



Australian
Competition &
Consumer
Commission

15 April 2009

Statement of Issues — Pact Group Pty Ltd - proposed acquisition of Viscount Plastics Pty Ltd

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Viscount Plastics Pty Ltd by Pact Group Pty Ltd (**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 **8 May 2009** and anticipates making a final decision on **27 May 2009**. 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 28 April 2008, the ACCC commenced its informal review of the proposed acquisition. The ACCC previously issued a Statement of Issues in relation to this acquisition on 25 June 2008. Shortly after this, the parties advised the ACCC they had withdrawn from commercial negotiations and, accordingly, withdrew their request for an informal review.
6. The parties requested the ACCC recommence its public review on 14 April 2009.

7. Based on market inquiries conducted previously and competition concerns identified at that time, the ACCC is re-issuing a Statement of Issues for this matter.
8. This Statement of Issues largely reflects the ACCC's previous Statement of Issues; however, some amendments have been made to reflect changes advised by Pact Group since the ACCC's previous consideration of the proposed acquisition.
9. At the time of examining the proposed acquisition previously, Pact Group had advised the ACCC that it intended to acquire Brickwood Holdings. Accordingly, the ACCC had regard to Pact Group's likely future ownership of Brickwood Holdings in conducting its assessment. This in turn gave rise to the need to consider the impact of the proposed acquisition in relation to competition for the manufacture and supply of materials handling products.
10. Pact Group has since advised the ACCC that it no longer intends to acquire Brickwood Holdings. Consequently, Brickwood Holdings will be treated as a separately owned entity for the purposes of this review, and the impact of the proposed acquisition on competition for the manufacture and supply of materials handling products will not be considered further.

Relevant parties

The target – Viscount Plastics Pty Ltd

11. Viscount is owned by the LINPAC Group, a UK based company which is a global packaging and materials handling company.
12. Viscount has four distinct business units: materials handling, packaging, blow moulding and industrial/retail.
13. Viscount has seven production facilities in Australia. Relevant to the ACCC's inquiries, Viscount has its blow moulding facility in Western Australia and its injection moulding facilities in Victoria, New South Wales and Queensland.

The acquirer – Pact Group Pty Ltd

14. In Australia, Pact Group's plastic packaging business is managed through four wholly owned subsidiaries: VIP Packaging Pty Ltd, Plaspak Packaging Pty Ltd, Alto Packaging Australia Pty Ltd and Baroda Packaging Pty Ltd (together, **Pact Group**).
15. Pact Group 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 tinplate pails, plastic pails, cubes and steel and plastic drums.
16. Pact Group also manufactures and supplies a range of packaging products including PET, HDPE, polypropylene bottles and container and plastic closures.

17. 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, 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.
18. Since the purchase of 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 Industries Australia Pty Ltd (Visy)

19. 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.
20. Visy is privately owned by the Pratt family through a family trust.

Relationship between Pact Group and Visy

21. In previous matters involving Pact Group and Visy, the ACCC has 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.
22. The ACCC will again have regard to the commercial and family arrangements between Pact Group and Visy.

Areas of overlap and market definition

23. From its inquiries, the ACCC understands the primary areas of overlap between Pact Group, Visy and Viscount Plastics to be:
 - the manufacture and supply of plastics pails ranging in sizes up to 20L;
 - the manufacture and supply of plastic cartridges; and
 - the manufacture and supply of PET beverage bottles in Western Australia.

Market inquiries

24. On 28 April 2008 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers and customers.

Statement of issues

25. 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'. The ACCC is inviting information from interested parties (preferably supported by specific examples and quantitative data) in relation to all issues.

Issues that may raise concerns

Competition for the manufacture and supply of plastic pails

26. The ACCC considers the proposed acquisition may raise concerns for competition for the manufacture and supply of plastic pails. From its inquiries, the ACCC understands that both Pact Group and Viscount Plastics are significant suppliers of plastic pails.
27. The ACCC has previously considered acquisitions involving aggregation in the manufacture and supply of various types of small industrial containers (including pails) in its reviews of:
- Bindora's (Pact Group) proposed acquisition of Baroda Packaging (2007); and
 - Drum Markers Pty Ltd, a subsidiary of Visy Steel Products Pty Ltd – proposed acquisition of Greif Australia Pty Ltd (2007).
28. The ACCC did not consider it necessary to reach a definitive view on market definition for these matters.
29. The ACCC has explored issues surrounding the substitutability of the various packaging types in this matter. Market inquiries have suggested there is limited substitutability from plastic pails to other packaging types such as plastic cubes, the 'bag-in-a-box' system and tinsplate pails.
30. In relation to the plastic cubes and 'bag-in-a-box' system, market inquiries indicated that substitutability with plastic pails is limited due to the functionality of the packaging. For example plastic pails will often contain solid products like margarines and viscous liquids such as paints which are not well suited to a plastic cube or a 'bag-in-a-box' system.
31. For tinsplate pails, market inquiries suggested that functionally the products are substitutable in many cases; that is, products that go into a plastic pail can generally also go into a tinsplate pail. However, many plastic pail customers indicated that they would not consider tinsplate pails as a viable substitute to plastic pails because of the higher unit cost. Indeed, the ACCC understands there has been a trend of customer switching away from tinsplate toward plastic pails.

32. The ACCC also understands that there is limited supply-side substitutability between the manufacture of other types of packaging including plastic cubes, tinsplate pails or the 'bag-in-a-box' system. In particular, because of the difference in equipment used to manufacture the different packaging types, firms producing other types of small industrial packaging would require capital investment in order to produce plastic pails.
33. Given the limited demand and supply-side substitution, the ACCC considers the relevant market definition is likely to be the manufacture and supply of plastic pails.

Removal of the principal competitor for plastic pails

34. The ACCC understands that Pact Group and Viscount are the largest suppliers of plastic pails in Australia and together hold a substantial share of the market for the manufacture of plastic pails.
35. Market inquiries pointed to National Can Industries Ltd (NCI), the third largest supplier of plastic pails, as providing some degree of competitive constraint. The ACCC notes that Pact Group and associated companies have a 12.25% interest in NCI.
36. The ACCC is also aware of the existence of smaller pail manufacturers such as Mercedes Plastics and Piber Plastics. However, market participants suggested these suppliers were niche suppliers and would not pose a competitive constraint on the merged entity.
37. The ACCC invites market participants to provide comment on, and preferably specific examples of, the competitiveness of other Australian manufacturers of plastic pails. The ACCC also welcomes any comments regarding the current degree of competition between Pact Group and Viscount Plastics in relation to the manufacture and supply of plastic pails.
38. The ACCC also invites further information and comments as to the strength of other competitive constraints operating on the merged entity for the manufacture and supply of plastic pails post-acquisition. Potential constraints are discussed below.

Actual and potential imports.

39. The ACCC seeks further information on whether customers can viably import plastic pails into Australia. From market inquiries, the ACCC notes that the import of pails seem to be considered more feasible by some customers than others, although levels of import penetration across all customers appear to be very low.
40. The primary concerns raised regarding importing pails include:
 - *Price.* While many market participants considered that the landed cost of imports would be the same or lower than the price for acquiring pails

domestically, others submitted that it would be more expensive to import pails once the costs of transportation were taken into account.

- *Lead times.* Market participants have suggested that there are considerable lead times associated with importing pails. Whereas a customer may be able to receive a turnaround of 1–3 days from a local manufacturer it may take up to 12 weeks to import pails. Participants were concerned that they would need to warehouse significant quantities of pails if relying on imports.
 - *Non-standard sizing.* Some market participants commented that issues can arise when importing pails because the dimensions of an imported generic pail can be different to the industry standard dimensions in Australia. Differences in dimensions can result in customers needing to reconfigure production lines or incurring additional freight charges resulting from the pails not stacking as efficiently onto pallets.
 - *Quality differences.* Some market participants were of the opinion that imported plastic pails are not of the same quality as locally manufactured plastic pails.
41. The ACCC seeks specific evidence and examples regarding the viability of imports including:
- quotes received for imported plastic pails;
 - examples of previous plastic pail importation and whether this was successful or unsuccessful and the reasons; and
 - specific information and costings regarding the costs of shifting to imported pails including any costs that would be incurred through longer lead times and/or non-standard sizing.

The threat of new entry or expansion

42. The ACCC has considered the likelihood of timely and sufficient entry by a new player or expansion by an existing, yet smaller supplier. Market inquiries have identified the following barriers to entry or expansion.
- *Capital costs.* The ACCC has received varied information on the capital costs required to establish a manufacturing facility of a size capable of being an effective competitor to the merged entity. The ACCC seeks further information on the necessary scale and scope of new entry, including whether an entrant could offer an effective constraint through entry with a limited range of pail sizes.
 - *Customer contracts.* Market inquiries have suggested an impediment to new entry or expansion by an existing supplier is the ability to win customer contracts. Many market participants commented on the reluctance of customers to switch suppliers. Reasons for this included brand reputation and the level of investment a customer makes when engaging with a manufacturer. Examples of this include the testing of pails for quality and design, and technology achieved

through joint research and development which result in shared proprietary interests.

43. The ACCC seeks further information on the barriers to entry and expansion for the manufacture and supply of plastic pails. In particular, the ACCC seeks further information of the likelihood of new entry and expansion including:
- whether it is likely an existing, yet smaller, manufacturer with injection moulding facilities will expand its facilities;
 - whether an existing manufacturer with blow-moulding facilities could leverage its existing operations into pail manufacture; and
 - what would be the value of contract(s) needed to make entry or expansion on a scale similar to the current plastic pail manufacturing operations of Viscount or Pact Group financially viable?
44. From customers, the ACCC seeks information on:
- any history of switching between suppliers and the costs that were incurred as a result; and
 - the likelihood of awarding a contract to a player other than the merged firm to support new entry or expansion.

Competition for the manufacture and supply of PET beverage bottles in Western Australia

45. The ACCC considers the proposed acquisition may raise concerns for competition for the manufacture and supply of PET beverage bottles in Western Australia.
46. The ACCC has previously considered the substitutability between PET beverage bottles and other types of beverage bottles and has found there exists limited substitutability due to the technical properties of PET and consumer preferences.
47. The ACCC understands that PET beverage bottles are generally purchased in the state they are manufactured due to the significant cost of transport relative to the value of the bottle.
48. For these reasons, the ACCC considers that the appropriate market is likely to be the manufacture and supply of PET beverage bottles in Western Australia.

Removal of a principal competitor for PET beverage bottles in Western Australia

49. The ACCC understands that Viscount and Visy are the only manufacturers of PET beverage bottles in Western Australia.
50. The ACCC seeks information from customers on existing levels of competition between Viscount and Visy, including:
- any history of switching between Visy and Viscount; and

- cost savings achieved from having two suppliers in the market.
51. As noted at paragraphs 20 and 21, the ACCC has had regard to the commercial and family relationships existing between Visy and Pact Group and the impact of these relationships on the likely effectiveness of competition between Visy and the merged entity post-acquisition. The ACCC considers that these relationships between Visy and Pact are likely to provide a significant disincentive for Visy and the merged entity to compete vigorously for the manufacture and supply of PET beverage bottles, post acquisition.
 52. The ACCC invites further information and comments as to whether competitive constraints operating on the merged entity and Visy would be sufficient to ensure the proposed acquisition does not give rise to a substantial lessening of competition with respect to the manufacture and supply of PET beverage bottles in Western Australia. Potential sources of constraints are set out below.

The threat of new entry or expansion

53. The ACCC has considered the likelihood of timely and sufficient entry by a new competitor on a scale to be a competitive constraint on Visy and the merged entity.
54. The ACCC considers that a new entrant may find it difficult to attract the requisite volumes of orders in Western Australia to justify the capital costs necessary to reach the size necessary to be competitive with the incumbent suppliers.
55. The ACCC welcomes any information or data which would demonstrate:
 - the scale at which a new entrant could enter the market to constrain the incumbents;
 - the cost of such entry; and
 - barriers to achieving sufficient scale and how long it may take to achieve that scale.
56. The ACCC is also interested in any examples market participants may have of:
 - entry into or exit from the market for the manufacture and supply of PET bottles in Western Australia; and
 - customers considering the sponsorship of a new entrant into the manufacturing of PET beverage bottles.

The potential for customers to exercise countervailing power

57. Customers in Western Australia have indicated to the ACCC that they do not consider that they have the ability to bypass Visy or the merged entity through self-manufacture. Market inquiries indicated that self-manufacture of PET beverage bottles is unlikely to be a viable option for many smaller customers because of the relatively small volumes required.

58. The ACCC seeks further information on:
- examples of successful small volume in-house PET manufacturing operations; and
 - any specific information or costings undertaken regarding in-house manufacture.

Bundling and Conglomerate Merger Issues

59. The ACCC notes that market participants have raised concerns that the proposed acquisition may raise competition issues with regard to the bundling of products by the merged entity. Bundling involves leveraging from a position of market power in one market to gain market share in a complementary market by bundling the first product with the complementary product. In doing this a firm may reduce competition in the second market.
60. If customers have a preference to acquire a range of goods from the one supplier, bundling may increase entry barriers because a new player may need to enter with a range of goods in order to effectively compete.
61. The ACCC welcomes any information or data in relation to:
- whether the merged entity will have an incentive to bundle its products;
 - which products market participants consider are likely to be bundled together;
 - whether barriers to entry are significant in markets where the merged entity would have an incentive to bundle its products; and
 - whether the merger will raise barriers to entry in complementary product markets.

Issues unlikely to pose concerns

Competition for the manufacture and supply of plastic cartridges

62. The ACCC considers the proposed acquisition is unlikely to raise concerns for the manufacture and supply of plastic cartridges.
63. Plastic cartridges appear to be mainly used to package adhesives and sealants and are sometimes inserted into an application tool, e.g. a gun applicator. This type of packaging is mainly used in the building and construction industry. Market inquiries have suggested there are no available substitutes to plastic cartridges as some of the tools in the building industry have been designed around the configuration of the plastic cartridge.
64. The ACCC is aware the proposed acquisition will bring together the only two domestic suppliers of plastic cartridges. However, the ACCC understands that imports already represent a significant proportion of the cartridges sold in the Australian market. Market inquiries have also suggested that import price benchmarking of domestic suppliers is common for cartridges. The ACCC

therefore considers it likely that the threat of imports will act to constrain the merged entity post-acquisition.

65. The ACCC will accept further submissions from industry participants about the feasibility of imports or any other topics and will further consider this product area if it considers that such an assessment is warranted.

ACCC's future steps

66. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
67. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues, on any significant changes in the markets identified since the ACCC's previous consideration of this matter and on any other issue that may be relevant to the ACCC's assessment of this matter.
68. Submissions are to be received by the ACCC no later than **8 May 2009**. 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.
69. The ACCC intends to publicly announce its final view by **27 May 2009**. 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.