



Public Competition Assessment

21 May 2008

Pact Group Pty Ltd - proposed acquisition of Brickwood Holdings Pty Ltd

Introduction

1. On 31 July 2007, Pact Group Pty Ltd (**Pact Group**) announced its intention to acquire Brickwood Holdings Pty Ltd, Logan Moulders Pty Ltd, Full View Plastics Pty Ltd and the units in the Full View Plastics Unit Trust (together, **Brickwood**) and provided the ACCC with a submission, seeking informal clearance of the merger.
2. On 31 October 2007, the ACCC announced its decision to oppose that acquisition. In reaching its decision in relation to the proposed acquisition, the ACCC had regard to the commercial and family relationships between Pact Group and Visy, and the impact of these relationships on the likely effectiveness of competition between the two entities post acquisition. The ACCC considered that existing financial arrangements and a shared services arrangement between Pact Group and Visy would have the potential to undermine competition between the merged entity and Visy post acquisition. The ACCC further considered that the acquisition of Brickwood would result in the removal of the most significant constraint on Pact Group and Visy with regard to the relevant polyethylene terephthalate (**PET**) market/s and as a consequence would substantially lessen competition.
3. On 6 February 2008, Pact Group announced that it had entered into a new agreement to acquire Brickwood (**proposed acquisition**) and sought a second informal merger clearance review from the ACCC, citing new information concerning the market for the supply of PET bottles.
4. Pact Group provided submissions to the ACCC that extensive competitive constraints for large PET suppliers existed, including constraints from existing suppliers who could expand production, and constraints arising from large customers exercising a degree of countervailing power.
5. The ACCC subsequently conducted a fresh review of the proposed transaction and conducted market inquiries in relation to all possible relevant markets to further examine the likely impact on competition that would result as a consequence of the completion of the proposed acquisition.
6. Amongst broader market inquiries conducted for this review, the ACCC further consulted the four major beverage manufacturers that it considered were the most

likely to suffer harm arising from the competitive detriment the ACCC identified in 2007 resulting from the proposed acquisition. These beverage manufacturers were Coca Cola Amatil Pty Ltd (CCA), Cadbury Schweppes (CS), Pure & Natural (P&N) and National Foods.

7. Some of the large beverage manufacturers informed the ACCC that they had no concerns relating to the competitive impact of the proposed acquisition, and that they didn't consider that the acquisition would result in a lessening of competition in the market/s for PET. However, other large beverage manufacturers expressed to the ACCC that they had concerns regarding the competitive impact of the proposed acquisition.
8. The ACCC investigated these concerns extensively, including seeking information from market participants in voluntary submissions and under section 155 notices. The ACCC formed its view on the basis of the evidence before it and reached the conclusion that the evidence was insufficient to establish a substantial lessening of competition in the Federal Court of Australia.
9. On 23 April 2008, the Australian Competition and Consumer Commission (ACCC) announced its decision to not oppose the proposed acquisition of Brickwood by Pact Group.
10. While the ACCC considered that the proposed acquisition would be likely to result in the removal of a significant competitor in the market for the manufacture and supply of PET bottles in Australia, the evidence provided to the ACCC suggested that Brickwood was not the only competitive constraint in the market, and that although its removal from the market may cause some lessening of competition in the market, this lessening was not likely to be substantial.
11. In particular, the range of evidence obtained from the ACCC's investigation, including new information derived from the examination of documents and other information obtained from a range of market participants, indicated that large beverage manufacturers are likely to have some degree of bargaining power when negotiating supply agreements with PET suppliers. The ACCC considered that the large beverage manufacturers' bargaining power stemmed from their significant contribution to the economies of scale achieved by their PET suppliers and their access to information regarding the cost of manufacturing bottles. The evidence provided to the ACCC also suggested that the large beverage manufacturers were likely to have countervailing power resulting from their potential to self-manufacture PET bottles.
12. The ACCC's investigation showed that smaller beverage manufacturers were able to cost-effectively obtain PET bottles either through self-manufacture or from other smaller PET bottle suppliers.

13. Several matters that were identified in the ACCC's first review of the proposed acquisition were confirmed by the 2008 investigation. The ACCC considers that the proposed acquisition may result in the removal of a significant competitor to Pact and Visy, with some lessening of competition. However, after examining comprehensive information provided to it, as well as evidence provided under section 155 notices and extensive market consultation, the ACCC concluded that the transaction was not likely to result in a substantial lessening of competition.
14. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

15. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is opposed;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is not opposed but raises important issues that the ACCC considers should be made public.
16. This Public Competition Assessment has been issued because the proposed acquisition raises important issues that the ACCC considers should be made public.
17. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or is likely to change, because of developments.
18. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be determinative of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
19. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and

accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

The proposed acquisition

20. On 31 July 2007, Pact Group announced its intention to acquire Brickwood and provided the ACCC with a submission. On 31 October 2007, the ACCC announced its decision to oppose that acquisition.
21. On 8 February 2008, Pact Group announced that it had entered into a new agreement to acquire Brickwood and sought a second informal merger clearance review from the ACCC, citing new information concerning the market for the supply of PET bottles.

Relevant parties

The target - Brickwood

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

Entity	State	Products
Logan Moulders	Queensland	PET & HDPE bottles, closures
Full View Plastics & Water	New South Wales	PET & HDPE bottles, PET preforms
Brickwood	Victoria	PET & HDPE bottles, closures

23. Brickwood related entities also participate in joint venture arrangements with large suppliers of dairy products. These joint ventures include on-site blow moulding facilities for HDPE bottle manufacturing for milk and other dairy products (**dairy joint ventures**). The dairy joint ventures did not form part of the proposed acquisition.

The acquirer - Pact Group

24. 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.

25. Pact Group manufactures and supplies a range of packaging products including PET, HDPE, polypropylene (**PP**) bottles and containers and plastic closures through manufacturing operations in Queensland, New South Wales and Victoria. Pact Group has recently commenced manufacturing and supplying HDPE milk bottles in Victoria. Pact Group is also a purchaser of PET and HDPE resin.
26. Pact Group also manufactures and supplies plastic packaging products for the food and retail industries including jars, tubes, food trays and bowls as well as larger containers for industrial applications including tins, pails, plastic pails, cubes and steel and plastic drums.
27. 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,¹ 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.
28. Since the purchase in 2002, Pact Group has taken steps to increase the 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

29. 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.
30. Visy is privately owned by the Pratt family through a family trust.

Relationship between Pact Group and Visy

31. In reaching its decision in relation to the proposed acquisition, the ACCC had regard to the commercial and family relationships between Pact Group and Visy, and the impact of these relationships on the likely effectiveness of competition between Pact Group and Visy post acquisition.

¹ The Visy industrial packaging business was sold to a consortium including Salvage Pty Ltd, the corporate trustee for the Geminder Trust, which is the ultimate owner of Pact Group.

32. The ACCC concluded that the corporate relationship arising from the current financial arrangements and shared services arrangements (including potential information flows) between Pact Group and Visy make it unlikely that the merged entity and Visy would compete effectively against one another post acquisition. In forming this view, the ACCC also considered the incentives flowing from personal and family relationships between Pact Group and Visy post acquisition and concluded that these would similarly have the potential to undermine competition between the merged entity and Visy.

Areas of overlap

33. The ACCC considered that the following areas of overlap existed between the relevant parties:
- Brickwood, Pact and Visy are all suppliers of PET beverage containers;
 - Pact and Brickwood are both suppliers of HDPE containers; and
 - Brickwood, Pact and Visy have overlapping operations in Queensland, New South Wales and Victoria.

Industry background

34. The packaging industry in Australia manufactures and supplies a wide range of packaging products including for industrial and chemical products, household consumer products, pharmaceutical products, personal care products and fast moving consumer goods (**FMCG**). FMCG packaging products include beverage containers (e.g. plastic bottles, cartons, glass bottles and aluminium cans) and non-beverage containers (e.g. plastic bottles and containers, cartons, glass bottles and jars, steel and aluminium cans and flexible packaging).
35. The vast majority of plastic bottles supplied in Australia are used to package beverages.² Beverage container customers include suppliers of carbonated soft drinks (**CSD**), fruit juice, water, functional drinks (including sports and energy drinks) and dairy products.³
36. Market inquiries indicated a relatively low capital cost requirement for small-scale entry using either single-stage PET bottle manufacturing equipment or low-cost, low-capacity 2-stage equipment.
37. Companies participating in small scale PET manufacturing include specialist PET bottle manufacturers servicing small customers from one location, and small beverage manufacturers who use less than 50 million bottles per year.

² For instance, industry reports indicate that approximately 93% of PET blow moulded containers (i.e. bottles and jars) are used to package beverages.

³ 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 Public Competition Assessment, the ACCC has treated milk as a beverage.

38. Market inquiries indicated that small beverage manufacturers or external PET manufacturers who supply these beverage manufacturers can cost-effectively produce low-volume runs of bottles that would not be cost-effective to produce on larger scale machines.
39. Manufacturers of CSDs, water and functional beverages predominantly use PET bottles to package these beverages. These manufacturers require large volumes of PET bottles, typically over 100 million bottles per year. While there are examples of large scale in-house manufacturing of PET bottles, the Australian industry is currently primarily characterised by outsourced manufacturing and supply.
40. Market inquiries indicated that PET bottle manufacturing is characterised by economies of scale. In particular, the unit cost of producing bottles decreases:
 - as the cavitation of a PET machine increases (e.g. producing bottles on a 32-cavity machine requires the same labour as producing bottles on a 6-cavity machine (i.e. one-sixth the volume));
 - as the utilisation of machinery increases, for instance the production of generic bottle sizes and shapes for multiple customers; and
 - as the aggregate volume of bottles produced at a particular site increases (i.e. overhead costs, such as utilities, labour and management, and warehousing space, are spread across a larger number of bottles).
41. Large beverage manufacturers' consumption of PET bottles is primarily characterised by:
 - several different types of proprietary and generic PET bottles⁴;
 - high volumes of all types of PET bottles, in the order of more than approximately 100 million PET bottles per year (in aggregate); and
 - receipt of bottle deliveries in large volumes at facilities in multiple states.
42. Large beverage manufacturers are predominantly supplied PET bottles by Visy and Brickwood pursuant to long term supply agreements. These long term supply agreements prevent substantial price increases from occurring throughout the duration of the agreement.
43. The remaining medium and small beverage manufacturers are supplied by Visy, Brickwood and/or a range of smaller PET bottle suppliers, which include Pact Group (in Queensland, New South Wales and Victoria), Hollywood Plastics (in New South Wales and Victoria) and Viscount (in Western Australia) and some self supply.
44. Dairy suppliers predominantly use HDPE bottles for packaging milk and other dairy products. Fruit juice suppliers also use HDPE bottles for fresh juice. Dairy and fruit juice suppliers also use PET bottles and cartons (these tend to be for smaller bottle sizes, typically up to 1 litre).

⁴ The reference to bottle 'types' refers to the sizes and shapes of bottles.

45. Other HDPE bottle manufacturers in addition to the merging parties include:
- in New South Wales - Power Plastics, Sneirbo and Hollywood Plastics;
 - in Victoria - Ultraplas, Quality Blow Moulders, Jalco and Food Plastics;
 - in Queensland – Queensland Blow Moulders;
 - in South Australia – OM Plastics; and
 - in Western Australia – Plasmco and Viscount.
46. In addition, there is a significant amount of on-site supply of HDPE bottles by dairy suppliers through the dairy joint ventures referred to above. This takes place through either self-manufacture of HDPE bottles by the dairy companies, or manufacture by the joint venture partners on-site at the location of the dairies' bottle filling facilities. The large extent of co-located supply appears to be the result of the way that supply to dairies was historically established, that is, to address concerns about the perishable nature of milk and the need for short supply timeframes.

Timing

47. The following table outlines the timeline of key events in this matter.

08 Feb 2008	ACCC commenced review under the Merger Review Process Guidelines.
29 Feb 2008	Closing date for submissions from interested parties.
07 Mar 2008	ACCC requested further information from Pact Group. ACCC timeline suspended.
19 Mar 2008	Proposed date for announcement of ACCC's findings amended from 4 April to 16 April 2008 pending Pact Group's response to information request of 7 March 2008.
25 Mar 2008	ACCC received further information from Pact Group. ACCC timeline recommenced.
15 Apr 2008	Proposed date for announcement of ACCC's findings amended from 16 April to 23 April 2008 pending receipt of further information from market participants.
23 Apr 2008	ACCC announced that it would not oppose the proposed acquisition.

Market inquiries

48. On 8 February 2008 the ACCC commenced extensive market inquiries regarding the proposed acquisition with a range of industry participants, including competitors, potential competitors, customers, input suppliers, and other interested parties. The ACCC also used its formal information collection powers during its investigation.

Future with/without test

49. In assessing whether a merger is likely to breach section 50 of the Act, the ACCC applies a future “with and without” test. That is, it considers and compares the likely future state of competition with and without the acquisition.

50. In the event that the transaction does not proceed, the ACCC considers that in order for Brickwood to service any existing Visy customers it would need to undergo a significant expansion; this appeared to be also the case for other existing small PET bottle suppliers. The ACCC concluded that there was insufficient evidence to establish that Brickwood was in a considerably more favourable position to undergo expansion as compared to other small PET suppliers. The ACCC also considered that if the acquisition proceeds a number of other competitive constraints will also continue to remain in the market – including bargaining power wielded by the large beverage companies arising from their potential ability to switch to other suppliers, and countervailing power arising from potential for large beverage companies to commence self-manufacture of PET bottles.

Market definition

51. The ACCC considered the relevant markets for the purpose of assessing the competition effects in this matter were:
- the state markets for the manufacture and supply of PET bottles in Queensland, New South Wales, and Victoria; and
 - the state markets for the supply of HDPE bottles in Queensland, New South Wales and Victoria.

Manufacture and supply of PET bottles

Product dimension

52. The ACCC's market inquiries indicated that while beverage manufacturers may use a range of alternative packaging products, these alternatives do not generally represent demand-side substitutes for PET bottles due to:
- the functional properties of PET—PET has superior barrier properties to other plastics, allows beverages to be quickly chilled and can be cold or warm filled, easily moulded into different shapes and easily stored and handled; and
 - end-customer preferences for PET bottles, which have contributed to beverage manufacturers' growing demand for packaging their products in PET bottles.
53. On the supply-side, market inquiries indicated that there is limited substitutability between large scale PET bottle manufacturing and the manufacturing of other packaging products such as glass, aluminium or carton due to the highly specialised equipment required to blow-mould PET containers.

Geographic dimension

54. Large beverage manufacturers typically purchase PET bottles from suppliers with multi-state manufacturing facilities. Market inquiries indicated that 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.

55. Accordingly, the ACCC considered that the relevant markets included separate state markets for the manufacture and supply of PET bottles in Queensland, New South Wales and Victoria.

Manufacture and supply of HDPE bottles

Product dimension

56. The merger parties' HDPE activities overlap in the manufacture and supply of HDPE beverage (including milk) bottles up to 5 litres in size.
57. Market inquiries indicated that for dairy and fresh fruit juice suppliers, alternative packaging products are not generally close demand-side substitutes for the use of HDPE bottles because:
- different packaging forms are used to target different price points (and thus different consumer groups);⁵ and
 - different filling processes and machinery are used for each packaging medium (switching between media would require investment of between \$50,000 and \$150,000 for each filling line).
58. The ACCC's market inquiries indicated that although there is a distinction between machinery used to manufacture bottles and containers below 5 litres and that used for bottles and containers above 5 litres, there is substantial overlap in the technical expertise required to manufacture both categories of bottles and containers. However, information obtained through market inquiries led the ACCC to form the view that bottles and containers above and below 5 litres in volume are not supply-side substitutes as a SSNIP⁶ in one category would not be defeated by suppliers switching into the manufacture of the other category of bottles and containers. Market inquiries also indicated there is some supply-side substitutability between HDPE bottle manufacturing and other plastic packaging manufacturing (excluding large scale PET manufacturing) but no supply-side substitutability with other packaging forms such as glass, carton or aluminium cans.

Geographic dimension

59. The largest customers, particularly dairy and juice suppliers, purchase HDPE bottles from suppliers with multi-state manufacturing facilities. However, market inquiries indicated that there is very limited ability to supply HDPE bottles (particularly high-volume bottles) interstate due to the significant cost of transport relative to the bottle value.
60. Accordingly, the ACCC considered that the relevant markets in this matter included separate state markets for the supply of HDPE bottles of 5 litres or less in volume in Queensland, New South Wales and Victoria.

⁵ For instance, flavoured milk packaged in cartons tends to be sold at a lower price point than that packaged in HDPE bottles.

⁶ Small but significant non-transitory increase in price (SSNIP).

Competition analysis - Manufacture and supply of PET bottles

61. The proposed acquisition would result in the merged entity becoming the major supplier of PET bottles in Australia, and the only current external supplier of PET bottles to large beverage manufacturers.
62. Market inquiries indicated that, although Brickwood supplies lower volumes of PET bottles than Visy, it is a significant competitor to Visy with respect to the supply of PET bottles to large beverage manufacturers. This competition appears to occur in most part upon expiration (and re-negotiation) of existing supply contracts.

Barriers to entry

63. The ACCC considered the extent to which barriers to entry or expansion are present in the markets for the manufacture and supply of PET bottles.
64. With regard to small beverage manufacturers, as a result of the substantially lower capital costs for small scale production noted above, barriers to small-scale entry and self-manufacture do not appear to be significant.
65. With regard to barriers to entry and expansion into the market for the supply of PET bottles for large beverage manufacturers, the ACCC's 2007 review concluded that:
 - establishing large scale PET bottle manufacturing operations involves significant capital expenditure, and that much of this investment is sunk;
 - it is unlikely that a new entrant or small incumbent would invest in significant PET bottle manufacturing capacity in the absence of a secure supply agreement with at least one large beverage customer; and
 - new or smaller PET bottle manufacturers are likely to experience some difficulty in securing long term supply agreements in circumstances where they do not have a proven capability to reliably supply large beverage manufacturers.
66. These findings were largely confirmed by the ACCC's market inquiries during the 2008 review. However, evidence obtained by the ACCC during this investigation indicated that large beverage customers primarily require the assurance that a supplier has sufficient technical expertise and financial capability to manage the supply of large quantities of PET bottles, before committing to a supply contract with a new PET bottle manufacturer. Hence, the ACCC considered that whilst a track record of supplying large beverage customers is advantageous for a prospective PET bottle supplier, the evidence before the ACCC indicated that a lack of such does would necessarily prevent a prospective PET bottle supplier from obtaining the necessary customer base for entry or expansion.
67. Furthermore, market inquiries indicated that funding for capital investment for new entry or expansion in the relevant market is likely to be attainable on the basis of a supplier having secured a sufficiently large contract.

Alternative sources of supply

68. The ACCC considered whether alternative PET bottle suppliers would provide an effective competitive constraint on the merged entity and Visy. Market inquiries indicated that the range of smaller PET bottles suppliers currently operating are likely to provide some level of competitive constraint with respect to the supply of PET bottles to small-medium beverage manufacturers.
69. However, smaller PET bottle suppliers would be unlikely to have the PET bottle manufacturing capacity or capability to meet the requirements of large beverage manufacturers. In particular, large beverage customers are likely to require the reliable and flexible⁷ supply of high volumes of PET bottles nationally (over approximately 100 million PET bottles per annum through facilities in multiple states). There are four such customers: Coca Cola Amatil, Cadbury Schweppes, National Foods, and P&N.
70. As mentioned previously, the ACCC's investigation concluded that in order for Brickwood to service any of Pact Group's or Visy's large beverage customers it would need to undertake extensive expansions of current operations. The ACCC concluded that this would also be the case for any of the smaller PET suppliers currently in the market. The ACCC found that there was insufficient evidence to establish that Brickwood was in a considerably better position to expand to service existing or new large beverage manufacturers compared to other existing smaller PET suppliers.

Bargaining power and countervailing power

71. The ACCC also considered options for large beverage manufacturers to constrain any attempt by the merged firm to impose a SSNIP by initiating alternative supply options.
72. The ACCC obtained evidence that indicated that ahead of a contract's expiry date, large beverage manufacturers are in a position to evaluate supply options, including:
 - engagement with domestic and international suppliers, to gauge their willingness and capability to enter the PET market or expand existing production, and to obtain a sense of their current PET suppliers' cost bases;
 - disaggregating supply; and
 - internal cost analysis in relation to self-manufacture.
73. On the basis of information obtained during its investigation, the ACCC determined that such analyses would be likely to provide large beverage manufacturers with a substantial amount of information regarding the manufacturing costs underlying PET bottle conversion prices.

⁷ In terms of the ability to vary bottle shapes and volumes over the term of a supply agreement.

74. With regard to self-manufacture, the ACCC's market inquiries confirmed the issues that arose from the previous review, namely, that outsourced supply enables large beverage manufacturers to focus on their core businesses, and provides greater flexibility to respond to changes in retail beverage markets. However, additional information obtained during this investigation indicated that self-manufacture may provide a viable option for large beverage manufacturers in the event of a SSNIP through reduced freight and other costs associated with outsourced manufacturing. The ACCC also had regard to information concerning instances of self-manufacture conducted by large beverage manufacturers in forming this view.
75. Furthermore, as noted earlier in this document, the ACCC's market inquiries indicated there are significant economies of scale in PET bottle manufacturing for large beverage manufacturers. Information obtained by the ACCC indicated that in the context of these scale economies, all large beverage manufacturers are likely to contribute significantly to their suppliers' PET bottle manufacturing operations. The ACCC found that this factor, amongst others, was likely to give the large beverage manufacturers some degree of bargaining strength at the relevant times.

Conclusion

76. Several matters that were identified in the ACCC's first review of the proposed acquisition were confirmed by the 2008 investigation. For instance, the ACCC concluded that the proposed acquisition would result in the removal of a significant competitor to Pact and Visy. However, after examining comprehensive information provided to it, including evidence provided under section 155 notices and extensive market consultation, the ACCC concluded that the transaction was not likely to result in a substantial lessening of competition in this market.
77. The ACCC considered that large beverage manufacturers would be likely to prevent the merged entity from substantially raising prices in future contract negotiations through:
- the interdependence between suppliers and large beverage manufacturers and the corresponding significant bargaining power of these customers;
 - the significant level of transparency that large beverage manufacturers have regarding the costs underlying PET bottle conversion prices; and
 - the threat that large beverage manufacturers could implement options for alternative sources of supply, including self-manufacture.
78. On the basis of the additional evidence obtained by the ACCC during this review, the ACCC was not satisfied that it could establish that the lessening of competition arising from the proposed acquisition would be substantial.
79. Therefore, the ACCC concluded that the proposed acquisition was not likely to result in a substantial lessening of competition in the markets for the manufacture and supply of PET bottles in Queensland, New South Wales or Victoria.

Competition analysis - Manufacture and supply of HDPE bottles

80. The proposed acquisition would result in the largest HDPE bottle supplier (Brickwood) being acquired by a smaller supplier (Pact Group) that has recently undertaken significant expansion. The merged entity would have a strong position in the supply of HDPE bottles in New South Wales, Queensland and Victoria.
81. The ACCC considered whether alternative HDPE bottle suppliers would provide an effective competitive constraint to the merged entity. Market inquiries indicated that post acquisition, HDPE bottle customers located in New South Wales, Queensland and Victoria would have at least one alternative HDPE bottle supplier to the merged entity. While these (smaller) suppliers would not benefit from the economies of scale enjoyed by the merged entity, the ACCC's market inquiries did not indicate evidence of significant barriers to their expansion, nor that HDPE customers would not consider disaggregating supply.
82. More generally, market inquiries indicated that HDPE bottle machinery is relatively inexpensive, and that in-house production can be conducted at the site of beverage production.
83. These relatively low barriers to entry are reflected in the ability of some HDPE bottle customers to undertake in-house HDPE bottle manufacturing including joint ventures. The ACCC considered the viability of in-house manufacturing for some customers is likely to impose a constraint on the merged entity with respect to the supply of HDPE bottles.
84. Having considered all these factors, the ACCC considered that the proposed acquisition is unlikely to give rise to a substantial lessening of competition with respect to the manufacture and supply of HDPE bottles in New South Wales, Queensland or Victoria.

Conglomerate issues

85. The ACCC considered whether the proposed acquisition would lead to competition concerns with respect to the potential for the merged entity, by itself or in combination with Visy, to impose conditions on the supply of packaging or related products to the detriment of competition.
86. This could arise from the merged entity's and Visy's unique position as suppliers of a portfolio of complementary packaging products, including being the major suppliers of PET bottles in Australia. In particular, the merged entity and Visy could seek to foreclose competition with respect to the supply of packaging products by bundling or tying the supply of PET bottles with other packaging products.
87. However, market inquiries did not indicate specific scenarios in which the merged entity and Visy would be likely to engage in such bundling conduct with the effect of substantially lessening competition.

Plastic closures, PET preforms, PET and HDPE resin

88. Market inquiries indicated that the proposed acquisition would be unlikely to give rise to a substantial lessening of competition with respect to the manufacture and supply of plastic closures, PET preforms and PET and HDPE resin.

Conclusion

89. On the basis of the factors set out above, the ACCC formed the view that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any relevant market in Australia.