



Australian
Competition &
Consumer
Commission

19 April 2007

Statement of Issues — Drum Makers, a subsidiary of Visy Steel Products - proposed acquisition of Greif Australia

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition (**proposed acquisition**) of Greif Australia Pty Ltd (**Greif**) by Drum Makers Pty Ltd, a subsidiary of Visy Steel Products Pty Ltd which is a subsidiary of Visy Industrial Packaging Holdings Pty Ltd (**Visy**).
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 accordance with the ACCC's Merger Review Process Guidelines,¹ the ACCC has established a secondary timeline for further consideration of the competition issues arising from the proposed acquisition. The ACCC anticipates completing further market inquiries by **2 May 2007** with a proposed date for announcement of the ACCC's decision of **17 May 2007**. 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 21 March 2007, Visy advised the ACCC of the public announcement of the proposed acquisition.

¹ The ACCC's *Merger Review Process Guidelines* are available on the ACCC's website at www.accc.gov.au

The parties

Visy

6. Visy manufactures and supplies a range of packaging products including steel drums in 30 to 220 litre (L) capacities. Visy also manufactures and supplies tinplate cans and pails (10 L to 25 L capacities), plastic drums (30 L to 220 L capacities), pails (15 L to 20 L capacities), cubes (10 L to 25 L capacities), jerry cans and other packaging products including bottles, jars, tubes, food trays and closures (including plastic and tinplate caps and nozzles).
7. Visy has two manufacturing operations for steel drums and other packaging products in each of Queensland, New South Wales and Victoria, as well as manufacturing operations in Western Australia and Tasmania.
8. Visy also supplies reconditioning services for steel drums and intermediate bulk containers (IBCs).

Greif

9. Greif is a subsidiary of US-based Greif Inc, which is a manufacturer of industrial packaging products and services in over 40 countries.
10. In Australia, Greif manufactures and supplies a range of packaging products including steel drums in 40 to 60 L and 200 to 220 L capacities. Greif also supplies tinplate pails (10 to 30 L capacities) and plastic cubes (10 to 40 L capacities), as well as some 205 L plastic drums.
11. Greif has manufacturing operations for steel drums and other packaging products in Queensland, New South Wales, Victoria and Perth. Greif also has a large fleet of 1,000 L IBCs which it distributes in Australia.

Market inquiries

12. On 21 March 2007 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including customers for packaging products, including new and reconditioned steel drums and suppliers of packaging products.

Industry background

13. Visy and Greif are major suppliers of industrial packaging products in Australia. They are the only manufacturers and suppliers of new steel drums in Australia.
14. The packaging industry in Australia supplies products for the packaging of a very wide range of products, for example, chemicals, food products, agricultural products and industrial products. There are a variety of packaging products including:

- large packaging products having a capacity over 60 L, including:
 - drums – usually made of steel or plastic. The most common sizes are 60 L, 100 L and 205 L;
 - IBCs – cube-shaped containers made of a flexible inner ‘box’ (usually made of plastic) with a rigid external frame (for example, a metal cage) which in turn is attached to a pallet. Storage capacities range between 1,000 L and 2,000 L;
 - bulk bags – made of strengthened plastic with capacities between 1,000 L and 2,000 L; and
 - small packaging products including:
 - pails – open or closed head containers made of tin or plastic. Storage capacities range from 10 L to 25 L;
 - cubes – cube-shaped plastic containers with capacities between 10 L and 25 L; and
 - bag-in-a-box systems – consisting of a strong plastic bag seated inside a cardboard box.
15. Some packaging products including steel drums and IBCs can be reconditioned to extend their product life. Reconditioning involves the cleaning, repair and redecoration of used drums or IBCs, using washing facilities and thermal oxidation treatment. This reconditioning process can occur on up to five to seven occasions in the life cycle of a drum. There is therefore a pool of drums in the industry that, to varying degrees, may be suitable for reconditioning.
16. As well as storage volume and ability to be reconditioned, other product features that vary among these different packaging products include their ability to store dry and/or liquid products, store dangerous goods, display branding, their weight and their storage characteristics (referred to as ‘stackability’).

Statement of Issues

17. For the purposes of this Statement of Issues, the competition issues are divided into three categories, ‘issues of concern’, ‘issues that may raise concerns’ and ‘issues unlikely to pose concerns’. The ACCC is inviting information from interested parties in relation to all issues.

Issues of concern

Monopoly in the supply of new steel drums

18. Based on market inquiries, the ACCC considers that the merged entity’s monopoly in the supply of new steel drums in Australia as a result of the proposed acquisition could represent a significant threat to competition.
19. Market inquiries indicated that despite general substitutability between various types of industrial packaging, practical constraints mean that for a material level of industrial packaging customers in Australia, there are limited or no effective alternatives to the use of new steel drums.

20. These practical constraints include where:
- products are considered dangerous such as some fuels, hazardous chemicals and corrosive cleaning agents;
 - product integrity/cleanliness is considered paramount such as some food products, solvent based paints and high value products;
 - product image including packaging consistency or aesthetics is paramount such as in the case of retail sales where it may be necessary to supply branded products and/or products of uniform sizes; and
 - end-customer preferences dictate the use of a particular type of packaging and packaging customers in Australia have no option but to meet this specification such as in supplying export markets or industries in which particular safety standards apply.
21. Market inquiries further indicated that new steel drum customers to which these practical constraints apply may not purchase a sufficient volume of large industrial packaging to have options with respect to sponsoring new entry to the manufacturing of new steel drums in Australia, importing filled large industrial packaging or exercising countervailing power against the merged entity with respect to the supply of large industrial packaging.
22. Accordingly, the ACCC is concerned that a material level of new steel drum customers may be 'captive' to the merged entity such that the merged entity may have the ability to increase prices and/or reduce the quality of steel drums supplied to these customers.
23. The ACCC invites further information and views as to whether:
- new steel drum customers may be in a position to switch to alternative packaging products for some or all of their packaging requirements in the event of an increase in the price or reduction in quality of new steel drums;
 - the number of 'captive' customers would be likely to be material in terms of either the value of steel drums purchased, the number of steel drums purchased, the volume of litres packaged or any other relevant measure;
 - the merged entity would be likely to be able to identify 'captive' customers so as to engage in price discrimination with respect to those customers;
 - price discrimination with respect to 'captive' customers would be likely to be profitable for the merged entity; and
 - any price discrimination by the merged entity with respect to 'captive' customers would be likely to be defeated by arbitrage opportunities it may create for the resale of new steel drums (i.e. by taking advantage of the price difference between steel drums supplied by the merged entity to 'captive' customers and other customers).

Issues that may raise concerns

24. Based on market inquiries, the ACCC considers that the following aspects of the proposed acquisition may raise competition concerns:
- Visy's principal competitor for the supply of industrial packaging products in Australia and the only other supplier of a comprehensive range of industrial packaging products, including new steel drums, would be removed;
 - the merged entity may have the ability and incentive to significantly foreclose competing steel drum reconditioners' access to used drums for reconditioning; and
 - the merged entity may have the ability and incentive to bundle or tie a portfolio of industrial packaging products including new steel drums, thereby significantly foreclosing the ability of other suppliers to compete in packaging markets.

Removal of principal competitor to Visy

25. The ACCC's market inquiries indicate that the proposed acquisition would remove the principal source of competitive constraint to the supply of industrial packaging products by Visy in that:
- Visy and Greif are the only parties with the ability to offer a comprehensive range of industrial packaging products and services encompassing new steel drums and other industrial packaging products;
 - Visy and Greif are the only suppliers of steel drums and other packaging products with the geographic coverage, by way of operations in several Australian states, to service customers that contract on a national basis; and
 - Visy and Grief are the only Australian based manufacturers and suppliers of new steel drums.
26. The ACCC invites further information and views as to whether there would be competitive constraints operating on the merged entity that would be sufficient to ensure that the proposed acquisition does not give rise to a substantial lessening of competition with respect to the supply of industrial packaging products. These constraints may arise from:
- remaining competitors with a more limited product range and/or geographic coverage than the merged entity;
 - actual or potential imports of industrial packaging. In particular, the ACCC is interested in whether:
 - packaging customers in Australia have the ability to viably import unfilled new steel drums; and

- the ability of packaging customers in Australia to import filled steel drums may be limited to very large customers with global operations;
- the threat of new entry or expansion to the supply of industrial packaging. In particular, the ACCC is interested in whether:
 - entry or the threat of entry to the supply of industrial packaging products other than new steel drums would be sufficient to impose an effective competitive constraint on the merged entity;
 - the sales volume and growth in the use of new steel drums in Australia would be sufficient to make new entry to the manufacture of new steel drums viable;
 - new steel drum plant and equipment could be used for other manufacturing applications;
 - expertise with respect to steel drum manufacturing could be easily obtained; and
 - there would be a customer or combination of customers likely to sponsor entry to the manufacture of new steel drums in Australia. This would require consideration of the number of new steel drums purchased by packaging customers and the proportion of their total costs attributable to packaging relative to the scale required to make entry to the manufacture of new steel drums viable; and
- any countervailing power of industrial packaging customers including arising from:
 - an ability to bypass the merged entity through the importation of filled products or by sponsoring new entry; or
 - the use of procurement joint ventures by a combination of customers.

Ability and incentive to foreclose competition for reconditioned steel drums

27. The merged entity's unique position as the only supplier of new steel drums may provide it with the ability and incentive to foreclose competing steel drum reconditioners' access to used steel drums for reconditioning.
28. For example, the merged entity may supply new steel drum customers on the condition that those customers:
 - also purchase reconditioning services from the merged entity (or do not purchase reconditioning services from the merged entity's rivals);
 - accept some limit on their ability to resupply used drums, or particular used drums, to a drum reconditioner other than the merged entity; or

- accept the imposition of additional fees (including that any deposit paid will not be refunded) if they do not return the drums, or particular used drums, to the merged entity.
29. These examples are a non-exhaustive account of the types of conduct that may foreclose competition. Such conduct may be to the substantial detriment of competition for the supply of industrial packaging in Australia including the supply of reconditioned drums.
30. The ACCC invites further information and views as to:
- how steel drum customers dispose of used steel drums including any arrangements with respect to disposal, entered into with steel drum suppliers;
 - the size of the pool of used drums available for reconditioning, the product life of drums comprising this pool and any practical limitations on the use of particular used drums;
 - the extent to which customers presently purchase new steel drums and reconditioning services from a single supplier;
 - customers' likely incentives to accept a bundle or tied offer of new steel drums and reconditioning services from the merged entity, such as to reduce transaction costs and secure discounts/rebates;
 - whether the imposition of unwanted conditions on the supply of new steel drums would be likely to lead to a reduction in sales of new steel drums, such that the conduct would not be profitable for the merged entity; and
 - the extent to which customers may be able to respond by threatening to purchase other packaging products from competing suppliers, such that the conduct would not be profitable for the merged entity.

Ability and incentive to bundle or tie a portfolio of packaging products

31. The ACCC's market inquiries indicate that competition in industrial packaging markets in Australia may be substantially reduced if the proposed acquisition were to result in competitors to the merged entity being effectively foreclosed from competing for a material proportion of industrial packaging demand. This may arise from the merged entity's unique position as a supplier of a portfolio of complementary packaging products including new steel drums.
32. For example, the merged entity may have the ability and incentive to bundle or tie (via conditional contractual terms) the supply of particular industrial packaging products, including new steel drums, with a range of its other industrial packaging products, to the substantial detriment of competition. Such conditions may include either providing certain discounts/rebates on new steel drums if a customer also purchases plastic industrial packing products or refusing to supply new steel drums unless a customer also purchases plastic industrial packaging products.

33. Bundling or tying of particular industrial packaging products, including new steel drums, with other industrial packaging products may significantly foreclose competing packaging suppliers from winning customers, reduce their ability to achieve scale economies and raise their costs.
34. The ACCC invites further information and views as to the extent to which customers:
 - presently purchase multiple industrial packaging products from a single supplier;
 - are likely to have incentives to accept a bundle or tied offer of industrial packaging products from the merged entity, such as to reduce transaction costs and secure discounts/rebates; and
 - would have the ability to disaggregate their industrial packaging purchases between multiple suppliers or source a comparable bundle of packaging products from any alternative supplier.

Issues unlikely to pose concerns

35. Based on market inquiries, the ACCC considers that the proposed acquisition is unlikely to pose competition concerns in relation to the supply of closures (including plastic and tinsplate caps and nozzles) and small industrial packaging products including (tinsplate pails, plastic pails and plastic cubes).
36. Nonetheless, the ACCC will accept further submissions from industry participants and will further consider these product areas if it considers that such an assessment is warranted.

ACCC's future steps

37. 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.
38. Submissions are to be received by the ACCC no later than **2 May 2007**. 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 as to the appropriate course of action to take to resolve any competition concerns that remain.
39. The ACCC intends to publicly announce its decision in relation to the proposed acquisition by **17 May 2007**. 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.