

# Notice under section 66 of the Commerce Act 1986

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Proposed business acquisition by  
Waters & Farr

# Commerce Act 1986: Business Acquisition

## Section 66: Notice Seeking Clearance

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**3 February 2010**

By email: registrar@comcom.govt.nz  
The Registrar  
Market Structure Group  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s 66 (1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

# Executive Summary

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## Proposal

1. This application seeks clearance for Waters & Farr (the trade name of Interpipe Holdings Limited) to acquire Fletcher Concrete and Infrastructure Limited's (**Fletchers**) vertical drycast technology (**VT**) concrete pipe plant at Hamilton (**VT Business**).
2. The proposal will achieve efficiencies which would not otherwise occur under any relevant counterfactual. Post-acquisition the merged entity would only have around a [ ] (ie including Waters & Farr, Fletchers and Hynds) share of supply in the relevant market and around a [ ] share of all pipe supply. [ ].

## Background

3. Waters & Farr is a 50/50 joint venture company owned by Hynds Limited (**Hynds Limited**) and Fletchers. Of relevance, the parties currently manufacture the following pipe diameters:
  - (a) Waters & Farr - polyethylene (**PE**) pipe between 225mm – 400mm and polypropylene (**PP**) Twin Wall Pipe (**TWP**) between 225mm – 450mm;
  - (b) Fletchers – VT and spinning technology (**Spun**) concrete pipe between 225mm – 450mm; and
  - (c) Hynds Pipe Systems Limited (**Hynds**) – Spun concrete pipe between 225mm – 450mm.
4. This application only involves aggregation in the manufacturing and wholesale supply of pipe ranging from 225mm to 450mm (inclusive). Pipe within that diameter range is supplied in a number of materials which offer competing solutions to any given pipe project. As confirmed by the Commerce Commission (**Commission**) in Decision No. 639 (discussed at paragraph 13 of this summary) substitutes include:
  - (a) plastic (including TWP), PE, PP, polyvinylchloride (**PVC**);
  - (b) concrete (including VT and Spun);
  - (c) ductile iron;
  - (d) steel (including concrete lined and galvanised);
  - (e) corrugated metal pipe (**CMP**);
  - (f) clay/earthenware; and
  - (g) glass reinforced pipe (**GRP**) and fibre reinforced pipe (**FRP**).

## Industry dynamics

5. The concrete pipe industry can be characterised by the following trends:
- (a) **Substitution:** While pipe systems of alternative materials are almost always substitutable, the rate at which concrete pipe systems are being substituted for alternative systems is increasing significantly more than that of other materials. This is especially the case within the 225mm – 450mm diameter range where for any given project there will almost always be pipe systems of different materials which could fulfil the engineering specifications for that project. Recent years have seen a marked acceleration in the substitution from concrete to alternative pipe systems generally (including plastic), as a result of continued innovation, and as customers’ familiarity with alternative systems has grown. The acceptance of alternative materials has been driven by the high numbers of foreign trained civil engineers where their overseas experience has enabled them to specify pipe systems of non-traditional materials. That trend is expected to continue, as evidenced by the US and UK, where there is essentially only a market for concrete pipes equal to, or greater than, 450mm. The manufacture of heavy, cumbersome concrete pipe less than 450mm will inevitably become a “sunset” industry.
  - (b) **Competition:** The pipe industry is highly competitive and that level of competition continues to intensify. Besides the high level of substitution from new materials and manufacturing technology, vigorous competition in the pipe industry is continually evolving due to new capacity and more stringent customer requirements.
  - (c) **Falling demand:** Macro demand for pipe is falling. Even accounting for the current global recession, which has had a significant impact on demand, demand is unlikely to return to pre-recession levels due to the completion of major infrastructure projects, predicted levels of large scale sub-divisions and continued competition from alternative pipe systems.
6. As a result of those market trends the joint venture (Waters & Farr) was established in 2005 as a competitive reaction to the increasing market shares of alternative pipe systems at the expense of traditional materials and manufacturing methods. The Waters & Farr joint venture model appears well-received in the market. It essentially operates as a toll processor competing on price and service.

### The formation of the Waters & Farr JV

7. In 2003 Crane Group Limited installed a TWP plant (an advanced engineered plastic pipe of great strength) in Brisbane. While Hynds had previously tentatively explored options regarding TWP technology, this development, coupled with the increasing preference for alternative pipe systems equal to and less than 450mm, provided the catalyst for Hynds to invest in a TWP machine. [
- ]. Having explored options, Hynds [
- ] agreed with Fletchers [
- ]
- to establish an efficient high utilisation manufacturing joint venture which would include:
- (a) Waters & Farr’s existing PE business;
  - (b) Hynds’ TWP machine (although not yet operational); and
  - (c) Fletchers’ VT Business.

8. The joint venture was conceived on the basis that all 3 components (a - c) would be absorbed as that model would best enable the parties to compete effectively in the 225mm – 450mm pipe space. [

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9. Instead, Waters & Farr was granted an option to acquire the VT Business. [

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### Impact of the acquisition

10. [

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11. The proposal will therefore result in Fletchers de-aggregating its direct interests in the manufacture of concrete pipe equal to and less than 450mm (as it will reduce its equity in the VT Business from a direct 100% to an indirect 50% interest via Waters & Farr). Hynds would, via its 50% stake in Waters & Farr, gain an indirect 50% interest in the VT Business, [

]. The proposal will result in aggregation in the manufacture of pipe between 225mm – 450mm for Waters & Farr given its current plastic pipe production within that diameter range. But the proposal will not result in aggregation at the distribution/merchant level.

12. The Hynds Directors see commercial benefit from the proposal. They believe that [ ] Consolidating production will result in reduced costs, enabling more competitive pricing against alternative pipe systems which continue to replace concrete pipe for many applications.

### Relevant market

13. The applicant notes and agrees with the Commission's analysis in Decision No. 639, New Zealand Investment Holdings Limited and RX Plastics Limited, 11 February 2008, (*Marley/RX*). There the Commission defined the relevant market as the national market for the manufacture and wholesale supply of large diameter bore pipe systems over 250mm. Waters & Farr does not consider that there is any basis for choosing 250mm as a starting point. Accordingly for this application the applicant takes a conservative approach, focusing on the areas of aggregation, defining the relevant market as the national market for the manufacture and wholesale supply of pipe systems, between 225mm and 450mm (the **225mm – 450mm pipe market**).

14. As noted (at paragraph 2 of this summary), the Hynds Directors estimate that post acquisition Waters & Farr would only account for:
- (a) around a [ ] share of all pipe supplied; and
  - (b) around a [ ] share of the 225mm – 450mm pipe market.<sup>1</sup>
15. The Hynds Directors note that the 225mm – 450mm pipe market accounts for an estimated [ ] of all pipe with concrete pipe accounting for less than [ ] of that market. Thus, concrete pipe between 225mm – 450mm accounts for less than [ ] of total pipe supply.

#### **No competition concerns**

16. Given that those figures (above in paragraphs 14 and 15) represent a relatively low level of aggregation and share of total pipe supply the applicant is confident the proposal does not raise any competition concerns. There are a number of factors that will ensure the market will remain competitive, including:
- (a) As the Commission has concluded, there is a high level of substitutability between concrete pipe systems and pipe systems made of alternative materials, and there are a large number of manufacturers supplying the 225mm – 450mm pipe market. Among other things, various large, well-resourced international plastic pipe manufacturers will continue to constrain Waters & Farr (and its parents) post-acquisition, including Iplex/Crane, Aliaxis (Marley/RX) and Tyco.<sup>2</sup>
  - (b) The Waters & Farr joint venture model has enjoyed great success in the market as it was designed, and is seen, to act entirely independently from its parents as it pursues its price and quality objectives. It has a proven track record of supplying customers on a non-discriminatory basis and the proposal enables it to supply efficiently manufactured VT pipe to a greater range of third party distributors/merchants. (Currently supply from the VT Business is predominantly only available through Fletchers' channels.)
  - (c) Fletchers and Hynds do not have any influence over Waters & Farr's individual quotes and do not receive accounts showing individual sales. As a joint venture, Waters & Farr also has different incentives to either of the joint venturers acting individually.
  - (d) Even focusing solely on concrete pipe, there are other suppliers of pipe such as Austin Pipe Concepts (which has installed a VT pipe plant and has commenced manufacturing pipe) and Absolute Concrete.
  - (e) As the Commission noted in *Marley/RX* almost all sales in the 225mm – 450mm pipe market are conducted by competitive tender via contractors on behalf of end-users such as local authorities. Concrete pipe, if specified, will always form part of a larger selection of products sought for a particular project. Contractors initially seek quotes from pipe suppliers in the process of tendering for a project and suppliers will also provide quotes for what they consider to be substitutes for a particular project based on the specifications. Once a contractor is awarded a project, the contractor has little trouble exercising its countervailing power as suppliers compete vigorously to supply projects.

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<sup>1</sup> [ ] and Waters & Farr would essentially be a toll processor for the parties, but it would also supply third parties directly.  
<sup>2</sup> *Marley/RX*, p19.

- (f) There are no impediments on existing players expanding output or utilising excess capacity.
  - (g) As the Commission acknowledged in *Marley/RX*, barriers to entry are low<sup>3</sup> (evidenced by “greenfields” establishments such as RX Plastics and Austin Pipe Concepts which has recently started manufacturing VT pipe, and according to it, adopting the latest technology) and there are numerous potential entrants. New entry is full “turnkey” as pipe plant manufacturers offer full support regarding effective operation of their machinery. The applicant is aware that a number of pipe plant manufacturers visit New Zealand each year to showcase their technology.
  - (h) Similarly there are few impediments to expansion of imports (as recognised by the Commission)<sup>4</sup> and many potential offshore suppliers.
  - (i) There is no relevant counterfactual that is likely to result in a more competitive market than the proposal. The proposal enables efficiencies to be realised as the VT Business’ capacity would be significantly increased. Relevant counterfactuals would result in greater costs and at excess capacity as the parties’ plants would be under utilised and produce pipe at a greater marginal cost.
17. In short the applicant does not consider that the proposal raises any legitimate competition concerns.

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<sup>3</sup> As above, pp 14-15.

<sup>4</sup> As above, pp 11-15, 19.

# Part 1: Transaction Details

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## 1. Person giving this notice

### 1.1 This notice is given by:

John Hynds  
Director  
(Hynds appointed director)  
Interpipe Holdings Limited  
306 Neilson Street  
Onehunga  
AUCKLAND  
Website: [www.watersandfarr.co.nz](http://www.watersandfarr.co.nz)  
Telephone: (09) 274 0316  
Facsimile: (09) 272 7485

### 1.2 Correspondence and inquiries should in the first instance be directed to:

Minter Ellison Rudd Watts  
Lawyers  
Lumley Centre  
88 Shortland Street  
PO Box 3798  
AUCKLAND  
Attention: Andy Matthews/Nicko Waymouth  
Telephone: (09) 353 9700  
Direct Dial: (09) 353 9847/(09) 353 9837  
Facsimile: (09) 353 9701  
Email: [andy.matthews@minterellison.co.nz](mailto:andy.matthews@minterellison.co.nz)  
[nicko.waymouth@minterellison.co.nz](mailto:nicko.waymouth@minterellison.co.nz)

## 2. Details of other merger parties

Fletcher Concrete and Infrastructure Limited  
810 Great South Road  
Penrose  
AUCKLAND  
Website: [www.fletcherbuilding.com](http://www.fletcherbuilding.com)  
Telephone: (09) 525 9000  
Facsimile: (09) 525 9989  
Attention: Mark Binns  
Position: Director

### 2.1 Correspondence and inquiries should in the first instance be directed to:

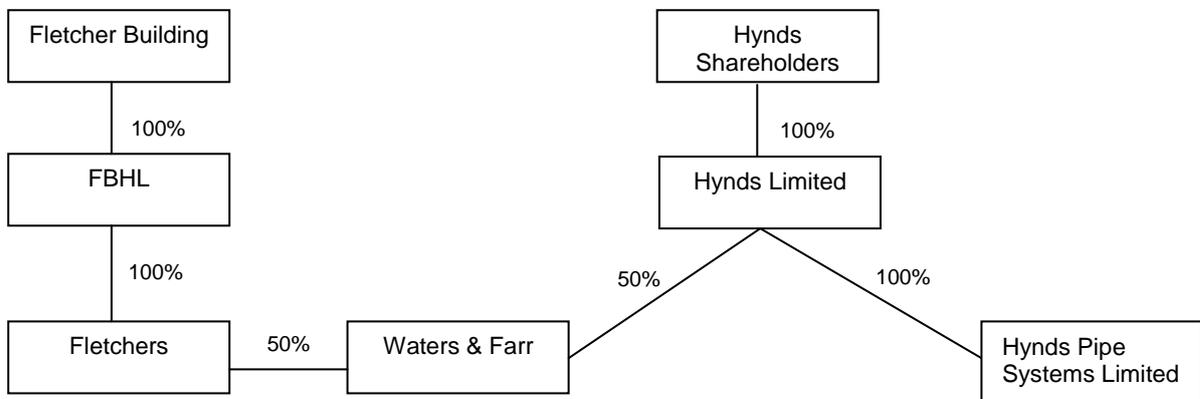
Chapman Tripp  
Lawyers  
ANZ Centre  
23 Albert St  
PO Box 2206  
AUCKLAND

Attention: Lindsey Jones  
 Telephone: (09) 357 9000  
 Direct Dial: (09) 957 9020  
 Facsimile: (09) 357 9099  
 Email: [lindsey.jones@chapmantripp.com](mailto:lindsey.jones@chapmantripp.com)

### 3. List of companies relevant to merger parties

- 3.1 (a) Interpipe Holdings Limited (**Waters & Farr**);
- (b) Fletcher Concrete and Infrastructure Limited (**Fletchers**);
- (c) Humes Pipeline Systems (**Humes**) (a division of Fletchers);
- (d) Fletcher Building Holdings Limited (**FBHL**);
- (e) Fletcher Building Limited (**Fletcher Building**);
- (f) Hynds Pipe Systems Limited (**Hynds**);<sup>5</sup>
- (f) Hynds Limited (**Hynds Limited**); and
- (g) Hynds, Waters & Farr and Fletchers (the **parties**).

**Diagram 1: Shareholder structure**



### 4. Details on what is to be acquired

- 4.1 Clearance is sought by the directors of Interpipe Holdings Limited (**Waters & Farr**) appointed by Hynds Limited (the **Applicant**) on behalf of Waters & Farr for Waters & Farr, or any interconnected body corporate of Waters & Farr, to acquire Fletcher Concrete and Infrastructure Limited's (**Fletchers**) vertical drycast technology (**VT**) concrete pipe plant at Ruffell Road, Hamilton (**VT Business**) (the **Proposal**).
- 4.2 This acquisition does not involve Fletchers' other concrete pipe plants.
- 4.3 The VT Business comprises plant relating to the manufacture of vertical drycast concrete pipe products, intellectual property, stock and any lease of property where the VT Business is located.

<sup>5</sup> Hynds also includes Hygrade Products Limited, see 8.18 for description.

4.4 Currently, most product manufactured by the VT Business is distributed through Fletchers' merchant channels. Post-acquisition Waters & Farr will open up additional distribution channels as it will provide third parties access, on a non-discriminatory basis, to product from the VT Business (ie in addition to Hynds and Fletchers (via Humes)).

## 5. Explanation of commercial rationale for proposed acquisition

5.1 Concrete pipe, particularly smaller diameter pipe (between the diameters of 225m - 450mm), is traditional technology. Over the last 30 - 40 years there has been a significant shift away from concrete pipe in preference for lightweight technologically advanced plastic pipe alternatives. As a result of this shift, demand for concrete pipe has significantly decreased and continues to do so. This decreasing demand has primarily been in the 225mm – 450mm diameter range.

5.2 Because of falling demand and vigorous competition from plastic and other alternative pipe systems, it is vital that concrete pipe be produced by the most efficient means in a plant with high utilisation to remain cost competitive. [

].

5.3 [

]. This will allow significant efficiencies to be realised as the VT Business will have a greater utilisation rate compared with Hynds and Fletchers operating separate, under-utilised, small diameter machines. This will result in the production of concrete pipe at a lower marginal cost enabling the parties to more readily meet the competition presented by alternative pipe systems. Additionally, third parties will also have access to efficiently produced small diameter concrete pipe.

5.4 Essentially, the Proposal allows Hynds, Fletchers and third parties cost effective access to efficiently produced VT small diameter concrete pipe from a plant running at optimal rates of utilisation.

5.5 [

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## 6. Copies of final/most recent version of documents bringing about the proposed merger

6.1 [

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6.2 [

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6.3 [

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6.4 [

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6.5 Copies of the relevant agreements are enclosed in **Confidential Appendix 1** and **Confidential Appendix 2**.

7. **List competition agencies in any other jurisdiction which have been notified of the proposed merger**

7.1 Not applicable.

## Part 2: The Industry

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### 8. Description of relevant goods or services supplied by the merger parties

8.1 Waters & Farr, Fletchers and Hynds currently manufacture pipe that is predominately used by civil and infrastructure customers, such as municipalities (pipe is also supplied to the farming, forestry and commercial sectors). Pipes used by civil and infrastructure customers are predominately 225mm and above in diameter (but diameters above 50mm are used) and are used outside private property boundaries and/or in municipal networks.

8.2 The most common applications for pipe above 225mm are as follows:

- (a) **storm water:** pipe that is used to drain surface water caused by normal precipitation, including transit projects for major roading networks;
- (b) **sewer:** pipe used to transfer raw sewage once that sewage has left the boundary of a building;
- (c) **water reticulation and irrigation:** pipe used for reticulation of drinking water in municipal networks; and
- (d) **rural on farm:** pipe used for farm and forestry drainage, and irrigation.

8.3 Pipe between 225mm – 450mm can be manufactured from various materials including:

- (a) plastic (including Twin Wall plastic pipe);
  - (i) polyvinylchloride (**PVC**)
  - (ii) polyethylene (**PE**)
  - (iii) polypropylene (**PP**)
- (b) concrete;
  - (i) Spun
  - (ii) VT
- (c) ductile iron;
- (d) steel (including concrete lined and galvanised);
- (e) corrugated metal pipe (**CMP**, includes aluminium and steel);
- (f) clay/earthenware; and
- (g) glass reinforced plastic (**GRP**) and fibre reinforced plastic (**FRP**).

8.4 Concrete pipe can either be manufactured by using Spun or VT (eg the VT Business uses VT). Among other benefits, VT produces pipe more efficiently and is suitable for long-run production compared to Spun. From an end-user's view there is no distinction between Spun and VT manufactured pipe as they perform the same function.

**Fletchers**

- 8.5 Fletchers (via its Humes manufacturing division) manufacture both VT and Spun concrete pipe on its older machinery. It currently manufactures VT pipe between diameters of 225mm – 3000mm and Spun pipe between diameters of 300mm – 2550mm.
- 8.6 The majority of its pipe is distributed through its own merchant network (ie Humes merchant division) while a small amount is sold through other merchants such as MICO Pipelines.
- 8.7 Humes merchants also supply PP Twin Wall Pipe (**TWP**) under the “Boss” brand and solid wall PE pipe which is manufactured by Waters & Farr (and other manufacturers such as Marley, RX and Iplex), and PVC pipe manufactured by a number of other competitors.
- 8.8 Fletchers’ manufacturing plants are located at:
- (a) Hamilton (VT Business currently manufacturing pipe between 225mm and 600mm);
  - (b) Hastings (Spun plant currently manufacturing pipe between 300mm and 2000mm);
  - (c) Papakura (VT plant currently manufacturing pipe between 750mm and 3000mm and Spun plant has the capability of manufacturing pipe between 300mm and 2550mm); and
  - (d) Christchurch (Spun plant currently manufacturing pipe between 300mm and 2000mm).
- 8.9 Fletchers (via Humes/CSP Pacific (**CSP**)) also manufacture and supply corrugated steel pipe. Alongside a wide range of other civil infrastructure and road safety products, CSP manufactures and supplies “MultiPlate” and “SuperSpan” products, commonly used for culverts, storm drains, bridges and underpasses.<sup>6</sup>
- 8.10 Fletchers and its wider group of companies are involved in the manufacture and distribution of a variety of building/infrastructure products that are unrelated to this application/proposal.

**Waters & Farr**

- 8.11 As noted earlier, Waters & Farr is a joint venture company owned 50/50 by Fletchers and Hynds.
- 8.12 On the formation of Waters & Farr in 2005, Fletchers transferred its Waters & Farr PE pipe manufacturing business to the Waters & Farr joint venture and Hynds transferred its newly acquired, but not yet operational, TWP machine to Waters & Farr.
- 8.13 Waters & Farr manufactures TWP between the diameters of 225mm – 400mm and PE between the diameters of 10mm – 450mm. Waters & Farr distributes both its TWP and PE pipe to customers including Hynds, Humes, MICO Pipelines, Plumbing World, Vector, and MasterTrade. [ ].
- 8.14 Waters & Farr’s TWP and PE manufacturing plant is located at Wanganui.

**Hynds**

- 8.15 Hynds is a privately held company that manufactures Spun concrete pipe between the diameters of 225mm – 2100mm and wetcast concrete pipe in larger diameters up to 3050mm.

<sup>6</sup> Information sourced from <http://www.csppacific.co.nz/Products.php?id=34&Cat=Multiplate&MenuBut=Structures&MenuItem=5&Categorized=No>.

The majority of its pipe is distributed through its own merchant network while a small amount is sold through other merchants such as MICO Pipelines.

- 8.16 Hynds' manufacturing division has plants located at:
- (a) East Tamaki (Spun concrete pipe plant); and
  - (b) Christchurch (Spun concrete pipe plant).
- 8.17 Hynds' merchant division has 27 sales branches throughout New Zealand, which also distribute PVC, TWP and PE pipes. It sources that pipe from its manufacturing division and a variety of New Zealand based manufacturers (such as Marley, RX and Iplex). Hynds also manufactures and distributes a range of other building/infrastructure related products that are unrelated to this application/proposal.
- 8.18 Hynds also owns Hygrade Products Limited, a separate legal entity which is a specialist agency importing business representing internationally renowned drainage and water main product manufacturers, predominantly from Europe.

## 9. Description of industry

- 9.1 The pipe industry, like many industries involved in producing building/infrastructure products/supplies, is made up of a variety of participants producing products manufactured from various materials but which ultimately have the same end use/purpose. Essentially, for any given pipe project there is likely to be a number of different competing piping solutions in which pricing will usually be a major factor.
- 9.2 Pipe can be manufactured from plastic (polyvinylchloride (**PVC**), polyethylene (**PE**), and polypropylene (**PP**)), concrete (Spun and VT), ductile iron, steel (including corrugated metal pipe), clay, and GRP/FRP. Pipe manufactured from all these materials are widely available in New Zealand. Concrete pipe is generally manufactured domestically but there have been instances of significant volumes of larger diameter pipe being imported (discussed further at 18.19). Plastic, steel and iron pipe is both manufactured domestically and imported, while clay pipe tends to be imported.
- 9.3 The pipe industry is comprised of both independent and well-resourced multinational players and is highly competitive.
- 9.4 The pipe industry's main customer segments identified by the Commission in *Marley/RX* regarding plastic pipe include:
- (a) Civil/infrastructure customers, who account for 40% of all pipe end users;
  - (b) Building and plumbing customers, who account for 30% of all pipe end users;
  - (c) Rural irrigation customers, who account for 25% of all pipe end users; and
  - (d) Telecommunications and utilities customers, who account for 5% of all pipe end users.

For a detailed summary of the general pipe customer groups refer to paragraphs 32-40 of *Marley/RX*.

- 9.5 However, those customer segments vary for the 225mm – 450mm pipe market. A *Building and Plumbing* segment (which is primarily pipe structures within buildings) does not exist as

225mm – 450mm pipe is not generally installed within buildings. The main customer segments for 225mm – 450mm pipe include:<sup>7</sup>

- (a) Civil/municipal/infrastructure customers, who account for [ ] of all 225mm – 450mm pipe end users. (For example storm water [ ], sewer [ ], and water reticulation/irrigation schemes (off farm) [ ].)<sup>8</sup>
- (b) Rural on farm customers, who account for [ ] of all 225mm – 450mm pipe end users. (For example land drainage, on farm water supply for stock and irrigation.)

9.6 As discussed further at 16.16, concrete pipe’s share of each customer segment has been consistently eroded with the emergence and acceptance of alternative pipe systems.

9.7 As sales of pipe 225mm in diameter or greater are predominantly sold for civil and infrastructure projects, sales are conducted on a competitive tender basis (as discussed in the Executive Summary). Typically an asset owner (eg a local authority council, central government authority or land owner/developer etc) organises a design and relevant consent application and invites tenders to construct a pipeline as part of a project. A civil contractor would seek prices from suppliers, including merchants. Given that the pipe supply market is highly competitive contractors are aware of their countervailing power.

9.8 For merchants, it is important that they stock a full range of piping systems as contractors and other customers tend to look for a full piping solution for a particular project, rather than simply a pipe of a specific material. There can often be more than one solution for a project and projects often use different pipe materials in the same job.<sup>9</sup>

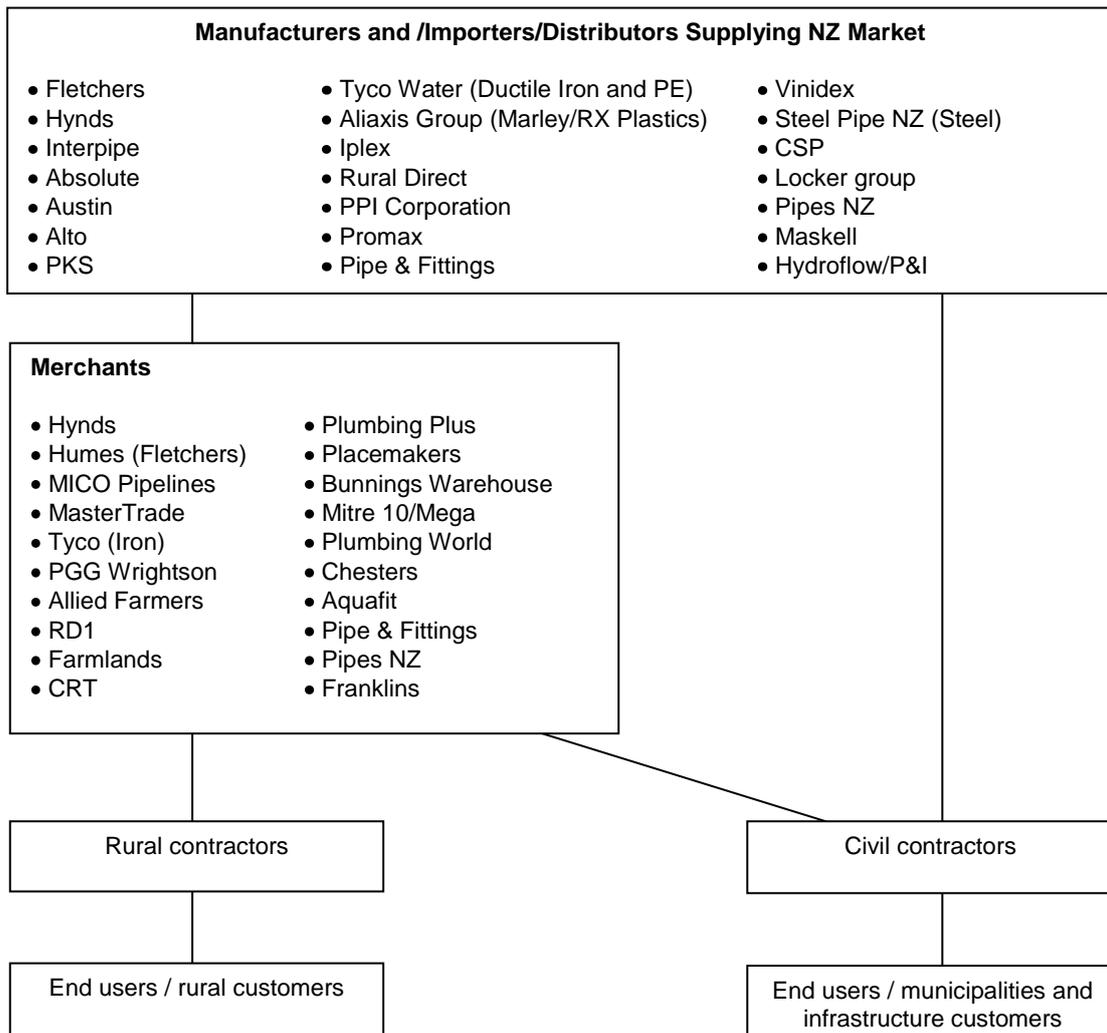
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<sup>7</sup> Source: The Applicant’s estimates.

<sup>8</sup> Note that major irrigation schemes could impact on this mix in any given period.

<sup>9</sup> *Marley/RX*, para 36.

9.9 **Diagram 2: Supply Chain for Pipe between 225mm – 450mm**



10. **Current industry trends and developments**

- 10.1 Internationally over the last three to four decades the pipe industry has witnessed a significant shift away from traditional concrete pipe to new technologically advanced pipe systems including plastic pipe.
- 10.2 This trend is clearly illustrated by the variety and sophistication of today’s alternative pipe systems. It is the Applicant’s view that plastic pipe systems will only continue to improve through future advancements and further erode the market share of concrete pipe. The substitution of plastic pipe for concrete is consistently accelerating as historical resistance to plastic pipe subsides.
- 10.3 Domestically, 225mm concrete pipe has lost a significant share of supply to plastic to the extent that 225mm concrete sewer pipe is almost (to the Applicant’s knowledge) no longer manufactured. In the 1970s, 150mm concrete pipe had been the dominant force but today is no longer even produced. Concrete pipe of 300mm, 375mm and 450mm have also lost a significant share of supply, particularly over the last 10 years or so. While 450mm concrete sewer pipe is still managing to compete with plastics, plastics are increasingly becoming the preferred option.

- 10.4 However, the full extent of plastic pipe's impact on the New Zealand pipe industry is yet to be felt judging by international pipe trends. The erosion of concrete pipe's market share is most pronounced in the United States. Over the last 30 years US concrete pipe manufacturers have experienced a dramatic switch in favour of plastic pipe. This has been driven by innovations such as PVC, PE and TWP, a type of structured wall plastic pipe of great strength and durability.
- 10.5 This trend forced US concrete pipe manufacturers to launch comprehensive public relations campaigns to promote their product in the 1990s.<sup>10</sup> However, the Applicant understands that the preference for plastic over concrete is now so strong that concrete pipe less than 450mm is essentially no longer manufactured in the US. (While it is unlikely that concrete pipe of 450mm will be manufactured in the near future.) In order for the concrete pipe industry to survive and remain competitive there was forced industry consolidation. This led to Hanson Building Materials America Inc. (**Hanson**) becoming the largest producer of concrete pipe in the USA.<sup>11</sup> Hanson acquired a number of concrete pipe producers during the 1990s as concrete pipe manufacturers struggled to compete with the rise of plastic pipe.
- 10.6 Australia has experienced a similar story. For example, 225mm concrete pipe had once been the only pipe used in that size range for storm water. Today, 95% of 225mm storm water pipe used in Australia is plastic. In fact, concrete pipe of 225mm and below is, to the best of the Applicant's knowledge, no longer manufactured in Australia. The Applicant notes that concrete pipe's share of supply of up to 450mm pipe in Australia is consistently being eroded by plastic.
- 10.7 There have been a number of mergers in recent years in the concrete products sector (including aggregation in pipe systems) which, to the best of the Applicant's knowledge, have gone unopposed. In May 2008, Americast, Inc (**Americast**) announced that it would be merging with The Clear Flow Company (**Clear Flow**), with effect from 1 July 2008. Americast is a Virginia based, independently owned precast concrete and reinforced concrete pipe manufacturer while Clear Flow makes complementary precast water and sewer packaged systems.<sup>12</sup>
- 10.8 In the first half of this year, Advanced Drainage Systems, Inc (**ADS**) acquired two concrete related companies. On 1 April 2010 ADS completed the acquisition of Foltz Concrete Pipe Company, LLC (**Foltz**) of North Carolina. According to ADS, it is the world's largest producer of HDPE pipe, including TWP.<sup>13</sup> Further expanding its presence in the concrete industry, ADS acquired Piedmont Concrete, a manufacturer of precast sanitary and storm water structures, shortly after acquiring Foltz.<sup>14</sup>
- 10.9 In the Australasian context, a merger between Reinforced Concrete Pipes Pty Limited and Australasian Pipeline and Pre-Cast Pty Limited took effect from 1 July 2009, making the merged company Reinforced Concrete Pipes Australia the only wholly Australian owned supplier of steel reinforced concrete pipe.<sup>15</sup> The ACCC has made no public opposition to this merger. The ACCC has also recently cleared Holcim Australia PTY Limited's (Hume) acquisition of certain assets of Hunter Concrete Products Pty limited, discussed at 12.12.
- 10.10 Essentially, overseas evidence supports domestic trends that concrete pipe is struggling to remain competitive in the 225mm – 450mm range with the emergence of plastic alternatives.

<sup>10</sup> See [http://concreteproducts.com/mag/concrete\\_concrete\\_pipe\\_industry/](http://concreteproducts.com/mag/concrete_concrete_pipe_industry/) or <http://concreteproducts.com>.

<sup>11</sup> See <http://www.fundinguniverse.com/company-histories/Hanson-Building-Materials-America-Inc-Company-History.html>. See also, Cemex S.A.B de C.V (**Cemex** - Mexico) acquisition of Rinker Group (**Rinker** – Australia). While the Department of Justice sought Cemex to divest a number of ready mix concrete, concrete block and aggregate plants in the USA it did not seek the divestment of Rinker's concrete pipe manufacturing assets, <http://www.justice.gov/atr/cases/cemex.htm>.

<sup>12</sup> Information sourced from [http://www.americastusa.com/index.php/news/press\\_release/americast\\_inc\\_annou](http://www.americastusa.com/index.php/news/press_release/americast_inc_annou).

<sup>13</sup> Information sourced from <http://www.ads-pipe.com/en/article.asp?articleID=114>.

<sup>14</sup> Information sourced from <http://www.ads-pipe.com/en/article.asp?articleID=117>.

<sup>15</sup> Information sourced from <http://www.rcpa.com.au>

- 10.11 The preference for plastic pipe is largely driven by ease of use, price and a growing acceptance of plastic pipe by specifiers (as discussed in the Executive Summary). Faced with constraints presented by plastics, concrete pipe manufacturers have to realise efficiencies to remain competitive.
- 10.12 As noted at 9.5(a), the civil/municipal/infrastructure sector accounts for [ ] of all users of 225mm – 450mm pipe. Being the largest end users, their changing preference to plastic pipe has and will continue to place pressure on concrete manufacturers to realise efficiencies in order to compete. A recent example of a local authority switching to plastic is Christchurch City Council, who the Applicant considers historically adopted a conservative approach to new technologies.
- 10.13 This trend will continue in the future to the point where the manufacture of concrete pipe in New Zealand less than 450mm is likely to become obsolete.

### Imports

- 10.14 Since 2003, the Applicant understands imports of PVC pipe have increased reaching 6.5% of the PVC pipe sales in 2007. The Applicant believes that pipe imports will only increase in the future with likely candidates such as Australian based Vinidex Pty Limited and Iplex Pipelines, discussed later at 16.5(a) and 16.4(b) respectively. In *Marley/RX* the Commission recognised the growing role of imports and low barriers to entry regarding PVC importation.<sup>16</sup>
- 10.15 There are ongoing shipments of concrete pipe from Thailand into New Zealand. While those shipments have been in diameters greater than 450mm the Applicant sees no reason why end-users or merchants could not ship concrete pipe of smaller diameters if incentivised. There are no relevant tariffs or duty on pipe imports.

## 11. Any relevant mergers that have taken place over last three years

- 11.1 On 3 April 2008 the Commission granted New Zealand Investment Holdings Limited (Marley) or any of its interconnected bodies corporate clearance to acquire 100% of the shares, or assets and business of RX Plastics Limited. That decision involved aggregation in PVC and PE pipe systems less than 250mm and large bore pipe systems up to 450mm.
- 11.2 Fletchers have acquired other businesses but none of those acquisitions have involved pipe manufacturing assets or shares in New Zealand.
- 11.3 Hynds have also acquired other businesses with none of those acquisitions involving pipe manufacturing assets or shares.

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<sup>16</sup> *Marley/RX*, para 106.

## Part 3: Market Definition

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### Horizontal Aggregation

12. For each area of aggregation of market shares, please define the relevant market(s) for the:

#### Product market

- 12.1 The acquisition will result in aggregation in the manufacturing and wholesale supply of pipe systems between 225mm - 450mm for Waters & Farr.

- 12.2 [

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- 12.3 Similarly, the Proposal will not result in any aggregation at the distribution/merchant level as both Hynds and Fletchers (via Humes) will essentially continue supplying similar quantities of concrete pipe between 225mm – 450mm.

- 12.4 The Commission considered pipe markets in 2008 in *Marley/RX*. The Commission defined *national markets for the manufacture and wholesale supply of:*

- *large diameter bore pipes systems, over 250mm (the large bore pipe market);*
- *PVC pipe systems, under 250mm (the PVC pipe systems market); and*
- *PE pipe systems, under 250mm (the PE pipe systems market).<sup>17</sup>*

- 12.5 In doing so the Commission noted in regards to all three defined markets “... *that this is a narrow market definition, and so represents a conservative approach to assessing the competitive impact of the proposed acquisition*”.<sup>18</sup> (The Applicant notes that *Marley/RX* only involved aggregation in large bore PVC and PE pipe.)

- 12.6 The Applicant agrees with the Commission’s reasoning and conclusions in regards to the *large bore pipe* market, in particular that concrete pipe is “...*a regular substitute*...” for PVC and PE pipes greater than 250mm and thus falls within the same product market.<sup>19</sup> But the Applicant considers that there is no market distinction between pipe of 250mm and 225mm diameters as the same degree of substitutability exists at 225mm as it does at 250mm. Pipes made from all plastics, especially TWP, PVC and PE are regularly substituted by end users in the diameter range of 225mm - 450mm. The largest customer group for pipes between 225mm - 450mm is the civil and infrastructure group. The Commission noted in *Marley/RX* that this group informed the Commission “... *that while smaller diameter PVC and PE pipe systems are priced lower than other materials, at diameters above 250mm concrete becomes a more cost effective option, and so PVC and concrete pipes become closer substitutes. Clay, ductile*

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<sup>17</sup> As above, paras 62, 68.

<sup>18</sup> As above, para 63.

<sup>19</sup> As above, para 61. See also Commerce Commission Investigation Report, *Iplex Pipelines New Zealand Limited/Keyplas Limited*, 20 December 2004, para 30 (**Commission Report**).

*iron, steel and fibreglass also become substitutes.*<sup>20</sup> The Applicant agrees with this assessment but believes substitutability between pipes of various materials is initiated at 225mm rather than 250mm.

- 12.7 Additionally, the pricing of plastic pipe systems has become more competitive as plastic pipe materials have proven to have a lower installation cost than concrete, taking into account their light weight and longer length sections. Plastic pipe's moulded joint systems and associated fittings, which enhance pipeline seal integrity, also contribute to their competitiveness. The lighter weight plastic pipe does not require such heavy machinery to install and has lower associated health and safety management costs. Thus, the diameter at which different piping systems become comparable on price alone is not static.
- 12.8 Given those market characteristics the Applicant submits that the relevant market to analyse the Proposal is *the market for pipe systems between 225mm and 450mm*.
- 12.9 For completeness, the European Commission has also recognised the substitutability of large bore pipes of different materials when it concluded:

*“For water pressure, the parties point out that PVC is replacing asbestos and cement large diameter pipes which have to be withdrawn for health reasons. Users have gained more experience with PVC pipes & become more confident with the product. This has allowed an improvement in the competitiveness of PVC in larger-diameter pipes against Glass Fibre Reinforced Polyester (GRP), fibro cement and ductile iron pipes up to pressure of 10 bars.”*<sup>21</sup>

- 12.10 While pipe made of certain materials may be specified for specific projects on occasion, the Applicant believes that these situations are limited and would not affect the adoption of the 225mm – 450mm pipe market. One example is pipe used under the runway at Auckland Airport. Due to the significant weight of aircraft, concrete pipe is required because of its inherent structural strength. However, the parties would not be able to raise prices for such customers as they would be constrained by the prices of concrete pipe for those customers who have the option of substituting concrete pipe and countervailing power of contractors. In the vast majority of cases there will be pipe material choice as to which pipe(s) will provide a suitable solution and this will be decided through a vigorously competitive tender process.
- 12.11 The Applicant is aware of two previous approaches to pipe market definitions by international regulators; one based on materials used in the manufacturing process and the other on the pipe's application. While the ACCC defined a market for all plastic pipes and fittings,<sup>22</sup> the UK<sup>23</sup> and EU regulators have preferred to define/acknowledge markets by application ie separate markets for water and sewage pipes.<sup>24</sup> (It was recognised by the EU Commission back in 1995 that plastic was now competing more with concrete regarding large bore pipe<sup>25</sup> – the Applicant submits that this trend has only increased.) But the Applicant considers that neither the ACCC or EU/UK approaches are justified in New Zealand as in practice pipes of all materials are substitutable between 225mm – 450mm.
- 12.12 More recently the ACCC considered Holcim Australia PTY Limited's acquisition of certain assets of Hunter Concrete Products Pty Limited (**Hunter**) “...within the context of an eastern NSW market for the manufacture and supply of concrete pipes (including steel and fibre reinforced concrete pipes...”<sup>26</sup> The ACCC concluded that the acquisition was unlikely to

<sup>20</sup> Marley/RX, para 57.

<sup>21</sup> EU Commission (Case No IV/M .565S/W) p 4. See

[http://ec.europa.eu/comm/competition/mergers/cases/decisions/m565\\_en.pdf](http://ec.europa.eu/comm/competition/mergers/cases/decisions/m565_en.pdf).

<sup>22</sup> In Crane/Milnes, see <http://www.accc.gov.au/content/index.phtml/itemId/500402/fromItemId/751043>.

<sup>23</sup> See [http://www.ofc.gov.uk/advice\\_and\\_resources/resource\\_base/Mergers\\_home/mergers\\_fta/mergers\\_fta\\_advice/stanton](http://www.ofc.gov.uk/advice_and_resources/resource_base/Mergers_home/mergers_fta/mergers_fta_advice/stanton).

<sup>24</sup> Case No IV/M .565S/W,

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/99/689&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>25</sup> Case No IV/M .565S/W.

<sup>26</sup> See <http://www.accc.gov.au/content/index.phtml/itemId/951371/fromItemId/751046> for summary of decision.

substantially lessen competition based on a number of factors including the presence of four alternative suppliers.<sup>27</sup> Given the presence of those suppliers it can be assumed that the ACCC did not consider it necessary to analyse a broader market. Moreover, the Applicant understands that the acquisition of Hunter involved aggregation in concrete pipes over a far greater diameter range (including much larger pipe) than the smaller diameter pipe (ie 225mm – 450mm) that the Proposal concerns. As previously noted, it is small diameter concrete pipe that is materially constrained by alternative pipe systems.

- 12.13 Further, the Applicant submits that the imposition of a SSNIP, by a hypothetical monopolist of concrete pipe, would not be profitable and would confirm the Commission’s analysis in *Marley/RX* ie that concrete pipe systems of the relevant diameter range fall within a broader product market which includes various alternative pipe systems. For concrete to remain a viable option in the face of technology driven plastic offerings it must remain competitively priced.
- 12.14 The ability of end users to substitute pipe of various materials in the diameter range of 225mm – 450mm is indicative of the 225mm – 450mm pipe market.

### Functional Level

- 12.15 The acquisition results in aggregation in the manufacture and wholesale supply of pipe between 225mm – 450mm (inclusive) for Waters & Farr. Therefore the relevant functional dimension is the manufacture and wholesale supply of pipe between 225mm – 450mm. (As previously noted, the proposal will not result in aggregation at the distribution/merchant level.)

### Geographic Area

- 12.16 In *Marley/RX* the Commission concluded that “[a]ll the relevant manufacturers of plastic pipes distribute their products nationally. Accordingly, the Commission considers that the geographical dimension of the market is national for each product” ie including 225mm – 450mm pipe.<sup>28</sup> The Applicant agrees with this conclusion.
- 12.17 In regards to concrete pipe both Fletchers and Hynds distribute and retail their pipe nationally. Because of transportation costs both parties tend to distribute concrete pipe produced at their existing plants regionally within the island of manufacture. However, the VT Business (at Hamilton) has supplied pipe into the Upper South Island and Hynds’ Christchurch plant has supplied the North Island. While the Applicant generally acknowledges that it can be more difficult to transport pipe between the North and South Islands, it remains feasible to transport pipe from one island to another. The Applicant understands that Austin Pipe Concepts (**Austin**) has an existing trade relationship with [ ] and would expect [ ] to source Austin pipe in addition to existing supply from other concrete product manufacturers (including Hynds and Humes). Absolute Concrete predominantly supplies the Upper North Island with its own manufactured products and also with concrete products resold from Humes. However, there are no variances in supply structure between the regions.
- 12.18 On that basis the Applicant submits that the market is the national market for the manufacture and wholesale supply of pipe systems between 225mm – 450mm.

### Customer dimension and timeframe

- 12.19 While pipe between 225mm – 450mm is generally supplied, on a reasonably regular basis, to the civil/municipal/infrastructure and rural on farm sectors (as discussed at 9.5), neither group will be disproportionately affected post acquisition and will continue to choose product based

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<sup>27</sup> As above.

<sup>28</sup> *Marley/RX*, para 67.

on price and solution fit. Thus the Applicant submits that there are no distinct customer or temporal dimensions to the 225mm – 450mm pipe market.

### Conclusion on market definition

12.20 The Applicant submits that the relevant market is the national market for the manufacture and supply of pipe systems between 225mm and 450mm (the *225mm – 450mm pipe market*).

### 13. Explanation of how products or services are differentiated within the market(s)

13.1 While pipe systems are differentiated by material composition and that can play a role in end-users' decisions if a particular characteristic is sought or solution preferred, it can generally be said that that role is a decreasing one as more end-users become comfortable using new technologies that have similar characteristics. Moreover, the full installation price/cost is still a primary influence on a customer's purchase decision.

13.2 The vast majority of pipe in the 225mm – 450mm pipe market is manufactured in standardised sizes. Regarding concrete pipe, customers are indifferent as to which manufacturer produces the pipe as long as it meets the price and quality expectations. For example, [

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The civil and infrastructure sector is the largest customer in the 225mm – 450mm pipe market and price considerations are a concern.

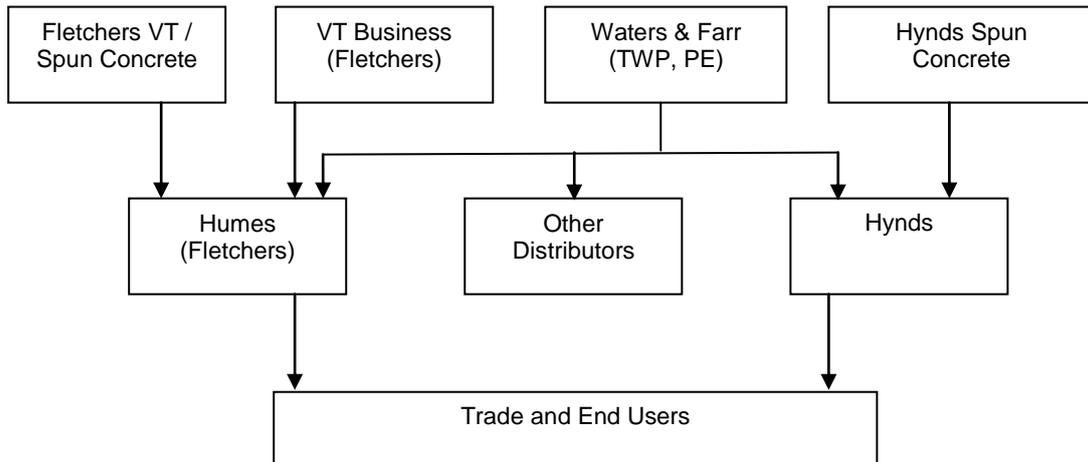
### Vertical Integration

### 14. Details of any creation or strengthening of vertical integration that would result from the proposed merger

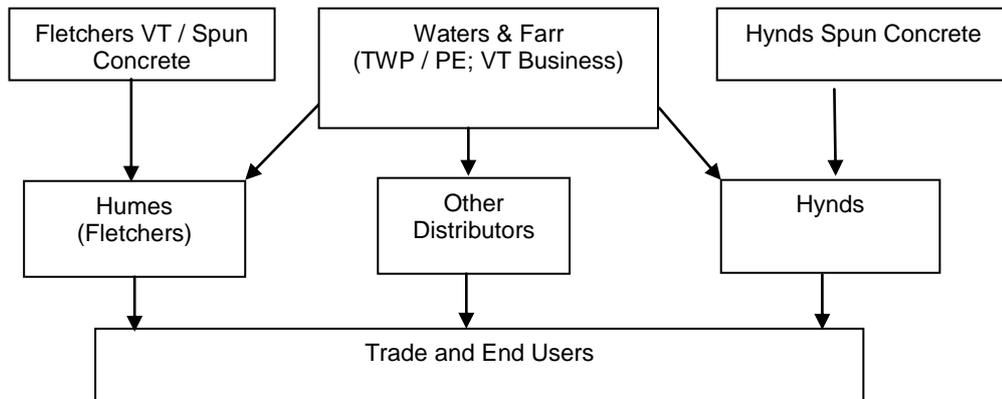
14.1 The Proposal does not create or strengthen vertical integration compared to the status quo. Under the status quo both Hynds and Fletchers are already vertically integrated and [

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14.2 **Diagram 7: Current Vertical Integration**



14.3 **Diagram 8: Vertical integration under the Proposal**



14.4 Moreover, the Proposal will open up more distribution channels for VT pipe compared to the status quo where the majority of pipe from the VT Business is distributed via Fletchers’ channels and more recently through MICO. This will allow for additional price-based competition of VT pipe in the 225mm – 450mm pipe market.

## Part 4: Counterfactual

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15. In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry

15.1 If the Proposal does not proceed [

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15.2 VT plants require larger sites than Spun plants due to their continuous production format ie one pipe diameter is manufactured at a time continuously so large storage space is necessary to hold stock while manufacturing pipe of another diameter. [

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15.3 [

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15.4 The Applicant submits that over the next 20 - 30 years plastics will virtually make concrete pipe between 225m - 450mm obsolete, as has happened in the United States and United Kingdom. This is driven by the increasing preference for TWP/plastic pipe by all civil authorities due to the high numbers of foreign educated specifiers who have had previous experience with these materials overseas.

## Part 5: Competition Analysis

### Existing Competitors

#### 16. Identify all relevant competitors in the market(s) and describe how they all compete in the market(s)

16.1 The below tables show the manufacturers and importers who compete in the 225mm – 450mm pipe market.

16.2 **Table 1: NZ Manufacturers in the 225mm – 450mm Pipe Market**

Pipe Manufactures	TWP/ (“BOSS”)	Concrete	PVC	PE	PP	Iron	Steel	Clay	GRP	CMP	AL <sup>29</sup>
Waters & Farr	✓			✓	✓						
Hynds		✓									
Fletchers (Humes, including CSP)		✓					✓			✓	✓
Crane (Iplex)	✓		✓	✓							
Tyco				✓							
Marley/RX Plastics (Aliaxis Group)			✓	✓							
NZ Steel Pipe							✓				
Austin Pipe Concepts		✓									
Absolute Concrete		✓									
Alto Plastics				✓							
PPI				✓							
Rural Direct Ltd (Auplex)				✓							
Southtile								✓			
Locker										✓	
Frank PKS				✓							

<sup>29</sup> Aluminium

16.3 Table 2: NZ Importers in the 225mm – 450mm Pipe Market

Importer	TWP	Concrete	PVC	PE	PP	PB	Iron	Steel	Clay	GRP	CMP
Hynds (Hygrade Products Limited)							✓		✓		
Fletchers (Humes, including CSP)							✓		✓		
Crane (including Crane Distribution and Manufacturing)				✓			✓		✓	✓	
Tyco							✓	✓		✓	
Pipe & Fittings			✓								
Aquafit			✓								
PPI				✓							
Agro NZ				✓							
Central Plastics				✓							
Hydroflow/P&I							✓	✓			
Asmuss Group			✓	✓	✓						

16.4 Details of New Zealand manufacturers are as noted below:

#### New Zealand based pipe manufacturers

##### (a) The Aliaxis Group

The Aliaxis Group is a large, well-resourced international group of businesses primarily engaged in the manufacture of plastic products for fluid transport in the building, sanitary, industrial and utilities sectors. Aliaxis is a privately held company employing more than 15,000 people with a global presence in over 50 countries, including New Zealand.<sup>30</sup>

For the 2009 financial year, the Aliaxis Group reported revenue of €1.921 billion and net profit (group share) of €78 million.<sup>31</sup>

New Zealand Investment Holdings Limited (**NZIH**) is the New Zealand holding company for the Aliaxis Group. NZIH is most widely known through its subsidiary, Marley New Zealand Limited (**Marley**), but also holds, of relevance, RX Plastics Limited (**RX Plastics**).<sup>32</sup>

<sup>30</sup> Information sourced from [www.aliaxis.com](http://www.aliaxis.com).

<sup>31</sup> Information sourced from [http://www.aliaxis.com/fileadmin/user\\_upload/pdf/Annual\\_Report/Aliaxis\\_Group\\_Annual\\_Report\\_2009.pdf](http://www.aliaxis.com/fileadmin/user_upload/pdf/Annual_Report/Aliaxis_Group_Annual_Report_2009.pdf).

<sup>32</sup> Sourced from the Companies Office website, [www.business.govt.nz/companies](http://www.business.govt.nz/companies).

*Marley*

Marley manufactures and wholesales PVC pipe and fittings, PE pipes, and also sells imported products sourced from the Aliaxis Group overseas. It is arguably New Zealand's most well-known "gutter" brand and is one of the largest plastic pipe manufacturers in New Zealand. Additionally, Marley manufactures and wholesales rainwater systems (spouting, downpipes and associated fittings).

Marley has manufacturing plants at Auckland and Christchurch and exports products to the Pacific Islands, South East Asia, Australia and the United Kingdom.<sup>33</sup>

*RX Plastics*

According to RX Plastics it is New Zealand's leading manufacturer of irrigation products, water storage tanks and effluent disposal systems. RX Plastics manufactures PVC and PE pipe and fittings as well as PP pipe systems. It has two manufacturing plants at Ashburton with a third at Hamilton which can produce pipe up to 500mm in diameter. In addition to supplying the New Zealand market, RX Plastics exports products to Australia, the Pacific Islands, USA and South Africa.<sup>34</sup>

The Applicant notes that NZIH was granted clearance to acquire RX Plastics on 3 April 2008 and according to the Companies Office it became the sole shareholder of RX Plastics on 30 April 2008 (ie *Marley/RX*).

(b) **Crane Group Limited/Iplex**

Crane Group Limited (**Crane**) is a large firm which is listed on the Australian Stock Exchange and manufactures and distributes plastic pipe and plastic pipeline systems in both Australia and New Zealand. For the 2009 financial year, Crane reported revenue of AU\$2.118 billion and net profit of AU\$43.6 million.<sup>35</sup>

In New Zealand, Crane operates through its subsidiaries Iplex Pipelines New Zealand Limited (**Iplex**) and Crane Distribution NZ Limited (**Crane Distribution**). Iplex claims to be a leading Australasian manufacturer and supplier of plastic pipelines from 15mm up to 3,000mm in diameter for a number of industries.<sup>36</sup> Iplex's product range includes TWP that it manufactures on its Corma machine at its Palmerston North plant. While Iplex's Corma machine is capable of manufacturing TWP between 150mm and 600mm, it is currently producing TWP between 150mm and 250mm using polyethylene.

According to Crane Distribution it is New Zealand's leading merchant of plumbing, pipelines, electrical and safety supplies. Crane Distribution's key brands are MasterTrade, Corys, MICO (Plumbing and Pipelines), Hydrotech Pacific and Hydrotech Sanitar (a supplier of premium European plumbing and bathroomware products, currently being rebranded as MICO Design).<sup>37</sup>

The Applicant notes that Crane previously submitted a clearance application to the Commission to acquire 100% of the shares in or assets of RX Plastics, but subsequently withdrew this application on 11 March 2008.

<sup>33</sup> Information sourced from [www.marley.co.nz](http://www.marley.co.nz).

<sup>34</sup> Information sourced from [www.rxplastics.co.nz](http://www.rxplastics.co.nz) and *Marley/RX*, para 13.

<sup>35</sup> Information sourced from [www.crane.com.au](http://www.crane.com.au). Annual Report 2009 can be found at <http://crane.ice4.interactiveinvestor.com.au/Crane0901/Annual%20Report%202009/EN/body.aspx?z=1&p=2&v=2&uid>.

<sup>36</sup> Information sourced from [www.iplex.co.nz](http://www.iplex.co.nz).

<sup>37</sup> Information sourced from [www.cranenz.co.nz](http://www.cranenz.co.nz).

(c) **Rural Direct**

Rural Direct Limited (**Rural Direct**) is a family owned and operated manufacturer and wholesaler of PE pipe and fittings with a factory at Papakura and rural retail stores in Matamata, Taranaki and Whangarei. Rural Direct sells direct to the New Zealand farming, agricultural and construction sectors.

Rural Direct currently manufactures High Density PE plastic culvert pipes up to 315mm in diameter.<sup>38</sup>

(d) **Austin Pipe Concepts**

Austin Pipe Concepts (**Austin**) is a recent entrant in the 225mm – 450mm pipe market establishing a new plant at Rolleston (just south of Christchurch). Austin claims to have installed the most advanced technology in a Schlosser Pfeiffer (variant) VT concrete pipe machine. VT is high strength, densely compacted concrete. Austin claims its VT is unique to New Zealand<sup>39</sup> giving it a competitive edge.

Austin is capable of supplying 300mm, 375mm, 450mm, and larger diameter VT pipe.

According to Austin its pipe is compliant with the Australasian manufacturing standards AS/NZS 4058:2007 and AS/NZS 3725:2007, British and European standards BSEN 1916.2002 and BS 5911.1.2002, and United States standard ASTM C76.<sup>40</sup>

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(e) **Absolute Concrete**

Absolute Concrete Limited (**Absolute**) is a Spun concrete pipe manufacturer and distributor located at Kaiwaka, North of Auckland. Absolute was established by Adrian Reddy (an ex Fletchers employee) over forty years ago and originally operated as Adrian Reddy Ltd. Sometime in the last 3-5 years Adrian Reddy was joined by an ex Fletchers/Hume employee and from that time forward the business operated as Absolute. Absolute manufactures and distributes pipe between 225mm – 450mm (as well as larger diameters), specialising in the rural and roading segments of the market. Absolute also makes precast rural products.

(f) **Tyco Flow Control Pacific**

Tyco Flow Control Pacific (**Tyco Water**) is part of the large and well known Tyco International Group (**Tyco Group**). Tyco Water manufactures and supplies water main and irrigation solutions. According to Tyco Water it provides “*complete pipeline solutions*” including steel, ductile iron and plastic pipeline systems. Steel and ductile iron products are imported from Australia. Tyco Water has sales outlets at Wellington, Auckland and Christchurch with its main plastics plant at Hamilton, giving it a national presence.

For the 2009 financial year, Tyco Group reported revenue of US\$17.237 billion. Of this, US\$3.8 billion was generated by the Flow Control segment.<sup>41</sup>

<sup>38</sup> Information sourced from [www.ruraldirectltd.co.nz](http://www.ruraldirectltd.co.nz).

<sup>39</sup> See the “Products” tab at [www.austinpipe.co.nz](http://www.austinpipe.co.nz).

<sup>40</sup> Information sourced from [www.austinpipe.co.nz](http://www.austinpipe.co.nz).

<sup>41</sup> Information sourced from [www.tycowater.com](http://www.tycowater.com). Tyco International 2009 Annual Report can be found at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzExMzJ8Q2hpbGRJRD0tMXxUeXBIPtM=&t=1>.

(g) **PPI Corporation**

According to PPI Corporation Pty Limited (**PPI**) it is a leading Australian owned manufacturer and distributor of PE pipe and fittings systems for the irrigation, water supply and drainage markets.<sup>42</sup> PPI has a presence in New Zealand through PPI Corporation (NZ) Limited which operates a PE pipe manufacturing plant at Rangiora. PPI supplies PE pipe to merchants in New Zealand such as Mitre 10 and Bunnings Warehouse.

(h) **Locker Group (NZ)**

Locker Group (NZ) Limited (**Duraduct**) is based at East Tamaki and manufactures and supplies Duraduct culvert pipe, a well established product in the farming, forestry and civil engineering industries. Duraduct pipe is roll-formed steel and comes in varying diameters up to 2000mm. According to Duraduct its pipe can offer considerable advantages over concrete and plastic culvert products due to its substantial strength and durability.<sup>43</sup>

(i) **Steelpipe NZ**

Steelpipe NZ Limited (**Steelpipe**) is a privately owned Onehunga-based manufacturer producing spiral formed steel pipe up to 2030mm for supply to the sewer, water main and irrigation sectors.<sup>44</sup>

(j) **Alto**

According to Alto Holdings Limited (**Alto**) it is one of New Zealand's leading rigid plastic packaging companies, with 12 plants in Australasia (eight being in New Zealand) employing over 1,100 people. Alto manufactures Laylite culvert pipe out of recycled HDPE up to 600mm in diameter.<sup>45</sup>

(k) **Maskell**

Maskell Productions Limited (**Maskell**) manufactures FRP in standard diameters from 50mm to 2000mm at its manufacturing plant at Auckland. Maskell uses the filament winding method of manufacture (where pipe is manufactured with continuous strands of glass fibres, wound around a polished mandrel under controlled tension).<sup>46</sup>

(l) **Promax**

Promax Engineered Plastics (**Promax**) is a business based in Kerikeri specialising in rain water tanks and rain harvesting packages. Promax manufactures Polyflo culvert (full circle) and Polyflo fluming (half circle) pipe in diameters ranging from 330mm to 1,200mm. Polyflo culvert pipe is a rotational moulded, ribbed pipe and is primarily used in the agriculture and roading sectors.<sup>47</sup>

(m) **Potential competitors:**

(i) *Busck Prestressed Concrete* (Whangarei) – According to Busck it is one of the longest established and most respected concrete companies in New Zealand,

<sup>42</sup> Information sourced from [www.ppi.com.au](http://www.ppi.com.au).

<sup>43</sup> Information sourced from [www.lockernz.co.nz/culvert.asp](http://www.lockernz.co.nz/culvert.asp).

<sup>44</sup> Information sourced from [www.steelpipe.co.nz](http://www.steelpipe.co.nz).

<sup>45</sup> Information sourced from [www.alto.co.nz](http://www.alto.co.nz) and [www.enviro-choice.org.nz/companies/alto.html](http://www.enviro-choice.org.nz/companies/alto.html).

<sup>46</sup> Information sourced from [www.maskell.co.nz/pdf/PipeandDucting.pdf](http://www.maskell.co.nz/pdf/PipeandDucting.pdf).

<sup>47</sup> Information sourced from [www.promaxplastics.co.nz/colverts.php](http://www.promaxplastics.co.nz/colverts.php).

having noticeably completed projects at the Sylvia Park Shopping Centre and the University of Auckland Business School.<sup>48</sup>

- (ii) *Telecrete* (East Tamaki) – According to Telecrete it manufactures a large range of reinforced concrete chambers which have a number of uses. The chambers are typically designed for use in telecommunications, electrical, railway signalling, water reticulation and where general underground access is required.<sup>49</sup>
- (iii) *Bowers Concrete* (Morrinsville) – Bowers Concrete is a family owned business serving the rural and building sectors in the Waikato and Bay of Plenty. According to Bowers and Son it is the only company in the central North Island to have secured a licence to construct Duracrete tanks (which use self-compacting concrete technology).<sup>50</sup>
- (iv) *Fulton Hogan* (Henderson/Hamilton/Taranaki/Otaki) – Fulton Hogan is a large, well-established Australasian civil contracting company employing over 5,500 staff across New Zealand and Australia. Products and services include road, quarrying, civil contracting, rail, infrastructure maintenance and land development. Fulton Hogan is continually growing and diversifying into new markets.<sup>51</sup>
- (v) *HEB Construction* (Nationwide) – According to HEB Construction it is a privately owned company that is strongly positioned as a leader in the civil sector. Through its “Precast” concrete division, HEB services the commercial, industrial, residential and civil markets by supplying a range of precast and prestressed concrete products such as wall panels and beams.<sup>52</sup>
- (vi) *Allied Concrete* (Invercargill, Gore) – Allied Concrete (with its associated companies) operates 45 ready-mixed concrete production plants nationwide. This company is part of the HW Richardson Group Limited, a Southland-based family owned business with over 1,000 staff nationwide.<sup>53</sup>

16.5 Details of the main importers into New Zealand are as noted below:

### Importers of pipe systems

#### (a) **Vinidex Pty Limited**

Vinidex Pty Limited (**Vinidex**) is one of the leading Australian manufacturers of PVC and PE pipe and fittings,<sup>54</sup> alongside Crane/Iplex and Australian Plastic Profiles. Vinidex supplies some PVC pipe and fittings for on-sale by Marley, but otherwise currently has no direct involvement in New Zealand pipe markets. Despite this, the Applicant is not aware of any arrangements preventing Vinidex from directly expanding its New Zealand supply and it is conceivable that Vinidex could enter into a supply agreement with a merchant in New Zealand or directly approach end users.

There are a number of plumbing and building merchants in New Zealand who Vinidex could enter into such arrangements, giving them a portal into the market. Aside from the large wholesale merchants such as Mitre 10, Bunnings Warehouse and Plumbing

<sup>48</sup> Information sourced from [www.busck.co.nz](http://www.busck.co.nz).

<sup>49</sup> Information sourced from [www.wilsonsgroup.co.nz/telecrete](http://www.wilsonsgroup.co.nz/telecrete).

<sup>50</sup> Information sourced from [www.bowersconcrete.co.nz](http://www.bowersconcrete.co.nz).

<sup>51</sup> Information sourced from [www.fultonhogan.com](http://www.fultonhogan.com).

<sup>52</sup> Information sourced from [www.heb.co.nz](http://www.heb.co.nz).

<sup>53</sup> Information sourced from [www.alliedconcrete.co.nz](http://www.alliedconcrete.co.nz).

<sup>54</sup> Information sourced from [www.vinidex.com.au](http://www.vinidex.com.au).

World, Vinidex could use its relationship with MM Kembla New Zealand Limited (which is owned by Vindex's parent company) to enter the market.

(b) **Pipes NZ**

According to Pipes NZ Limited (**Pipes NZ**) it is the leading supplier of top quality pipe and fittings in New Zealand. This New Plymouth based supplier was incorporated in May 2009 and is backed by international interests from Australia, Singapore, Korea, China and the USA. Pipes NZ supplies seamless carbon steel pipe, welded pipe and stainless steel pipe, which are often used for major projects in New Zealand.<sup>55</sup>

(c) **Pipe & Fittings**

Pipe & Fittings (**Pipe & Fittings**) is a family owned business based in Invercargill. Pipe & Fittings distributes imported plastic pipe products and fittings (including pipe between 225mm – 450mm) around New Zealand.

(d) **Aquafit**

Aquafit Limited (**Aquafit**) is a family owned business with stores at Auckland City and North Shore City supplying PVC, drainage and water main pipes from what they claim to be the best brands in New Zealand and around the world.<sup>56</sup> Aquafit imports all of its products.

(e) **Frank PKS**

Frank PKS NZ Limited (**PKS**) specialises in the distribution of waste water, storm water and irrigation pipe. According to PKS it is one of the leaders in the production and development of plastic pipe systems in New Zealand, boasting the capacity to manufacture plastic pipe up to 4,000mm in diameter.<sup>57</sup>

(f) **Asmuss Group**

The Asmuss Group of companies has stores around New Zealand and supplies pipeline product primarily to the construction industry. According to the Asmuss Group it is now the largest privately-owned company in its field, with a heavy focus on steel supply.

(g) **Hydroflow**

Hydroflow Distributors Limited (**Hydroflow**) is a privately owned company with stores at Auckland and Christchurch. Hydroflow distributes the Saint Gobain range of ductile iron pipe in the 225mm – 450mm range.

(h) **Australian Plastic Profiles**

Australian Plastic Profiles Pty Limited (**APP**) is a Sydney-based manufacturer and exporter of PVC pipes and fittings. It is one of the largest suppliers of PVC pipe and fittings in Australia alongside Crane/Iplex and Vinidex.<sup>58</sup>

APP currently exports drain, waste and vent pipe and fittings to New Zealand plumbing merchants such as Pipe & Fittings, Aquafit, and Franklin Plumbers &

<sup>55</sup> Information sourced from [www.pipesnz.co.nz](http://www.pipesnz.co.nz).

<sup>56</sup> Information sourced from [www.aquafit.co.nz](http://www.aquafit.co.nz).

<sup>57</sup> Information sourced from [www.frankpksnz.com](http://www.frankpksnz.com).

<sup>58</sup> Information sourced from [www.app.net.au](http://www.app.net.au).

Builders Supplies Limited. Their customer base in New Zealand has the potential to easily expand.

(i) **Plumbing World**

Plumbing World is the major trading division of NZPM Group and has expanded to become the largest 100% New Zealand owned national plumbing merchant. It is owned by hundreds of plumbers, drainlayers and other tradespeople New Zealand wide.<sup>59</sup>

One of the other companies in the NZPM Group, MCD Limited, currently imports copper, PB and PP pipe into New Zealand<sup>60</sup> so this could easily be a vehicle for Plumbing World to import and supply pipe of other materials such as PVC.

- 16.6 All of the above pipe system manufacturers and importers compete vigorously for customers either by directly supplying pipe to end users (generally via contractors) or by supplying distributors/merchants who then on-sell to end-users. All pipe manufacturers supply other distributors even if they also compete downstream at the distribution/merchant level. In this regard distributors such as MICO Pipelines and Plumbing World regard Hynds and Humes as competitors.
- 16.7 As the Commission noted in *Marley/RX*, civil and infrastructure customers form the largest customer segment in the *large bore pipe market* (ie pipe over 250mm). This customer segment will typically offer projects (usually via a contractor) on an open tender basis. Prospective pipe suppliers will tender solutions which may include pipe of various materials depending on a project's specifications, price, contractor's/authority's preference and location. Generally there is more than one solution for a particular pipe project.
- 16.8 Customers in the rural customer segment typically approach distributors directly, or via contractors, for quotes regarding particular projects.
- 16.9 While suppliers in the 225mm – 450mm pipe market have individual price books setting out standard prices when supplying civil and infrastructure contractors and customers, discounts of varying degrees will apply to individual tenders given the countervailing power of contractors. Given that virtually every project can be completed with more than one piping solution it has become common practice to provide discounts for all projects.
- 16.10 Players and their products do vary in preference regarding different customer segments and particular applications. For example, Hynds' and Fletchers' strength in the civil and infrastructure segment is largely due to differences in marketing strategy. Pipe manufacturers can easily switch between customer segments as increasing or decreasing the diameter of pipe produced does not require significant investment. For example, Iplex could easily source dies of greater diameter from its Australian parent and recalibrate its Corma machine and produce TWP greater than 250mm.

*225mm – 450mm pipe applications*

- 16.11 The most common current applications for 225mm – 450mm pipe are storm water, sewer, water reticulation/irrigation and rural on farm.

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<sup>59</sup> Information sourced from [www.plumbingworld.co.nz](http://www.plumbingworld.co.nz).

<sup>60</sup> Further information can be obtained from [www.mcd.net.nz](http://www.mcd.net.nz).

16.12 Table 3: 225mm – 450mm Pipe Material Share by Application

Material	Storm water	Sewer	Water reticulation / irrigation	Rural on farm
Concrete	[ ]	[ ]	[ ]	[ ]
Plastic	[ ]	[ ]	[ ]	[ ]
Steel / Aluminium / FRP / Ductile iron	[ ]	[ ]	[ ]	[ ]
Earthenware	[ ]	[ ]	[ ]	[ ]
Total	[ ]	[ ]	[ ]	[ ]

16.13 Table 4: Concrete's Total Share of 225mm – 450mm Pipe and by Application

Function/Application	Function/Application's share of the 225mm – 450mm Pipe Market	Concrete's share of Applications' share of the 225mm – 450mm Pipe Market	Concrete's total share of the 225mm – 450mm Pipe Market
Storm water	[ ]	[ ]	[ ]
Sewer	[ ]	[ ]	[ ]
Water reticulation / irrigation	[ ]	[ ]	[ ]
Rural	[ ]	[ ]	[ ]
Total	[ ]	[ ]	[ ]

*Particular competition between size and application*

16.14 While all materials generally compete across all diameters and applications within the 225mm – 450mm pipe market there are particular diameters and applications where competition is more particular between pipe of various material.

16.15 Smaller diameter concrete pipe has become less competitive due to new alternatives entering the market which are more cost efficient to install compared to heavy concrete pipe manufactured in shorter lengths. Over the last 30 years or so prices for concrete pipe have been consistently eroded. Initially competition was from fibrolite and now plastics and other alternatives.

16.16 For example, concrete pipe faces the following particular competitive constraints:

*Pipe diameter*

- (a) **225mm:** Concrete pipe faces significant competition from PVC, PE and TWP/"Boss" pipe. PVC, PE and TWP/"Boss" are the most competitive materials at 225mm.
- (b) **300mm:** Concrete pipe faces significant competition from PVC, PE and TWP/"Boss" pipe. PVC, PE and TWP/"Boss" are the most competitive materials at 300mm.
- (c) **375mm:** Concrete pipe faces significant competition from PVC, PE, TWP/"Boss" and CMP. Pipe of all materials is competitive at 375mm.

- (d) **450mm:** Concrete pipe faces strong competition from PVC, PE, TWP/“Boss” and CMP. While concrete pipe currently competes strongly at 450mm its competitive edge is consistently being eroded by plastic pipe and likely to become obsolete following the overseas trend.

#### *Application*

- (e) **Storm water** (including roading/NZTA): Concrete remains a strong competitor as traditionally local authorities specified rigid pipe. But this preference is increasingly being eroded as plastic gains the confidence of local authorities/specifiers. Generally, all councils in New Zealand now consider plastic to be an acceptable substitute. The Applicant understands that 95% of 225mm pipe used for storm water in Australia is now plastic, whereas previously concrete had dominated.
- (f) **Sewer:** While concrete was once the preferred pipe (due to limited options), PVC and PE now dominate the sewer segment. 225mm is no longer even supplied. Concrete can still compete at 450mm but plastics are consistently growing. In the United States, concrete sewer pipe is no longer supplied in 225mm, 300mm, or 375mm. Vitrified clay pipe and GRP are also used for specialised sewer applications.
- (g) **Water reticulation/irrigation:** While concrete and steel were once the preferred pipe PVC and PE now absolutely dominate the water reticulation/irrigation segment and concrete has been effectively eliminated. Ductile iron and steel are also used for more specialised applications, along with GRP which is a specialist product for pressurised heat systems.
- (h) **Rural on farm:** Again, concrete has been virtually eliminated as PVC, PE and TWP/“Boss” now dominate the market.

16.17 The geographical location of a manufacturer’s plant does give that manufacturer a degree of strength in that area relative to the rest of the country. For example Tyco has relative strength in the North Island as its plant is located there.

17. **Outline the estimated market shares in terms of sales, and where relevant, volume and productive capacity, of the merger parties and competitors identified above**

17.1 **Table 5: NZ 225mm – 450mm Pipe Market: Market Shares**

Rank	Competitors (including merger parties)	Estimated revenue (\$000)	Estimated % of market share by revenue	Estimated volume (m)	Estimated % of market share by volume
5	Waters & Farr	[ ]	[ ]	[ ]	[ ]
3	Fletchers VT	[ ]	[ ]	[ ]	[ ]
	Fletchers other	[ ]	[ ]	[ ]	[ ]
	Fletchers total	[ ]	[ ]	[ ]	[ ]
4	Hynds	[ ]	[ ]	[ ]	[ ]

	<i>Post acquisition</i>	[ ]	[ ]	[ ]	[ ]
1	Aliaxis (Marley/RX)	[ ]	[ ]	[ ]	[ ]
2	Crane Distribution New Zealand/Iplex	[ ]	[ ]	[ ]	[ ]
6	Tyco	[ ]	[ ]	[ ]	[ ]
7	Absolute	[ ]	[ ]	[ ]	[ ]
8	Austin	[ ]	[ ]	[ ]	[ ]
	Other manufacturers	[ ]	[ ]	[ ]	[ ]
	Imports	[ ]	[ ]	[ ]	[ ]
	Total market 225 – 450mm	[ ]	[ ]	[ ]	[ ]

18. **To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

- 18.1 In *Marley/RX* the Commission concluded that Aliaxis/NZIH would be constrained “... *given the high level of substitutability between large bore PE, PVC and other types of large bore pipes, the relatively large number of manufacturers, the potential for imports and the countervailing power of large customers, the Commission considers that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the large bore pipe market*”.<sup>61</sup>
- 18.2 The Applicant agrees with the Commission’s analysis and conclusions and submits that the market has not changed since 2008, although the preference for plastics and other alternatives has continued.
- 18.3 Post acquisition Waters & Farr will essentially operate as a toll processor supplying VT pipe on a non-discriminatory basis to Hynds, Fletchers and third parties. Currently third parties only have limited access to Fletchers’ VT pipe. While third party distributors are unlikely to acquire similar volumes to Hynds and Fletchers, and thus qualify for volume discounts, that would not result in a materially less competitive market than under any likely counterfactual. Not only will Hynds and Fletchers continue to vigorously compete at the distribution level, third party distributors would also continue to compete. Third parties could easily compete by reducing prices on VT as VT will only be one component of an overall piping solution for a particular project.
- 18.4 The Applicant submits that prices would be unlikely to rise in any particular areas where alternatives to concrete are perceived to be few due to continued vigorous competition between Hynds, Fletchers and third party distributors as well as the countervailing power of contractors. As already discussed, the parties’ price for concrete pipe in the limited cases where, for whatever reason there are considered to be no substitutes, will be constrained by the prices the parties set for projects where there are alternatives. Moreover, there remains two other concrete pipe manufacturers in Austin and Absolute who would constrain Waters & Farr post acquisition.

<sup>61</sup> *Marley/RX*, para 137.

- 18.5 As noted above, under the status quo Fletchers only supplies VT to a limited number of third parties meaning there is limited competition at the distribution/merchant level for efficiently produced VT in the relevant diameters.
- 18.6 Austin has the advantages associated with Greenfields entry, claiming to have state-of-the-art equipment producing pipe efficiently and would easily provide an alternative to Waters & Farr VT pipe. The Applicant expects that it is entering into distribution arrangements with [ ]. Further, there is nothing preventing Austin expanding its manufacturing operations and establishing plant in the Upper North Island. Given the lack of brand loyalty and the claimed quality of Austin’s pipe, Austin would not be prevented from supplying any end-users.
- 18.7 Post-acquisition Waters & Farr would also be constrained by two major, well resourced, established manufacturers with international connections in Iplex and Aliaxis. The Applicant knows no reason why either Iplex or Aliaxis could not make use of their current surplus capacity and increase production of pipe between 225mm – 450mm if Waters & Farr attempted to raise prices. As already noted, shifting production from one diameter pipe to another of the same material can be easily achieved without incurring significant cost. This would enable Iplex and Aliaxis, in a timely fashion and without significant further capital investment, to bring to market additional 225mm – 450mm pipe preventing Waters & Farr from increasing prices. In fact, it is likely that both Iplex and Aliaxis would have sufficient existing capacity between the diameters of 225mm – 450mm to increase production in this range without further investment.
- 18.8 As the Commission noted in *Marley/RX* in regards to PVC and PE manufacturers “[a]ll are either currently manufacturing large bore pipes, or have the ability to expand current productions to introduce large bore pipe to their product lines. This is in addition to those manufacturers making other types of (non-plastic) large bore pipe.”<sup>62</sup>
- 18.9 Moreover, the raw material (resin) required for the manufacture of plastic pipe has been recognised by the Commission to be “...widely available internationally”.<sup>63</sup> Sourcing additional resin is not a barrier. Additionally none of the resin suppliers are vertically integrated at the pipe manufacturing level.
- 18.10 There are no additional barriers preventing a plastics manufacturer from expanding as the following market conditions exist:
- (a) an existing manufacturer only requires additional staff, operational hours and associated costs for a higher output plant;
  - (b) as noted, resin is widely available;

(c) **Table 6: Capital costs for new plant and time;**

Plant Cost	Time
PVC [ ]	[ ]
TWP [ ]	[ ]
PE [ ]	[ ]

- (d) plant can potentially operate 24 hrs a day;
- (e) there are no environmental consent issues involved in constructing new plant;

<sup>62</sup> As above, para 134.  
<sup>63</sup> As above, para 17.

- (f) access to any technology required to produce the majority of plastic pipe is readily available and machinery manufacturers will provide support;
- (g) current capacity is only running at [ ];
- (h) costs of plant are decreasing as their availability from China increases – New Zealand free trade deal only enhances this; and
- (i) all pipe systems are manufactured to common Australian standards. Excess can be easily exported to Australia and Asia.

### **Iplex**

18.11 According to Iplex, it is the largest Australian owned and operated pipe and fittings manufacturer.<sup>64</sup> It is a highly ambitious player and offers multi-level constraint given its vertical integration. It operates both the MICO Pipeline and MasterTrade chains at the retail level; combined these number nearly 100 outlets. It has also acquired Hydrotech Sanitar (an importer of plumbing products) and the Tauranga branch of Plumbing Plus a chain of plumbing supply retailers (independently owned). In 2003 the ACCC did not object to Crane's subsidiary's, Iplex Pipelines Australia Pty Ltd (**Iplex Australia**), proposed acquisition of Milnes Holdings Limited even though the merged entity would have 51% of the Australian market for the manufacture and supply of plastic pipes and fittings.<sup>65</sup> Neither did the ACCC object to Iplex Australia's proposed acquisition of Crevet Limited in 2000 which included aggregation in pipe used in civil projects.

18.12 The above conduct illustrates Iplex's desire to expand and strengthen its position in the pipe systems industry. Moreover, following Waters & Farr's introduction of TWP to the 225mm – 450mm pipe market, Iplex quickly installed an additional TWP machine capable of manufacturing pipe up to 450mm. As noted at 16.4(b), Iplex currently produces TWP in diameters up to 250mm but faces no barriers in producing TWP in diameters greater than this as it could easily recalibrate its machines using its dies from Australia. Again, this demonstrates Iplex's competitive conduct, and more generally the competitive nature of the 225mm – 450mm pipe market.

### **Aliaxis**

18.13 Aliaxis is a Belgian entity which controls both the Marley and RX Plastics brands. Aliaxis acquired RX Plastics in 2008 and could easily expand operations should Waters & Farr attempt to raise prices. Its acquisition of RX Plastics also demonstrates its growth ambitions in New Zealand.

### **Others**

18.14 Post acquisition there will also be a number of smaller plastics and steel manufacturers remaining in the market (noted at 16.2 – 16.4). Those players will also constrain the ability of players to raise prices post acquisition.

### **Expansion**

18.15 Given their extensive existing distribution channels and market experience both Aliaxis and Iplex could expand output if incentivised. The other domestic based plastic manufacturers could also expand to meet any price increase. Their only difficulty might be raising capital in the current financial climate. However, these operations have managed to secure their

<sup>64</sup> Information sourced from <http://iplex.com.au/iplex.php?section=1>.

<sup>65</sup> See, [www.accc.gov.au/content/index.phtml/itemId/500402/fromItemId/751043](http://www.accc.gov.au/content/index.phtml/itemId/500402/fromItemId/751043).

positions in the wider pipe systems markets and there is no evidence to suggest that they would not respond competitively to a price increase.

- 18.16 Although Austin and Absolute are on a smaller scale, there are no barriers preventing their expansion should market conditions make that option attractive. As noted, cement is only a small component of a concrete pipe's composition. Moreover, distribution channels are open for these smaller operations including MICO Pipelines and Plumbing World so there are no market foreclosure issues. Alternatively, tender submissions could be arranged directly with civil infrastructure contractors. The existence of these smaller players would constrain the parties' ability to raise prices for the small number of specific tenders where there are limited substitutes for concrete. Moreover, if VT pipe is sourced through a third party distributor Waters & Farr would not necessarily have knowledge of the particular project and its characteristics and/or that the end-user considered there were limited alternatives to concrete. Thus it would be difficult to raise prices for those small numbers of projects that for whatever reason concrete was sought (in addition to the reasons already discussed).
- 18.17 There are also a number of near competitors who currently manufacture other types of concrete building components. These include Allied Concrete, Fulton Hogan, HEB, Busck Prestressed Concrete, Telecrete, and Bowers & Son, who could also easily expand their manufacturing base to include concrete pipe if incentivised. As noted, there are no barriers to entry. Manufacturers of vertical drycast machines offer support and training enabling new entrants to quickly be in a position to produce efficient VT pipe.

### Expanding Imports

- 18.18 There are no barriers preventing existing or potential importers from expanding or entering the 225mm – 450mm pipe market. The Applicant understands that around 6.5% of PVC pipe is imported. In *Marley/RX* the Commission concluded that “[in] *the Commission’s view the barriers to importers’ abilities to enter the PVC pipe systems market, given the incentive to do so, are relatively low*”<sup>66</sup> and more specifically “[t]he Commission also understands that there have been examples of imports of large bore PE and PVC pipe that have been used for specific projects.”<sup>67</sup>
- 18.19 The Applicant agrees with that analysis and is also aware of large imports of concrete pipe greater than 450mm. In 2007/08, 10,000 tonnes entered through the Port of Lyttleton and in 2006/07, 3,000 - 4,000 tonnes entered through Port Otago. The Applicant estimates the annual concrete pipe usage to be approximately 70,000 - 90,000 tonnes per year. Those imported shipments represent between 5% - 10% of annual concrete pipe sales by weight.
- 18.20 Those concrete pipe imports were from Thailand, a well known exporter of building materials. The Applicant submits that Thai concrete pipe plants have the capacity and motivation to supply the New Zealand market if requested and end-users would simply support the lowest price supplier. As the majority of 225mm – 450mm pipe projects go through a competitive tender process the opportunity is open for civil and infrastructure contractors or local authorities to seek bids from overseas suppliers. There are no tariffs or regulatory controls on the importation of concrete pipes and the Applicant understands that freight costs from Thailand are comparable to that of Auckland to Christchurch.
- 18.21 The ACCC views actual or potential import competition as a competitive constraint where, among other factors, independent imports “... represent at least 10 per cent of total sales in each of the previous three years.”<sup>68</sup> The Applicant believes that independent imports of plastic pipe in New Zealand would be within the vicinity of this threshold. Other factors include there being no significant barriers to independent imports rapidly increasing within a one to two year

<sup>66</sup> *Marley/RX*, para 106.

<sup>67</sup> As above, para 135.

<sup>68</sup> ACCC, Merger Guidelines, November 2008, paras 7.33 - 7.35.

period and that the imported product (whether actual or potential) is a strong substitute in all respects.

- 18.22 While currency fluctuations may impact imports, the Applicant considers that the New Zealand Dollar will always be in a relatively strong position relative to countries such as Thailand where concrete pipe imports are most likely to originate from.

#### **Ease by which customers can switch supplier**

- 18.23 As discussed above, 225mm – 450mm pipe projects are supplied by competitive tender. The majority of end users (eg local authorities) are not necessarily concerned with pipe of a particular material but rather a “total solution” to meet a project’s requirements. Due to the market’s tender characteristics, customers are not “locked” into dealing with one supplier/distributor; each project is specific and customers don’t automatically choose the incumbent supplier ie there is no brand loyalty. Additionally, over time different civil infrastructure contractors are likely to be involved in projects for an end user.

#### **Overseas manufacturers who could enter the 225mm – 450mm pipe market**

- 18.24 In the context of plastic pipes a variety of overseas manufacturers could enter the 225mm – 450mm pipe market if incentivised. These include Vinindex (Australia’s second largest manufacturer of PVC and PE pipe), APP (the third largest manufacturer of PVC pipe in Australia), and Snow Plastic Pipe (Splendour Corporation Pte Limited – a large Singaporean PVC manufacturer). This could be achieved quickly by either importing or establishing plant in New Zealand. As noted earlier, plastic pipe is standardised to Australasian standards.

#### **Potential importers**

##### **(a) Snow Plastic Pipe (Splendour Corporation PTE Ltd)**

This Singaporean company is a major manufacturer of PVC piping (currently from 15mm - 200mm diameter, but could easily produce larger diameters) and currently exports its product to a number of countries including the Middle East, Asia and the Asia-Pacific regions.<sup>69</sup>

Splendour currently supplies Snow PVC pipe direct to the trade in New Zealand, but in recent years has shown interest and associated activity relating to a potential entry into the New Zealand market.

##### **(b) Tubemakers and Roofmart Fiji (TRL)**

TRL manufactures PVC plastic and galvanised pipes for the industrial, agricultural and domestic sectors. Manufacture is primarily for local Fijian and Pacific Island supply.

In recent years, TRL has communicated with New Zealand plumbing merchants with a view to supplying products. The Applicant understands that it is now supplying at least one New Zealand distributor. Potential exports from Fiji are made easier as TRL’s products comply with Australasian standards.<sup>70</sup>

<sup>69</sup> Information sourced from [www.splendour.sg](http://www.splendour.sg).

<sup>70</sup> Information sourced from [www.tubemakersfiji.com](http://www.tubemakersfiji.com).

(c) **Pipeking**

Pipeking claims to be Australia's leading independent manufacturer of PVC Plumbing Pipe and Fittings with sales offices and warehouses throughout Australia. Pipeking notes that it has a growing presence in the Pacific region.<sup>71</sup>

**Potential Competition***Conditions of Entry*19. **Please explain the requirements for new entry and/or importers in the relevant market(s)**

19.1 In regards to the entry requirements for de novo large bore PVC and PE refer to *Marley/RX* at paragraphs 89 - 94 and 124 respectively.

19.2 Below, the Applicant provides information regarding de novo entry for concrete and TWP pipe plants.

19.3 There are relatively low barriers for de novo entry into concrete pipe manufacturing.

**Table 7: Entry requirements for a de novo concrete pipe plant**

Action / requirement	Comment / what is needed / time / cost
Cost	[ ]
Time to establish plant	[ ]
Regulatory requirement	[ ]
Land requirement	[ ]
Labour requirements	[ ]
Raw materials	[ ]
Sunk costs	[ ]

19.4 If a narrow approach was taken to market definition (ie concrete pipe formed a distinct market) the existence of existing suppliers, low barriers to entry and available distribution channels would sufficiently constrain any attempt to maintain any price increase.

19.5 The Applicant also notes the High Court's comments in respect to low barriers to entry and lack of market power, namely:

*“What level of market power a firm has, as a result of its market share, will depend substantially on the level of barriers to entry and expansion which apply to the market. **If the barriers are low, a high market share is unlikely to result in an insufficiently constrained level of market power ...**”*<sup>72</sup>(emphasis added) and

*“The most that can be said is that dominance is frequently attended by a substantial market share but all other relevant factors must be brought to*

<sup>71</sup> Information sourced from <http://www.pipeking.com.au/default.aspx>

<sup>72</sup> *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269.

*account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.*<sup>73</sup> (emphasis added)

**Table 8: Entry requirements for a de novo TWP plant**

Action / requirement	Comment / what is needed / time / cost
Cost	[ ]
Time to establish	[ ]
Regulatory requirement	[ ]
Land requirement	[ ]
Labour requirements	[ ]
Technology requirements	[ ]
Sunk costs	[ ]

19.6 Barriers to entry for a de novo TWP plant are not prohibitive, especially for a player of Aliaxis' calibre.

19.7 Given those relatively low barriers to entry the Applicant submits that if a narrow market definition only including concrete and TWP pipe was defined there is no impediment preventing Aliaxis or other manufacturers from supplying TWP in addition to Waters & Farr, or Iplex expanding its diameter range if prices were increased materially. Importation of TWP from Australia and Asia also provides constraint on Waters & Farr post acquisition.

## 20. Factors that could impede entry, and what might prompt new entry post-merger

20.1 The Applicant submits there are no factors that would impede entry if market conditions are conducive.

20.2 New entry would be prompted if there were perceived opportunities to create a profit and this would depend on the individual characteristics of the new entrant. Distribution channels are also open for new entry. New entry may also occur due to a technological innovation or advancement.

### *Likelihood, Extent and Timeliness of Entry (the LET test)*

## 21. Please name any likely businesses you are aware of that do not currently supply the market but which you consider could supply each of the relevant markets

21.1 Refer to 16.4(m) for potential competitors. All of those firms could potentially supply the 225mm – 450mm pipe market if prices were to materially rise.

<sup>73</sup> *New Zealand Magic Millions Ltd v Wrightson Bloodstock Ltd* [1990] 1 NZLR 731, 755.

22. **To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?**

22.1 Potential entry would sufficiently constrain Waters & Farr/Fletchers/Hynds post acquisition given available distributional channels and the competitive tender nature of sales. While the Applicant considers de novo entry relatively easy, this is unlikely in concrete given Austin's entry and prevailing market conditions (namely the trend towards plastic and the competitive nature of the 225mm – 450mm pipe market). However, if prices were to materially rise, it is likely that a number of smaller concrete pipe plants would emerge. This response would constrain the parties post acquisition. Potential entry in TWP could also occur if new entrants perceived an opportunity to create profits existed. The extent of entry would be sufficient if TWP was added to a plastic manufacturer's product line such as Aliaxis or expanded diameters were offered by Iplex. Moreover, Aliaxis and Iplex have well established distribution channels.

23. **How long would you expect it to take for entry to occur, and for market supply to increase, in respect of the potential entrants named in question 21 above?**

23.1 An importer sourcing concrete from a manufacturer in Thailand could supply the New Zealand market in approximately 5 weeks,<sup>74</sup> as could importers of PVC and TWP. Refer to 19.3 and 19.4 for de novo entry times for concrete and TWP plants respectively. For an existing plastic manufacturer or manufacturer of other concrete building materials this time could be significantly less.

#### **Countervailing Power of Buyers**

24. **To what extent do you consider that the merged entity would be constrained in its action by the conduct of buyers in the markets affected?**

24.1 The Applicant agrees with the Commission's conclusion in regards to large bore pipe "*... customers in the civil/infrastructure customer group are typically large purchasers and that work in this customer group is traditionally conducted by competitive tender. In this respect, as with the PVC and PE pipe systems markets, the Commission is of the view that there is likely to be a degree of countervailing power held by large customers in [the large bore pipe] market*".<sup>75</sup>

24.2 The Applicant also agrees with the Commission when it noted "*PVC pipes over 250mm in diameter are produced to international standards, and can be sourced from a number of countries*".<sup>76</sup>

24.3 There is no reason why civil and infrastructure end users or their contractors could not source 225mm – 450mm pipes from overseas should Waters & Farr/Fletchers/Hynds attempt to raise prices in addition to the various sources already available domestically.

<sup>74</sup> Maersk Line shipping schedules indicate estimated transit times of between 23-37 days from Bangkok to Auckland, see [www.maerskline.com](http://www.maerskline.com).

<sup>75</sup> *Marley/RX*, para 136.

<sup>76</sup> Commission Report, para 78.

25. **If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume in the relevant markets**

25.1 Customer information for Waters & Farr, Hynds and Fletchers is enclosed in **Confidential Appendices 3, 4 and 5** respectively.

#### **Coordinated Market Power**

26. **Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination**

26.1 There is minimal scope for collusion in the 225mm – 450mm pipe market following the Commission’s Guidelines:

- (a) there is a high degree of competition between existing suppliers;
- (b) 225mm – 450mm pipe is differentiated as cost structures vary due to different raw materials. Raw materials for concrete pipe are available domestically while all resin for plastic pipe is imported;
- (c) new entry can occur relatively quickly;
- (d) there are a number of fringe participants in the industry;
- (e) neither of the parties could be described as “mavericks”;
- (f) there are a number of large market participants and potential participants;
- (g) the pipe industry is innovation driven rather than static;
- (h) there are a number of distribution channels ensuring price is elastic;
- (i) due to the lifetime of pipe, end users can delay purchases ensuring price is elastic;
- (j) customers are large and sophisticated and exercise considerable countervailing power;
- (k) there is no history of price coordination in the industry;
- (l) there is excess capacity ensuring market allocation is unlikely;
- (m) there are increasing imports in the market; and
- (n) there are no barriers preventing customers from switching between participants.

**Efficiencies**

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition?
- 27.1 As discussed, [ ] including insurance, maintenance, interest, labour and property costs.
- 27.2 The Applicant submits that the efficiencies are pro-competitive and will be reasonably extensive and the impact will be to both fixed and variable costs.
- 27.3 Those efficiencies are unlikely to be realised without the Proposal or over a longer timeframe. As discussed in 5.1, demand for concrete pipes in the 225mm - 450mm diameter range is decreasing as plastics become more acceptable to end-users. [ ].
- 27.4 The Applicant expects that the cost savings realised by shifting production to the VT plant would be passed onto customers given that the market is highly competitive.

**Other Factors**

28. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.
- 28.1 Not applicable.

## Part 6: Further Information & Supporting Documentation

29. Provide the contact details of all competitors, buyers and suppliers and any other relevant market participants

	<b>Name of Company</b> <i>Both legal and trading names</i>	<b>Contact Details</b> <i>Postal &amp; physical address, telephone &amp; fax, website</i>	<b>Relevant Contact Person</b> <i>Name, position and contact details including telephone phone, fax, email</i>
<b>Competitors</b>	AUSTIN PIPE CONCEPTS LIMITED	Izone Business Park 20 Illinois Drive Rolleston  PO Box 16276 Hornbyrive Rolleston  <b>T:</b> 0800 428 7846 or 03 347 4097 <b>F:</b> 03 347 4090  <a href="http://www.austinpipe.co.nz">www.austinpipe.co.nz</a>	
	ABSOLUTE CONCRETE LIMITED	2458 State Highway 1 Kaiwaka 0587  PO Box 17 Kaiwaka 0542  <b>T:</b> 09 431 2211 <b>F:</b> 09 431 2242	<b>Adrian Reddy</b> <b>M:</b> 0274 722 5551
	MARLEY NEW ZEALAND LIMITED	32 Mahia Road Manurewa Auckland  Private Bag 802 Manurewa  <b>T:</b> 09 279 2799 <b>F:</b> 09 279 2798  <a href="http://www.marley.co.nz">www.marley.co.nz</a>	
	RX PLASTICS LIMITED	445-453 West Street Ashburton  <b>T:</b> 03 307 9081  <a href="http://www.rxplastics.co.nz">www.rxplastics.co.nz</a>	<b>Phil Gatehouse</b> <i>National Sales &amp; Marketing Manager</i> <b>T:</b> 03 307 9081 <b>M:</b> 027 432 2132

	DUX INDUSTRIES LIMITED	111 Eastern Hutt Road Wingate Hutt City  T: 0800 367 389 or 04 5678900 F: 04 5678904  <a href="http://www.dux.co.nz">www.dux.co.nz</a>	
	IPEX PIPELINES NEW ZEALAND LIMITED	67 Malden Street Palmerston North  Private Bag 11019 Palmerston North  T: 0800 800 262 or 06 358 2004 F: 0800 800 804 or 06 356 2906  <a href="http://www.iplex.co.nz">www.iplex.co.nz</a>	
	CRANE DISTRIBUTION NZ LIMITED	50 & 58 Hazeldean Road Addington Christchurch 8024  PO Box 4641 Christchurch 8140  T: 03 338 1009 F: 03 338 7313  <a href="http://www.cranenz.co.nz">www.cranenz.co.nz</a>	<b>Ivor Timmins</b> <i>Executive General Manager</i>  <b>Steve Priest</b> <i>General Manager North Island</i>  <b>Kevan Hunt</b> <i>General Manager South Island</i>
	RURAL DIRECT LIMITED	105 Settlement Road Papakura Auckland  T: 09 297 2045 F: 09 297 2046  <a href="http://www.ruraldirectltd.co.nz">www.ruraldirectltd.co.nz</a>	<b>Neil Van Duyn</b> <i>Director and Shareholder</i>
	TYCO FLOW CONTROL PACIFIC PTY LIMITED	12-14 Kaimiro Street Pukete Ind Estate Te Rapa Hamilton  Branches: T (AKL): 09 921 7230 T (WLG): 04 568 3471 T (CHC): 03 968 3260  <a href="http://www.tycowater.com">www.tycowater.com</a>	<b>Ross Buddle</b> <i>Manager</i> (New Zealand Sales Outlets)  E: <a href="mailto:rbuddle@tycoflow.co.nz">rbuddle@tycoflow.co.nz</a>
	PPI CORPORATION (NZ) LIMITED	16 Edward Street (PO Box 33) Rangiora  T: 03 313 7956 F: 03 313 5551  <a href="http://www.ppi.com.au">www.ppi.com.au</a>	
	LOCKER GROUP (NZ) LIMITED	12 Offenhauser Drive East Tamaki Auckland 2013	

		<p><b>T:</b> 0800 285 837 or 09 273 9825 <b>F:</b> 09 274 5940</p> <p><a href="http://www.lockernz.co.nz">www.lockernz.co.nz</a></p>	
	STEELPIPE NZ LIMITED	<p>224 Neilson Street Onehunga Auckland 1061</p> <p><b>T:</b> 09 622 4580 <b>F:</b> 09 636 6196</p> <p><a href="http://www.steelpipe.co.nz">www.steelpipe.co.nz</a></p>	<p><b>James Hawkes</b> <i>General Manager</i> <b>T:</b> 09 622 4594 <b>M:</b> 021 638 025</p> <p><b>Athol Carr</b> <i>Sales Manager</i> <b>T:</b> 09 622 4592 <b>M:</b> 021 738 541</p>
	ALTO HOLDINGS LIMITED	<p><i>Address For Service:</i> Brown Glassford &amp; Co Level 1 55 Kilmore Street Christchurch</p> <p><a href="http://www.alto.co.nz">www.alto.co.nz</a></p>	
	MASKELL PRODUCTIONS LIMITED	<p>24 Bowden Road Mt Wellington Auckland</p> <p><b>T:</b> 09 573 0548 <b>F:</b> 09 573 0666</p> <p><a href="http://www.maskell.co.nz">www.maskell.co.nz</a></p>	<p><b>David Craig</b> <i>Company Director</i></p>
	PROMAX ENGINEERED PLASTICS	<p>389 Waipapa Road Kerikeri</p> <p>PO Box 749 Kerikeri Bay of Islands 0245</p> <p><b>T:</b> 0800 77 66 29 or 09 407 3575 <b>F:</b> 09 407 3578</p> <p><a href="http://www.promaxplastics.co.nz">www.promaxplastics.co.nz</a></p>	
	FRANK PKS NZ LIMITED	<p>18 Senior Place Bromley Christchurch 8062</p> <p><b>T:</b> 03 381 5400</p> <p><a href="http://www.frankpknsz.com">www.frankpknsz.com</a></p>	
	ASMUSS GROUP	<p>6 Gabador Place Mount Wellington Auckland</p> <p><b>T:</b> 09 573 0002 <b>F:</b> 09 573 3090</p> <p><a href="http://www.asmusshj.co.nz">www.asmusshj.co.nz</a></p>	
	HYDROFLOW DISTRIBUTORS LIMITED	<p>221A Bush Road Albany Auckland</p> <p>PO Box 33-780 Takapuna Auckland</p> <p><b>T:</b> 0800 488 444 or 09 415 6151</p>	

		<p><b>F:</b> 09 415 6150</p> <p><a href="http://www.hydroflow.co.nz">www.hydroflow.co.nz</a></p>	
<b>Buyers</b>	CRANE DISTRIBUTION NZ LIMITED (MICO PIPELINES)	<p>50 &amp; 58 Hazeldean Road Addington Christchurch 8024</p> <p>P.O. Box 4641 Christchurch 8140</p> <p><b>T:</b> 03 338 1009 <b>F:</b> 03 338 7313</p> <p><a href="http://www.cranenz.co.nz">www.cranenz.co.nz</a></p>	<p><b>Ivor Timmins</b> <i>Executive General Manager</i></p> <p><b>Steve Priest</b> <i>General Manager North Island</i></p> <p><b>Kevan Hunt</b> <i>General Manager South Island</i></p>
	NZPM GROUP LIMITED (PLUMBING WORLD LIMITED)	<p><i>Support Office:</i> 38 Fitzherbert Avenue Palmerston North <b>T:</b> 06 353 0283</p> <p><i>NZPM Group Head Office:</i> 92 Carbine Road Mt Wellington Auckland <b>T:</b> 09 573 1378</p> <p><a href="http://www.plumbingworld.co.nz">www.plumbingworld.co.nz</a></p>	<p><b>Kevin Smith</b> <i>General Manager Plumbing World</i></p>
<b>Suppliers</b>	HOLCIM (NEW ZEALAND) LIMITED	<p>1/1 Show Place Addington Christchurch</p> <p><b>T:</b> 0800 465 246</p> <p><a href="http://www.holcim.co.nz">www.holcim.co.nz</a></p>	<p><b>Jeremy Smith</b> <i>Managing Director</i> <b>T:</b> 03 339 7500 <b>F:</b> 03 339 7499</p> <p><b>David Howie</b> <i>General Manager, Concrete and Aggregates</i> <b>T:</b> 09 580 4700 <b>F:</b> 09 580 4719</p>
<b>Trade Associations</b>	CEMENT AND CONCRETE ASSOCIATION OF NZ	<p>Level 6 142 Featherston Street Wellington</p> <p>P O Box 448 Wellington</p> <p><b>T:</b> 04 499 8820 <b>F:</b> 04 499 7760</p> <p><a href="http://www.cca.org.nz">www.cca.org.nz</a></p>	<p><b>Rob Gaimster</b> <i>Chief Executive Officer</i> <b>T:</b> 04 915 0385</p>
<b>Any other relevant market participants or interested parties</b>	BUSCK PRESTRESSED CONCRETE LIMITED	<p>8 Fraser Street Whangarei 0110</p> <p>PO Box 310 Whangarei 0140</p> <p><b>T:</b> 09 438 3059 <b>F:</b> 09 438 3055</p> <p><a href="http://www.busck.co.nz">www.busck.co.nz</a></p>	<p><b>Stephen McGuirk</b> <i>Hamilton Factory Manager</i> <b>T:</b> 07 824 9397</p> <p><b>Dan Trask</b> <i>Palmerston North Factory Manager</i> <b>T:</b> 06 354 0058</p> <p><b>Paul Mathers</b> <i>Christchurch Factory Manager</i> <b>T:</b> 03 943 2068</p> <p><b>Phil Ryan</b></p>

			<i>Invercargill Factory Manager</i> <b>T:</b> 03 216 8210
	TELECRETE (NZ) LIMITED	20 Heritage Way East Tamaki Auckland  PO Box 64150 Botany Manukau 2163  <b>T:</b> 09 271 5730 <b>F:</b> 09 271 2047  <a href="http://www.wilsongroup.co.nz/telecrete">www.wilsongroup.co.nz/telecrete</a>	<b>E:</b> <a href="mailto:sales@wilsongroup.co.nz">sales@wilsongroup.co.nz</a>
	BOWERS & SON LIMITED	1852 Alexandra Street Te Awamutu 3800  <b>T:</b> 07 871 5209 <b>F:</b> 07 871 5249  <a href="http://www.bowersconcrete.co.nz">www.bowersconcrete.co.nz</a>	<b>E:</b> <a href="mailto:sales@bowersconcrete.co.nz">sales@bowersconcrete.co.nz</a>
	FULTON HOGAN LIMITED	<i>Corporate Office:</i> 29 Sir William Pickering Drive PO Box 39185 Harewood Christchurch  <b>T:</b> 03 357 1400 <b>F:</b> 03 357 1450  <a href="http://www.fultonhogan.com">www.fultonhogan.com</a>	<b>N D Miller</b> <i>Managing Director</i> (Melbourne based)  <b>R J Fulton</b> <i>Chief Operating Officer</i>
	ALLIED CONCRETE	35 Inglewood Road Invercargill  <b>T:</b> 03 217 1600 <b>F:</b> 03 217 1077  <a href="http://www.alliedconcrete.co.nz">www.alliedconcrete.co.nz</a>	<b>Scott O'Donnell</b> <i>Managing Director</i> <b>T:</b> 03 217 1614 <b>M:</b> 029 233 4401 <b>E:</b> <a href="mailto:scott.odonnell@hwr.co.nz">scott.odonnell@hwr.co.nz</a>  <b>Bob Officer</b> <i>General Manager Allied Concrete</i> <b>T:</b> 03 471 9594 <b>M:</b> 027 436 0042 <b>E:</b> <a href="mailto:bob.officer@alliedconcrete.co.nz">bob.officer@alliedconcrete.co.nz</a>
	HEB CONSTRUCTION LIMITED	<i>Auckland Head Office:</i> Firth Street Drury Auckland  P.O Box 226 Drury  <b>T:</b> 09 295 9000 <b>F:</b> 09 294 7208  <a href="http://www.heb.co.nz">www.heb.co.nz</a>	<b>Derrick Adams</b> <i>Chief Executive Officer</i>
	VINIDEX PTY LIMITED	19-21 Loyalty Road (PO Box 4990) North Rocks	<b>Russell Eggers</b> <i>Chief Executive Officer</i>

		NSW 2151 Australia  <b>T:</b> +61 2 8839 9006 <b>F:</b> +61 2 8839 9152	
	PIPES NZ LIMITED	207 Connett Road East Bell Block New Plymouth  <b>T:</b> 06 755 4152 <b>F:</b> 06 755 4153  <a href="http://www.pipesnz.co.nz">www.pipesnz.co.nz</a>	<b>Steve Gallichan</b> <i>Company Director</i> <b>M:</b> 027 471 8530 <b>A/H:</b> 027 255 4163
	PIPE & FITTINGS	54 Bay Road Grasmere Invercargill 9810  <b>T:</b> 03 215 6356	
	AQUAFIT LIMITED	46 Andrew Baxter Drive Airport Oaks Auckland 2154  <b>T:</b> 0508 278 234 or 09 255 5321 <b>F:</b> 09 255 5322  <a href="http://www.aquafit.co.nz">www.aquafit.co.nz</a>	
	AUSTRALIAN PLASTIC PROFILES	<i>Head Office – Sydney:</i> 12 Cawarra Road Caringbah NSW 2229 Australia  <b>T:</b> +61 2 9527 8800 <b>F:</b> +61 2 9527 8811  <a href="http://www.app.net.au">www.app.net.au</a>	
	SPLENDOUR CORPORATION PTE LIMITED	2 Fan Yoong Road Jurong Town Singapore 629780  <b>T (Sales):</b> +65 6 266 6698 <b>T (Store):</b> +65 6 266 2460 <b>F:</b> +65 6 268 2898  <a href="http://www.splendour.sg">www.splendour.sg</a>	
	TUBEMAKERS AND ROOFMART FIJI	98B Navutu Industrial Subdivision PO Box 4336 Lautoka Fiji Islands  <b>T:</b> +67 9 666 9655 or +67 9 666 8048 <b>F:</b> +67 9 666 4024  <a href="http://www.tubemakersfiji.com">www.tubemakersfiji.com</a>	

30. Please provide a copy of the most recent annual report (or audited financial statements if no annual report available) for each of the merger parties
- 30.1 Copies of the parties' most recent annual reports are enclosed in **Confidential Appendix 6** (Waters & Farr), **Confidential Appendix 7** (Hynds) and **Appendix 8** (Fletchers).

## Part 7: Confidentiality

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31. **If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.**
- 31.1 Confidentiality is not claimed for the fact of the proposed acquisition.
- 31.2 Confidentiality is sought for:
- (a) the information contained in **Confidential Appendices 1 – 7** to the confidential version of this application. None of the appendices are attached to the public version of this application; and
  - (b) the information contained in bold square brackets in the confidential version of this application (i.e. [ ]).
- 31.3 Confidentiality is sought until the relevant Applicant confirms in writing to the Commission that the particular information is no longer confidential.
- 31.4 This request is made because the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it would be likely to unreasonably prejudice the commercial position of the participants. Confidentiality is requested under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982.
- 31.5 The Applicant requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time a response to such a request is being considered.
- 31.6 Paragraphs 31.1 – 31.5 of this application also apply in respect of any additional information provided, whether orally or in written form, to the Commission where it has been expressed to be confidential or it is implicit by the nature of that information.

**THIS NOTICE** is given by John Revell Hynds of Interpipe Holdings Limited.

I hereby confirm that:

- (a) all information specified by the Commission has been supplied;
- (b) if information has not been supplied, reasons have been included as to why the information has not been supplied;
- (c) all information known to the Applicant(s) which is relevant to the consideration of this application/notice has been supplied; and
- (d) all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 3rd day of February 2011

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**Director, Interpipe Holdings Limited**

I am a director of the company and am duly authorised to make this application/notice.

# Confidential Appendices 1 – 7

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## Appendix 8 – Fletchers’ Financial Information

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See [http://www.fletcherbuilding.com/investor/financial-information/cms/files/report\\_pdfs/10FBL\\_AnnualReport.pdf](http://www.fletcherbuilding.com/investor/financial-information/cms/files/report_pdfs/10FBL_AnnualReport.pdf).