24 November 2011

Statement of Issues — Pact Group Pty Limited – proposed acquisition of Viscount Plastics Pty Limited

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 Limited (**Viscount**) by Pact Group Pty Limited (**Pact**) (**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 **15 December 2011** and anticipates making a final decision by **19 January 2012**. 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 4 October 2011, the ACCC commenced a public review of the proposed acquisition after receiving a submission on 3 October 2011 from Pact seeking clearance from the ACCC for the proposed acquisition.

6. The ACCC has commenced a public review of a proposed acquisition by Pact of Viscount on two previous occasions – 28 April 2008 and 14 April 2009. In each of these reviews, the ACCC released a Statement of Issues outlining preliminary competition concerns with the proposed acquisition. On each occasion the review was discontinued at the request of the merger parties.

The parties

Pact Group Pty Limited

7. Pact manufactures a diverse range of plastic and non-plastic products for different packaging applications. Pact's product range includes rigid plastic food containers, bottles, jars, tubes, jerry cans, cubes, pails, plastic and steel drums, trays and closures.

8. Pact's packaging business is managed through several wholly-owned subsidiaries that operate under their own name and brand, including: VIP Packaging, Alto Packaging, Signum, Baroda Packaging, Brickwood, Plaspak, Salient Asia Pacific and Atlas Plastics. A wholly owned subsidiary of Pact also has partial shareholdings in Pro-Pac Packaging Limited and National Can Industries Limited (**NCI**).

9. Pact is controlled by Raphael Geminder, husband of Fiona Geminder. Fiona Geminder is a member of the Pratt family.

Viscount Plastics Pty Limited

10. Viscount is a packaging, supply chain and logistics solutions provider. Viscount's product range includes rigid plastic containers, food packaging, plastic materials handling and lubricant packaging.

11. Viscount has operations in Australia, New Zealand, China and Malaysia, including packaging plants in Queensland, New South Wales, Victoria and Western Australia.

12. Viscount is a division of LINPAC Group Limited (**LINPAC**) a global packaging and materials handling company that has been owned by a consortium of lenders since 2009.

Other industry participants

Visy Industries Australia Pty Ltd

13. Visy Industries Australia Pty Ltd (**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, aluminium and tinplate cans, 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.

15. In previous matters, the ACCC has had regard to the relationship between Pact and Visy, and the impact of this relationship on the likely effectiveness of competition between Pact and Visy post-acquisition. In assessing the competitive

effects of the proposed acquisition, the ACCC will have regard to whether current and historical relationships, including financial and corporate links between Pact, Visy and their respective principals, may impact on the effectiveness of competition between Pact and Visy.

National Can Industries Limited

16. NCI is an ASX listed company that supplies a range of plastic and metal packaging products including plastic and tinplate pails, aerosol cans and plastic closures for application in a range of industries including paint, chemicals and food packaging.

17. A wholly owned subsidiary of Pact (Bennamon Pty Ltd) holds a 19.99% shareholding in NCI.

18. Over 50% of the shares in NCI are owned by Tyrrell Investments Pty Ltd and its related corporations and associates, who are unrelated to Pact or Visy.

Areas of overlap

19. The ACCC considers that the following areas of overlap exist between the parties identified above:

- Pact, Viscount and NCI each supply plastic pails;
- Pact and Viscount both supply plastic cartridges;
- Pact and Viscount both supply materials handling products; and
- Pact, Viscount and Visy each supply PET bottles, though Viscount only has PET manufacturing facilities in Western Australia.

The transaction

20. Pact is proposing to acquire 100% of the shares in Viscount.

Market inquiries

21. On 5 October 2011, the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers and customers.

With/without test

22. In assessing an acquisition pursuant to section 50 of the *Competition and Consumer Act 2010*, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-acquisition if the transaction proceeds (the "with" position) to the likely competitive environment if the transaction does not proceed (the "without" position or "counterfactual" position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.

23. In the event that Pact does not acquire Viscount, the ACCC considers the likely counterfactual to be that Viscount will continue to operate as an independent competitor, either under current or new ownership. However, the ACCC recognises that if Viscount remains under current ownership, there is uncertainty regarding the level of ongoing capital funding that Viscount will receive from the banking consortium that currently control LINPAC.

Market definition

24. The ACCC's preliminary view is that the following markets are relevant to its consideration of the proposed acquisition:

- the national market for the manufacture and supply of plastic pails;
- the national market for the manufacture and supply of plastic cartridges;
- the market for the manufacture and supply of PET beverage bottles in Western Australia; and
- the national market(s) for the manufacture and supply of materials handling products.

National market for the manufacture and supply of plastic pails

Extent of substitution between plastic pails and other plastic storage products

25. Plastic pails are open head containers used for storing and transporting food, chemicals, surface coatings, adhesives, pharmaceuticals and agricultural products and can range in size up to 25L. An open head container is a container with a large opening, being a similar size to the rest of the container; this is differentiated from a closed head container such as a bottle where the opening is relatively smaller than the rest of the container. Plastic pails can be square or round and may or may not have a handle.

26. Market inquiries to date have suggested that there is limited demand side substitution from plastic pails to other types of containers, such as plastic bottles, cubes or 'bag in a box' (a plastic bladder situated inside a cardboard box) systems. The ACCC understands that a customer's storage container choice is largely determined by the functionality required. Customers will opt to package their product in pails when they require an 'open head' container. The ACCC considers that any substitution from plastic pails to other types of plastic packaging is at the fringes.

27. Plastic pails are manufactured using injection moulding. Injection moulded containers are made by melting plastic polymer granules in a heated barrel and then injecting these into a mould which cools and solidifies the plastic into the finished product.

28. The ACCC considers that there is limited supply side substitution between plastic pails and other injection moulded products. While injection moulding can be used to produce other types of plastic packaging of different functionality (such as plastic cartridges), the ACCC notes that a supplier using an injection moulding

machine to produce other products would still need to buy and setup a new mould for each unique model of plastic pail they intended to manufacture, with associated capital costs and lead times.

29. The ACCC understands that there is no supply side substitution between the manufacture of plastic pails and other types of packaging such as plastic cubes, bottles or 'bag in a box' systems. Because these products are created by different manufacturing equipment and processes, firms producing other types of small industrial packaging would require significant capital investment in order to produce plastic pails.

Extent of substitution between plastic pails and tinplate pails

30. The ACCC understands that there is functional substitutability between tinplate pails and plastic pails in some uses (e.g. paint) but that for the majority of plastic pail customers, tinplate pails are not regarded as a viable alternative. For example, the ACCC understands that tinplate's susceptibility to denting and losing its shape makes it less suitable for use on industrial worksites. Similarly, tinplate pails may not be suitable for many food applications because of rusting and food contamination issues.

31. Market inquiries have indicated that tinplate pails can be approximately 40% more expensive than plastic pails for larger pail sizes. The ACCC understands that this cost differential limits customer willingness to substitute from plastic pails to tinplate pails, even where they provide similar functionality.

32. On the supply side, the manufacturing processes for tinplate pails and plastic pails are vastly different, utilising different machinery and different raw materials.

Geographic dimension

33. The majority of suppliers of plastic pails manufacture their pails in one or two plants, from which they distribute nationally. Large contracts are typically negotiated on a national basis. Accordingly, the ACCC considers that the market for plastic pails is likely to be national.

34. The ACCC therefore considers that the relevant market is the national market for the manufacture and supply of plastic pails.

National market for the manufacture and supply of plastic cartridges

35. Plastic cartridges are tube shaped containers designed to package and dispense adhesives, lubricants and sealants. A nozzle provides control in applying the sealant/adhesive and the sizing and shape is designed to fit into an applicator gun. The ACCC understands that there are no other packaging products available that offer a functional substitute for cartridges.

36. There are two types of plastic cartridges – grease cartridges and building cartridges. Grease cartridges are manufactured to hold motor oils, lubricants and coolants, while building cartridges are manufactured to hold glues and sealants. The difference in end uses means that grease cartridges and building cartridges

are designed and manufactured to different specifications and are supplied to different types of customers. The ACCC understands that there is no demand side substitution between cartridge types.

37. The ACCC's market inquiries to date suggest that both types of cartridge are manufactured using similar processes of injection moulding, and that supply side substitution may be possible from the supply of building to grease cartridges.

38. The ACCC's preliminary view is that the appropriate product market is the market for the supply of plastic cartridges. However the ACCC also recognises that the proposed acquisition may have different effects on competition for the supply of building and grease cartridges, and that separate markets for each of building and grease cartridges may be appropriate.

39. Both Viscount and Pact Group manufacture cartridges in plants in the eastern States and distribute their product to customers across Australia. The ACCC therefore considers that the relevant market is national.

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

40. The ACCC has considered the extent of substitutability between PET beverage containers and other types of beverage containers in the context of its previous reviews of Pact's proposed acquisition of Brickwood Holdings Pty Ltd, and the 2008 and 2009 reviews of the currently proposed acquisition.

41. Consistent with the approach taken in those previous reviews, the ACCC considers that particular characteristics of PET bottles limit their demand-side substitutability with other types of beverage containers:

- **functional (technical properties).** PET bottles can be cold or hot filled, hold carbonation, have greater structural integrity and barrier properties than other plastic bottles of similar weight, and are easily stored and handled;

- **end-customer preferences**. PET bottles offer visual clarity and lower weight; and

- **filling and packing.** Machinery used by beverage suppliers to fill containers is specific to the volume, neck size and type of container. In particular, machinery used to fill empty bottles is different to that used to fill other containers such as cans, glass or cartons.

42. PET bottles are manufactured using a blow moulding process. This encompasses:

- first, the creation of a PET preform through an injection moulding process, which determines the neck and weight of the final bottle; and

- second, the preform is heated and air is blown into it, so that the preform expands to take the bottle's desired shape.

43. PET bottles can be manufactured using either a single stage or two stage process. In a single stage process, the two phases of blow moulded PET container

production take place consecutively on the same machine. In a two stage process, preforms are moulded by an injection moulding machine which produces fully cooled preforms. A separate machine is then used to blow mould the preforms into bottles. A single stage process is slower, and best suited for lower volume and shorter production runs.

44. The ACCC understands that the machines used to produce PET bottles are different to those used for the manufacture of other beverage bottle types. Therefore a manufacturer of another type of beverage container would require considerable capital outlay in order to switch to the manufacture of PET.

45. Due to the constraints on both supply and demand side substitutability, the ACCC considers that the appropriate product market definition is the manufacture and supply of PET beverage bottles.

46. Viscount's PET manufacturing operations are confined to Western Australia. PET beverage bottles are high volume, non-nestable (non-stackable) products, with low value relative to transport cost. Consistent with this, the ACCC understands that almost all PET bottles sold in Western Australia are manufactured locally. The ACCC therefore considers that the appropriate geographic market definition is the manufacture and supply of PET beverage bottles in Western Australia.

National market(s) for the manufacture and supply of materials handling products.

47. Materials handling relates to the systems or combinations of methods, facilities, labour and equipment for moving, packing and storing materials. Materials handling products include crates, trays, warehouse containers and produce bins.

48. The ACCC does not consider it necessary to come to a definitive view on market definition for material handling products because competition concerns appear unlikely to arise whether the market is defined narrowly (in terms of separate markets for the supply of particular products such as pallets) or broadly.

49. The ACCC understands that materials handling products are typically distributed nationally and therefore considers that the relevant market(s) is / are national.

Statement of issues

50. 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'.

Issues that may raise concerns

National market for the manufacture and supply of plastic pails

51. The ACCC is concerned that the proposed acquisition may substantially lessen competition for the supply of plastic pails in Australia. The ACCC is considering the extent to which the proposed acquisition would allow the merged firm to unilaterally, or in coordination with NCI, increase prices for plastic pails.

52. The merger parties are two of the three largest domestic manufacturers of plastic pails (being Pact, Viscount and NCI). The proposed acquisition would remove a key competitor of similar scale and product range to Pact.

53. NCI has a plastic pail business of similar size to each of Pact and Viscount, and supplies a broad range of plastic pails as well as other packaging products.

54. Pact, Viscount and NCI account for upwards of 60% of market sales by revenue.

55. As noted above, while NCI is controlled by Tyrrell Investments Pty Ltd and its related corporations and associates, a wholly owned subsidiary of Pact holds a 19.99% shareholding in NCI. The ACCC is considering the extent to which this shareholding may affect the merged firm's incentive to compete effectively against NCI, given that it would enjoy 19.99% of NCI's profits.

56. The ACCC is also considering the extent to which Pact's shareholding may affect NCI's willingness and ability to compete against and constrain the merged firm. In particular the ACCC is considering the extent to which Pact's shareholding could be used to:

- facilitate coordination between Pact and NCI - by Pact using its votes at an AGM to vote against director appointments or remuneration reports to 'punish' effective competitive behaviour by NCI's management; and / or

- prevent NCI from making significant equity capital raisings (and thereby hinder potential expansion opportunities) in circumstances where Tyrrell Investments was prevented from voting on the relevant resolution(s).

57. In addition to NCI, there are also a number of smaller suppliers competing in the market. The ACCC understands that these suppliers range in size from 1 - 8% of the market, based on sales. Market inquiries to date have suggested that these firms have had an impact on competition for supply to some customers, particularly customers that require lesser quantities of pails. Market participants indicated that these smaller suppliers:

- **may be price competitive for supply to some customers.** Lower overheads, and a focus on more popular pail sizes, allow these firms to compete on price with the three larger manufacturers for particular pail sizes and quantities;

- **are looking to expand their capacity.** The ACCC understands that many of these firms do not have significant levels of excess capacity. However, some indicated they would be in a position to expand their capacity by purchasing new machinery, so long as they are able to secure sufficient new contracts capable of funding the capital costs associated with expansion; and

- **compete with larger pail suppliers for supply to some customers.** These firms have in some cases attracted business from the merger parties.

However, market inquiries have also identified limits on the extent of competitive constraint imposed by smaller suppliers. In particular:

- **limited range and current capacity**. These firms may be currently unable to produce the full range of pail sizes required by some customers, and without further capital expenditure would not be capable of providing the quantity of pails required by high-demand customers currently supplied by Pact, Viscount or NCI;

- **inability to produce 'anti-skinning' pails**. The ACCC understands that the extent of supply by these companies to paint companies is very limited. The ACCC understands that Pact, Viscount and NCI have developed plastic pails that minimise or prevent a 'skin' from developing on paint stored in those pails. Smaller suppliers do not produce 'anti-skinning' pails;

- **customer reluctance.** For some customers, plastic pails constitute an integral part of their finished product but only a small portion of the total cost of production or the price of the finished product. Market inquiries have revealed reluctance amongst such customers to trust smaller and less established suppliers with their plastic pail supply; and

- **switching costs.** The ACCC understands that testing pails of a potential new supplier for quality, durability and design before use involves use of internal resources that could otherwise be put to more productive uses. Customers therefore face costs associated with inviting new or untested suppliers to tender for supply.

The ACCC considers that these factors may constitute barriers to the expansion of small firms, and that these barriers to expansion may prevent the smaller firms from acting as a sufficient constraint to the merged firm in the event that the merged firm sought to increase the price of its plastic pails.

The ACCC invites comments from interested parties on the potential competitive constraint likely to be imposed on the merged firm by NCI and smaller suppliers

The ACCC seeks further information (and where possible, specific examples) on:

- tenders or other supply opportunities won by NCI, or smaller suppliers, in competition with Pact and / or Viscount and the proportion of total tenders / supply opportunities for which smaller suppliers are a competitive constraint;

- the importance of 'anti-skinning' pails to paint companies, and the extent of substitution between 'anti-skinning' pails and tinplate pails;

- the extent to which Pact competes with Viscount in respect of 'anti-skinning' pails;

- the costs associated with testing pails of a potential new supplier, switching suppliers of plastic pails, and/or sourcing plastic pails from multiple suppliers.

Imports

58. A number of market participants have indicated that imports provide only a weak source of competitive constraint upon domestic supply. Particular difficulties identified with importing plastic pails include:

- **landed price of imports.** Some market participants identified that the landed cost of imports can be cheaper for smaller pail sizes. However, the ACCC understands that for larger sizes (10L and above) the landed cost of imports may be above those for locally produced pails.

- **security of supply.** Imports of plastic pails involve long lead times when compared to domestic supply (weeks compared to 1-3 days). These lead times mean that if there is any supply disruption, or if the customer has an unexpected increase in demand for their product, obtaining replacement / additional supply may take some time, which may potentially cause a disruption to the customer's core operations;

- **warehousing costs**. Market inquires revealed a concern that customers would need to warehouse significant quantities of pails if relying on imports, with associated storage and inventory management costs, especially where a customer is otherwise operating a just-in-time inventory management system and has a number of product lines; and

- **perceived quality issues.** Some market participants have expressed concerns about the quality of imported products.

59. However, the ACCC is also considering the extent to which customers benchmark domestic prices to import prices, such that imports may act as a competitive constraint, even in circumstances where there is not a substantial quantity of plastic pails being imported.

60. The ACCC is also aware of a number of customers that import plastic pails pre-filled with their contents. The ACCC's preliminary view is that most pail customers are not in a position to directly substitute to importing pre-filled pails in response to a small but significant increase in the price of domestically manufactured pails. The ACCC understands that most imports of pre-filled pails are the result of procurement decisions relating to the source of the contents of the pail, rather than being the result of decisions relating to prices of the pails themselves.

61. The ACCC recognises that customers that acquire domestically manufactured plastic pails may compete in downstream markets against parties that import pre-filled plastic pails, and that there may be a degree of indirect downstream constraint to the merged firm from pre-filled pails. However, the ACCC also understands that for some customers, the price of plastic pails as an input only constitutes a small portion of the total cost of production of the finished product. Accordingly, the ACCC's preliminary view is that imports of filled pails would not provide a strong constraint to the merged firm.

62. The ACCC is seeking further information and comment on the competitive constraint imposed by imports of plastic pails on domestic supply.

> ***The ACCC invites comments from interested parties on the competitive constraint provided by imports of plastic pails***
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> The ACCC seeks examples or estimates of:
>
> - the landed cost of importing unfilled pails (across a range of sizes); and
> - other costs associated with importing or storing imported pails.
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> The ACCC seeks further detailed information on:
>
> - whether imported pails have significantly longer lead times than domestically manufactured pails, and if so, the impact of longer lead times on a customer's production or storage processes; and
> - whether there are quality issues associated with imported pails, including recent examples of quality concerns with imported pails, or the basis upon which quality concerns are held; and
> - the extent to which customers seek quotes from importers, and benchmark domestic prices against those quotes, as part of their procurement process.

National market for the manufacture and supply of plastic cartridges

63. Pact (including its controlled subsidiary Bev-Cap Pty Ltd) is active in supplying and tendering to supply building and grease cartridges to domestic customers. Viscount is the predominant supplier of building cartridges, but does not presently supply grease cartridges. There are no other significant domestic suppliers of plastic cartridges.

64. The ACCC is concerned that the proposed acquisition may substantially lessen competition in the supply of plastic cartridges by combining the only two significant domestic suppliers of building cartridges.

65. The ACCC has also considered whether the proposed acquisition would remove Viscount as a potential future supplier of grease cartridges. Based on market inquiries and information received from Pact and Viscount, the ACCC's preliminary view is that this is unlikely. Further, the ACCC understands that grease cartridges are not a technically complex product to manufacture, and that Viscount may not be any more likely an entrant into grease cartridges than some current manufacturers of other injection moulded products.

<u>Barriers to entry</u>

66. The ACCC is assessing the likelihood that a new entrant would commence manufacture and supply of building cartridges in Australia in the event that the merged firm sought to increase prices or reduce service and innovation, and the potential for customer sponsorship of such new entry.

67. The most recent entry into building cartridges was the sponsored entry of Baroda (at the time independent of Pact) in 2007. The ACCC understands that Baroda's entry may have resulted in lower prices for some customers of building cartridges, but may not have resulted in materially lower prices for all customers.

68. The ACCC understands that the sunk capital costs associated with plastic cartridge manufacture may not be substantial. However, the ACCC's preliminary view is that the limited number of building cartridge customers means that as a practical matter, new entry is only likely to occur where that entry is sponsored. The ACCC understands that customers may also acquire other plastic or packaging products from their building cartridge suppliers. The ACCC considers that these pre-existing broader relationships between customers and suppliers may:

- lessen the likelihood of customers sponsoring entry in respect of a single product – building cartridges - due to the possibility of losing discounts or transactional efficiencies associated with purchasing a range of products from a single supplier; and

- to the extent that a potential new entrant doesn't already produce related packaging products, increase the range of products that a potential new supplier would need to enter in order to effectively compete in building cartridges.

69. The ACCC further understands that, notwithstanding the lower prices that resulted from Baroda's entry, quality control issues that affected Baroda shortly after its entry may mean that market participants would be presently less willing to sponsor new entry than they were in 2007. However, the ACCC also understands that amended building cartridge specifications introduced since 2007 may mean that the issues that affected Baroda would be less likely to affect a new entrant today.

The ACCC invites comments from interested parties on the likelihood of entry into the supply of building cartridges and the likely price effect of new entry

The ACCC seeks further detailed information on the likelihood of other parties, with or without previous experience in injection moulding, commencing supply of building cartridges. In particular the ACCC is interested in:

- the effect of Baroda's entry in 2007 on the prices paid for building cartridges at the time by both customers who sponsored Baroda's entry, and by other building cartridge customers;

- whether any other companies have expressed a willingness to supply, or an interest in supplying, building cartridges;

- the likelihood of a potential new entrant being affected by quality control issues of the kind that affected Baroda upon its entry into building cartridges; and

- whether building cartridge customers also acquire a range of other plastic or packaging products from their plastic cartridge suppliers, and if so, the likelihood of customers sponsoring the entry of a new supplier for just one product – building cartridges.

Imports

70. The ACCC's market inquiries to date have identified limits on the viability of importing unfilled plastic cartridges similar to those outlined above in respect of plastic pails, namely: security of supply, warehousing costs, and perceived quality issues (in the case of building cartridges this also includes the quality of decoration available on imported cartridges). The ACCC understands that despite these limitations, some building cartridge customers benchmark domestic prices to import prices for unfilled cartridges. The ACCC is interested in receiving further information about the ability and incentive of customers to source unfilled plastic cartridges from overseas.

71. The ACCC also understands that some building cartridge customers import pre-filled cartridges for some or all of their product lines. The ACCC is interested in whether a significant proportion of building cartridge customers would have the ability and incentive to substitute to importing a material proportion of their product lines as pre-filled building cartridges in response to a small but significant increase in the price of domestically manufactured unfilled building cartridges.

72. The ACCC recognises that customers that acquire domestically manufactured building cartridges may compete in downstream markets against parties that import pre-filled building cartridges, and that there may be a degree of indirect downstream constraint to the merged firm from pre-filled building cartridges. Consistent with the discussion of imported pre-filled plastic pails given above, the ACCC's preliminary view is that imports of pre-filled building cartridges would not provide a strong constraint to the merged firm.

73. The ACCC is seeking further information and comment on the competitive constraint imposed by imports of building cartridges on domestic supply.

The ACCC invites comments from interested parties on the competitive constraint provided by imports of building cartridges

The ACCC seeks examples or estimates of:

- the landed cost of importing unfilled building cartridges; and
- other costs associated with importing or storing imported cartridges.

The ACCC seeks further detailed information on:

- whether imported building cartridges have significantly longer lead times than domestically manufactured cartridges, and if so, the impact of longer lead times on a customer's production or storage processes; and

- whether there are quality issues associated with imported building cartridges, including recent examples of quality concerns with imported cartridges, or the basis upon which quality concerns are held; and

- the extent to which customers seek quotes from importers of unfilled and / or pre-filled building cartridges, and benchmark domestic prices against those quotes, as part of their procurement process.

Market for the manufacture and supply of PET bottles in Western Australia

74. The ACCC understands that Pact, Viscount and Visy are the only suppliers of PET bottles to third-party Western Australian customers. Pact's involvement in this market is currently minimal, arising from supply by Pact of small volumes to limited customers from its interstate manufacturing operations. Visy and Viscount both manufacture PET bottles in Western Australia. The ACCC understands that while Visy is of a significantly larger scale than Viscount, Visy and Viscount compete for Western Australian PET customers with annual requirements of less than 15 million units per annum (approximately). The ACCC has therefore focussed its review on customers of this size.

75. The ACCC queries whether the proposed acquisition would represent a bare transfer of market share from Viscount to Pact. In the ACCC's view, Pact may not provide effective independent competition to Visy as a result of the current and historical relationships, including financial and corporate links between Pact, Visy and their respective principals. Accordingly, the ACCC is concerned that the proposed acquisition may remove or mute the actual and potential competition that currently exists between two independent suppliers of PET bottles in WA.

Barriers to entry

76. The ACCC is assessing the likelihood of new entry into the manufacture and supply of PET bottles in WA in the event that Pact and Visy sought to increase prices to WA customers, having regard to the commercial incentive for entry and the barriers to such entry. Particular parties being considered as possible entrants are parties who currently manufacture PET bottles outside of Western Australia, and manufacturers of other bottle types (such as HDPE) with existing production facilities in Western Australia.

77. Coca-Cola Amatil has made public statements that it plans to move to 100% self sufficiency in PET bottle manufacture in Australia by 2015. The ACCC's preliminary view is that the significant excess manufacturing capacity of incumbent suppliers (especially after Coca-Cola Amatil moves to in-house PET bottle supply) may represent a strategic barrier to entry to the WA market.

The ACCC invites comments from interested parties on the likelihood of new entry into PET supply in Western Australia.

The ACCC seeks further information on:

- the costs and incentives of new suppliers entering the Western Australia market to supply customers of less than approximately 15 million units per annum; and
- the likely impact of CCA's planned move towards in-house production (and the excess capacity that the move may create for incumbent suppliers) on those incentives.

Countervailing power

78. As noted above in respect of Coca-Cola Amatil, the ACCC recognises that there are examples of companies that either currently manufacture, or have current plans to manufacture, PET bottles in-house in Western Australia.

79. The ACCC is investigating the incentives of current Western Australian PET customers to switch to in-house manufacture in response to a small but significant increase in the price of PET bottles. The ACCC's market inquiries suggest that PET bottle customers in WA over whom Viscount and Visy compete currently have little interest in the capital investment and development of expertise in non-core manufacturing operations associated with in-house manufacture of PET bottles.

80. However, the ACCC notes that there are multiple types of PET production processes, and that customers may be able to acquire small scale single stage machines for relatively low capital expenditure. In this context the ACCC is considering whether the incentives of customers who purchase fewer than 4 million units per annum to commence in-house manufacture of PET bottles are different to the incentives of customers who purchase between 4 million and 15 million units per annum. The ACCC understands that customers who acquire less than 15 million units per annum acquire approximately 13% of total Western Australian PET bottle production, but constitute the majority of Western Australian PET bottle customers by number.

The ACCC invites comments from interested parties on the likelihood of PET customers moving their manufacturing in-house

In particular, the ACCC is seeking information relating to:

- the current per unit cost of a PET bottle for Western Australian customers;
- the likely per unit cost associated with small scale in-house PET bottle manufacture;
- capital costs associated with purchasing single stage PET manufacturing equipment (including machinery cost and any other ancillary setup costs); and
- any additional ongoing costs associated with in-house PET manufacture, such as additional labour to supervise the production process.

Issues unlikely to pose concerns

National market(s) for supply of materials handling products

81. The ACCC has examined the potential for competition concerns to arise in relation to the national market(s) for the supply of materials handling products.

82. The ACCC understands that the extent of product overlap and aggregation in materials handling products is very limited and that the merged firm would be constrained by other competitors. Market inquiries to date have not revealed concerns about the impact of the proposed acquisition in this sector.

83. While the ACCC's preliminary view is that the proposed acquisition is unlikely to raise significant competition concerns in the market(s) for the supply of materials handling products, the ACCC welcomes comments regarding its preliminary findings in this sector.

ACCC's future steps

84. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.

85. 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.

86. Submissions are to be received by the ACCC no later than **15 December 2011**. 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.

87. The ACCC intends to publicly announce its final view by **19 January 2012**. 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.