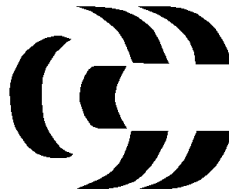


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## COMMERCE COMMISSION

### DECISION NO. 405

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

ETEX HOLDING B.V.

AND

KEYPLAS LIMITED

**The Commission:** M J Belgrave (Chair)  
M N Berry  
P R Rebstock

**Summary of Proposed Acquisition:** Etex Holding B.V. has sought clearance for the indirect acquisition of Keyplas Limited.

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

**Date of Determination:** 11 September 2000

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## **THE PROPOSED ACQUISITION**

1. Pursuant to section 66(1) of the Commerce Act 1986 (“the Act”), Etex Holding B.V. (“Etex” or “the applicant”) gave notice to the Commission on 28 August 2000 (“the notice” or “the application”) seeking clearance for the proposed appointment of a representative of Etex to the board of directors of Milnes Holdings Limited A.C.N., and the acquisition of up to 100% of the shares in Milnes Holding Limited A.C.N., an Australian company listed on the Australian Stock Exchange. Milnes Holdings Limited has a New Zealand subsidiary, Keyplas Limited (“Keyplas”). This clearance is ultimately concerned with the indirect acquisition of Keyplas by Etex.
2. This determination relates only to the proposed share acquisition. Under section 66 of the Act the Commission only has the power to clear proposed acquisitions of shares or assets. The Commission does not have the power to approve appointments to boards of directors.

## **THE PROCEDURES**

3. The Commission registered the notice on 28 August 2000. Section 66(3) of the Act requires the Commission, within 10 working days after the date of registration of a notice, or such longer period agreed to by the Commission and the person giving a notice, to either give a clearance or decline to give a clearance for the acquisition proposed. The 10<sup>th</sup> working day after the registration of the notice is 11 September 2000.
4. Etex requested confidentiality from the Commission for specific information in the notice on the grounds that the information is commercially sensitive and disclosure would be likely to prejudice the commercial position of the parties to the application. The Commission, in accordance with section 100 of the Act, made a Confidentiality Order on 30 August 2000:
  - prohibiting the publication or communication of specific information until 20 working days from the Commission’s determination of the notice.
5. When the Confidentiality Order in respect of specific information expires, the provisions of the Official Information Act 1982 will apply to the information.
6. The Commission’s determination is based on an investigation conducted by its staff, and their subsequent advice to the Commission.
7. In the course of their investigation of the acquisition proposed by Etex, Commission staff had discussions with and sought the views and comments of a number of parties. The parties included manufacturers, wholesalers and importers of piping systems; merchants of piping systems; BRANZ; Building Industry Authority; and Master Plumbers Gasfitters & Drainlayers NZ Inc.

## **THE PARTIES**

### **Acquiror Group & Associates**

#### *Etex*

8. Etex is a limited liability company which has its registered office in the Netherlands and is a member of the company group owned by S.A. Etex Group N.V., a Belgian limited liability company. Etex is engaged in the manufacture and wholesale supply of roofing materials, plastic plumbing and building materials, exterior claddings (boards), flooring, and other building materials. Etex also owns a wide range of subsidiary companies throughout the world in a variety of business activities.
9. In January 1999 Etex acquired Marley Plc which has within its corporate group, Marley Holdings New Zealand Limited, the holding company for Marley New Zealand Limited (“Marley”).

#### *Marley Holdings New Zealand Limited*

10. Marley Holdings New Zealand Limited is the holding company for Marley New Zealand Limited (“Marley”) which:
  - manufactures and wholesales polyvinylchloride (“PVC”) plastic pipes and fittings
  - manufactures and wholesales polyethylene (“PE”) plastic pipes and sells imported PE fixtures, and
  - manufactures and wholesales rainwater products and exterior cladding.
11. Marley Holdings Limited is also the holding company for:
  - Dynex Extrusion Limited, which manufactures custom plastic extrusions, and
  - Chemvin Plastics Limited, which manufactures plastic compound from imported resin for Marley and external customers.

### **Target Company Group/Associates**

#### *Milnes Holdings Limited A.C.N.*

12. The target company, Milnes Holding Limited A.C.N., an Australian company listed on the Australian stock exchange, is the parent company of the Milnes Group. The Milnes Group has a number of subsidiary companies in Australia and one subsidiary company in New Zealand (Keyplas) and manufactures concrete products (pits and chambers), cast iron gates and covers, non-ferrous metal castings (such as taps and valves) and non-pressure PVC pipes and fittings. The Australian subsidiary companies are not relevant to this application.

#### *Keyplas*

13. Keyplas manufactures and wholesales PVC pipe. It also sells PVC fittings, at the wholesale level, that it imports from the Milnes Group.

## BACKGROUND TO INDUSTRY

14. PVC pipe is produced by an extrusion process and PVC fittings by an injection moulded process. PVC pipes and fittings (“pipe systems”) are produced to a common Australasian standard and are effectively interchangeable as between manufacturers. The applicant advises that PVC pipes typically contain non-heated fluids (potable water, and waste-water) and services (such as electrical wiring). PVC pipe systems (and PE pipe systems) may be pressured or non-pressured. In simple terms pressured pipes are denser than non-pressured pipes.
15. The only manufacturers of PVC piping systems in New Zealand are:
- Marley
  - Keyplas, and
  - Iplex Pipelines New Zealand Limited (“Iplex”).
16. The Commission notes that PVC pipe systems compete in a broader generic pipe market which includes pipes constructed of PE, polybutylene (“PB”), polypropylene, concrete, iron, steel, clay and copper. The substitutability of the different kinds of pipe construction is discussed within (see paras 39 to 47).
17. [
- ]the New Zealand pipe market may be broken into the following four segments:
- Civil/Infrastructure – being pipe used outside the boundary of all buildings
  - Rural/Irrigation
  - Building/Plumbing – being pipe used inside the boundary of all buildings, and
  - Telecommunications.
18. There is no industry body which collates relevant statistical data. In the absence of such a data base of information, market participants’ (including the applicant) estimates of market shares have been drawn from general industry knowledge, their own data, and import statistics for suppliers of raw materials and for finished products. The Commission has verified data estimates provided.

### New Zealand Pipe Market

19. Iplex estimate the value of the pipe market in New Zealand to be approximately [ ]. Iplex's estimate of the respective market shares held by competing types of pipe construction within the generic pipe market are depicted in the pie chart below:
20. The applicant has provided estimated sales figures for the generic pipe market broken down by type of construction. The Commission has estimated market share percentages based on the applicant's estimated sales figures illustrated in Table 1 below:

**Table 1: The Commission's estimate of respective market shares held by competing types of pipe construction in the generic pipe market – based on sales figures provided by the applicant**

Type of Construction	Market Share %
PVC	[ ]
PE	[ ]
Other Plastics	[ ]
Concrete	[ ]
Clay	[ ]
Iron	[ ]
Steel	[ ]
Copper	[ ]

21. The applicant has estimated the value of the generic pipe market in New Zealand to be approximately \$[ ] million. The information provided by the applicant indicates that PVE, PE and other plastics together make up [ ]% of the total market.
22. An analysis of the main segments of the pipe industry follows.

*Civil/Infrastructure*

23. The Commission estimates the size of this segment to be approximately \$[ ] million in dollar terms. [ ] analysis of the respective market shares, of the different types of pipe construction, in this segment of the overall pipe market is depicted in the following pie chart.
24. Competition for market share in this segment is primarily between plastic (PVC and PE) and concrete in the smaller diameter pipes (below 250 mm) and plastic and steel in pressure applications.
25. PE competes strongly with PVC in this segment. Some councils prefer PE pipes because they are perceived as being less brittle and more likely to survive earthquakes.

*Rural*

26. The Commission estimates the rural segment to be worth about \$[ ] million. [ ] analysis of the respective market shares, of the different types of pipe construction, in this segment of the overall pipe market is depicted in the following pie chart.
27. The rural segment is dominated by plastic pipes. Amongst the plastic pipes, PE pipes are often favoured over PVC pipes due to the fact that they are perceived as being more robust and flexible. Further perceived advantages of PE pipes, over PVC pipes, is that they are sold in larger lengths and coils and offer a flexibility that allows them to be 'curved' to follow the contours of the ground upon installation. Whereas PVC pipes are sold in fixed, rigid and shorter lengths and consequently require more 'joins'. For this reason PE piping systems can offer in ground cost benefits relative to PVC pipes.

*Building/Plumbing Segment*

28. The Commission estimates the building/plumbing segment to be worth around \$[ ] million. In this segment competition is split primarily between plastic (PVC, PE and PB) and copper pipes.
29. [ ] analysis of the respective market shares, of the different types of pipe construction, in this segment of the overall pipe market is depicted in the following pie chart.
30. For waste water plumbing of buildings, which makes up the vast majority of house hold plumbing, PVC is used almost exclusively. This is because waste water plumbing of buildings requires relatively small lengths of pipe and many 'joins'. PVC is preferred because PVC pipes can be glued together (larger PVC pipes can be connected with rubber ring joints) whereas PE pipes requires fusion welding techniques. Consequently, PE pipe is neither convenient nor cost effective for plumbers to install.
31. PVC pipes are not used for hot water plumbing. Hot water is usually conveyed in either copper, PB or a cross link PE.

*Telecommunications*

32. The Commission estimates this segment to be worth about \$[ ] million. This segment is all PVC and PE. There is considerable overlap between the two products although PE has the highest market share.

**MARKET DEFINITION**

**Introduction**

33. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered, and in which the application of section 47(1) of the Act can be examined.
34. Section 3(1A) of the Act provides that:
- “... the term ‘market’ is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.”
35. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473 and in the *Business Acquisitions Guidelines*<sup>1</sup>. A brief outline of the principles follows.
36. Markets are typically defined in relation to three dimensions; namely, product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit-maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
37. A properly defined market includes products which are regarded by buyers or sellers as being not too different (the product dimension), and not too far away (the geographic dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (“*ssnip*”), assuming that other terms of sale remain unchanged.
38. Markets are also defined by functional level (the functional dimension). Typically, production, distribution, and sale occur through a series of stages, with markets intervening between suppliers at one vertical stage and buyers at the next.

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<sup>1</sup> Commerce Commission, *Business Acquisitions Guidelines*, 1999.



### **The Relevant Market**

39. The delineation of relevant markets as a basis for assessing the competitive effects of a business acquisition begins with an examination of the products or services offered by each of the parties to the acquisition.
40. The only area where significant post-acquisition aggregation would occur is in the PVC pipes and fittings businesses of Keyplas and Marley. As noted earlier, Marley manufactures and sells PVC and PE plastic pipe and fittings, rainwater products and exterior claddings. Keyplas only manufactures and sells PVC pipes. Keyplas also sells PVC fittings imported from the Milnes Group.
41. In the present determination the Commission has chosen to take a conservative view of the relevant market and define it as the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand.
42. The Commission understands that in various instances PVC pipes compete directly with PE, concrete, steel and clay pipes. Anecdotal evidence suggests that to a certain extent choice between the various types of pipe is based on price, perceived customer preference and perceived inherent structural advantages. For instance, PE is perceived to be less brittle than PVC. Consequently, in some instances Councils will prefer PE pipe to PVC pipe – especially in earthquake prone areas. For this reason some of the market players have suggested the relevant market is simply the market for the “manufacture/wholesale supply of pipe in New Zealand”.
43. Other parties spoken to suggested it would be more accurate to define the market as the “manufacture/wholesale supply of plastic pipe systems in New Zealand”. Such a market would be dominated by PVC and PE but would also include PB and polypropylene. Lending credence to such a definition, the main PE manufacturers have confirmed that PE competes directly with PVC in all applications/segments of the overall pipe market (including pressured and non-pressured piping) with the (sole) exception of household plumbing.
44. PVC is used almost exclusively in waste water plumbing of buildings, which makes up the vast majority of house hold plumbing (see para 30). The Commission estimates that the building/plumbing segment of the generic piping market represents approximately [ ]% of the overall piping market. The fact that PVC has this niche segment of the pipe market almost exclusively to itself has prompted the Commission to opt for a conservative assessment of the market.
45. The applicant has suggested that “the Australasian market is increasingly operating as a single market”. All other parties spoken to by Commission staff were of the opinion that the market is still only a nationwide market. Furthermore, the Commission’s powers under the Act only apply to markets in New Zealand.<sup>2</sup> Accordingly, the Commission is of the view that the appropriate geographical market in this instance is the New Zealand market.

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<sup>2</sup> See section 3(1A) of the Commerce Act 1986.

46. In the present determination the Commission considers the relevant market for the purposes of competition analysis is the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand. In adopting this narrow market definition, it is noted that, if no dominance concerns are found in this market, it is unlikely that there would be any in a more widely defined market.

### **Conclusion on Market Definition**

47. The Commission concludes that the appropriate market for assessing the competitive effects of the acquisition proposed by Etex is the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand (“the manufacture/wholesale PVC pipe systems market”).

## **COMPETITION ANALYSIS**

### **Introduction**

48. Section 47 of the Act prohibits particular business acquisitions. It provides:
- (1) No person shall acquire assets of a business or shares if, as a result of the acquisition, -
    - (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
    - (b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”
49. The key issue for the Commission is to satisfy itself under section 66 of the Act that the acquisition as proposed by the applicant will not result, or would be likely to not result, in the acquisition or strengthening of a dominant position by any person in a market. In accordance with the Act, if the Commission were satisfied that dominance would not result, or would be likely to not result, it is required to give a clearance for the acquisition. Conversely, if the Commission is not satisfied, it must decline to give a clearance for the acquisition.
50. Section 3(9) of the Act defines a person as having a dominant position in a market:
- “... if that person as a supplier or an acquirer ... of goods or services is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”.
51. In determining whether a person has such a dominant influence, section 3(9) states that regard shall be had to:
- (a) The share of the market, the technical knowledge, the access to materials or capital of that person ... :
  - (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
  - (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

52. The leading exposition on “dominant position” is the High Court’s discussion in *Commerce Commission v Port Nelson Limited* (1996) 6 TCLR 406 (approved by the Court of Appeal). There McGechan J held at p. 441:

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute. ... ‘Dominance’ includes a qualitative assessment of market power. It involves more than ‘high’ market power; more than mere ability to behave ‘largely’ independently of competitors; and more than power to effect ‘appreciable’ changes in terms of trading. It involves a high degree of market *control*.

How high? Clearly, not absolute control. There need not be monopoly. There need not be ability to act totally without regard to competitors, suppliers, or customers. Expression of the required degree of control in terms of mastery – eg as ‘commanding’, ‘ruling’, or ‘governing’ – is perhaps to that extent misaligned, and needs to be read down.”  
(Emphasis in the original)

53. The *Business Acquisitions Guidelines* reflects the dominance test stated by the High Court and approved by the Court of Appeal:

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint from competitor or customer reaction.”

54. The Business Acquisitions Guidelines further states that:

“A person in a dominant position will be able to initiate and maintain an appreciable increase in price, or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position; it is sufficient for it to have that ability.”

### **Constraints from Competition within the Manufacture/Wholesale PVC Pipe Systems Market**

#### *Market Concentration*

55. An examination of concentration in the manufacture/wholesale PVC pipe systems market is a useful starting point for analysing the effect that the acquisition as proposed by Etex might have on that market, in terms of the constraint that the applicant would face from other market participants. In general, the higher the share of a market held by the merged entity, the greater the probability that a proscribed dominant position will, or will likely, be acquired or strengthened in that market. However, market shares are insufficient in themselves to establish a dominant position in a market. As well as market structure, behavioural factors, including the extent of actual and potential rivalry in the market, also typically need to be considered and assessed.
56. In respect of business acquisitions, the *Business Acquisitions Guidelines* specifies certain “safe harbours” determined on the basis of market concentration:

“In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exists

- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;

- the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market, and faces competition from at least one other market participant having no less than in the order of a 15% market share.”

57. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged entity and its rivals are relevant when considering the extent to which the rivals are able to constrain the merged entity.
58. In respect of a business acquisition triggering an intervention by the Commission based on market concentration, the *Business Acquisitions Guidelines* states:

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of market shares, fall within these safe harbours.”

59. The applicant has provided estimated sales figures for the overall/generic pipe market in New Zealand. Its estimates have been drawn from general industry knowledge, Marley’s own data and import statistics for suppliers of raw material and finished products. From this information Commission staff have been able to assess the market shares for the manufacture/wholesale PVC pipe systems market. This information is presented below in Table 2.

**Table 2: The Commission’s estimate of current market shares in the manufacture/wholesale PVC pipe systems market – based on the applicants estimated sales figures for the generic pipe market**

<b>Manufacturer/Importer</b>	<b>Market Share %</b>
Marley	[ ]
Keyplas	[ ]
Iplex	[ ]
Others	[ ]

60. Based on the applicant’s assessment of current market concentration, its post-acquisition market share would be approximately [ ]%. Iplex would hold a [ ]% market share.
61. In addition to the above market share data, the Commission obtained estimates of market shares from Iplex. Iplex have only assessed market shares in terms of a combined PVC and PE market. Iplex’s estimate of current market shares in the combined manufacture/wholesale PVC and PE market are depicted below in Table 3.

**Table 3: Iplex’s estimate of current market shares for manufacture/wholesale PVC and PE pipe systems market**

<b>Manufacturer/Importer</b>	<b>Market Share %</b>
Marley	[ ]
Keyplas	[ ]
Iplex	[ ]
Rx Plastics	[ ]
Prebensen	[ ]
Others	[ ]

62. Table 3 shows that the applicant's post-acquisition market share in the combined market for PVC and PE would be [ ]%. Iplex would hold a [ ]% market share.
63. In terms of the manufacture/wholesale PVC market, Kevin Kellow, General Manager of Iplex, has advised Commission staff that their PVC sales for the financial year ended 30 June 2000 were approximately \$[ ] million. Mr Kellow estimates that this would give Iplex a [ ]% share of the manufacture/wholesale PVC pipe systems market. Accordingly, Mr Kellow estimates that the applicants post acquisition market share in the manufacture/wholesale PVC pipe systems market would be [ ]%.
64. Purchase/sales figures provided by the major merchants have verified the approximate accuracy of the market share figures provided by Iplex and the applicant.
65. The Commission will, for the purposes of its assessment, adopt [ ] estimate of market share for the manufacture/wholesale PVC pipe systems market, as this yields the highest level of combined market share for the parties to the acquisition. The Commission considers that this will lead to an appropriately conservative assessment of concentration.
66. With a post-acquisition market share in the order of [ ]%, and with Iplex holding a market share of [ ]%, the acquisition is within the Commission's "safe harbours" stated in the *Business Acquisitions Guidelines* (see paras 56 to 58).
67. For the sake of prudence the Commission has also considered other factors that the applicant suggested will also operate as constraints on the merged entity.

#### **Constraint from Existing Competition in Overall/Generic Pipe Market**

68. PVC pipe systems operate within the generic pipe systems market which includes pipes of various constructions (see para 16). To varying extents PVC pipe systems compete against the other types of pipe systems in almost all areas/segments of the generic pipe market. Information provided by the applicant and Iplex indicate that 'plastics pipe systems' (being predominantly PVC and PE and to a lesser extent PB) share of the generic pipe market is in the range of [ ]%. Concrete and steel pipe having a significant share of the balance – approximately [ ]%. Competition is driven by price and customer preference.
69. In terms of a 'plastics pipe systems market', PE is the only other product with a sizeable market share. Based on sales figures provided by the major manufacturers, the Commission estimates PE pipe systems make up [ ]% of the overall plastic pipe systems market.
70. In addition to Iplex and Marley, PE is also manufactured in New Zealand by Rx Plastics, Prebensen, Waters and Farr and PEL. The Commission estimates that Iplex have a [ ]% share of the PE pipe systems market with Marley having a [ ]% share and Rx Plastics having a [ ]% share. Prebensen being the next biggest player with an estimated [ ]% share. These estimates are based on the sales figures of the major manufacturers.
71. Rx Plastics and Prebensen have confirmed that PE, in terms of structural suitability, offers a viable alternative to PVC in all segments of the market with the sole exception

of household plumbing (see para 30). All parties spoken too agreed that PE was a growing market. However, not everyone agreed with the applicant's assertion that this growth was at the expense of PVC.

### **Constraint by Merchants**

72. The applicant states that it will be constrained by the market power held by substantial retail merchants such as Placemakers, Mico Wakefield, Hume's Pipeline Systems and Hynds Pipe Systems. There was a broad consensus amongst the other industry players (both major merchants and other manufacturers) that the large merchants do in fact hold substantial market power – [ ]

73. [ ]

]

74. [ ]

]

75. [ ]

[ ] agreed with the applicant's assertion – that they are able to exert considerable market power. The main way in which merchants felt they are able to exert this power is by going from "one supplier to the other" or importing PVC pipe systems themselves (see below paras 76 and 77).

### **Constraints from Imports**

76. The applicant argues that the importation of pipe systems is increasing and has the potential to increase considerably more given the common Australasian standard and growth in Asian production.

77. As noted above one of the main ways in which merchants felt they are able to exert market power is their ability to import PVC pipe systems directly. [ ]

]

### **Low Barriers to Entry**

78. The applicant has suggested that the raw materials for producing the different types of pipes and fittings are all readily available and therefore there is no restriction, on any existing or potential supplier of a finished product, as to their levels of production. The other manufacturers of PVC and PE universally accepted this statement.

79. The applicant also stated that:
- the costs of establishing an extrusion plant or a moulding plant is relatively low – between \$1 and \$3 million, and
  - it is easy for manufacturers to use the same plant to manufacture both pressure and non-pressure pipe and fittings.
80. Both of these assertions have been verified by the other manufactures of PVC and PE. Although, some parties have suggested that it may cost a little more than \$1 to \$3 million to establish an extrusion or moulding plant, they agree that such a plant would be relatively easy to establish.

### **Conclusion on Competition Analysis**

81. As noted above (see para 58) the Commission, except in unusual circumstances, will not seek to intervene in business acquisitions which fall within its safe harbours. In the present instance the proposed acquisition does fall within the Commission's safe harbours.
82. In addition, the Commission has considered whether the merged entity would be able to initiate and maintain an increase in prices, or reduction in the quality or service, consistent with dominance. The Commission has concluded that it would be constrained from doing so by: existing competition in the generic pipe market and in particular by PE pipe systems; merchant's market power; the availability of imported PVC pipe systems; and low barriers to entry.

### **OVERALL CONCLUSION**

83. The Commission has considered the impact of the acquisition proposed by Etex on the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand.
84. Having regard to the various elements of section 3(9) of the Act (see paras 50 and 51), and all the other relevant factors, the Commission concludes that it is satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the manufacture/wholesale supply of PVC pipe systems in New Zealand.

**DETERMINATION ON NOTICE OF CLEARANCE**

85. Accordingly, pursuant to section 66(3)(b) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

Dated this 11th day of September 2000

M J Belgrave  
Chair