

2 December 2016

Fletcher Steel Limited  
810 Great South Rd  
Penrose  
Auckland 1061

Dear Ms Hill

### **Fair Trading Act 1986: Warning**

1. The Commerce Commission has been investigating Fletcher Steel Ltd (**Fletchers**) under the Fair Trading Act. In particular, we have been investigating whether Fletchers made false and/or misleading representations that its 500E steel mesh complied with the requirements of AS/NZS 4671:2001 (the **Standard**).
2. We have now completed our investigation and are writing to you to alert you to our concerns.

### **Summary of the Commission's concerns**

3. In summary, we consider that, in relation to 19 batches of 500E mesh, Fletchers is likely to have breached section 13(a) of the Fair Trading Act by representing that the 500E mesh complied with the requirements of the Standard.
4. Fletchers made representations in trade that specific batches of its steel mesh were 500E and/or compliant with the Standard. These representations were contained on labels attached to the steel mesh, invoices provided to customers, and Fletchers' website made a number of representations that its steel mesh was 500E and complied with the Standard.
5. The Commission considers it likely that 19 specific batches of Fletchers 500E product did not comply with the testing and record keeping requirements of Standard. This is because:
  - 5.1 The retesting of eight batches of 500E mesh between May 2015 and May 2016 was not strictly in line with the requirements of the Standard; and
  - 5.2 Fletcher's Long Term Quality (**LTV**) data for some of its less popular SE73 and SE73DE 500E products shows that 11 batches of steel mesh had 'yield stress' values lower than the LTV requirements of the Standard.

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6. We understand that Fletchers has taken steps to address our concerns, but if this behaviour is continuing, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act.

### **The investigation**

7. Since August 2015 the Commission has been investigating whether claims about steel mesh products supplied by three New Zealand companies breach the Fair Trading Act.
8. During our investigation it became apparent that Fletchers may have engaged in conduct that breached the Fair Trading Act. In March 2016 we opened an investigation into Fletchers.

### **Investigation Phase 1 – Testing of steel mesh**

9. On 10 March 2016, the Commission purchased three sheets of SE62 mesh. Samples from these sheets were sent for testing by two independent labs, SAI Global (an IANZ accredited lab) and SGS.
10. On 31 March 2016 and 4 April 2016 we received test results for these sheets.
11. Those results raised no significant concerns, and as a result, we decided to take no further action against Fletchers.

### **Investigation Phase 2 – Retesting procedure and LTQ**

12. We re-opened our enquiries in April 2016.
13. At that time we were investigating another mesh supplier. In that investigation we became aware of an approach to retesting that caused us some concern. We had some concern that this may be a common practice in the industry. We then decided to ask Fletchers for further information to see whether similar issues arose with its retesting.
14. On 27 April 2016 the Commission asked that Fletchers provide further information about its testing procedures, including:
  - 14.1 Batch test certificates;
  - 14.2 Current test procedures; and
  - 14.3 LTQ data.
15. Between 28 April 2016 and 2 May 2016, Fletchers responded with all of the information requested.

16. Fletchers also provided a LTQ data spreadsheet which contained not only SE62 mesh, but also LTQ data for their other 500E grade mesh products, SE72, SE73, SE73DE and SE82.
17. We analysed this LTQ data and identified the following specific concerns:
  - 17.1 In the individual test results for ductility, there were no individual values below 10%. Throughout our investigation and analysis of results from many suppliers there has been significant variation of results for ductility, generally including a number of results under 10%. We were concerned that Fletchers had no results below 10%.
  - 17.2 The LTQ data for the SE73, SE73DE 7.5 and SE73DE 5.5 products showed that the calculated value for yield stress was lower than the permitted value of 500Mpa for 500E grade steel mesh. These values were shown in red in the spreadsheet.
18. These concerns were raised with Fletchers and following a number communications and a meeting on 13 May 2016, we reached the view that Fletchers were likely to have failed to comply with the retesting and LTQ requirements of the Standard.

#### **Deficient retesting procedure**

19. Appendix B4.1.2(b) of the Standard requires that ductility of steel mesh is determined by the average of the individual results obtained from four individual tests on one sheet of mesh. The individual tests must have an average of at least 10% ductility, although not all results need to be 10% or above. For example a batch with results of 9%, 10%, 11% and 12% is deemed to comply with the Standard, as the average of the individual results is 10.5%.
20. Batches with an average of lower than 10% are deemed to be non-conforming. The Standard allows these batches to be retested, using the more stringent requirements of Appendix B5 of the Standard. Appendix B5 requires that twice as many “items”, i.e. two sheets of mesh and eight individual tests, are taken from the batch and retested. If these additional items comply, then the batch complies.
21. We are concerned that Fletchers, or more specifically Pacific Steel on behalf of Fletchers, did not follow the retesting provisions of Appendix B5 in two key ways:
  - 21.1 First, instead of retesting where the average of four tests was less than 10%, it retested each time an individual test that was below 10%. Using the example in paragraph 34, Pacific Steel would have retested because there was one individual result under 10%, notwithstanding that the average of the test results exceeded 10%.
  - 21.2 Second, instead of performing eight retests as required by the Standard, Fletchers conducted two tests for each individual item that failed the first

test, i.e. where a batch provided results of 9%, 10%, 11% and 12%, it would re-test the 9% element twice.

22. This error affected eight batches of mesh produced between May 2015 and May 2016 although we are only concerned about two of the batches. This is because six of the affected batches did not require retesting at all. The average of the initial test results was above 10%, but because of the erroneous approach to retesting, unnecessary retesting was performed.
23. Of the two batches that should have been retested, and were not retested properly:
  - 23.1 One batch (Batch 1462, SE82, July 2015) was subject to less retesting than the standard requires, although our analysis of information provided by Pacific Steel suggests that the mesh would likely have passed testing if it had been conducted properly. This batch is a year old and cannot be tested further.
  - 23.2 One batch (Batch 1526, SE73, May 2016) has been subject to less retesting than the standard required. Fletchers quarantined this batch after becoming aware of our concerns and carried out further testing which demonstrated that the mesh complied with the Standard.
24. Fletchers say that it relied on Pacific Steel to perform the testing in accordance with the Standard. It outsourced all of its mechanical testing to Pacific Steel and was reliant on the expertise of its staff.
25. Although we agree that Fletchers relied on the expertise of Pacific Steel for the testing of steel mesh, we do not consider its reliance was reasonable in all the circumstances.
26. Fletchers is a manufacturer of mesh, a structural steel product. Fletchers is aware that the product is used for regulated building activities – and subject to important testing and performance requirements aimed at ensuring the performance and safety of buildings.
27. As a manufacturer of 500E steel mesh, Fletchers has an obligation to comply with the Standard during the manufacturing process.
28. We consider it was not reasonable for Fletchers to rely entirely on Pacific Steel for testing in accordance with the Standard. In our view it had an obligation to assess whether Pacific Steel was testing in accordance with the Standard.

#### **LTQ Non-compliance for SE73, SE73DE7.5 and SE73DE 5.5**

29. Fletchers has also produced a small amount of steel mesh that we consider is unlikely to comply with the LTQ requirements of the Standard, because the calculated values for “yield stress” were lower than required by the Standard.



30. The Standard requires that all manufacturers must keep LTQ data for steel mesh. Long-term quality compliance is aimed at ensuring statistical confidence that the results of testing carried out are representative of the properties of the wider population.
31. The Standard provides a statistical equation for calculating LTQ data, with the statistical multiplier varying depending on the amount of testing performed.
32. The Standard requires that when a 95% confidence interval is applied to the mean of individual values (subtracting or adding the standard deviation of the values multiplied by a statistical multiplier), the lower value for yield stress must not be less than 500Mpa and the upper figure must not be above 600Mpa.
33. Where a mesh supplier cannot meet the LTQ requirements, Appendix B7 of the Standard provides an alternative (although more difficult) means of demonstrating compliance.
34. The information provided by Fletchers contained LTQ data for five separate 500E grade products: SE62, SE72, SE73, SE73DE and SE82.
35. That spreadsheet indicated that the LTQ figures for the SE73 and SE73DE (7.5mm and 5.5mm) products fell marginally outside the requirements in the standard for yield stress, with values of 494.6, 497.0 and 499.6Mpa respectively, where the Standard required a minimum of 500Mpa. These figures were also highlighted in red in the spreadsheet sent to us, which suggests that the author of the spreadsheet was aware of the potential non-compliance.
36. Fortunately, there are only a small number of affected batches. Only four batches of SE73 had been produced between May 2014 and March 2015. Seven batches of SE73DE had been produced between August 2013 and October 2015. You have told us that you have quarantined all existing stock and will not sell it as 500E mesh.
37. We note that although the LTQ data was lower than required by the Standard, the individual batches of mesh all complied with the batch testing requirements of the Standard. Consequently, we consider that the low volume of mesh produced is likely to have been a significant contributing factor to the LTQ data not complying with the Standard's requirements.
38. Our assessment of the data provided suggests that, if Fletchers had continued to produce mesh with similar characteristics, over time as its data set got larger, the LTQ data is likely to have moved into the permitted range.
39. However, we still consider this to be a clear departure from the Standard. The 95% confidence interval and associated statistical multipliers are clearly specified in the Standard, and B7 provides for testing of material that does not comply with the LTQ requirements.

40. Fletchers knew, or should have known of these requirements – indeed the numbers were in red in the spreadsheet sent to us, when all other compliant numbers were in black.

### **The Commission's view**

41. In this case, the Commission's view is that Fletchers' conduct is likely to have breached section 13(a) of the Fair Trading Act, which prohibits false or misleading representations that a product is of a particular standard, quality or grade.
42. Fletchers made representations in trade that specific batches of its steel mesh were 500E and/or compliant with the Standard. These representations were contained on labels attached to the steel mesh, invoices provided to customers, and Fletchers' website made a number of representations that its steel mesh was 500E and complied with the Standard.
43. To comply with the Standard, steel mesh must have certain specified physical qualities and must have undergone specified testing as set out in the Standard. Fletchers' 500E representations are likely to have been false or misleading in relation to specific batches because:
- 43.1 The re-testing of certain batches was not in strict compliance with the Standard; and/or
- 43.2 Fletchers' LTQ data for some of its less popular 500E products shows a small number of batches of steel mesh had 'yield stress' values lower than that which is compliant with the Standard.
44. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
45. While we will not be taking any further action against Fletchers at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Fletchers.
46. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

### **The Commission's role**

47. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

**Penalties for breaching the Fair Trading Act**

48. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
49. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

**Further information**

50. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
51. You can also view the Fair Trading Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
52. Thank you for your assistance with this investigation. Please contact me on (09) 919 4446 or by email at [brett.carter@comcom.govt.nz](mailto:brett.carter@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



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