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

## The proposal

1. On 4 December 2013, we received a joint application from USG and Boral seeking clearance to form a joint venture. The proposed joint venture encompasses the two parties' operations in Asia, India, the Middle East and Australasia for the supply of plasterboard, ceiling tiles and ancillary building products such as metal studs and tracks, metal ceiling grids and metal ceiling battens.
2. Clearance is sought in accordance with section 4(3) of the Act, which extends the application of section 47 to business acquisitions outside New Zealand, to the extent that the acquisition affects a market in New Zealand.

## The decision

3. The Commission gives clearance to the proposed joint venture as it is satisfied that it 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 proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>1</sup>

## The substantial lessening of competition test

5. As required by the Commerce Act 1986, 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.
8. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
9. 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

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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.

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.<sup>4</sup>

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

10. 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>5</sup> Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.<sup>6</sup>
11. 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**

12. 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>7</sup>

### **The clearance test**

13. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>8</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.<sup>9</sup>

## **Key parties**

### **USG**

14. USG is an American incorporated company which supplies a range of building products around the world.
15. In New Zealand, USG primarily supplies ceiling tiles and metal building products.
  - 15.1 USG imports all its ceiling tiles into New Zealand.
  - 15.2 USG manufactures all its metal building products at its Auckland factory, where it currently has [ ] rollforming manufacturing lines in place. USG

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<sup>4</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>5</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

<sup>6</sup> *Ibid* at [129].

<sup>7</sup> *Ibid* at [111].

<sup>8</sup> Commerce Act 1986, s 66(1) of the Commerce Act 1986.

<sup>9</sup> In *Commerce Commission v Woolworths Limited* (CA), above n 2 at [98], the Court held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”. However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

exports these metal products to Australia, Asia and the Middle East, as well as selling those products in New Zealand.

16. USG only supplies its products in New Zealand via third party distributors; these distributors are Potter Interior Systems and T & R Interior Systems Limited.<sup>10</sup>

### **Boral and Rondo**

17. Boral is an Australian incorporated company which supplies a range of building products.
18. At present, Boral has a limited presence in New Zealand. However, Boral owns 50% of Rondo. Rondo, like USG, supplies a range of metal building products in New Zealand. Another Australian based building products company, CSR Limited, owns the other 50% of Rondo.<sup>11</sup>
19. At present, Rondo is both an importer and a domestic manufacturer of metal building products. Rondo operates [ ] rollforming manufacturing lines at its Auckland factory. These lines produce about [ ] of Rondo's total supply in New Zealand; Rondo imports the remaining [ ] from its factory in Sydney.
20. Rondo has an exclusive supply arrangement with certain divisions within Fletcher Building Limited (Fletchers). As most metal building products are used in commercial buildings, much of Rondo's products are supplied via Fletchers' commercial distributor, Forman Building Systems Limited.

### **Scope of the proposed joint venture**

21. The proposed joint venture encompasses USG's and Boral's plasterboard, ceiling tiles and metal building products operations in Asia, India, the Middle East and Australasia. In Australia and New Zealand the joint venture will be formed by USG acquiring 50% of the shares of Boral's subsidiary Boral Australasian Gypsum Limited (Boral Gypsum). As part of the proposed joint venture, it is likely that the shares in USG's wholly-owned subsidiary in New Zealand, USG Interiors Pacific Limited, will also be included in the Boral Gypsum joint venture.

### *No significant overlap in plasterboard and ceiling tiles*

22. USG and Boral advised that they have only ever supplied very small amounts of plasterboard in New Zealand. In addition, while USG does currently import ceiling tiles into New Zealand, Boral advised that it has a very limited presence in New Zealand in ceiling tiles. Both parties advised that, in respect of New Zealand, they have no expansion plans for these two products.

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<sup>10</sup> [ ]

<sup>11</sup> CSR Limited also owns Potter Interior Systems.

23. The Commission's investigation confirmed that there is no significant overlap to consider between USG and Boral for the supply of plasterboard or for the supply of ceiling tiles.
24. We are, therefore, satisfied that the acquisition is unlikely to substantially lessen competition in relation to these two products. We do not consider these products any further.

*Metal building products*

25. There is the potential for more significant overlap in regards to metal building products.
26. In New Zealand, Rondo and USG are the two largest suppliers of metal building products. As set out above, under the proposed joint venture USG would obtain a 50% interest in Boral Gypsum. Boral Gypsum is a 50% shareholder in Rondo. USG will therefore obtain an indirect interest in Rondo, its main competitor for the supply of metal building products in New Zealand. Accordingly, metal building products are the main focus of our investigation.
27. We have not carried out a detailed analysis of the degree to which USG would be able to influence the behaviour of Rondo, or the extent to which we would consider Rondo and USG to be associated parties. Instead, we have taken a conservative approach and assumed that the proposed joint venture may change the incentives of USG and Boral to compete aggressively, such that they would cease to be close competitors.

**Other parties supplying metal building products**

28. In addition to USG and Rondo, there are a number of domestic manufacturers of metal building products. These include:
  - 28.1 Steel Rollformed Products Limited (SRP) which is based in Auckland and has [ ] rollforming machines; and
  - 28.2 Rollformers 2000 Limited (Rollformers), which is based in Auckland and has [ ] rollforming machines.
29. Metal building products are also imported into New Zealand. Manufacturers who have their products imported into New Zealand include:
  - 29.1 Armstrong World Industries Inc. (Armstrong), based in the United States;
  - 29.2 CBI Europe S.p.A, based in Italy;
  - 29.3 Studco Australia Pty Limited (Studco), based in Australia; and
  - 29.4 Peer Industries Pty Limited, based in Australia.

30. Most metal building products are supplied to end customers through third party distributors. In New Zealand there are three main metal building product distributors, namely:
  - 30.1 Forman Building Systems Limited (Formans);
  - 30.2 Potter Interior Systems (Potters); and
  - 30.3 T & R Interior Systems Limited (T&R).

### **Industry background**

31. Metal building products are made from steel that is passed through a rollforming machine. The end products are used in the construction of interior walls and partitioning as well as interior ceilings, primarily for commercial buildings.
32. Typically, when a customer requires internal partitioning or an internal ceiling for their building:
  - 32.1 they go to an architect who designs the partitioning/ceiling to the customer's requirements;
  - 32.2 a tender is then issued by the customer for the construction and installation of the partitioning/ceiling and potential installers will respond;
  - 32.3 the installer's response will include a quote for the metal products component and this is typically obtained from a New Zealand-based distributor; and
  - 32.4 the distributor then places an order with the domestic manufacturer or an importer.
33. It is at the manufacturing / importing level where the competition between USG and Rondo is currently occurring.

### **Market definition**

34. For the purposes of considering this application, we consider the relevant markets to be the national markets for the manufacture/importation of:
  - 34.1 steel rollformed stud and track;
  - 34.2 steel rollformed ceiling battens; and
  - 34.3 steel rollformed exposed ceiling grid.

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

35. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely 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.

36. To help us establish whether customers would switch sufficient purchases to alternative products, we use the hypothetical monopolist test as a conceptual tool. This test asks whether a hypothetical sole supplier of a set of products would profitably increase prices for at least one of the merging firms' products by at least a small, but significant, amount.<sup>12</sup> This small, but significant, amount is often referred to as a SSNIP – a small, but significant, non-transitory increase in price.
37. In general, the smallest set of products in which the SSNIP can be profitably sustained is defined as the relevant product market.

### **The applicants' view of the relevant markets**

38. The applicants submitted that the relevant market affected by this transaction is the national market for the wholesale supply of metal building products (being stud and track, ceiling battens, and exposed steel ceiling grid).

### **The Commission's view of the relevant markets**

#### *Product Dimension*

39. As outlined above, USG and Rondo are active in the provision of three main types of rollformed light gauge steel building products namely stud and track, battens, and ceiling grid. Stud and track is used for the construction of interior walls<sup>13</sup> and battens and exposed grid for the construction of interior ceilings.
40. Generally, different products are in separate markets unless customers consider them to be close substitutes.
41. On the demand side, there is clear delineation between products used for the construction of interiors walls (stud and track) and those products used in the construction of interior ceilings (battens and grid). In this respect, both of these types of products are used for a different purpose.
42. We also considered the difference, from a customer's perspective, between selecting ceiling batten and ceiling grid.
43. When designing a ceiling system for a building, an architect or designer will consider a number of factors including cost, performance and aesthetics. Ceilings in commercial buildings can be constructed in several ways, including with steel battens and with exposed ceiling grid.
  - 43.1 Concealed ceilings constructed using steel battens are generally cheaper and provide a cleaner, more hardwearing finish. Broadly, concealed batten

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<sup>12</sup> The test assumes that all other prices are held at current levels.

<sup>13</sup> Stud and track are typically supplied together. The 'track' is the term used to describe the top and bottom steel layer of the internal wall. These layers connect with the 'stud', which is the vertical steel layer of the internal wall.

ceilings are utilised in the construction of apartments, hotels and similar buildings.

- 43.2 Exposed grid ceilings on the other hand are generally more expensive and utilised in the construction of commercial buildings where access to roof cavities and the ability to alter the ceiling configuration is important.
44. We consider that, on the demand side, there is clear differentiation in product, pricing and demand between concealed ceiling battens and exposed ceiling grid.
45. From a supply side perspective, the machinery and expertise needed to manufacture the three main types of metal products - stud and track, battens, and ceiling grid - are very similar. All require rollforming machinery to form the steel into shape and punch and knurl it as required. The manufacturers we have spoken to have indicated that generally a wide range of sizes and types of metal products can be manufactured on a single rollformer, with limited changeover required between different sizes or types.<sup>14</sup>
46. This substitutability appears especially true when manufacturing stud and track and ceiling battens, due to the similarity in the profiles of the products. However, USG stated that ceiling grid requires more processing; [ ]also noted that if they wished to manufacture ceiling grid, they would likely invest in new machinery, rather than modifying their existing equipment.
47. We consider that on the supply side, switching production from stud and track to ceiling battens (and vice versa) is relatively simple but switching from either of these products to ceiling grid is not. We have not at this stage considered whether stud and track produced by firms that normally produce ceiling battens (or vice versa) would be seen to be acceptable substitutes by buyers of these products (such an assessment is necessary to conclude on supply-side substitution).
48. Overall, we consider stud and track, and ceiling battens as separate markets when assessing the competitive effects of the proposed joint venture. We do this because if there are no competition issues in these narrowly defined markets, there will also unlikely be a competition issue in a more broadly defined market consisting of both stud and track, and ceiling grids.
49. We also consider exposed ceiling grid as a separate market.
50. USG submitted that timber framing is a substitute for both stud and track, and ceiling battens. However, we do not consider that timber framing is a viable constraint to metal building products. Parties we have spoken to stated that while technically timber can be used in the same applications as steel stud and track, and battens, timber is not a competitive alternative due to the lower cost and higher performance of steel products.

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<sup>14</sup> These products are all produced using the same steel sheet as an input. The changeover typically requires a change of 'cassettes' to specify the shape to be rolled and this can take between one to three hours to compete.

### *Conclusion on product dimension*

51. We consider it is appropriate to consider each of the three main products separately. None of the products are demand-side substitutes, and there is a lack of supply side substitutability between certain product types.
52. We also consider that isolating these products will more accurately highlight the extent of competition between USG and Rondo. We also note that if no substantial lessening of competition is likely under any of these three narrowly defined product markets, a substantial lessening of competition is unlikely in a market defined more broadly.
53. We therefore consider the relevant product markets to be:
  - 53.1 steel rollformed stud and track;
  - 53.2 steel rollformed ceiling battens; and
  - 53.3 steel rollformed exposed ceiling grid.

### **Functional dimension**

54. Both USG and Rondo sell their products through distribution arrangements with a number of parties and neither has a direct to customer sales presence in New Zealand.
55. We therefore consider that the manufacture/importation of steel stud and track, battens, and exposed ceiling grid is the appropriate functional level.

### **Geographic market**

56. Some producers, such as USG and Rondo manufacture product locally while others such as Armstrong and CBI (as well as Rondo) import their product from Australia and further abroad.
57. Industry participants have informed us that, for all three products, the importation of the final steel product is common and priced competitively to locally produced product although, generally, it is easier and more cost effective to import batten and grid as it is able to be nested and therefore utilises container space more efficiently.
58. Manufacturers supply product nationwide and so it is appropriate to define a national market with imports.

### **Conclusion on market definition**

59. We consider that the relevant markets under which to consider the competition impacts of the proposed acquisition are the national markets for the manufacture/importation of:
  - 59.1 steel rollformed stud and track (the stud and track market);
  - 59.2 steel rollformed ceiling battens (the battens market); and

59.3 steel rollformed exposed ceiling grid (the ceiling grid market).

## **With and without scenarios**

### **With the acquisition**

60. The applicants advised us that their rationale for the joint venture is to enable Boral's distribution and manufacturing capabilities in a number of Asia-Pacific countries to supply USG's plasterboard, joint compounds and ceiling products.
61. In respect of metal building products, the applicants advised that USG's New Zealand facility would be owned fully by the USG-Boral joint venture. In addition, the proposed joint venture would have an interest in Rondo, through Boral's 50% interest in Rondo.

### **Without the acquisition**

62. Without the proposed joint venture, it is likely that USG and Boral, and therefore USG and Rondo, would compete against each other in all the relevant markets.

## **Competition analysis**

63. In respect of all three of the relevant markets, the relevant question is whether as a result of the acquisition USG's and Boral's incentives would change such that Rondo and USG would no longer sufficiently constrain each other. For example, USG and Boral via the joint venture may have a greater incentive to increase prices as a proportion of any sales it lost as a result of that price increase would be won by Rondo and so would be partly captured by Boral.
64. Alternatively, this cross ownership could enhance the ability of USG and Rondo to coordinate, potentially impacting prices given they are each other's closest competitors.
65. In respect of these questions, we have considered the following for all the relevant markets:
  - 65.1 the strength of competition from existing players (including importers) and their ability to expand;
  - 65.2 the likelihood of new entry in the event that the joint venture is able to wield market power; and
  - 65.3 the extent of any countervailing power that downstream parties, such as distributors, installers or architects, may be able to exert in the same event.
66. Considering all these factors, the Commission considers that, in respect of all three of the relevant markets, existing domestic competitors with excess capacity, together with imports, would act as a strong competitive constraint on the proposed joint venture. Accordingly, the proposed acquisition is not likely to result in a substantial lessening of competition.

### **The applicants' submissions**

67. While the applicants' consider that all the different metal building products supplied by different suppliers are essentially functionally identical, they do acknowledge that there is a degree of differentiation across the different suppliers' products. The applicants noted that the different suppliers compete on both price, as well as qualitative factors such as the provision of warranties, brand specific patterns/shapes and/or slight variations in the quality of steel used.
68. Within each variation of metal building products, there is a range of products from the premium end to the standard end of the range, with each supplier often supplying products at different points along the range from premium to standard products.
69. The greatest variation occurs with respect to ceiling grids given that they are higher value products permanently visible upon installation and have both substantive functional and aesthetic properties.
70. Local suppliers of metal building products supply comparable products to both USG and Rondo and are able to readily expand local manufacturing capacity to meet additional demand.
71. While expansion for stud and track and ceiling battens suppliers is easier given the lower levels of complexity in manufacturing these products, if there was an attempt to increase the price of ceiling grids, manufacturers of stud and track, and ceiling battens could readily invest in the additional equipment needed to produce ceiling grid.
72. USG also understands that existing manufacturers in New Zealand generally have significant unused capacity and could readily increase their output utilising their installed rollforming equipment.

### **The stud and track market**

#### **Existing competition**

73. At present, USG and Rondo are the two main suppliers of stud and track. Other suppliers include SRP and Rollformers as well as a number of other parties importing product into New Zealand.
74. Industry participants advised it is difficult to accurately estimate market shares in this industry due to the level of importing and because each supplier's production and capacity figures can vary depending on what product each production line is set up to manufacture and how often the production line is changed.
75. Table 1 shows the estimated market shares for the stud and track market.

**Table 1: Estimated market shares for the stud and track market for 2013**

Supplier	Revenue	Market share	Total capacity	Current production	Spare capacity	Current utilisation
	\$million	%	Linear metres			%
USG	[ ]	[ ]	[ ]#	[ ]#	[ ]	[ ]
Rondo	[ ]	[ ]	[ ]^	[ ]^	[ ]	[ ]
<i>Proposed Joint Venture</i>	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
SRP	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Rollformers	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Other parties (including imports)	[ ]	[ ]	-	-	-	-
<b>Total sales</b>	<b>[ ]</b>	<b>100%</b>	-	-	-	-

Source: Industry participants, Commission estimates. [ ]].

#### *Constraint from domestic manufacturers*

76. Other than Rondo and USG, there are two other domestic manufacturers of steel stud and track, SRP and Rollformers. Both SRP and Rollformers consider that they make equivalent product to USG and Rondo and could expand their existing production by using current excess capacity or by adding capacity, if incentivised to do so.

#### SRP

77. SRP advised us that steel stud and steel track were the first products it started making in 2007 and it has been competing with both USG and Rondo since this time. [ ]].

78. SRP advised that it tries to introduce a number of new products each year which it uses as a point of difference from other suppliers in the market. SRP advised that, like Rondo and USG, it also had a large product range. SRP noted that it had [ ] different products across both the stud and track market and the batten market, some of which it has patented. SRP advised that its smaller size, in relation to both USG and Rondo, enabled it to [ ]].

79. SRP advised that it has [ ] capacity and it has recently moved into a larger factory [ ]. SRP estimated that it was currently operating at [ ] of its available capacity and that it is very active in trying to increase its utilisation. For example, [ ]

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### Rollformers

80. Rollformers advised that it competes with USG, Rondo and SRP in the supply of stud and track as well as with a range of different importers. Rollformers advised that its sales of stud and track have [ ]].
81. To this extent, Rollformers advised that it has excess capacity and it could increase its current production, if incentivised. Rollformers advised that it is much more flexible than either USG or Rondo in its ability to provide customised products to end-customers, particularly with respect to some of the heavier, higher gauged stud and track products. Rollformers said that it actively promotes this flexibility.
82. Rollformers also noted that it is able to ramp up production and is able to offer very short turnaround times for orders.

### *Constraint from imports*

83. A number of parties we spoke with indicated that they consider that imports of steel stud and track from Australia (and potentially further abroad) are an economic alternative to New Zealand manufactured product. For example, [ ] stated that the cost to ship stud and track from Australia to Christchurch was equivalent to shipping from Auckland to Christchurch. However, [ ] noted that importing of steel stud and track was only really economical for heavier gauge products.
84. Rondo noted that much of its New Zealand product range is currently manufactured in Australia and it considered that imported product is cost competitive with locally manufactured product. For example, approximately [ ] of Rondo's stud and track sales in New Zealand is product manufactured in its Sydney based plant and the decision to have a New Zealand manufacturing base was [ ]<sup>15</sup>.
85. Rondo advised us that in Australia it competes directly with two large Australian-based stud and track manufacturers namely, Studco and Peer Industries Pty Limited (Peer Industries), together with imports from USG's Auckland factory and from suppliers from China.
86. A number of installers we have spoken to stated that they currently import stud and track from Studco and Peer Industries in Australia and are able to do so economically.

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<sup>15</sup> [ ]

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87. Studco advised that it is actively seeking to establish itself in New Zealand by approaching designers, architects and building contractors and it already has some product coming into New Zealand through a third party. Studco currently exports to the United States and Europe and so it does not consider importing into New Zealand as problematic. [

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88. We consider that the presence of Australian imported steel stud and track is likely to continue, albeit that such importing is currently predominantly project based.

*Conditions of expansion*

89. If requested to do so by a purchaser, the Commission considers that domestic manufacturers could easily increase their current production given their excess capacity and the low cost of adding capacity. This also applies to Australian-based suppliers. However, to date there appears to have been little opportunity for these suppliers to expand significantly, given the presence of USG and Rondo.

90. All parties interviewed by the Commission confirmed that USG and Rondo are each other's closest competitors and have been for some time. In this respect, USG and Rondo could be considered to supply 'equivalent' products.

91. Several parties questioned whether other suppliers in the market also supplied 'equivalent' products to USG and Rondo, and some parties advised that they would be reluctant to switch away from either USG or Rondo. This concern related mostly to the perceived quality of the alternatives available to USG or Rondo.

92. For example, most projects using stud and track are designed to certain specifications, typically determined by an architect and it is often only USG or Rondo that are specified as 'equivalent' products.

93. However, architects contacted by the Commission advised that it is common for the USG or Rondo brands to be specified at the design stage but the specification almost always includes an 'or equivalent' caveat. What this means is that if the installer wishes to provide an equivalent product to the one specified, then there is nothing preventing them from doing so.

94. All the installers<sup>16</sup> contacted by the Commission confirmed that it is the installer, rather than the architect, who determines which brand of stud and track will be used on any given project. Each installer also advised that price, more than anything, determines which stud and track product will be installed, as long as the product is equivalent.

95. [ ], an installer, considered that only USG or Rondo supply 'equivalent' products and even in the event of a price increase, it would continue to only use

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<sup>16</sup> The Commission contacted a range of different installers including some of the main purchasers of stud and track products from the three distributors.

these two suppliers as they were only ones with the established reputations in the market and the only two who can support their products with the “appropriate documentation and back up”. Nevertheless, a number of other parties had a different view.

96. The Commission understands that the domestic manufacturers and importers listed above do provide equivalent alternatives to USG and Rondo and that brand and reputation are not significant barriers to expansion in the stud and track market. The following evidence we have received supports this:
- 96.1 SRP and Rollformers consider their products to be equivalent to those produced by USG and Rondo.
- 96.2 T&R distributes both USG and SRP products and considers that SRP supplies a quality product and, as a distributor, it has actively promoted the expansion of SRP.
- 96.3 [ ], an installer, advised that manufacturers can vary on their quality of product or on the ease to which their product can be installed but that the stud and track products themselves are functionally identical.
- 96.4 [ ], an installer, advised that it considers products from SRP to be ‘equivalent’ to those from Rondo and it has purchased product directly from SRP in the past.
- 96.5 [ ], an installer, advised that it can and does import ‘equivalent’ steel product from Australia and this helps to “keep the other suppliers honest”.
- 96.6 [ ], an installer, advised that it recently imported ‘equivalent’ steel product from Studco in Australia as a direct alternative to Rondo.
- 96.7 [ ] currently purchase equivalent product to USG and Rondo directly from Rollformers.
97. The Commission also notes that in recent years imports of Chinese manufactured stud and track have become more common. The Commission has received conflicting evidence from manufacturers, distributors and installers on whether or not these Chinese imported products are a strong competitive constraint. Some parties noted that there can be quality and reliability issues with Chinese stud and track and that the time and resource required to secure a reliable product makes such imports unreliable.
98. The Commission considers that while Chinese imports do not provide a significant level of constraint on domestic or Australian manufacturers, they do remain as an alternative for some customers.

*Conclusion on existing competition*

99. We consider that with the acquisition, existing competitors with excess capacity such as SRP and Rollformers, together with imports, would act as a strong competitive constraint on the proposed joint venture.

**Other competition factors**

100. The ability of the proposed joint venture to exert market power can be limited by the entry of new participants into the relevant markets. In this case, we consider that entry could occur through two avenues:

100.1 de novo entry by a party operating in different markets; or

100.2 entry by a party with industry experience operating at a different functional level of the supply chain.

101. In either scenario, we assess whether entry by new competitors is likely to be sufficient in extent in a timely fashion to constrain the merged firm and prevent a substantial lessening of competition. This is referred to as the 'LET test'.
102. The LET test is satisfied when entry or expansion in response to a price increase or other exercise of market power is Likely, and sufficient in Extent and Timely enough to constrain the merged firm.

*Requirements for entry*

103. All parties that the Commission spoke with considered that the main requirement for entry into the stud and track market is acquiring a suitable rollforming manufacturing line.
104. The applicants submitted that it is possible to develop a metals manufacturing operation with only a modest capital investment, particularly as one of the main input costs into production is coiled steel, which is widely available.
105. All parties confirmed that access to steel is not a significant barrier to entry. [

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106. We understand that the necessary rollforming machinery is also widely available, from both New Zealand and overseas suppliers.

107. The most recent entrant into the stud and track market in New Zealand with a domestic manufacturing plant is SRP. SRP advised that it is possible to purchase equivalent machines to SRP's 'off the shelf' for about [

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108. SRP advised [

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109. Rollformers estimated the cost of a new rollforming machine to be around [ ]with an additional [ ] required for the necessary componentry and accessories. Rollformers also advised that [

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110. The Commission considers that there are no impediments to any party that is interested in entering into the stud and track market from doing so. The machinery is widely available and it appears that entry could take place in a timely fashion.

*De novo entry*

111. We have considered the prospect of de novo entry into the stud and track market.

112. [

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113. [

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114. [

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115. [

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116. [

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<sup>17</sup> [

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*Entry by an industry party*

117. We have also considered the extent to which downstream parties may be able to leverage their countervailing power to incentivise entry into the stud and track market. We consider that if the proposed joint venture tried to exercise any market power that it may have, this could incentivise entry into the market or encourage self-supply.
118. [ ].
119. [ ].
120. [ ].
121. At the time of the Commission's determination, [ ] had yet to make a decision on whether it would enter the market. [ ].

*Conclusion on other competition factors*

122. Any assessment of the costs of entry must be balanced against the expected likely return on investment, taking into account the size of the market, and the extent to which existing competitors are capacity constrained.
123. All of the existing manufacturers we spoke with have indicated that they have spare capacity and could quickly and easily increase production should there be demand for their product. [ ], the Commission has not identified any other potential entrants into this market, given this excess supply.
124. We consider that the requirements for entry into the relevant market are not excessive, and, if incentivised, entry could be achieved in a reasonably short period of time. For example, [ ].
125. However, the Commission considers that the levels of excess capacity in the market would likely be a disincentive to enter. Therefore, the main competitive constraint on the proposed joint venture would likely come from existing competitors rather than from potential entrants.

### Conclusion on the stud and track market

126. We consider that with the acquisition, existing competitors with excess capacity such as SRP and Rollformers, together with imports, would act as a strong competitive constraint on the proposed joint venture, such that the proposed acquisition is not likely to result in a substantial lessening of competition in the stud and track market.

### The battens market

127. The main suppliers in the battens market are the same suppliers present in the stud and track market. Like the stud and track market, all existing batten suppliers have excess capacity.

128. At present, USG and Rondo are the two main suppliers in the battens market. Other suppliers in the market include SRP and Rollformers as well as a number of other parties importing product into New Zealand.

129. Table 2 shows the estimated market shares in the battens market.

**Table 2: Estimated market shares in the battens market for 2013**

Supplier	Revenue	Market Share	Total capacity	Current production	Spare capacity	Current utilisation
	\$million	%	(linear metres)			%
USG	[ ]	[ ]	[ ]#	[ ]#	[ ]	[ ]
Rondo	[ ]*	[ ]	[ ]^	[ ]^	[ ]	[ ]
<i>Proposed Joint Venture</i>	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
SRP	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Rollformers	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Other parties (including imports)	[ ]	[ ]	-	-	-	-
<b>Total</b>	<b>[ ]</b>	<b>100%</b>	-	-	-	-

Source: Industry participants, Commission estimates. \*includes [ ] sales from Rondo Key Lock System which includes additional ceiling componentry. [ ]].

### Constraint in the battens market

130. SRP advised that battens account for [ ] of its total production and, as for stud and track products, it has excess capacity to produce additional battens.

131. Rollformers also advised that it has excess capacity in respect of battens. [ ]

]

132. Industry parties advised that of all the metal building products, steel battens are the easiest to import because their shape make them very easy to ‘nest’ in containers. Although these imports are not currently on the same scale as Rondo’s imports, several installers [ ] advised that they used the option of importing from Australia to their competitive advantage in negotiations with local manufacturers.
133. [ ]
134. Similar to the stud and track market, the Commission considers that the ability to import battens from Australia is likely to provide an effective competitive constraint on the proposed joint venture.
135. While each supplier’s battens differ to a certain extent in terms of their reputation and branding, the suppliers listed above all supply equivalent products to Rondo and USG. To this extent, as in the stud and track market, the Commission does not consider that there are any significant barriers to existing suppliers expanding in the battens market.
136. However, as in the stud and track market, the evidence is less conclusive on the constraint from Chinese imports of steel battens. Therefore, we have not placed a significant degree of weight on this constraint.
137. All industry participants consider that the requirements for entry in the battens market are very similar to the stud and track market and that the barriers to entry to the battens market are relatively low.
138. The Commission notes that entry into battens could occur in the same manner as for stud and track. However, as with the stud and track market, the excess capacity in the market is likely to discourage new entry.

#### *Conclusion on the battens market*

139. We consider that with the acquisition, existing competitors with excess capacity would act as a strong competitive constraint on the proposed joint venture such that the proposed acquisition is not likely to result in a substantial lessening of competition in the battens market.

#### **The ceiling grid market**

140. The main suppliers in the ceiling grid market are USG and Armstrong as well as a number of other parties importing product into New Zealand.
141. USG advised that it sells [ ] worth of ceiling grid each year in New Zealand.<sup>18</sup> Conversely, Rondo advised that it is not a very strong competitor in New

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<sup>18</sup> In addition, USG exported [ ] grid to overseas countries.

Zealand in terms of ceiling grid. For example, [ ].

142. Other than USG, the main suppliers of ceiling grid include:

142.1 Armstrong, which is based in the United States. Its ceiling grid is imported into New Zealand by Fletchers.<sup>19</sup> Last year, Fletchers purchased [ ] grid from Armstrong; and

142.2 CBI Europe S.p.A., which is based in Italy and its ceiling grid is imported into New Zealand by T&R. Last year, T&R purchased [ ] grid from CBI Europe S.p.A.

143. As there is only a limited amount of direct overlap between USG and Rondo and, because of the presence of several other grid suppliers, the proposed joint venture is unlikely to raise any significant competition concerns in the ceiling grid market.

### **Overall conclusion**

144. In respect of the different metal building products, for purposes of this transaction, we consider there to be separate national markets for the manufacture/importation of metal studs and tracks, metal ceiling battens, and metal ceiling grid.

145. With the acquisition, the proposed joint venture would have an interest in Rondo, through Boral's 50% interest in Rondo. Accordingly, in respect of all three of the relevant markets, the Commission considered whether as a result of the acquisition USG's and Boral's incentives would change such that Rondo and USG would no longer sufficiently constrain each other.

146. The Commission considers that, in respect of all three of the relevant markets, domestic competitors with excess capacity, together with imports, would act as a strong competitive constraint on the proposed joint venture.

147. Accordingly, the Commission is satisfied that the proposed joint venture will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

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<sup>19</sup> [ ]

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

148. The Commission is satisfied that the proposed joint venture will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
149. Under s 66(3)(a) of the Commerce Act 1986, the Commission gives clearance to USG Corporation and Boral Limited to form a joint venture encompassing USG Corporation's and Boral Limited's operations in Asia, India, the Middle East and Australasia for the supply of plasterboard, ceiling tiles and ancillary building products (such as metal studs and tracks, metal ceiling grids and metal ceiling battens).

Dated this 20<sup>th</sup> day of February 2014

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Dr Mark Berry  
Chairman