

Readymix Holdings Limited's proposed acquisition of the Elvin business

On 11 May 2005, the Australian Competition and Consumer Commission ('ACCC') announced that it would not intervene in the proposed acquisition of the Elvin concreting and quarrying business by Readymix Holdings Limited ('Readymix').

Timing

On 19 January 2005, Readymix submitted a proposal to the ACCC to acquire the Elvin business.

On 8 February 2005, the ACCC commenced market inquiries in relation to the proposed acquisition.

On 30 March 2005, the ACCC released a Statement of Issues outlining the competition issues raised during the assessment process.

On 11 May 2005, the ACCC announced that it did not propose to intervene in the proposed acquisition pursuant to Section 50 of the *Trade Practices Act 1974* ('the Act').

The Parties

Readymix

Readymix is a wholly owned subsidiary of Rinker Group Limited, an international heavy building materials group. Rinker has interests in quarries and sand mines, concrete plants as well as other related building material plants. It also owns a 25% share of Cement Australia (one of three domestic cement producers).

Readymix has the following concrete plants and sand quarries in the ACT:

- Fyshwick Concrete;
- Mitchell Concrete;
- Bungendore Quarry; and
- Cooma Road Quarry.

The Elvin Business

The Elvin business covers three distinct areas of operations: premixed concrete and pumping; sand processing and; wholesale concrete supplies. Each Elvin business is a separate company but all shares in each company are held by members of the Elvin family.

The Elvin owned and operated businesses are:

- Tom Elvin Pty Ltd t/a Mitchell Mini-Mix Concrete: a premixed concrete and pumping business.
- Tuggeranong Pre-Mix: a premixed concrete and pumping business.
- Tylden Machinery (Sales) Pty Ltd t/a Tom Elvin: a sand quarrying and processing business.
- Concretors Warehouse Canberra Pty Ltd: a concrete supplies warehouse (that sells equipment such as concreting tools, oxides, stencils and other supplies).

The Proposal

Readymix intends to acquire the assets of the Elvin business.

Market Inquiries

The ACCC conducted wide ranging market inquiries on the matter, contacting competitors, customers and other interested parties.

Market Definition

The ACCC considered the relevant market to be the market for pre-mixed concrete within an 80km radius of the Elvin concrete plants.

During market inquiries, the ACCC also considered the effects of the acquisition on the upstream cement market.

Competition Analysis

As previously mentioned, the ACCC issued a Statement of Issues on 30 March 2005. The Statement of Issues outlined the competition issues raised during the assessment process and gave interested parties the opportunity to provide information addressing the primary competition issues under consideration by the ACCC.

The ACCC however received a limited response to the Statement of Issues, with only a small number of market participants providing submissions to the ACCC. The ACCC considered the information provided during the first and second assessment phase when making its decision on the proposed acquisition.

During the course of the ACCC's investigation, the following significant competition issues were raised:

(i) The Level of Market Concentration

The ACCC's investigation indicated that Readymix will have a substantial market share for the supply of concrete in the Canberra region post acquisition. The merged entity will own and operate a total of four concrete plants in Canberra.

Other competitors in region include the vertically integrated concrete suppliers Boral and Hanson and also independent concrete supplier Monaro Mix.

Market inquiries revealed that these competitors currently compete against Readymix and/or the Elvin businesses for commercial/industrial as well as residential customers and are likely to compete against the merged entity post acquisition.

In other words, despite the merged entity's large market share, it will be constrained by the presence of the three other concrete suppliers in the region.

(ii) The Extent of Barriers to Entry

The Commission found that the barriers to entry for large scale entry are high but somewhat lower for small scale entry into the concrete industry. Market inquiries revealed that a small scale new entrant into the industry would face low economic, regulatory or social barriers in setting up a small concrete plant.

Consequently, the Commission considered potential new entry and the threat of new entry as a constraint on the behaviour of the merged entity. In the event that the incumbents significantly increase their prices and/or decrease their service, potential new entry and/or the threat of new entry is likely to return prices and service to competitive levels.

(iii) The Extent of Vertical Integration

Readymix, Boral and Hanson are vertically integrated suppliers providing upstream products such as cement and aggregates as well as downstream products such as concrete. In recent years, these companies have become increasingly horizontally and vertically integrated primarily by entering into tolling arrangements, acquisitions and mergers.

Market inquiries revealed some competition issues concerning an increase in the barriers to entry and/or expansion for cement suppliers as a result of decline in the number of customers independent of the three vertically integrated companies. However, the information provided did not illustrate that barriers to entry and/or expansion would be significantly increased post acquisition and furthermore, did not illustrate a substantial lessening of competition in the market.

Conclusion

The Commission found that the presence of other competitors in the pre-mixed concrete market in the Canberra region including Boral, Hanson and Monaro Mix would constrain the behaviour of the merged entity. The potential for new entry and the credible threat of new entry also would act as a constraining force on all market participants.

The ACCC therefore concluded that the acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition in any of the relevant markets in breach of Section 50 the Act.