



Australian  
Competition &  
Consumer  
Commission

13 September 2007

## Statement of Issues — Pact Group – proposed acquisition of Brickwood Holdings

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Brickwood Holdings Pty Limited, Logan Moulders Pty Ltd, Full View Plastics Pty Ltd and the units in the Full View Plastics Unit Trust (**Brickwood**) by Pact Group Pty Limited (**Pact Group**) (**proposed acquisition**).
2. Pact Group is a holding company of VIP Plastic Packaging Pty Ltd, trading as VIP Packaging, Plaspak Packaging Pty Ltd, Alto Packaging Australia Pty Ltd and Baroda Packaging Pty Ltd.
3. 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.
4. In accordance with the ACCC's Merger Review Process Guidelines,<sup>1</sup> 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 **26 September 2007** with a proposed date for announcement of the ACCC's decision of **19 October 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](http://www.accc.gov.au/mergersregister).
5. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, suppliers 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.

---

<sup>1</sup> The ACCC's *Merger Review Process Guidelines* are available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)

## Background

6. On 31 July 2007, Pact Group advised the ACCC of the public announcement of the proposed acquisition.

## Relevant Parties

### *Brickwood*

7. Brickwood manufactures a range of packaging products including polyethylene terephthalate (**PET**) bottles, high density polyethylene (**HDPE**) bottles, PET preforms and plastic closures. Brickwood is also a significant purchaser of PET and HDPE resin. Brickwood's manufacturing operations are as follows:

Entity	State	Products
Brickwood	Melbourne	PET & HDPE bottles, closures
Fullview plastics & water	Sydney	PET & HDPE bottles
Logan Moulders	Queensland	PET & HDPE bottles, closures

8. Brickwood related entities also participate in joint venture arrangements with National Foods Milk, Parmalat Australia and Dairy Farmers Co-Operative which include on-site blow-moulding facilities for HDPE and PET bottle manufacturing for milk and fruit juice products (**dairy joint ventures**). The dairy joint ventures are not part of the proposed acquisition.

### *Pact Group*

9. Pact Group manufactures and supplies a range of packaging products including PET, HDPE, polypropylene (**PP**) bottles and polyvinyl chloride (**PVC**) bottles and containers and plastic closures through manufacturing operations in Queensland, New South Wales and Victoria. Pact Group has recently commenced manufacturing and supplying 2-3L HDPE beverage bottles in Victoria. Pact Group is also a significant purchaser of PET and HDPE resin.
10. Pact Group also manufactures and supplies plastic products for the food and retail industries including jars, tubes, food trays and bowls as well as larger containers for industrial applications including tinplate pails, plastic pails and cubes and steel and plastic drums.
11. Pact Group is privately owned by the Geminder family through a family trust (**Geminder Trust**). In 2002, a Pact Group related entity, Salvage Pty Ltd (**Salvage**)<sup>2</sup>, acquired the industrial packaging operations of Visy Industries Australia Pty Ltd (**Visy**). As part of the purchase of the Visy industrial packaging business, Visy entered into an agreement for the provision of corporate and shared services to Pact Group. In 2003, Visy entered into a loan agreement with Salvage to retire the pre-existing vendor finance transferred with the assets at the time of the acquisition.
12. Since the purchase in 2002, Pact Group has taken steps to increase the

---

<sup>2</sup> The Visy industrial packaging business was sold to a consortium including Salvage Pty Ltd, the corporate trustee for Geminder Trust, which is the ultimate owner of Pact Group.

separation between Pact Group and Visy including through reducing the extent to which Visy provides corporate and shared services and inputs to Pact Group. Recent steps include Pact Group directors resigning from directorships in Visy and related entities.

### **Visy**

13. Visy is Australia's largest packaging and recycling company. Visy's operations include the:
  - manufacture and supply of beverage and food containers including PET bottles, PET preforms, PET jars, paperboard cartons and corrugated cardboard boxes; and
  - the collection and processing of recyclable materials and the manufacture and supply of recycled paper.
14. Visy is privately owned by the Pratt family through a family trust (**Pratt Trust**).

### ***Relationship between Pact Group and Visy***

15. Market inquiries indicated that given the current operational dependence, information flows, financial relationships and incentives flowing from personal and family relationships between Pact Group and Visy, it is unlikely that the merged entity and Visy would compete effectively against one another.
16. The ACCC has not formed a concluded view as to the relationship between Pact Group and Visy. The ACCC invites further information and views as to whether Visy is likely to be an effective competitor to Pact Group post-acquisition.
17. In order to outline the likely competition concerns arising from the proposed acquisition, this Statement of Issues proceeds on the basis that Visy would not be an effective competitor to Pact Group post-acquisition.

### **Market inquiries**

18. On 2 August 2007 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including suppliers of packaging products, PET preforms and PET and HDPE resin, and customers for PET bottles, HDPE bottles, plastic closures, PET preforms and PET and HDPE resin.

### **Industry background**

19. The packaging industry in Australia manufactures and supplies products for a wide range of packaging products including industrial and chemical products and fast moving consumer goods (**FMCG**) such as food and beverage, household consumer, pharmaceutical and personal care products. FMCG packaging products include:
  - beverage containers, such as PET and HDPE bottles, cartons, glass bottles and aluminium cans; and

- non-beverage containers, such as PET, HDPE, PP and PVC bottles and containers, cartons, glass bottles and jars, steel and aluminium cans and flexible packaging.
20. Beverage container customers include carbonated soft drink suppliers (**CSD**), fruit juice, water, functional drinks (including sports and energy drinks) and dairy<sup>3</sup> suppliers (**beverage suppliers**).
  21. CSD, water and functional drinks suppliers predominantly use PET bottles for packaging. While there are examples of large scale in-house manufacturing of PET bottles in the past by beverage suppliers, the industry is currently characterised by outsourced manufacturing and supply.
  22. Dairy and fruit juice suppliers predominantly use HDPE bottles for packaging milk and fruit juice, particularly in 2-3L bottle sizes. Dairy and fruit juice suppliers also use PET bottles and cartons for up to 1L bottle sizes. Given the perishable nature of milk and fruit juice and the need to shorten supply timeframes, there is a significant level of on-site/in-house supply of HDPE bottles by dairy and fruit juice suppliers through the dairy joint ventures referred to in paragraph 8 above.

## Statement of Issues

23. For the purposes of this Statement of Issues, the issues in this matter are divided into three categories, 'issues likely to give rise to concerns', 'issues that may give rise to concerns and 'issues unlikely to pose concerns'. The ACCC is inviting information from interested parties in relation to all issues.

## Issues likely to raise concerns

### *PET bottles*

24. Based on market inquiries, the ACCC considers that the proposed acquisition is likely to give rise to competition concerns with respect to the supply of PET bottles to beverage suppliers in Australia.
25. Beverage suppliers may use a range of alternative packaging mediums including glass, aluminium cans and cartons and a range of plastic materials including HDPE, PP and PVC. However, market inquiries indicated that these alternatives are generally not close substitutes for the use of PET bottles due to:
  - functional properties of PET in that PET bottles can be cold or warm filled, easily moulded into different shapes, easily stored and handled and allow beverages to be quickly chilled; and
  - end-customer preferences for PET bottles which have contributed to beverage suppliers growing demand for their products.
26. The proposed acquisition would lead to the merged entity and Visy being the

---

<sup>3</sup> Market inquiries indicated that dairy products including milk are generally classed by the packaging industry as non-beverages. In contrast, dairy suppliers tend to treat milk as a beverage. For the purpose of this Statement of Issues, the ACCC has treated milk as a beverage.

major suppliers of PET bottles in Australia. In addition, market inquiries indicated that:

- there may be structural and strategic barriers to entry such that it is unlikely that alternative suppliers would enter or significantly expand the manufacture or supply of PET bottles;
- there may be risks for beverage suppliers sponsoring entry and expansion by alternative suppliers of PET bottles due to the critical nature of packaging in the beverage supply chain and concerns relating to reliability;
- the ability of beverage suppliers to vertically integrate to manufacture PET bottles on an in-house basis may be limited because such integration would require significant investment and is outside the core business and expertise of beverage suppliers; and
- there is a very limited ability to import PET bottles to Australia due to the inability of bottles to ‘nest’ and their significant volume relative to value.

27. The ACCC invites further information and views as to:

- the extent to which suppliers of alternative packaging materials (HDPE, PP, PVC) and mediums (cartons, glass, aluminium cans and flexible packaging) are likely to impose a competitive constraint on the merged entity with respect to its manufacture and supply of PET bottles;
- the extent to which PET bottle suppliers in one state/territory may impose a competitive constraint upon PET bottle suppliers in other states/territories (including with respect to national supply contracts) given the significant cost of transporting PET bottles;
- whether the competitive constraint imposed on the merged entity by Visy with respect to the manufacture and supply of PET bottles is likely to increase as a result of:
  - steps taken by Pact Group to reduce the extent to which Visy provides corporate and shared services to Pact Group; and
  - Pact Group directors resigning from directorships in Visy and related entities.
- the extent to which potential entrants may be deterred by:
  - structural barriers such as the capital cost of establishing viable PET bottle manufacturing and warehousing operations in one or more geographic locations; and/or
  - strategic barriers such as difficulties in obtaining supply contracts or the fact incumbent firms have established operations in several geographic locations.
- the extent to which beverage suppliers would be able to respond to an increase in the price, or a reduction in quality, with respect to the

manufacture and supply of PET bottles by:

- sponsoring new entry or expansion by alternative suppliers by offering long term contracts with respect to the supply of PET bottles in one or more geographic locations; and/or
- vertically integrating to manufacture PET bottles on an in-house basis in one or more geographic locations.

## **Issues that may raise concerns**

### ***Ability and incentive to foreclose competition***

28. Based on market inquiries to date, the ACCC considers that the proposed acquisition may lead to competition concerns with respect to the potential for the merged entity to impose conditions on the supply of packaging or related products to the detriment of competition.
29. In particular, the proposed acquisition may give rise to an increased ability and incentive of the merged entity to significantly foreclose competition with respect to the supply of:
  - packaging products, including beverage containers, non-beverage containers and/or small industrial containers, by bundling or tying the supply of PET bottles and/or 2-3L HDPE bottles with other packaging products; and/or
  - plastic closures, by bundling or tying the supply of PET bottles and/or 2-3L HDPE bottles with plastic closures.
30. Market inquiries indicated that competition in packaging markets in Australia may be substantially reduced if the proposed acquisition effectively forecloses alternative packaging and plastic closure suppliers from competing for a material proportion of packaging demand and thereby raises rivals' costs. This may arise from the merged entity's unique position as a supplier of a portfolio of complementary packaging products including PET bottles and 2-3L HDPE bottles.
31. For example, the merged entity (either alone or in conjunction with Visy) may have the ability and incentive to bundle or tie, through conditional contractual terms, the supply of PET bottles and/or 2-3L HDPE bottles, with a range of its other packaging products, to the substantial detriment of competition. Such conditions may include either:
  - providing certain discounts/rebates on PET bottles and/or 2-3L HDPE bottles if a customer also purchases other packaging products; or
  - refusing to, or otherwise limiting the supply of PET bottles and/or 2-3L HDPE bottles unless a customer also purchases other packaging products.
32. These examples are necessarily a non-exhaustive account of the types of conduct that may foreclose competition. Bundling or tying of particular packaging products, including PET bottles and/or 2-3L HDPE bottles with other packaging products may significantly foreclose competing packaging suppliers

from winning customers, reduce their ability to achieve scale economies and raise their costs.

33. The ACCC invites further information and views as to the extent to which:
- customers consider security of supply to be an important consideration in purchasing packaging products;
  - customers presently purchase multiple and/or complementary packaging products and customers' likely incentives to accept a bundle or tied offer of packaging products from the merged entity, such as to reduce transaction costs and secure discounts/rebates;
  - customers would have the ability to disaggregate their packaging purchases between multiple suppliers or source a comparable bundle of packaging products from any alternative supplier; and
  - whether the imposition of unwanted conditions on the supply of PET bottles and/or 2-3L HDPE bottles would be likely to lead to a reduction in sales of these products, such that the conduct would not be profitable for the merged entity.

#### ***HDPE bottles***

34. Based on market inquiries, the ACCC considers that the proposed acquisition may give rise to competition concerns with respect to the supply of 2-3L HDPE bottles to dairy and fruit juice suppliers in Australia.
35. Market inquiries indicated that alternative packaging products are not generally close substitutes for the use of 2-3L HDPE bottles due to:
- functional properties in that 2-3L bottles are able to be manufactured with an integrated handle; and
  - end-user preferences for 2-3L HDPE bottles which have contributed to dairy and fruit juice suppliers growing demand for their products.
36. The proposed acquisition would lead to the merged entity being the major outsourced supplier of 2-3L HDPE bottles in Australia. Market inquiries further indicated that:
- the dairy joint ventures are unlikely to impose a competitive constraint on the merged entity in that they are focused on in-house supply;
  - there may be risks involved for beverage suppliers sponsoring entry and expansion by alternative suppliers of 2-3L HDPE bottles due to the critical nature of packaging in the dairy and fruit juice supply chain and concerns relating to reliability; and
  - there is a very limited ability to import 2-3L bottles to Australia due to the inability of bottles to 'nest' and their significant volume relative to value.

37. The ACCC invites further information and views as to:
- whether the dairy joint ventures are likely to impose a competitive constraint on the merged entity either:
    - through the current operations of the dairy joint ventures; or
    - the potential expansion of the dairy joint ventures to supply 2-3L HDPE bottles to third parties;
  - whether dairy and fruit juice suppliers would be able to further vertically integrate to manufacture 2-3L HDPE bottles on an in-house basis; and
  - the extent to which Pact Group, as a recent entrant to the manufacturing and supply of 2-3L HDPE bottles would be likely to impose a competitive constraint on Brickwood in the absence of the proposed acquisition.

## **Issues unlikely to pose concerns**

### ***Plastic closures, PET preforms, PET and HDPE resin***

38. Based on market inquiries, the ACCC considers that the proposed acquisition is unlikely to pose substantial competition concerns in relation to the supply of plastic closures, PET preforms, and PET and HDPE resin.
39. 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**

40. The ACCC now seeks submissions from interested parties 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. Submissions are to be received by the ACCC no later than **26 September 2007**.
41. The ACCC will consider the submissions received from interested parties and Pact Group in light of the issues identified above and will, in conjunction with information and submissions already provided by Pact Group, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
42. The ACCC intends to publicly announce its decision in relation to the proposed acquisition by **19 October 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.