



Australian
Competition &
Consumer
Commission

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Statement of Issues — Visy Industries Australia Pty Ltd - proposed acquisition of PET and plastic assets of HP entities (receivers and managers appointed)

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition, by Visy Industries Australia Pty Ltd and Lightdock Pty Ltd (together **Visy**) of certain businesses and assets of HP PET Pty Ltd, HP PET (Australia) Pty Ltd, HP Industries Pet Ltd, HP Industries Services Pty Ltd, HP Plastics (NSW) Pty Ltd and HP Plastics (Vic) Pty Ltd, all of which have had receivers and managers appointed (the **proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 15 March 2012 and anticipates making a final decision by 22 March 2012. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 6 December 2012, receivers and managers were appointed to the HP Industries Group (**HP**). On 22 December 2012 Visy Industries Australia Pty Ltd provided its submission seeking informal clearance from the ACCC for the proposed acquisition.

The parties

Visy

6. Visy is Australia's largest packaging and recycling company. Visy's operations include:
 - the manufacture and supply of beverage and food containers including polyethylene terephthalate (**PET**) bottles, PET preforms, PET jars, aluminium and tinplate cans, paperboard cartons and corrugated cardboard boxes; and
 - the collection and processing of recyclable materials and the manufacture and supply of recycled paper.
7. Visy currently has five PET manufacturing facilities (PET blow moulding factories) located across Australia at: Kings Park (NSW), Heathwood (QLD), Moorabbin (VIC), Cavan (SA), and Forrestfield (WA).
8. In addition to the manufacture and supply of PET, Visy also manufactures and supplies plastic containers.
9. Visy is privately owned by the Pratt family through a family trust.

HP

10. HP is a plastic packaging and steel drum manufacturer in Australia and New Zealand. HP's business consists of three divisions: PET, plastics and steel.
11. HP operates two PET manufacturing facilities in Australia, one in Sefton (NSW) and one in Footscray (VIC). In addition to the two PET manufacturing facilities, HP operates two plastics manufacturing sites, one in Minto (NSW) and a small facility in Dandenong (VIC). These facilities manufacture a broad range of plastics products and packaging suitable for cosmetic and personal care products, food and beverages, household products and industrial products.
12. The proposed acquisition by Visy extends only to HP's PET and plastics divisions. Visy has not sought clearance to acquire HP's steel business.

Other industry participants

Pact Group Pty Ltd (Pact)

13. Pact manufactures a diverse range of plastic and non-plastic products for a variety of packaging applications through manufacturing operations in

Queensland, New South Wales (**NSW**) and Victoria. Pact's product range includes PET bottles and containers, rigid plastic containers, jars, tubes, jerry cans, cubes, pails, plastic and steel drums, trays and closures.

14. Pact's packaging business is managed through several wholly-owned subsidiaries, and products are sold under multiple brands including VIP Packaging, Alto Packaging, Signum, Baroda Packaging, Brickwood, Plaspak, Salient Asia Pacific and Atlas Plastics.
15. A related entity of Pact (Bennamon Pty Ltd) also has partial shareholdings in Pro-Pac Packaging Limited and National Can Industries Limited (**NCI**). Geminder Holdings Pty Ltd, another related entity of Pact, also has a partial shareholding in Cinqplast (a PET and plastics manufacturer in NSW).
16. Pact is privately owned by the Geminder family through a family trust. Pact is controlled by its sole director, Raphael Geminder, who is married to Fiona Geminder, the daughter of Jeanne Pratt and the late Richard Pratt.

Relationship between Pact and Visy

17. In previous matters, the ACCC has had regard to the relationship between Pact and Visy, and the impact of this relationship on the likely effectiveness of competition between Pact and Visy post-acquisition.
18. In assessing the competitive effects of the proposed acquisition, the ACCC is considering the relationships and links between Pact and Visy, including any financial, family, operational and other potential links that may impact on the effectiveness of competition between Pact and Visy. As part of this assessment, the ACCC will consider the incentives on the owners and controllers of Pact to compete vigorously with Visy (and vice-versa) post acquisition. While the ACCC is continuing to consider the relationship between Pact and Visy, the ACCC's preliminary view is that Pact may not provide an effective independent constraint on the merged firm and the proposed acquisition may remove or mute the potential competition that currently exists between HP and Pact.

The transaction

19. Visy is proposing to acquire HP's PET and plastics assets.
20. If this proposed acquisition proceeds, Visy will also acquire the assets of LIR Australia Pty Ltd (**LIR**) which operates a closure business in Australia (the LIR Acquisition). The beneficial ownership of LIR rests with the shareholders of HP.

Market inquiries

21. On 23 December 2011, the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers and customers.

With/without test

22. Section 50 of the *Competition and Consumer Act 2010 (CCA)* prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the CCA, the ACCC considers the likely effects of the acquisition by comparing the likely future competitive environment post acquisition if the acquisition proceeds (the “with” position) to the likely competitive environment if the acquisition does not proceed (the “without” position or “counterfactual” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
23. The ACCC considers it unlikely that HP’s PET and plastic assets would exit the relevant markets in the absence of the proposed acquisition. Market inquiries have indicated that, in the event HP is not acquired by Visy, either HP’s PET and plastics businesses are likely to be acquired by an alternative purchaser as a going concern, or the individual assets comprising HP’s PET and plastic business will be acquired by various different purchasers.
24. Accordingly, the ACCC is considering two alternative scenarios as to what would occur in the absence of the proposed acquisition:
 - HP’s plastic and PET assets are acquired by an alternative third party (other than Visy or Pact), as a going concern (**scenario 1**); or
 - HP’s plastic and PET assets are sold off separately to various third party purchasers (**scenario 2**).
25. The ACCC notes that under either scenario 1 or scenario 2 the plastics and PET assets of HP are likely to remain in the marketplace.

The ACCC invites interested parties to provide information and evidence on the likely competitive environment if the proposed acquisition does not proceed, including specific information on:

- the likelihood of scenario 1 occurring, that is the HP plastic and PET business being acquired by a an alternative third party purchaser as a going concern;
- the likelihood of scenario 2 occurring, that is, HP’s plastics and PET assets being sold off separately to various third party purchasers; and
- the likely effectiveness of HP’s PET and plastic assets as a continuing competitive constraint in the relevant markets if they are sold separately to various third party purchasers, other than Visy or Pact.

Areas of overlap

26. The ACCC considers that the following areas of overlap exist between the relevant parties:
- HP, Visy and Pact are all suppliers of PET bottles;
 - HP and Pact are significant suppliers of non-PET rigid plastic containers, with Visy currently having minor sales of non-PET rigid plastic containers;
 - HP and Pact are suppliers of small industrial plastic containers; and
 - LIR (which is owned by shareholders of HP) and Pact manufacture plastic closures.
27. The term ‘PET bottles’ is used to refer to jars, bottles and containers manufactured from PET. The term ‘rigid plastic containers’ is used to refer to non-PET plastic containers including plastic jars, bottles, tubes and cubes and other containers up to 10 litres in size and the term ‘small industrial plastic containers’ is used to refer to plastic containers including cubes, jerry cans and bottles of 10-25 litres in size.
28. The overlap between the relevant parties is set out in the table below.

	HP	Visy	Pact
PET	✓ NSW, VIC	✓ NSW, VIC, QLD, SA, WA	✓ NSW, VIC, QLD
Rigid plastic containers (non PET)	✓ NSW, VIC (small in VIC)	✓ (small)	✓ NSW, VIC, QLD
Small industrial plastic containers	✓ NSW, VIC	✗	✓ NSW, VIC, QLD
Plastic closures	✓	✗	✓

29. The ACCC notes that as regards the manufacture and supply of PET bottles, HP has not been active in the supply of PET bottles to large beverage customers (such as CCA, TBB and Asahi). HP is, however, a significant competitor in the supply of PET bottles to those customers in NSW and Victoria with volume requirements of around 50 million bottles or less per annum.

Market definition

30. The ACCC’s preliminary view is that the following markets are relevant to its consideration of the proposed acquisition:

- the manufacture and supply of PET bottles in each of NSW and Victoria;
- the manufacture and supply of rigid plastic containers (excluding PET bottles) in each of NSW and Victoria; and
- the manufacture and supply of small industrial plastic containers in each of NSW and Victoria.

Markets for the manufacture and supply of PET bottles

Product Dimension

31. The ACCC considers that the particular characteristics of PET bottles limit their demand-side substitutability with other types of plastic containers, namely:
 - **functional/technical properties.** PET bottles can be cold or hot filled, hold carbonation, have greater structural integrity and barrier properties than other plastic bottles of similar weight, and are easily stored and handled;
 - **end-customer preferences.** PET bottles offer visual clarity and lower weight which have contributed to beverage manufacturers' growing demand for packaging their products in PET.
32. On the supply-side, market inquiries indicate that there is limited supply-side substitutability between PET bottle manufacturing and the manufacturing of other packaging products such as glass, aluminium or carton due to the specialised equipment required to blow-mould PET bottles. The ACCC also understands that the equipment currently used to manufacture other types of plastic containers, such as high density polyethylene (**HDPE**) which uses a different manufacturing process cannot be easily adapted to manufacture PET bottles.
33. PET bottles (both beverage and non-beverage) are manufactured using an injection blow moulding process. This involves:
 - first, the creation of a PET preform through an injection moulding process whereby PET resin is injected into a mould, which determines the neck and weight of the final bottle; and
 - second, the preform is stretched and air is blown into it, so that the preform expands to take the bottle's desired shape.
34. PET bottles can be manufactured using either a single stage or two stage process. In a single stage process, the two stages of PET bottle production take place consecutively on the same machine. In a two stage process, preforms are moulded by a dedicated injection moulding machine which results in fully cooled preforms. A separate machine is then used to reheat and blow mould (stretch) the preforms into bottles. In a two stage process, the blow moulding can take place (and often does) in a separate facility from the manufacture of the preforms. The preforms are small (the size of a test-tube) and are therefore relatively inexpensive to transport.

35. A two stage process is much faster and achieves a higher level of output than single stage machines. It is accordingly better suited for large volume production. The high volume requirements of large beverage manufacturers such as Coca-Cola Amatil (CCA), Asahi/Schweppes and Tru Blue Beverages (TBB) are met by production from a two stage process.
36. A single stage process is slower, and best suited for shorter production runs. Smaller customers of PET beverage bottles and customers of non-beverage PET bottles, such as pharmaceutical, food, automotive and personal care product manufacturers (which typically have much smaller volume requirements), are likely to have their requirements met from a single stage machine.
37. While customers do not generally specify a manufacturing process, the ACCC understands that there may be some technical limitations which may prevent certain types of bottles being produced on a two-stage machine. For example, the two stage process is only able to manufacture cylindrical bottles, and bottles where the preform (and therefore the end bottle) has a flange (ridge). Two stage equipment is also typically unable to manufacture PET containers with wide mouths (for example, peanut butter jars).
38. Due to the economies of scale associated with two stage production, it is also often not economically viable for two stage equipment to be used to manufacture unique bottles in small volumes, or bottles with a non-standard neck size (due to the cost of non-standard preforms). Two stage equipment is typically used to manufacture standard stock bottles, that is, generic bottles produced using non-proprietary moulds, or large volumes of a proprietary PET bottle. These factors may limit the scope for competition between manufacturers operating single stage equipment and manufacturers operating two stage machines.
39. In this respect, the ACCC notes that each of HP, Visy and Pact operate two stage equipment and that HP and Pact also operate a significant amount of single stage equipment.
40. At this stage, the ACCC proposes to define a single product market for the manufacture of PET bottles, but recognising the different options and competitive constraints that apply, depending on a customer's volume and design requirements. The ACCC is seeking further information from market participants about the extent of actual and potential substitution between single stage equipment and two stage equipment.

The ACCC invites comments from interested parties on the extent of actual and potential substitution between suppliers with different PET manufacturing equipment

In particular, the ACCC seeks further information (and where possible, specific examples) on:

- customers with requirements that are capable of being met by either two stage equipment and single stage equipment (and details of their requirements);

- the extent to which a two stage production process can be adapted in order for it to be commercially viable to meet small volume requirements or to produce non-standard bottles at various production lengths;
- the extent to which two stage equipment can be modified to overcome technical limitations (e.g. to manufacture bottles or jars with wide mouths or without flanges); and
- the extent to which excess capacity on two stage machines may change the economics of servicing smaller customers.

Geographic dimension

41. Market inquiries indicated that the actual or potential supply of PET bottles interstate is very limited due to the significant cost of transport relative to the value of the bottle. The ACCC therefore considers that the markets for the manufacture and supply of PET bottles are State based. As HP's PET manufacturing plants are located in NSW and Victoria, the relevant markets are the markets for the manufacture and supply of PET bottles in each of NSW and Victoria.
42. However, while the ACCC considers that the boundaries of competition for the supply of PET bottles for the majority of customers are State based, the ACCC notes that the requirements of large beverage manufacturers (such as CCA, Asahi/Schweppes and TBB) are very different to the requirements of local State based customers. In particular, the large beverage manufacturers, which require high volumes of PET bottles (upwards of 100 million), typically receive bottle deliveries in large volumes at facilities in multiple States, pursuant to a single national contract. The requirements of each large beverage manufacturing facility are, however, typically met from the closest PET bottle manufacturing plant and are rarely delivered interstate.
43. The ACCC notes that while it may be appropriate to consider a broader geographic market for the supply of PET bottles to the large beverage manufacturers, HP has not been active in the supply of PET bottles to such customers. Accordingly, for the purposes of considering the impact of the proposed acquisition, it is unlikely to be necessary for the ACCC to reach a view on the geographic boundaries of competition to supply large beverage customers.

Markets for the manufacture and supply of rigid plastic containers less than 10 litres in size (excl'd PET)

Product Dimension

44. The ACCC considers that rigid plastic containers, produced from polymers other than PET, such as HDPE, polypropylene (**PP**) and polyvinyl chloride (**PVC**) are likely to be in a separate market from PET. This is due to the particular characteristics associated with PET summarised above which limit the demand and supply-side substitutability of PET bottles with other rigid plastic

containers. However, demand-side considerations indicate that there may be a degree of substitution between HDPE containers and containers manufactured from other polymers (except PET).

45. The ACCC also considers that:

- rigid plastic packaging is in a separate market to flexible packaging, such as bags and pouches. Flexible packaging has different characteristics to rigid plastic packaging. It is light-weight, making it easier to transport and it does not take up as much shelf space as products packaged in rigid packaging. Rigid and flexible packaging are also produced on very different machinery limiting the potential for supply-side substitutability;
- products produced from alternative rigid plastic mediums, such as cardboard or glass, are also unlikely to be in the same market as rigid plastic containers. Customers are unlikely to regard alternative rigid packaging mediums as genuine alternatives given the unique characteristics of plastic containers. In addition to differences in functionality, separate packaging forms are used to target different price points and therefore different consumer groups. Further, there is unlikely to be supply-side substitutability between the manufacturing of cardboard, glass and plastic containers.

46. Plastic containers above 10 litres in size are also unlikely to be in the same market. Such containers are not substitutable from the customer's perspective and the ACCC understands that containers of this size are typically manufactured using different equipment.

47. Rigid plastic containers include bottles, jars and containers. Bottles are used to package:

- cosmetic and personal care products (e.g. shampoo, moisturiser and sprays);
- food and beverage products (e.g. fruit juices, dairy and oils);
- household products, including trigger sprays (e.g. detergents, window sprays, cleaning solvents); and
- industrial products, including trigger sprays (e.g. chemicals, paints, pesticides).

48. Plastic jars and containers are also used to package cosmetic and personal care products (including creams, make-up, medicinal goods), food and beverage (e.g. biscuits and dairy) and household products (e.g. detergents and garden chemicals).

49. Rigid plastic containers can be manufactured via blow moulding or injection moulding. HDPE containers (the most common form of rigid plastic containers) are manufactured using a blow moulding process. Under this process, a balloon shape (parison) of molten plastic is released before it is clasped by a mould and blown into a bottle or container shape. Market inquiries indicated that there is some supply-side substitutability between the manufacture of HDPE containers and other rigid plastic containers. For example, PP bottles may be manufactured

on the same equipment as HDPE containers. The ACCC also understands that plastic containers for different applications can sometimes be manufactured using the same equipment although adaptations may be required, for example, food grade resin is required for food and dairy applications).

The ACCC invites comments from interested parties on the appropriate product dimension of the market for the supply of rigid plastic containers.

The ACCC seeks further information (and where possible, specific examples) on:

- the extent to which customers may consider certain rigid plastic containers (e.g. HDPE plastic containers) substitutable with containers manufactured from other polymers, including PET; and
- the extent of any limitations, including the technical limitations of manufacturing equipment, which may prevent a supplier of rigid plastic containers used for one application (e.g. beverage plastic containers) from manufacturing rigid plastic containers to be used for another application (e.g. dairy/food or personal care applications).

Geographic dimension

50. The ACCC's preliminary view is that it is appropriate to consider State based markets for the manufacture and supply of rigid plastic containers.
51. The ACCC understands that due to the cost of freight relative to product value, the majority of rigid plastic containers are sold to customers in the same State in which they are manufactured. The cost of freight, and hence the extent to which containers are transported between States will depend on the weight and whether the containers are stackable. The rigid plastic containers manufactured by HP are closed head containers, that is, plastic containers with a top and which cannot be stacked inside each other.
52. However, market inquiries indicated that for some manufacturers, rigid plastic containers are manufactured in one State and shipped to meet demand in another State. This is particularly the case for smaller containers where the per unit freight costs are lower. In this respect, the ACCC notes that rigid plastic containers are small in size, ranging from 20ml to less than 10 litres, compared to small industrial containers which range from 10-25 litres, and rigid plastic containers also have a higher product value relative to volume. The freight cost of shipping rigid plastic containers and, in particular smaller plastic containers, is therefore likely to account for a lower proportion of the value of the product, compared to small industrial containers.
53. While Visy has a limited presence in the supply of rigid plastic containers, Pact manufactures rigid plastic containers in multiple States. HP manufactures rigid plastic containers at its facility in NSW and to a lesser extent in Victoria. Accordingly, the ACCC considers the relevant markets are likely to be the manufacture and supply of rigid plastic containers in each of NSW and Victoria.

The ACCC invites comments from interested parties on the appropriate geographic dimension of the market for the supply of rigid plastic containers.

The ACCC seeks further information (and where possible, specific examples) on:

- the extent to which rigid plastic containers are transported interstate; and
- the freight costs associated with transporting rigid plastic containers interstate and how these costs compare to the value of the product.

Markets for the manufacture and supply of small industrial plastic containers between 10-25 litres in size

Product Dimension

54. Consistent with previous matters, the ACCC considers that there is likely to be a separate market for the supply of small industrial plastic containers, that is, plastic cubes, jerry cans and water bottles between 10-25 litres in size.
55. The ACCC understands that the significant price discrepancy between plastic containers and tin containers limits demand-side substitutability. On the supply-side, the ACCC understands that different manufacturing equipment and raw materials are used to manufacture small industrial plastic containers from those used to manufacture containers using non-plastic materials such as tin.
56. The ACCC also considers that plastic pails are unlikely to fall within the same market as plastic cubes, jerry cans and water bottles. Unlike plastic pails, plastic cubes, jerry cans and water bottles are all closed head containers which limits demand-side substitutability with plastic pails (which have open heads). In terms of supply-side substitutability, the ACCC understands that the equipment used to manufacture plastic pails cannot easily manufacture small industrial plastic containers (i.e. closed-head containers).

Geographic dimension

57. The ACCC's preliminary view is that it is appropriate to consider State based markets for the manufacture and supply of small industrial plastic containers.
58. The ACCC understands that the majority of small industrial plastic containers are supplied to customers within the same State in which they are manufactured. The ACCC also notes that the products supplied by HP are closed head small industrial containers, this means that they are not 'nestable' and therefore less cost effective to transport than open head containers (such as plastic pails) which can be stacked.
59. While Visy is not present in the supply of small industrial plastic containers, the ACCC understand that Pact manufactures and supplies small industrial plastic containers in NSW, Queensland and Victoria. HP manufactures small industrial containers in Victoria and NSW. Accordingly, the ACCC considers that the

relevant markets are likely to be the manufacture and supply of small industrial plastic containers in each of NSW and Victoria.

The ACCC invites comments from interested parties on the appropriate geographic dimension of the market for the supply of small industrial plastic containers.

The ACCC seeks further information (and where possible, specific examples) on:

- the extent to which small industrial plastic containers are transported interstate; and
- the freight costs associated with transporting small industrial plastic containers and the relationship of those costs to the value of the product.

Markets for the manufacture and supply of plastic closures

Product Dimension

60. Plastic closures are manufactured using the injection moulding process. They are used for the following applications:
- (a) bottle closures (beverage and other closure containers)
 - (b) caps for jars;
 - (c) caps for aerosols; and
 - (d) closures for drums, cubes and carboys.
61. Consistent with previous matters, the ACCC considers that there is likely to be a single market for the supply of plastic closures.

Geographic dimension

62. The ACCC notes that due to the higher value to weight ratio of plastic closures, (compared to plastic containers and PET bottles), a significant proportion of plastic closures are imported into Australia. The ACCC also notes that plastic closures are frequently transported interstate.
63. However, the ACCC considers that it is unlikely to be necessary to reach a definitive view on the geographic scope of the plastic closures market given LIR's small presence in this market.

Statement of issues

64. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories 'issues that may raise concerns' and 'issues unlikely to pose concerns'.

Issues that may raise concerns

The manufacture and supply of PET bottles to customers in New South Wales and Victoria

65. The ACCC is concerned that the proposed acquisition may substantially lessen competition in the markets for the manufacture and supply of PET bottles to customers in each of NSW and/or Victoria. The ACCC is considering the extent to which the proposed acquisition would allow Visy post acquisition to unilaterally, or in coordination with Pact, increase prices for the supply of PET bottles, or decrease the level of service provided to customers of PET bottles, in NSW and/or Victoria.
66. Visy is the largest supplier of PET bottles in Victoria (and also in Australia). Its annual production and also its production capacity are significantly larger than all other manufacturers. Indeed, Visy's production capacity in Victoria is substantially larger than the aggregate production capacity held by all other Victorian manufacturers of PET bottles combined. Pact is the second largest manufacturer of PET bottles in Victoria (and also in Australia). HP is the third largest manufacturer of PET bottles in Victoria (and also in Australia).
67. Similar to the position in Victoria, Visy is the largest supplier of PET bottles in NSW, Pact is the second largest and HP is the third largest.
68. Market inquiries indicated that HP is an effective competitor in the supply of PET bottles in NSW and Victoria to those customers with requirements of around 50 million bottles or less per annum and is an important constraint on Pact in this segment of the market.
69. The ACCC understands that the combined market share of Visy and Pact post acquisition would be greater than 80% in each of NSW and Victoria.
70. The ACCC recognises that Visy has traditionally focussed on large beverage customers and has not competed closely with HP for the supply of PET bottles to smaller customers. The ACCC expects that this reflects the differences in the two parties' production processes. The ACCC understands that the use of two stage equipment is likely to make it difficult for Visy to meet the requirements of non-beverage PET bottle customers (for example, to manufacture bottles with wide mouths or non-cylindrical shapes) and, given the economies of scale associated with two stage equipment, may also reduce the commercial incentives on Visy to compete to supply smaller customers.
71. HP operates both two stage equipment and single stage equipment in Victoria. However, HP has significantly less two stage equipment than Visy, and its two stage equipment has a smaller number of cavities than Visy's, reducing its potential throughput. This limits HP's ability to compete with Visy to supply those customers with very large volume requirements.
72. The ACCC notes CCA's public statements that it plans to move to 100% self sufficiency in PET bottle manufacture in Australia by 2015. The ACCC expects that this is likely to result in Visy (as CCA's incumbent supplier) having significant excess manufacturing capacity. While this excess capacity relates to

the operation of two stage equipment, the ACCC considers that the excess capacity may increase Visy's incentives to undertake shorter production runs and investigate what adaptations can be made to the equipment and processes to increase Visy's competitiveness in meeting the requirements of smaller customers. This may potentially increase the level of competition between Visy and HP.

73. The closest competitor to HP in the supply of PET bottles in both Victoria and in NSW is currently Pact. Like HP, Pact's PET business is currently focussed on supplying small to medium customers with stock and/or custom bottles, using a combination of single stage and two stage equipment (though, as noted above, Pact like HP, has significantly less capacity associated with its two stage equipment than Visy).
74. As set out above, the ACCC is considering the links between Pact and Visy and the incentives on their respective principals to compete. In the ACCC's preliminary view, Pact may not provide an effective independent constraint on the merged firm and the proposed acquisition may remove or mute the potential competition that currently exists between HP and Pact.
75. In addition to Visy, Pact and HP, there are several smaller manufacturers and suppliers of PET bottles in Victoria including Quality Blow Moulders (QBM), and Synergy. QBM also manufactures non-PET rigid plastic containers. In NSW, the smaller PET manufacturers and suppliers include Power Plastics, Cinqplast and Sangraal. Power Plastics and Sangraal also manufacture non-PET rigid plastic containers. The ACCC notes that a related entity of Pact has a partial shareholding in Cinqplast.
76. These suppliers, however, have substantially less capacity than Visy, Pact and HP, the ACCC expects that they would not be able to meet the volume requirements of new customers without expanding their capacity (this is discussed in barriers to entry and expansion below).
77. The ACCC invites comments from interested parties on the potential competitive constraint likely to be imposed on Visy in the supply of PET bottles in NSW and/or Victoria post acquisition.

The ACCC invites comments from interested parties on the potential competitive constraints likely to be imposed on Visy post acquisition in the supply of PET bottles in each of NSW and Victoria.

The ACCC seeks further information (and where possible, specific examples) on:

- the competitive constraint likely to be provided by Pact on Visy in the supply of PET bottles in NSW and Victoria post acquisition (and vice-versa);
- tenders or other supply opportunities where Visy and Pact submitted competing offers;
- tenders or other supply opportunities won by smaller suppliers in Victoria and / or NSW, in competition with Visy, Pact or HP and the proportion of total tenders/supply opportunities for which smaller suppliers are a competitive constraint;
- any difficulties faced by smaller manufacturers in securing contracts to supply some or all of the requirements of larger customers; and
- customer willingness to split contracts across more than one supplier.

Barriers to entry and expansion

78. Market inquiries indicated that there is a ready availability of machinery for the manufacture and supply of PET bottles and this is relatively inexpensive, particularly when purchased second hand. Market participants also suggested that a new entrant may be able to commence operation on a small scale and incrementally increase production capacity as customer volumes are obtained over time.
79. However, information received by the ACCC indicated that the threat of new entry may be unlikely to provide an effective constraint on the merged firm and Pact. In particular, market inquiries suggested that:
- considerable time would be required for a new entrant to build up the scale of production required to be an effective competitor to suppliers such as the merger parties and Pact, and also to obtain the reputation required to secure contracts to service large customers with significant contestable volumes;
 - the total costs involved in establishing a PET manufacturing plant are significant. In addition to the costs of acquiring the actual injection blow moulding machines necessary to manufacture PET bottles, there are a number of other pieces of equipment which would be required (e.g. conveyors, robots etc) as well as the lease or acquisition of a suitable site; and
 - in addition to the start-up costs involved, a new entrant would need to secure staff with skills and experience in blow moulding. Market inquiries indicated that it may be difficult to obtain such staff and, in particular, staff

with the technical skills necessary in order to design moulds and maintain blow moulding machinery.

80. The ACCC notes there are examples of successful injection blow moulding businesses manufacturing PET bottles being built up in the past 10-15 years such as Synergy (in Victoria) and Power Plastics (in NSW). These businesses typically evolved from the acquisition of the blow moulding assets of smaller companies and the associated customer relationships and staff.
81. Market inquiries indicated that current conditions are unlikely to favour new entry. In particular, the technical and commercial requirements of larger customers have increased in terms of assuring quality control and security of supply from their packaging suppliers. These requirements are likely to make larger customers more reluctant to switch and may also be difficult for a new entrant to meet in its initial stages of operation.
82. Further, as discussed above, Visy is expected to have significant excess capacity as a result of CCA's decision to move to in-house PET bottle supply. This excess capacity may provide Visy with an incentive to investigate potential adaptations to its existing two-stage equipment and processes, broadening the range of customers that Visy is capable of supplying and potentially creating a strategic barrier to entry.
83. The ACCC considers that the barriers to expansion may be lower than the barriers to entry given the ability of smaller manufacturers to incrementally expand their capacity in response to securing new customer contracts. Market inquiries indicated that suppliers and in particular smaller suppliers are capable of tendering for a customer's volume requirements prior to having the capacity to serve the customer's requirements. The successful tenders would have to acquire a new machine (likely to be a single stage) in the period before supply commences.
84. The ACCC is continuing to investigate the extent to which small suppliers would be able to expand capacity in response to a small but significant increase (**SSNIP**) in the price of PET bottles. The ACCC's preliminary view is that such expansion is unlikely unless this is sponsored by a customer whose requirements are sufficient to underwrite the supplier's investment. This is addressed in the section on countervailing power immediately below.

The ACCC invites comments from interested parties on the likelihood of entry and expansion in the manufacture and supply of PET in Victoria and/or in NSW

In particular, the ACCC is seeking information relating to the extent to which the significant excess capacity expected to be held by Visy (following CCA's decision to move to in-house production) will create a strategic barrier to entry in Victoria and/or NSW.

Countervailing power

85. The ACCC is considering the extent to which customers of PET bottles in NSW and Victoria hold countervailing power due to the ability to bypass the merged firm and Pact by either setting up in-house manufacturing or sponsoring new entry or expansion.
86. There are a number of options available to customers seeking to manufacture their own PET bottle requirements. One of the cheaper options is for a customer to acquire blow moulding equipment and to purchase the preforms from either a domestic manufacturer (such as Visy) or on the international market. Under this model, the customer is effectively carrying out the second stage of the two stage PET manufacturing process described in the market definition section above. The ACCC understands that as preforms are much smaller than blown PET bottles with consequently lower freight costs, interstate and, indeed, international delivery of preforms is commercially viable.
87. The manufacture (including the self-manufacture) of PET bottles involves significant economies of scale and market inquiries indicate that self manufacture is more likely to be commercially viable for large customers. However, market inquiries indicated that even for those customers with relatively small volume requirements, potentially as low as 5-10 million bottles per annum, the capital expenditure involved in setting up self manufacture may be recovered within a relatively short period of time.
88. A customer's incentive to switch to in-house manufacture will, however, also depend on whether the customer's requirements include a large range of different container types and/or configurations. If a customer uses only a single bottle or a small range of bottles, the customer would be able to use the same mould and avoid the cost and down time incurred in using and switching between multiple moulds. Therefore in-house manufacture would be likely to be economic at a lower total level of demand for these customers.
89. Market inquiries indicated that even for those customers with requirements sufficient to justify the initial capital expenditure, there were other factors which may reduce their incentive to self-manufacture. Customers would be required to source staff with the expertise to maintain blow moulding equipment and change the moulds (although where the customer's requirements are straightforward, the customer may be able to contract with the Australian distributor of the equipment or a design consultant to provide such services). A number of market participants indicated that they would not be interested in self

manufacture even if it was commercially viable and they were able to obtain staff as it would remove their focus from their core business.

90. The ACCC is also considering the incentives on customers to sponsor new entry or support the expansion of an alternative PET supplier in response to a SSNIP.
91. Market inquiries indicated that while customers would typically be unwilling to sponsor a new entrant given the uncertainty and risks associated with using an untested supplier, customers would be more likely to sponsor expansion by a small manufacturer.
92. However, while some customers were willing to sponsor expansion by a smaller supplier, other customers considered that the smaller suppliers lacked the technical and management skills necessary to support the supply of large volume requirements. Some larger customers considered that there were greater risks involved in securing supply from a supplier which had significantly less capacity and also had concerns that smaller suppliers would be unable to have the necessary expertise in order to work with them to further develop and improve the packaging (for example, to make changes to decrease the weight of the bottle).
93. The ACCC is seeking further information on the extent to which customers may be able to constrain the merged firm by switching to in-house manufacturing or sponsoring expansion by the smaller suppliers.
94. The ACCC's preliminary view is that self-manufacture may be commercially viable for customers with relatively small volume requirements, potentially providing these customers with countervailing power. However, the ACCC is seeking further information on the extent to which factors other than volume requirements may influence customers' decisions to self manufacture PET bottles and hence the extent to which they could constrain the merged firm by credibly threatening to move to in-house manufacture of PET bottles.

The ACCC invites comments from interested parties on the likelihood of PET customers in Victoria and NSW exercising countervailing power by moving their manufacturing in-house or alternatively supporting or sponsoring the entry or expansion of smaller suppliers

In particular, the ACCC is seeking information (and where possible, specific examples) relating to:

- the likely per unit cost associated with small scale in-house PET bottle manufacture;
- any additional ongoing costs associated with in-house PET manufacture, including obtaining suitably experienced staff; and
- the minimum volume of PET bottles that may be required by a customer before it can viably vertically integrate (and whether such a minimum scale only applies to customers that require a small range of bottle types or Stock Keeping Units (SKUs));
- the proportion of total demand for PET bottles in each of Victoria and NSW which is accounted for by customers with the ability to credibly threaten to self-manufacture their PET requirements; and
- the value of additional PET supply opportunities that a manufacturer would need to secure to profitably expand production capacity by purchasing new equipment.

The manufacture and supply of rigid plastic containers (non PET) to customers in New South Wales

95. The ACCC is concerned that the proposed acquisition may substantially lessen competition for the supply of rigid plastic containers to customers in NSW. The ACCC is considering the extent to which the proposed acquisition would allow Visy post acquisition to unilaterally, or in coordination with Pact, increase prices for rigid plastic containers, or decrease the level of service provided to customers of rigid plastic containers, in NSW.
96. The ACCC notes that Pact is currently the largest manufacturer and supplier of rigid plastic containers in NSW by a very significant margin. HP is the second largest manufacturer and supplier of rigid plastic containers in NSW but the ACCC understands that HP manufactures significantly less than Pact.
97. As set out above, the ACCC is considering the links between Pact and Visy and the incentives on their respective principals to compete. In the ACCC's preliminary view, Pact may not provide an effective independent constraint on the merged firm and the proposed acquisition may remove or mute the potential competition that currently exists between HP and Pact.

98. There are some alternative manufacturers of rigid plastic containers in NSW each operating multiple extrusion blow moulding machines including Cinqplast and Power Plastics, both of which also manufacture and supply PET bottles.
99. Similar to the position in respect of the supply of PET bottles in NSW and Victoria, these firms have significantly less capacity to manufacture rigid plastic containers than Pact or HP. However, as is also the case with the supply of PET bottles, these manufacturers can expand incrementally in response to customer demand.
100. Customers' views on the suitability of the smaller suppliers, and hence the competitive constraint they are likely to provide on Pact and the merged entity, appear to depend on the size and the volume requirements of the customer concerned. Smaller customers indicated a willingness to source supply from the smaller manufacturers of rigid plastic containers, and indeed in many cases indicated a preference to do so while some larger customers expressed reluctance to source more than a small proportion of their requirements from a smaller manufacturer. These concerns, which were not universally held by larger customers, were connected to security of supply and the ability of the manufacturer to work with the customer to improve design and efficiency. Market inquiries also indicated that larger customers are more likely to require custom packaging which may be more difficult to manufacture than generic packaging.
101. The ACCC understands that customers and, in particular larger customers, can incur significant switching costs when moving to a new untested supplier, particularly in the food, beverage and pharmaceutical industries. Testing plastic containers for quality and durability involves significant resources on the part of the customer and new suppliers may also find it difficult to meet these requirements.
102. The ACCC considers that these factors may limit the ability of the smaller manufacturers of rigid plastic containers to provide a constraint on the merged firm and Pact post acquisition.

The ACCC invites comments from interested parties on the potential competitive constraint likely to be imposed on Visy by Pact and by smaller manufacturers of rigid plastic containers (non PET) in New South Wales:

The ACCC seeks further information (and where possible, specific examples) on:

- tenders or other supply opportunities won by smaller suppliers, in competition with Pact or HP and the proportion of total tenders/supply opportunities for which smaller suppliers are a competitive constraint; and
- the value of additional supply opportunities that a supplier would need to secure to profitably expand production capacity by purchasing new equipment.

Barriers to entry and expansion

103. Market inquiries indicated that there is a ready availability of equipment necessary for the manufacture and supply of rigid plastic containers and this is relatively inexpensive, particularly when purchased second hand.
104. The ACCC understands that the price of this equipment is comparable to the equipment used to manufacture PET bottles. Market participants also suggested that a new entrant may be able to commence operation on a small scale and incrementally increase production capacity as customer volumes are obtained over time.
105. However, while the capital costs of acquiring one blow moulding machine and tooling costs (the purchase of the moulds) may not be significant, the ACCC understands that this would allow a new entrant to produce only a limited volume and range. Such a new entrant would not be able to meet the needs of many customers and therefore would be unlikely to provide a meaningful constraint on the merged firm and Pact.
106. The ACCC considers that it would take a new entrant a considerable amount of time before it is able to build up the scale required to compete with the merged firm and Pact. Market inquiries indicated that reputation and experience was a significant factor and that smaller suppliers would need to be in the market for a considerable period of time before many customers would consider sourcing their plastic container requirements from them.
107. The substantial production capacity held by Pact in NSW, and across the country as a whole, may also deter potential new entry.
108. The ACCC is seeking further information and comment on the barriers to entry to the manufacture and supply of rigid plastic containers.
109. The ACCC considers that the barriers to expansion may be lower than the barriers to entry given the ability of smaller manufactures to incrementally expand their production in response to new customer contracts.

Countervailing power

110. The ACCC is considering the extent to which customers of rigid plastic containers hold countervailing power due to their ability to bypass the merged firm and Pact by either setting up in-house manufacture or by sponsoring new entry/expansion.
111. In-house manufacture of rigid plastic containers would involve the customer acquiring the necessary equipment (typically multiple extrusion blow moulding machines and associated tooling and machinery) and acquiring the necessary resin (such as HDPE or PVC).
112. The ACCC is aware of examples of companies that have set up their own in-house manufacturing facilities.
113. Similar to the position with the in-house manufacture of PET bottles, customers indicated that given the significant capital expenditure, substantial scale is required to make the investment worth while. Market inquiries also indicated that even if a customer did have the requisite scale to justify the capital expenditure, the customer may be reluctant to make such an investment as it would be a diversion from their core business activity and would also involve a degree of technical expertise.
114. The ACCC is also aware of some large customers sponsoring expansion by smaller suppliers rather than contracting with Pact or HP. However, the ACCC notes that the extent to which a customer could sponsor expansion will depend on the size of the customer and the customer's volume requirements (due to the capital costs involved).
115. Market inquiries also indicated that customers are increasingly adopting dual-sourcing agreements, in part due to the risk to the supply chain of using only one supplier and in part to sponsor smaller manufacturers. The ACCC is seeking more information on the extent to which such strategies would provide the firms employing such strategies with countervailing buyer power.

The ACCC invites comments from interested parties on the competitive constraint provided by in-house manufacture of rigid plastic containers and the ability of customers to sponsor expansion by smaller suppliers

The ACCC seeks examples or estimates of:

- the cost of establishing an in-house operation for the manufacture of rigid plastic containers;
- the minimum efficient scale required to commence in-house manufacture of rigid plastic containers;
- the proportion of total demand for rigid plastic containers in NSW accounted for by customers with the ability to credibly threaten to self-manufacture their rigid plastic container requirements; and

- large customers sponsoring the expansion (or new entry) of a smaller rigid plastic container manufacturer.

Imports

116. Market inquiries indicated that importing empty rigid plastic containers is unlikely to be a viable alternative to domestic supply for most customers. This is due to the cost of transport, particularly where containers are not nestable and importation would require the transport of empty space. Potential risks to the supply chain as a result of long lead times and costs associated with managing large shipments also limit the competitiveness of imports.
117. The ACCC understands that imports of rigid plastic containers are limited to containers up to 500 ml in size (due to the freight cost, only very small containers are competitive with domestically manufactured product) or speciality or unique containers which are not available in Australia.
118. However, market participants indicated that filled, finished product (as opposed to empty rigid plastic containers) is often imported as this may be cost competitive.
119. The ACCC considers that imports of filled product are unlikely to provide a direct constraint on the merged firm. Given that packaging represents only a small fraction of total product value, manufacturers are unlikely to shift their production offshore in response to an increase in the price of packaging. While filled product may provide an indirect constraint (through customer switching between imported filled product and locally manufactured and filled product), the constraint is likely to be weak given the small fraction of total product value represented by packaging costs.

The manufacture and supply of small industrial plastic containers in New South Wales and Victoria

120. The ACCC is concerned that the proposed acquisition may substantially lessen competition for the supply of small industrial plastic containers to customers in NSW and/or Victoria. The ACCC is considering the extent to which the proposed acquisition would allow Visy, post acquisition, in coordination with Pact, to increase prices for small industrial plastic containers, or decrease the level of service provided to customers of such containers in NSW and Victoria.
121. Small industrial plastic containers (between 10-25 litres in size) include plastic cubes, jerry cans and water bottles. These containers are used for a range of purposes including in pharmaceutical, petrochemical and agricultural applications.
122. HP is the second largest manufacturer and supplier of small industrial plastic containers in NSW. While Visy does not manufacture small industrial plastic containers, the ACCC understands that Pact is currently the largest supplier of small industrial plastic containers in NSW. The ACCC understands that

between them, HP and Pact are expected to account for approximately half of the supply of small industrial plastic containers in NSW.

123. Similar to the position in NSW, the ACCC understands that Pact is currently the largest supplier of such containers in Victoria. HP has lower sales of small industrial plastic containers in Victoria than it does in NSW but between them, Pact and HP are expected to account for approximately half of the sales of small industrial plastic containers in Victoria.
124. There are a range of other alternative suppliers of small industrial plastic containers in NSW and Victoria including PB Packaging, A&J Australia, Cospak and Class Plastic. The ACCC understands that the switching costs for customers of small industrial plastic containers (10-25 litres) are likely to be less than for customers of rigid plastic containers, as generic rather than proprietary moulds are typically used for the manufacture of such containers.
125. The ACCC is seeking more information and comment on the competitive constraint imposed by the other manufacturers of small industrial plastic containers in NSW on the merged firm.

The ACCC invites comments from interested parties on the potential competitive constraint likely to be imposed on Visy post acquisition in the supply of small industrial plastic containers in NSW and Victoria:

- the competitive constraint expected to be provided by Pact on Visy (and vice-versa), post acquisition on the manufacture and supply of small industrial plastic containers in NSW and Victoria;
- the ability of customers of small industrial plastic containers to switch, or to credibly threaten to switch, to manufacturers other than Pact and Visy in response to a small but significant price increase by the merged firm; and
- the value of additional supply opportunities that a supplier would need to secure to profitably expand production capacity by purchasing new equipment.

Barriers to entry and expansion

126. The ACCC considers that the barriers to entry and expansion into the small plastic industrial container market are likely to be similar to the barriers to entry to the rigid plastic container market, as both types of container are typically manufactured using a blow moulding process.

Countervailing power

127. The ACCC is considering the extent to which customers of small industrial plastic containers (such as petrochemical, pharmaceutical and agricultural companies) are able to bypass local suppliers by establishing in-house manufacturing or sponsoring new entry.

128. The ACCC notes that while it may be commercially viable for certain customers of PET bottles (and potentially rigid plastic containers) to have the ability to manufacture bottles or containers in-house, this is unlikely to be the case for small industrial plastic containers, due to the low volumes in which they are traded. The ACCC considers that in light of the capital costs of setting up a manufacturing facility, the high degree of expertise required and the low volumes that customers generally require, manufacturing small plastic industrial containers in-house is unlikely to be a viable alternative.
129. Customers of small industrial containers could consider sponsoring new entry, or expansion by an existing supplier. However, market inquiries indicated that this is only likely to be an option for customers with large volume requirements, sufficient to underwrite the capital costs associated with entry and expansion.
130. The ACCC is seeking further information and comment on the competitive constraint imposed by the in-house manufacture of small industrial plastic containers and the ability for customers to sponsor new entry or expansion.

The ACCC invites comments from interested parties on the ability of customers to bypass the merged firm and Pact:

The ACCC seeks:

- examples or estimates of the cost of establishing an in-house operation for the manufacture of small industrial plastic containers and the minimum efficient scale for such an operation; and
- examples of large customers sponsoring the expansion (or new entry) of a smaller small industrial plastic container supplier.

Imports

131. Market inquiries indicated that closed head industrial containers (between 10-25 litres) in size are not cost effective to import due to their bulkiness and because they cannot be stacked within each other. Freight costs are significant and imports are not competitive relative to locally manufactured product. In addition, the ACCC understands that customers have concerns with lead times and potential supply chain risks associated with imported product.

Issues unlikely to pose concerns

132. The ACCC considers that the proposed acquisition is unlikely to pose competition concerns in respect of the following issues. However, the ACCC will accept submissions from interested parties on these issues and will further consider potential competition issues if it considers that such an assessment is warranted.

The manufacture and supply of rigid plastic containers in Victoria

133. The ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in the supply of rigid plastic containers in Victoria.

134. While Pact (but not Visy) has a significant presence in this market, HP has very minimal production of rigid plastic containers in Victoria.

Ability and incentive to foreclose competition

135. While the proposed acquisition extends Visy's portfolio by increasing its presence in the supply of rigid plastic containers and small industrial plastic containers, the ACCC considers the proposed acquisition is unlikely to increase Visy's ability to foreclose competition by bundling or tying PET bottles or plastic containers with other packaging products.
136. Market inquiries have not indicated any specific scenarios in which Visy alone, or in combination with Pact, would be likely to impose conditions on the supply of packaging products to the detriment of competition.
137. The ACCC notes that many market participants purchase their packaging requirements from multiple suppliers and the ACCC understands that even within a particular product category, there is an increasing tendency of customers to adopt dual-sourcing arrangements. This practice (and the underlying incentives on customers to adopt such strategies) may decrease the ability of Visy to foreclose such competition.

The supply of plastic closures,

138. As set out above, if the proposed acquisition proceeds, Visy will also acquire LIR, a very small plastics closure business. The ACCC notes that Visy does not currently supply plastic closures but notes that Pact has a plastic closure manufacturing business.
139. The ACCC considers that competition concerns are unlikely to arise in this market given LIR's small presence in this market and due to the availability of imports.

The acquisition of PET and HDPE resin

140. Both Visy and HP (as well as Pact) acquire PET and HDPE resin. The vast majority of PET and HDPE resin is imported in bulk from overseas.
141. Based on market inquiries the ACCC considers that the proposed acquisition is unlikely to pose substantial competition concerns in relation to the acquisition of PET and HDPE resin.

ACCC's future steps

142. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
143. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.

144. Submissions are to be received by the ACCC no later than **15 March 2012**. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view.
145. The ACCC intends to publicly announce its final view by **22 March 2012**. However the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.