



## Statement of Issues 5 December 2013

### BlueScope - proposed acquisition of Fielders

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#### Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of certain assets of the Fielders roll forming manufacturing business from Hills Holdings Limited and other associated entities (**Fielders**) by BlueScope Steel Ltd (**BlueScope**) (the **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 (at [www.accc.gov.au/processguidelines](http://www.accc.gov.au/processguidelines)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by **20 December 2013** and anticipates making a final decision on **30 January 2014**. However, the anticipated timeline can change in line with the Merger Review Process Guidelines. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).
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.

#### The parties

##### BlueScope

5. BlueScope is a large vertically integrated steel manufacturer and distributor listed on the Australian Securities Exchange.
6. BlueScope is the only manufacturer in Australia of steel slab through its Port Kembla steelworks. The steelworks has a capacity of 2.6 million tonnes per annum. Through its subsidiary Coated and Industrial Products Australia (**CIPA**), BlueScope processes steel slab into a range of steel products classified as 'flat steel' products. Further information on the flat steel products supply chain is provided below.

7. In addition to CIPA, BlueScope has a number of businesses at various levels of the flat steel supply chain, including in steel products distribution and businesses carrying out additional manufacturing functions.

### **Lysaght**

8. Relevant to the proposed acquisition is the BlueScope subsidiary Lysaght. Lysaght manufactures roll formed products. Further information on roll forming and roll formed products is provided below. Lysaght has approximately 30 manufacturing and sales sites across Australia.

### **Fielders**

9. Fielders is a subsidiary of Hills Holding Limited (**Hills**). Fielders manufactures roll formed products.
10. Fielders' main roll forming manufacturing operations are centred at Mile End in South Australia. It also has manufacturing facilities at Wangara in Western Australia, Campbellfield in Victoria and Minto in New South Wales. Fielders also has sales sites located throughout South Australia, Western Australia, and a branch in Darwin.
11. Fielders also operates downstream shed building distribution and retail businesses which utilise roll formed products. These are its Endurance Structures and Fielders Centenary businesses.

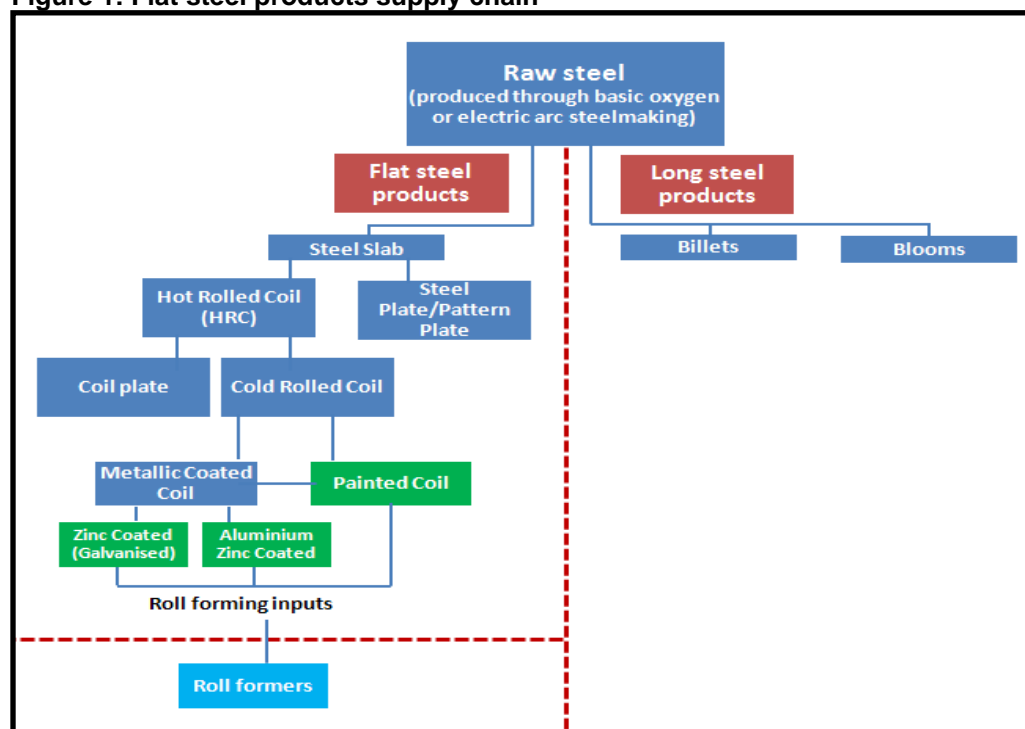
## **Industry background**

### **Flat steel products**

12. The steel supply chain in Australia is complex with a number of functional levels, numerous types of steel products, multiple inputs into various manufacturing processes and a global dynamic through imports and exports.
13. Steel producers use inputs such as iron ore, coal and steel scrap to form raw steel either through using a basic oxygen furnace, or an electric arc furnace. Raw steel is then passed through a casting machine which moulds and solidifies the steel into semi-finished steel products known as 'slab', 'billets' or 'blooms'. Steel slab, billets and blooms then undergo further processing to produce a range of 'flat' or 'long' steel products. It is flat steel products which are relevant to the proposed acquisition.
14. To produce flat products steel slab is reheated and passed through a rolling mill to produce Hot Rolled Coil (**HRC**) or a form of steel plate. HRC may be subject to further processing into either coil plate or Cold Rolled Coil (**CRC**). In particular, CRC is produced by passing HRC through rolling mills at low temperature to reduce thickness. This process increases the strength of the steel and enables it to be rolled into coil for transport and storage.
15. Relevant to the proposed acquisition is the further processing of CRC into either metallic coated coil or painted coil. Metallic coated coil is produced by uncoiling the CRC and applying a metallic coating. The most common coatings are zinc (galvanised) and aluminium zinc. Painted coil is produced by painting either CRC or metallic coated coil.

16. As noted above, BlueScope CIPA is the only Australian manufacturer of flat steel products. The other source of flat steel products is via imports, either directly from an overseas steel mill or through an Australian based import trader.
17. **Figure 1** provides a broad representation of the place of roll forming in the flat steel products supply chain, which is relevant to the proposed acquisition.

**Figure 1: Flat steel products supply chain**

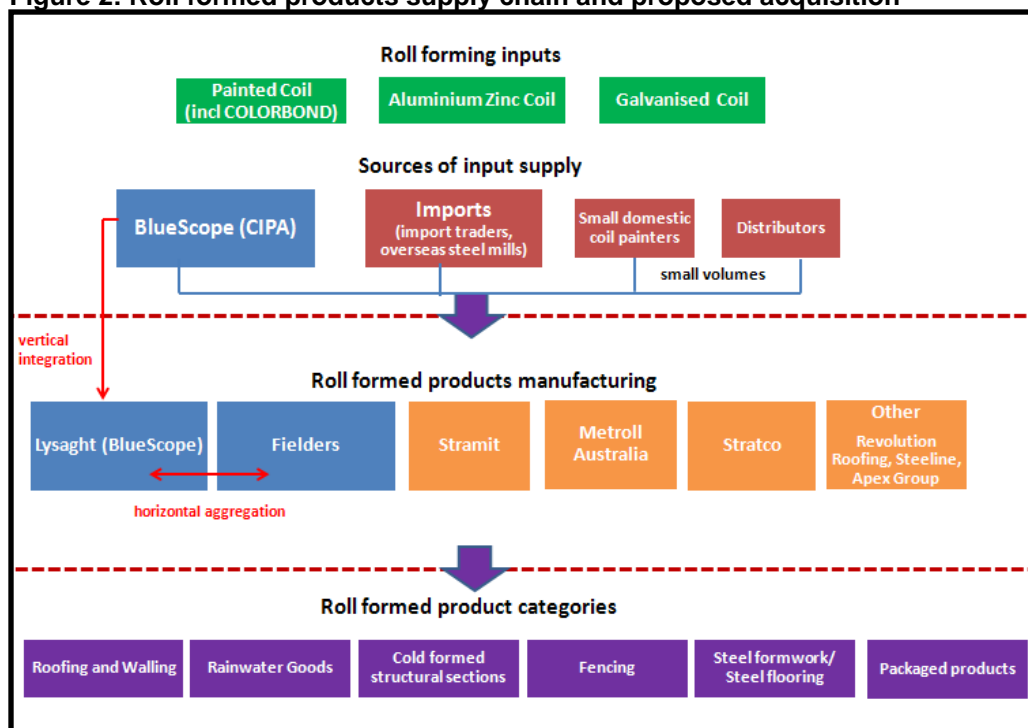


## Roll forming

18. Roll forming is the manufacturing process where steel coil is fed through contoured roller die machinery to form 'roll formed' steel in a particular profile which can then be cut to a particular length.
19. The steel inputs used in the roll forming manufacturing process are galvanised coil, aluminium zinc coated coil, and painted coil. Roll formed products include roofing, walling, guttering, fencing and steel formwork. In most cases for each product category specific machinery would be required to produce the relevant products.
20. The type of roll formed products supplied, and the end uses they are ultimately suitable for, will depend on:
  - the gauge (thickness) and width of the steel being roll formed;
  - the strength grade of the steel;
  - the complexity of the cross-section required (the greater the complexity, the more rollers required); and
  - the speed at which the steel is fed through the roll former (the lighter the gauge and the less complex the cross-section, the faster the speed at which the steel can be fed through the machine).

21. Roll formed products are used in all types of building structures (residential, commercial and industrial). Customers of roll formers include builders, steel fabricators, form and specialist roof installers, shed manufacturers, fencing contractors, distributors and other resellers such as hardware retailers or specialist shed retailers. Customers often source roll formed products from multiple suppliers with purchases typically being made on a project basis rather than under long term or exclusive supply arrangements.
22. Manufacturers of roll formed products are commonly referred to as 'roll formers'. There are five roll formers that operate nationally: Lysaght, Fielders, Stramit, Stratco and Metroll. In addition, there are roll formers operating in certain Australian states, such as Revolution Roofing (SA and WA) and Combined Metal Industries (WA).
23. Roll formers in Australia source steel coil inputs predominantly from BlueScope CIPA and in some cases through imports. Imports are sourced either via locally based traders or directly from overseas steel mills.
24. **Figure 2** provides a broad representation of the roll formed products supply chain and the proposed acquisition's place in the supply chain.

**Figure 2: Roll formed products supply chain and proposed acquisition**



## Other industry participants

25. The ACCC's market inquiries have generally identified five major national roll formers which offer a comparable range of products, and have manufacturing facilities in all/almost all states. In addition to Fielders and Lysaght, these are Stramit, Metroll and Stratco.

## **Stramit**

26. Stramit is a subsidiary of Fletcher Building Limited. It manufactures roll formed products for a range of applications, including steel formwork. Stramit delivers these products, along with complementary products and services, through a national network of manufacturing and distribution centres.

## **Metroll**

27. Metroll produces roll formed products for most applications, with manufacturing plants in all states. Metroll does not supply steel formwork.

## **Stratco**

28. Stratco is a manufacturer of a large range of roll formed products, with plants in all states in Australia (except Tasmania). Stratco also has its own downstream retail outlets for the supply of roll formed products such as sheds. Stratco does not supply steel formwork.

## **Other roll formers**

29. There are numerous other smaller roll formers, which focus on the supply of a smaller range of products and which do not supply nationally. These include roll formers such as Revolution Roofing, Apex, Ace Gutters and Combined Metal Industries.
30. Additionally, there are three roll formers which supply only steel formwork products. These include steel formwork specialists Formdeck Constructions and Formdeck Australia (both based in Victoria), and Big River Timber (which is based in NSW and is primarily a supplier of timber products).

## **The transaction**

31. On 19 August 2013, BlueScope publicly announced agreements to acquire the Fielders and Orrcon steel businesses from Hills. The proposed acquisition is conditional on ACCC clearance. The ACCC commenced a public review of the proposed acquisition on 4 September 2013.

## **Market inquiries**

32. On 4 September 2013, the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including distributors of steel coil, rival roll formers, customers of roll formed products and industry associations.

## **Future with and without the acquisition**

33. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
34. For the purposes of this Statement of Issues, the ACCC will at this stage assess the proposed acquisition against the status quo. Fielders has recently been the subject of

a sale process. In the event that BlueScope does not acquire Fielders, the current owners may retain the business and continue with their strategic plans or the business may be sold to another party.

## Areas of overlap

35. Lysaght and Fielders overlap is in the manufacture and supply of roll formed products, including steel formwork. As outlined below, this overlap is most relevant in South Australia and Western Australia, where both Lysaght and Fielders have a strong presence.

## Market definition

### Supply of steel coil inputs

36. The supply of steel coil inputs is relevant in considering the proposed acquisition as BlueScope CIPA is the predominant supplier of these inputs to roll formers, including, Lysaght and Fielders.

### Product dimension

37. The key inputs into the manufacture of roll formed products are:
- painted steel coil (**painted coil**);
  - steel coil coated with a zinc/aluminium alloy or zinc/aluminium/magnesium alloy (**aluminium zinc coil**); and
  - galvanised steel coil (**galvanised coil**);
- (collectively **steel coil inputs**)
38. In most cases the potential for demand side substitution by the roll formers between the inputs is limited due to end customer requirements for specific roll formed products. Further, roll formers often require specific grades of each input based on the input's chemical properties and other specific characteristics (e.g. dimensions).
39. Despite these demand side characteristics, the ACCC did not consider it necessary to define narrower markets than the three main inputs utilised by roll formers. This is due to supply side substitution. Suppliers of steel coil inputs, such as BlueScope CIPA and overseas steel mills, supply a large range of steel coil inputs in the specific grades and dimensions required by Australian roll formers

#### Painted coil

40. A focus of market inquiries with industry participants was the supply of BlueScope CIPA's COLORBOND product. COLORBOND is a painted coil input developed by BlueScope, which has significant brand recognition and it is considered important for roll formers to offer COLORBOND roll formed products.
41. The ACCC does not consider COLORBOND represents a separate product market to painted coil. Other painted coil products have similar chemical and performance characteristics. However, it appears that COLORBOND grades used in residential products have particular strong brand recognition.

## Geographic dimension

42. The ACCC considers the geographic scope of the steel coil input markets are national. BlueScope CIPA and other suppliers, such as import traders, supply roll formers across Australia.

## Supply of roll formed products

### Product dimension

43. Key types or categories of roll formed products include:
- roofing and walling, including steel sheeting and cladding;
  - rainwater products, such as downpipes and gutters;
  - purlins and structural sections,
  - fencing; and
  - structural decking/steel formwork (**steel formwork**).
44. The ACCC considers that, from a customer's perspective, there is little or no scope to substitute a product having one function with another (such as roofing for guttering). Furthermore, with the exception of sales of roofing, walling and rainwater products, only a small proportion of customers purchase more than one product category. Customers include roof fixers, form-workers and fence installers that specialise in installing particular products, and retailers that specialise in selling particular products such as sheds. Only distributors/resellers regularly purchase more than one category of product.
45. However, in terms of supply, the ACCC considers that the manufacturing process and expertise is common to almost all products. The merger parties and other main suppliers each produce and supply a wide range of products. Therefore, distinguishing separate markets by product category is unlikely to meaningfully influence the ACCC's competition assessment. A possible exception in these respects is supply of steel formwork, as discussed below.

### Substitution with other materials

46. The ACCC is also considering the impact of competition from non-steel products on the supply of roll formed products, and the extent to which these are substitutable with the roll formed products supplied by the merged firm.
47. For example, roofing and walling is the largest product segment in terms of customer demand for roll formed products. In the ACCC's market inquiries to date, some market participants have suggested that, in residential roofing, roof tiles are a substitute for steel roofing and that they place some constraint on the price of steel roofing.
48. The ACCC is seeking further information from interested parties on any effects that inter-material competition has on the pricing of roll formed products, including roofing and steel formwork.

## Geographic dimension

49. The ACCC understands that roll formers generally operate production facilities close to their customers to meet local demand and that interstate supply of roll formed products is generally limited due to freight costs and short lead times, among other factors. The ACCC's preliminary view is therefore that the markets for the manufacture and supply of roll formed products are state-based.

## Supply of steel formwork

### Product dimension

50. The ACCC is also considering the effects of the proposed acquisition specifically on the manufacture and supply of steel formwork. Steel formwork is used in the construction of suspended concrete slabs in buildings - generally multi-storey commercial buildings. Steel formwork is used to create a deck upon which the concrete is poured.
51. The ACCC understands that supply side substitution between other roll formed products and steel formwork may be limited due to the investment in specific equipment and timeframes associated with product development as well as technical expertise required to produce steel formwork. The ACCC's preliminary view is that the manufacture and supply of steel formwork should be considered a distinct product market for the purpose of assessing the proposed acquisition.

### Substitution with timber

52. The merger parties submit that customers, generally construction companies, regularly switch between steel formwork and timber formwork. The ACCC understands that steel formwork has advantages in terms of reduced construction time, fewer support structures (e.g. props) and is less labour intensive. However, it does have a higher upfront cost and is not reusable. Timber formwork on the other hand can be reused although it is more labour intensive and can add to construction time.
53. The substitutability between steel and timber formwork will be explored further by the ACCC in market inquiries on this Statement of Issues.

## Geographic dimension

54. The ACCC is considering the feasibility of suppliers transporting steel formwork between states and at this stage is undecided whether the market for the manufacture and supply of steel formwork is national or state-based in scope. Consequently, the ACCC has considered the proposed acquisition's potential competition effects in respect of steel formwork on the basis of both national and state based markets.

## Preliminary conclusions - relevant markets

55. For the reasons described above, the ACCC at this stage considers that the relevant markets in which to assess the proposed acquisition are:
- national markets for the supply of:
    - painted coil;
    - aluminium zinc coil;
    - galvanised coil;



- either a national market or state-based markets for the manufacture and supply of steel formwork;
- state-based markets for the manufacture and supply of roll formed products (other than steel formwork) in each of:
  - South Australia/Northern Territory;
  - Western Australia;
  - New South Wales/Australian Capital Territory;
  - Victoria/Tasmania; and
  - Queensland.

The ACCC invites comments from market participants on its proposed definition of the relevant markets.

In particular, market participants may wish to comment on:

- a. whether manufacturers of roll formed products are likely to be able to quickly and profitably switch their production capacity or make additional investments to supply steel formwork in response to a small but significant increase in the price of steel formwork;
- b. any differences in the supply of steel formwork (for example, longer lead times, limited local production and/or greater quantities sourced for specific projects) compared to other roll formed products, which makes interstate supply more viable; and
- c. the extent to which customers consider timber formwork to be an alternative for steel formwork and the issues (e.g. cost, timeframe) that customers take into account when selecting between steel and timber.

## Statement of issues

56. For the purposes of a Statement of Issues, the ACCC may identify three categories of issues: 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise competition concerns'. In this Statement of Issues, the issues have been categorised as 'issues that may raise concerns' and 'issues unlikely to raise competition concerns'.

## Issues that may raise concerns

57. The ACCC considers that the vertical and horizontal merger issues described below are important to the ACCC's assessment of the likely competition effects arising from the proposed acquisition. The following section describes the ACCC's potential concerns and provides details of specific further information that is being sought from interested parties.

### Foreclosure of rival roll formers' access to steel coil inputs

58. BlueScope CIPA is the only Australian manufacturer of galvanised coil and aluminium zinc coil, and is the primary Australian manufacturer of painted steel coil (there are other smaller domestic manufacturers of painted steel coil with a very limited market

presence). BlueScope is already vertically integrated into the downstream supply of roll formed products, via its Lysaght business.

59. As a result of the proposed acquisition and the merged firm's greater roll forming capacity and market share(s), BlueScope may have an increased ability and incentive to foreclose rival roll formers' access to steel coil inputs, or to supply them on discriminatory terms (in terms of price, service or other terms of supply). Relevant factors the ACCC is considering in relation to this increased vertical integration are:
- the merged firm's *ability* to foreclose supply of steel coil inputs to rival roll formers and, in this respect, whether BlueScope currently has market power in the supply of steel coil inputs;
  - the merged firm's *incentive* to foreclose supply of steel coil inputs to rival roll formers and, in this respect, the potential gains and losses to the merged firm at each level of the supply chain from foreclosure of supply to rivals; and
  - the likely competitive effects of any foreclosure of steel coil inputs to rival roll formers, including the potential for any increase in barriers to entry.
60. The ACCC's preliminary view is that the increase in vertical integration arising from BlueScope's proposed acquisition of Fielders may raise competition concerns. The ACCC considers that BlueScope likely already has market power in the supply of painted coil that it may be able to leverage off in foreclosing or partially foreclosing rival roll formers' access to steel coil inputs. However, the proposed acquisition may increase their incentive to engage in such a foreclosure strategy. This strategy may increase rival roll formers' costs and in doing so impact their ability to compete against the merged firm.

The merged firm's ability to foreclose supply of inputs to rival roll formers

61. To determine whether the merged firm would have the ability to significantly foreclose rival roll formers' access to steel coil inputs, the ACCC is considering whether BlueScope would have market power in any upstream market for the supply of relevant steel coil inputs. In doing so the ACCC is examining the extent to which roll formers could source alternative inputs to those manufactured by BlueScope CIPA from overseas steel mills (or through locally based import traders) or through smaller domestic suppliers.
62. The ACCC recognises that a significant role is played by import competition in the overall supply of steel products in Australia. However, information provided to the ACCC through market inquiries to date has indicated that the competitive constraint on domestic supply from imports differs markedly between specific steel coil inputs and their end-use application.
63. In particular, there appears likely to be the potential for roll formers to substitute between BlueScope CIPA supply and imports of galvanised coil and, to a lesser degree, aluminium zinc coil. The ACCC has received material demonstrating that BlueScope changes its pricing of these products in response to import prices. The ACCC considers that actual and potential import competition may represent a competitive constraint on the merged firm's supply of these inputs to rival roll formers.
64. However, the ACCC's market inquiries identified that market participants generally consider that alternative painted coil products, including imports, are not a strong substitute for BlueScope's COLORBOND painted coil products. This is particularly the case for COLORBOND grades used in residential applications. While alternative

painted coil products, including imported painted coil, may have similar chemical and quality characteristics, end-use customers of roll formed products, such as builders, often do not accept non-COLORBOND products for residential applications. Furthermore, architects and/or engineers often specify the use of COLORBOND in construction plans. As a consequence, roll formers consider that COLORBOND is a 'must have' product.

65. The ACCC's preliminary view is that BlueScope has market power in the supply of painted coil products due to its COLORBOND grades of painted coil. COLORBOND is considered by roll formers to be a critical input to their businesses, particularly for the supply of residential roofing, which is a very large market segment. It does not appear that pricing of imported painted coil products influences BlueScope's pricing of the key COLORBOND grade used in residential applications.
66. The ACCC is aware of extensive rebate arrangements in place between BlueScope CIPA and roll formers. The ACCC considers that these arrangements, which require roll formers to source a high overall threshold of steel coil inputs from BlueScope to obtain the rebates, limit the ability of rival roll formers to obtain painted coil and other steel coil inputs from other sources, particularly via imports. As discussed above, COLORBOND is considered a 'must have' by many roll formers. The linking of COLORBOND supply to the acquisition of other steel coil inputs as well as the high purchase thresholds to qualify for specific rebates means that were roll formers to attempt to switch to alternative sources of steel coil inputs they would likely forego significant financial incentives.
67. The ACCC understands that the rebates provided by BlueScope to roll formers are crucial to the ongoing viability of their businesses in an industry of low margins and profitability. The ACCC considers that these rebate arrangements on COLORBOND and other BlueScope products are likely to limit the opportunity for rival roll formers to increase their use of imported product in response to, for example, any price discrimination by the merged firm.
68. The ACCC notes that this market power and potential ability to foreclose rival roll formers exists now. The focus of the ACCC's assessment is on whether the proposed acquisition will alter the incentive on BlueScope to exercise this market power.

#### Merged firm's incentive to foreclose supply of inputs to rival roll formers

69. As noted previously, BlueScope is already vertically integrated through Lysaght. No information provided to the ACCC indicates that BlueScope currently discriminates against competitors of Lysaght by offering terms that are materially less favourable than those on which it supplies Lysaght, despite the fact that Lysaght has excess capacity.
70. Nonetheless, some market participants have raised concerns that aggregation of Lysaght and Fielders would provide BlueScope with an increased incentive to exercise its market power in the supply of painted coil to significantly or partially foreclose rival roll formers access to steel coil inputs.
71. Whether BlueScope would have an incentive to engage in such a foreclosure strategy would depend on whether the higher profits it would generate from its downstream roll forming business exceed the profits it would lose from making fewer sales of painted coil. BlueScope's higher market share of roll formed product markets after the acquisition may increase its incentive to foreclose its rivals since it would have more sales over which it would enjoy the higher roll forming margins. In this respect, the

ACCC estimates that in significant areas of overlap, Western Australia and South Australia, Lysaght would increase its market share by 20 – 25% and 25 – 30% respectively.

72. The ACCC understands that BlueScope has a limited ability to reduce its production of flat steel products at its Port Kembla steelworks, without increasing costs. BlueScope provided detailed information supporting its submission that the merged firm would continue to have a strong incentive not to pursue a foreclosure/discrimination strategy due to the significantly higher margins it earns on domestic supply of steel coil products over the next best alternative for its Port Kembla steel output – exports of steel slab.
73. The ACCC considers that the incentive for BlueScope to supply steel coil inputs at non-discriminatory prices to downstream rivals is strongly linked to the ability of rival roll formers to bypass BlueScope CIPA through obtaining inputs from alternative sources. The incentive will depend on the extent that alternatives, particularly imports, represent a credible and strong substitute to its supply of steel coil inputs and BlueScope would forego sales in the event it pursued a foreclosure strategy.
74. In assessing BlueScope's incentives, the ACCC is also examining the extent to which BlueScope adopts a national pricing strategy for the supply of steel coil inputs to roll formers. The ACCC understands that BlueScope may adopt a national pricing strategy for steel coil inputs and as a consequence to exploit any increased incentive to foreclose in the states where Lysaght's market share has increased significantly – South Australia and Western Australia – BlueScope may have to change its pricing strategy.
75. The incentive will also depend on the indirect loss of sales by BlueScope through any reduction in sales by its roll former customers. This will depend principally on the extent to which customers of roll formed products are likely to switch to using other products in response to an increase in the relative price of painted steel products (e.g. tiled roofs in place of steel).

#### Downstream competitive effects of foreclosure of inputs

76. Some interested parties have raised concerns with the ACCC that BlueScope's increased vertical integration has the potential to not only affect the competitiveness of individual roll formers but also raise barriers to entry.
77. The ACCC notes the low industry wide profitability of roll formers and considers that any foreclosure strategy is likely to have a significant impact on the ability of rival roll formers to constrain the merged firm. The ACCC is examining the potential impact of any foreclosure strategy on barriers to entry.

#### Preliminary conclusion - foreclosure of rival roll formers' access to steel coil inputs

78. The ACCC at this stage considers that BlueScope has market power in the supply of painted coil inputs. The ACCC also considers that BlueScope may have an increased incentive through the proposed acquisition to foreclose rival roll formers' access to steel coil inputs, or to supply them on discriminatory terms (in terms of price, service or other terms of supply).
79. However, the ACCC notes that BlueScope is already vertically integrated and it appears that it does not discriminate against competitors of Lysaght. The ACCC therefore invites objective information from interested parties identifying how the

proposed acquisition would materially change BlueScope's incentive to supply steel coil inputs to rival roll formers.

In considering the vertical effects of the proposed acquisition, the ACCC will focus its further inquiries on the extent to which BlueScope's incentive to foreclose rival roll formers increases as a result of the proposed acquisition.

The ACCC invites further submissions from interested parties on the vertical effects of the proposed acquisition. In this respect, market participants may wish to comment on:

- a. the ability of roll formers to use alternative suppliers of steel coil inputs, particularly in respect of painted coil, and the loss of rebates and sales roll formers would incur through not meeting rebate targets or not offering COLORBOND products; and
- b. the degree to which higher prices or restricted supply of COLORBOND would lead to roll formers reducing their COLORBOND purchases and obtaining painted coil from other sources.
- c. the likely effect of an increase in the price of painted coil on roll formers' prices and sales volumes (including sales that might be at risk from substitution with other materials).

### **Supply of steel formwork**

80. The ACCC considers that the proposed acquisition may result in a substantial lessening of competition in the supply of steel formwork either on a national or state market basis. This Statement of Issues seeks further information on this issue.

#### **Market concentration and closeness of competition**

81. The merger parties are currently the largest suppliers of steel formwork. Based on market inquiries, the ACCC estimates that the merged firm may account for approximately 50 – 55% of the supply of steel formwork in Australia. In certain states this market share is likely to be substantially higher, particularly in New South Wales, Queensland, Western Australia and South Australia.
82. Information provided by market participants and the merger parties indicates that Lysaght and Fielders are each other's closest competitors in the supply of steel formwork. Lysaght's Bondek and Fielders' KingFlor product ranges enjoy strong customer recognition. Both companies produce a wide range of profiles to meet particular customer/construction specifications and both appear to have developed proprietary technology designed to offer customer benefits in terms of construction speed or other factors.

#### **Availability of substitutes**

83. There are fewer suppliers of steel formwork compared to other roll formed products. Only three of the larger roll formers in Australia currently manufacture steel formwork - the merger parties and Stramit. The proposed acquisition would reduce three main suppliers of steel formwork to two.
84. Other manufacturers and suppliers of steel formwork, which are based in certain states, include Formdeck Australia, Formdeck Construction and Big River Timber. The ACCC understands that their manufacturing scale is relatively small, and that the geographic areas of their supply are currently relatively limited. Although, the ACCC

considers that Formdeck Construction may be a strong alternative supplier of steel formwork in Victoria.

85. The ACCC is therefore seeking further information about the ability and incentive for existing alternative suppliers to offer additional steel formwork products/profiles, and whether their manufacturing volumes and/or geographic areas of supply would be substitutable with the merged firm.

#### Likelihood of new entry

86. The ACCC is considering whether the merged firm would face a credible threat of new entry to the supply of steel formwork on a scale and within a timeframe that would provide an effective competitive constraint on its pricing and/or service levels.
87. The most likely source of new entry to the manufacture and supply of steel formwork in Australia would be an existing roll former, such as Metroll or Stratco. Market feedback to date has been mixed on the ability of roll formers not currently supplying steel formwork to enter. In particular, while the manufacturing equipment for steel formwork generally represents a higher capital cost than other roll formed products it is unclear whether any expertise or specific product development is required prior to entry.
88. The primary input into steel formwork is galvanised coil of which the largest supplier is BlueScope CIPA. As a consequence, the ACCC is also considering the likelihood of new entry in the context of BlueScope's position as the primary source of galvanised coil and also the potential for the proposed acquisition to result in a significant market concentration on both a national and state basis.

#### Constraint provided by timber formwork

89. As noted in the market definition section, the ACCC is considering whether timber formwork is a substitute for steel formwork. The ACCC understands that in the overall use of formwork timber is used approximately 75% of the time. Were timber to be considered a strong substitute to steel formwork, then the merged firm would likely be constrained, noting the numerous suppliers of timber formwork, particularly in the form of in-house supply at construction companies.
90. However, the ability of steel formwork customers to constrain the merged firm by substituting with timber is unclear, particularly when switching between materials may be limited by engineering and architectural specifications.

#### Preliminary conclusion - supply of steel formwork in Australia

91. Irrespective of whether the appropriate market(s) is national or state based, the ACCC considers that the proposed acquisition may result in a substantial lessening of competition in the supply of steel formwork with the merged firm having the unilateral ability to increase prices and/or decrease service.
92. The ACCC is seeking further information addressing, in particular, the substitutability of products supplied by other manufacturers, their ability and incentive to expand supply in response to an attempted price increase by the merged firm, and the potential for other roll formers to commence supply of steel formwork. As addressed earlier in the context of market definition, the ACCC will also consider the role of inter-material competition, specifically the substitutability of timber formwork.

The ACCC invites comments from market participants on:

- a. the extent to which Lysaght and Fielders are close competitors in relation to the supply of steel formwork, including examples which demonstrate your views;
- b. the extent to which other steel formwork suppliers provide a competitive constraint on the merger parties, including whether other suppliers could prevent an increase in price or reduction in service through developing additional steel formwork products and/or supplying steel formwork interstate;
- c. the ability and incentive of roll formers manufacturing other roll formed products to enter the supply of steel formwork in response to an increase in price or reduction in service from the merged firm. In responding please provide information on the costs of entry, including manufacturing equipment, product development and timeframes for entry; and
- d. the extent to which customers of steel formwork can switch to using timber formwork in response to an increase in price or reduction in service, including the role played by engineering or architectural specifications.

### **Issues unlikely to raise competition concerns**

93. The ACCC's preliminary view is that the proposed acquisition is unlikely to raise competition concerns in relation to the horizontal and vertical merger issues described below. However, the ACCC will accept submissions from interested parties on these issues and will further consider potential competition concerns if it considers that such an assessment is warranted.

### **Supply of roll formed products in South Australia and Western Australia**

94. The ACCC's preliminary view is that the proposed acquisition is unlikely to raise competition concerns in the markets for the supply of roll formed products (other than steel formwork) in New South Wales/Australian Capital Territory, Victoria/Tasmania and Queensland.
95. Based on market inquiries, the ACCC is assessing the potential for the proposed acquisition to result in competition concerns in the supply of roll formed products in South Australia and Western Australia. The factors the ACCC is considering in assessing these markets are:
  - the extent to which market concentration would increase and the closeness of competition between the merger parties;
  - the ability of alternative suppliers to expand; and
  - the likelihood of new entry.

#### **Market concentration and closeness of competition**

96. Fielders is currently the largest roll former in South Australia and one of the largest in Western Australia, in terms of sales. The proposed acquisition would result in an increase in concentration in the supply of roll formed products in these states. Based on market inquiries, the ACCC estimates that the merged firm may account for approximately 35 - 40% of the supply of roll formed products in South Australia and 30 - 35% in Western Australia.

97. Some customers of roll formed products submitted to the ACCC that Lysaght and Fielders are each other's closest competitors. Specifically, customers identified that Lysaght and Fielders are the major suppliers of roll formed products for commercial and industrial applications, as distinct from residential applications, in South Australia.
98. A number of market participants considered that Fielders generally offers competitive pricing and service. However, no information provided to the ACCC indicates that Fielders is a particularly vigorous and effective competitor above that of other roll formers. In particular, the market inquiries indicated that all roll formers compete strongly for customers due to an environment of excess capacity, weak demand and low switching costs.

#### Availability of substitutes

99. The ACCC's market inquiries to date have identified several competitors at the roll forming level, in both South Australia and Western Australia, that supply the same types of customers and projects as the merger parties. The ACCC's market inquiries indicate Lysaght and Fielders are among five relatively large roll formers that operate nationally, that offer very similar product ranges and that regularly tender against each other.
100. Metroll, Stramit and Revolution Roofing in Western Australia, and Stratco, Metroll, Stramit and Revolution Roofing in South Australia all have market shares that indicate they are viable alternatives to the merged firm. The viability of these alternatives was reflected in market inquiries with most customers, as was the ease with which customers are able to switch suppliers.
101. Further, the ACCC understands that most roll formers are currently operating with significant excess capacity and that customers do not face significant costs in switching between suppliers. This ability for competitors to increase production and sales without the need for significant further capital investment, and for customers to switch their demand, would likely prevent an attempted increase in prices of roll formed products by the merged firm.

#### Likelihood of new entry

102. The ACCC at this stage considers that new entry, and the threat of new entry, into roll forming markets would be unlikely to constrain the merged firm's service, pricing and output decisions in the foreseeable future. The ACCC found no support in market inquiries for a view that new entry is likely, or that the merged firm would face a credible threat of such entry.
103. The ACCC recognises that the sunk costs associated with market entry are not high in absolute terms. However, as discussed previously, the industry is currently characterised by excess capacity and low profitability, which makes entry on a scale that would constrain the merged firm unlikely. In particular, this excess capacity represents a strategic barrier to entry as it may be deployed by incumbent suppliers against any new entrant.

#### Preliminary conclusion - supply of roll formed products in South Australia and Western Australia

104. In relation to supply of roll formed products in South Australia and Western Australia, the ACCC's preliminary view is that the proposed acquisition appears unlikely to raise competition concerns. The ACCC recognises that customers face low switching costs



and the merged firm would continue to face competition from roll formers currently having significant excess capacity, including Stramit, Stratco and Metroll. In addition, it is not apparent that the proposed acquisition would remove a vigorous and effective competitor.

### **Foreclosure of rival steel coil suppliers' access to distribution**

105. The ACCC's market inquiries to date have addressed whether the loss of Fielders as an independent customer or potential customer for steel coil inputs may leave BlueScope's rivals without sufficient actual or potential economic alternatives to sell their supply. This may reduce rivals' economies of scale, thereby increasing their costs and potentially reducing competition to BlueScope.
106. Fielders is a significant acquirer of steel coil inputs. However, other roll formers are also large users of steel coil. In addition, there are a large range of users of steel coil other than roll formers to which BlueScope's rivals could seek to direct supply. Also, Fielders already acquires the majority of its steel coil inputs directly from BlueScope, although the ACCC understands that Fielders has acquired higher volumes of these inputs from alternative sources in the past.
107. Accordingly, the ACCC at this stage considers that the proposed acquisition would not provide BlueScope with the ability to anti-competitively foreclose access to distribution (customers) by rival suppliers of steel coil inputs.

### **ACCC's future steps**

108. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
109. The ACCC now seeks submissions from interested parties on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
110. Submissions are to be received by the ACCC no later than **20 December 2013**. 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 merger parties, come to a final view in light of the issues raised above.
111. The ACCC intends to publicly announce its final view by **30 January 2014**. However the anticipated timeline may change in line with the ACCC's 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.