

23 December 1987

REPORT OF THE SECURITIES COMMISSION

ON

EQUITICORP HOLDINGS LIMITED

Securities Commission,  
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REPORT OF THE SECURITIES COMMISSION  
FOLLOWING AN ENQUIRY INTO ASPECTS OF THE AFFAIRS  
OF EQUITICORP HOLDINGS LIMITED

I INTRODUCTION

1. On 7 March 1986 Mr A.R. Hawkins, Chairman of Equiticorp Tasman Limited ("Tasman"), announced in Australia and New Zealand a takeover bid for all the issued shares in ACI International Limited ("ACI"). The company's report to the New Zealand Stock Exchange on that day included the following statements:-

"Restructuring of Equiticorp Tasman Limited

The directors of Equiticorp Tasman also announced that there has been a restructuring of the company to enable it to complete its bid without the need for Australian Government approval under the Foreign Takeovers Act.

Equiticorp Tasman has become an Australian Company by a series of moves. As part of these moves Feltex has become the holder of a large number of convertible notes which give it an indirect involvement in Equiticorp Tasman. In this way Equiticorp Holdings will continue to benefit from the activities of Equiticorp Tasman through Feltex.

As part of the Australianisation process a shareholding in Equiticorp Tasman will be held by Capitalcorp Holdings Limited, a company controlled by Mr Allan Hawkins, Chairman of Equiticorp Holdings and Equiticorp Tasman. Mr Hawkins has been an Australian resident since last year.

Also, the Pratt Group of Melbourne - one of Australia's largest privately owned industrial groups with extensive interests in the packaging industry - has taken a significant investment in Equiticorp Tasman.

It is intended that Equiticorp Tasman will sell its existing finance company and merchant banking activities to Equiticorp Holdings (subject to FIRB approval). This sale is to be considered by Equiticorp Tasman shareholders at an extraordinary general meeting to be held in April."

"Funding of the Takeover

Funding commitments for the takeover have been arranged. The financing involves a placement of equity and the provision of credit facilities.

Pratt & Co Financial Services Pty Limited - the investment banking arm of the Pratt Group - has agreed, subject to Equiticorp Tasman shareholder approval, to subscribe for 50 million Equiticorp Tasman shares at a price of \$1.30 per share to raise \$65 million. Pratt & Co has also underwritten the placement of a further 15 million shares to be made to institutional investors.

The Directors of Equiticorp Tasman welcome Pratt & Co. as a major shareholder."

"Feltex New Zealand Limited

The restructuring of shareholdings in Equiticorp Tasman has the result that a large part of the Equiticorp Holdings Group involvement in Equiticorp Tasman is held by Feltex through the holding by Feltex of convertible notes in Capitalcorp. Feltex is presently owned 48% by Equiticorp Holdings.

Mr Hawkins explained that the restructuring of Equiticorp Tasman had been precipitated by strategic planning undertaken by Feltex since Equiticorp Holdings acquired control of Feltex. He said: 'Feltex is one of the major industrial companies in New Zealand, and since the Equiticorp Holdings' involvement, Feltex has become much more aggressive. It sees greater prospects for growth in Australia and has been developing strategies for achieving this. It was recognised that to be successful this expansion would need to be done through a company that was Australian.'

Mr Hawkins commented: 'The management of Feltex has demonstrated great competence during the period of our involvement. The access to this management expertise was most important in Equiticorp Tasman's decision to proceed with this takeover. We believe that Feltex can contribute materially to ACI's development'. He pointed out that some of the business activities of ACI are closely aligned to major areas of Feltex's activity.

It is intended that Mr Peter Stanes, Managing Director of Feltex, will join the Board of Equiticorp Tasman."

2. On 22 April 1986 Feltex New Zealand Limited ("Feltex") informed the New Zealand Stock Exchange that its shareholders had on 21 April 1986 -

"approved the Company's investment in Capitalcorp Holdings Limited, the major shareholder in Equiticorp Tasman Limited ...

"Feltex's investment in Capitalcorp Holdings will consist of 108,674,164 A\$1.00 convertible notes. Feltex shareholders approved the acquisition of these notes from Equiticorp Holdings Limited in exchange for Feltex issuing to Equiticorp Holdings Limited 5,276,501 NZ\$.50 cent ordinary shares and 14,463,188 NZ\$3.00 subordinated convertible notes. Feltex shareholders overwhelmingly voted in favour of the resolution. Equiticorp Holdings Limited did not vote on the resolution.

"Feltex shareholders also approved the placement of 11 million NZ\$.50 ordinary shares at a placement price of NZ\$3.10 per share or A\$2.29 (being the mid-point of the rate of exchange for A\$ - NZ\$ at 11 a.m. on 25 March 1986). The shares are to be placed primarily with Australian institutions."

The Company also stated -

"It will have been noted, and one or two sharebrokers have commented, that Feltex has achieved a very low cost entry into Equiticorp Tasman Limited and this can be of significant benefit to Feltex."

3. On 24 April 1986 Mr Hawkins announced a "new takeover bid for ACI", being a bid for part only of the issued shares in that company. This bid was in substitution for the 7 March bid (see para. 1 above). Directors also announced, on 24 April 1986 -

- (a) "That the Bank of New Zealand, as lead manager, has arranged credit facilities totalling \$340 million";
- (b) "Since the initial announcement by Equiticorp [Tasman] of the bid for ACI, Equiticorp [Tasman] has arranged the placement of 15 million ordinary shares at \$1.60 per share..."

4. At the time of the new bid Tasman was "currently entitled to 61.2 million shares in ACI (18.26% of the ACI shares

on issue) and 10.35 million ACI options". The new bid was subject to "the minimum acceptance condition that sufficient acceptances are received to increase Equiticorp's entitlement to 144 million ACI shares (representing 43% of ACI shares on issue)". The bid was also subject to a maximum acceptance condition.

5. At its meeting on 15 May 1986 the Commission decided to enquire into the "series of moves" referred to in para. 1 above to ascertain whether there were any matters on which it would wish to comment.
6. This report is prepared from public documents or information otherwise publicly available, and from discussions with persons mentioned in this report. A list of publicly available sources is attached as Appendix A. The report was shown in draft to the directors of Equiticorp who were invited to comment on it.

Unless otherwise stated, all sums of money are expressed in Australian dollars.

## II THE PARTICIPANTS

7. The relationships between the main companies before and after the various moves are summarised in diagrams attached as Appendix B. A brief description of each of the companies is attached as Appendix C.

## III THE MOVES

8. The Commission considered the following from "the series of moves" referred to or contemplated by the Tasman announcements of 7 March 1986 and 24 April 1986:
  - (a) Tasman made a share rights issue on 7 February 1986;
  - (b) Tasman made a rights issue of subordinated convertible notes and bonus options for ordinary shares on 7 February 1986;

- (c) Equiticorp Industries Limited of New Zealand ("Industries (New Zealand)"), a subsidiary of Equiticorp Holdings Limited ("Equiticorp"), sold 30 million Tasman fully paid shares (cum share rights issue of 7 February 1986) to Howart Investments Pty. Limited ("Howart") on 5 March 1986;
- (d) Members of the Equiticorp group of companies transferred to Capitalcorp Holdings Limited ("Capitalcorp"), an Equiticorp company, on 5 March 1986, all Tasman shares currently held by them. The consideration for this sale was the issue by Capitalcorp to Industries (New Zealand) of convertible notes of \$1.00 each at par value. Simultaneously, all issued shares of Capitalcorp were transferred by Equiticorp to Mr Hawkins;
- (e) Finance and merchant banking business of Tasman was transferred to Equiticorp as at 31 March 1986 pursuant to Tasman shareholders' approval on 24 April 1986;
- (f) Feltex purchased Capitalcorp convertible notes and options from Industries (New Zealand) and subscribed for Tasman convertible notes and options, following shareholders' meeting on 21 April 1986;
- (g) Tasman made a placement of 50 million ordinary shares and 10 million bonus options for ordinary shares with Howart on 24 April 1986;
- (h) On 24 April 1986 Tasman shareholders approved a placement of 15 million shares with various persons;
- (i) On 24 April 1986 Tasman shareholders approved an increase in the company's authorised capital from \$150 million to \$500 million.

The Tasman Share Rights Issue of 7 February 1986 (para. 8(a) above)

9. This was a 1 for 6 rights issue for fully paid ordinary 50¢ shares by Tasman to existing shareholders at a premium of 80¢ (a total of \$1.30 per share). It was made under and in the terms of a letter of offer dated 7 February 1986. It was supported by Equiticorp and subsidiaries in respect of their shareholding at that time. The issue closed on 5 March 1986. It was expected to raise \$32.7 million. It was underwritten by Potts West Trumbull and Company.

The Tasman Convertible Notes and Bonus Options Rights Issue of 7 February 1986 (para. 8(b) above)

10. This issue was made by Tasman to existing shareholders under and in the terms of a letter of offer dated 7 February 1986. It comprised a 1 for 4 rights issue of subordinated convertible notes at \$1.40 per note and a rights issue of bonus options ("the 1991 options") on the basis of one option for each convertible note subscribed for. The issue closed on 5 March 1986. It was expected to raise \$52.8 million. It was underwritten by Potts West Trumbull and Company. It was sub-underwritten by Feltex by letter dated 21 January 1986. By letter of the same date Equiticorp agreed to sub-underwrite Feltex "in respect of all convertible notes not taken up other than the entitlement of Capitalcorp Holdings Limited which numbers 30,104,876 convertibles notes". The effect of these sub-underwriting arrangements was that Feltex acquired the Equiticorp group entitlement to the Tasman convertible notes and options.
11. The principal terms of the convertible notes were:

interest	3% p.a. below prevailing 6-month Australian Treasury Note rate, payable six-monthly;
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repayable 31 March 1996, subject to subordination provisions, if not previously converted;

conversion at option of noteholder convertible to ordinary shares 1 for 1 during specified conversion periods, or in specified other circumstances including change in control or ownership of issued ordinary shares;

cash and bonus issues right to participate pro rata with ordinary shareholders;

subordination notes unsecured, issued as subordinated debt under an Unsecured Notes Trust Deed (under which "Total External Liabilities" of Tasman and its subsidiaries must not exceed 93.75% of "Total Tangible Assets").

listing listed on Australian Associated Stock Exchanges.

12. The principal terms of the 1991 options issue were:

entitlement one option for each convertible note subscribed for;

term five year term ending 28 February 1991;

exercise holder entitled to subscribe for one Tasman ordinary share at \$1.40 per share for each option held, during specified exercise periods each year of option term;

cash and bonus issues same rights to participate as note holders;

listing listed on Australian Associated Stock Exchanges.



Industries (New Zealand) sells Tasman shares to Howart  
(para. 8(c) above)

13. On 5 March 1986 Industries (New Zealand), having met a call of 25¢ per share, sold to Howart 30,000,000 fully paid Tasman ordinary shares, and the rights attaching under the 1 for 6 rights issue. The consideration was the issue by Howart to Industries (New Zealand) of 1 million fully paid Howart \$1.00 ordinary shares at a premium of \$45.50 per share (\$46.50 in total per share) plus an acknowledgement that Howart was indebted to Industries (New Zealand) in the sum of \$13.5 million free of interest, to be repaid as follows:

- (a) \$4.9 million on demand,
- (b) \$8.6 million on or before 5 March 1991,

representing a total effective price of \$60 million for the 30 million fully paid Tasman ordinary shares or \$2 per Tasman share. This equates to an ex issue price, after meeting the payments due on the rights issue, of \$1.90 for each fully paid share. This transaction was reported to Tasman and to the Sydney Stock Exchange Limited in a Substantial Shareholder Notice dated 10 March 1986. It was also referred to in the Part A Statement ("the Part A Statement") of Equiticorp Industries Limited of Australia ("Industries (Australia)") which was registered with the Commissioner for Corporate Affairs for Victoria on 24 April 1986. Industries (Australia) was the Tasman company nominated to make the takeover bid for ACI.

14. At the time of the sale, the original Howart shares (12 in number) were owned by Capitalcorp, and Howart was an Equiticorp subsidiary. Immediately after, and on the same day as the sale, Capitalcorp and Industries (New Zealand) sold their Howart shares, 1,000,012 in total, to Aldington Pty. Limited ("Aldington"), a Pratt company, for \$3,000,036 (\$3 per share). Aldington subscribed for

and Howart allotted 24.5 million \$1 shares paid to 1¢ (representing a payment by Aldington of \$245,000). Aldington lent \$4,655,000 to Howart. The two sums were used by Howart to discharge the on demand obligation to Industries (New Zealand) of \$4.9 million. Aldington also delivered a promissory note to Howart for \$8.6 million payable in five years, thereby, it appears, acquiring the benefit of the interest-free loan by Industries (New Zealand) to Howart.

15. The net effective price on the sale of these 30 million Tasman shares was:

(i) Consideration on Howart shares	\$3,000,036
(ii) On-demand obligation	\$4,900,000
(iii) Liability under promissory note	\$8,600,000
	<hr/>
	\$16,500,036
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or 55¢ per fully paid Tasman ordinary share (cum issue). This is equivalent to an ex issue price after allowing for the further payment by Howart of \$6.5 million (5 million x \$1.30), of 65.7¢ per share (If the interest-free loan represented by the promissory note is discounted at 15% from 5 March 1991, the present value is \$4.28 million, the net price on the sale of these Tasman shares to Pratt is \$12.18 million (\$18.68 million ex issue), and the net sale price per share is some 40.6¢ (53.4¢ ex issue).

16. In a letter to the Commission dated 10 June 1987 Equiticorp described the above transactions in the following way:

"The aim of the transactions was for Industries (NZ) to sell 30m Tasman shares to Pratt.

For their own reasons Pratt chose to use a wholly-owned subsidiary, namely Aldington, to purchase the shares.

(a) Industries (NZ) initially sold the 30m Tasman shares to a wholly-owned subsidiary, Howart. The sale price was A\$60m and the consideration to Industries (NZ) was:

(i) One million fully paid Howart \$1.00 ordinary shares issued at a premium of \$45.50 per share (\$46.50 in total per share) \$46.5m

(ii) Cash payable  
 - on demand 4.9m  
 - on or before 5 March 1991 8.6m

A\$60.0m

(b) Industries (NZ) sold to Aldington the shares in Howart which it owned.

The balance sheet of Howart was:

	<u>\$m</u>		<u>\$m</u>
Capital		Shares in Tasman	
1m shares @ \$1.00	1.0	30m @ \$2.00	60.0
Share Premium	<u>45.5</u>		
	46.5		
Advance -			
Industries	4.9		
Advance -			
Industries	8.6		
(Promissory Note)	<u>      </u>		<u>      </u>
	<u>\$60.0</u>		<u>\$60.0</u>

The rationale behind this was that:

- Howart at this stage owned the 30m Tasman shares and Aldington wished to take ownership;
- The price was set at a figure which effectively transferred the Tasman shares at 55 cents per share. This price was A\$16.5m (being 30m shares at 55 cps) made up thus:

Purchase of 1m Howart shares at \$3.00 each settled in cash \$ 3.0m

Advance owing by Howart to Industries settled in cash \$ 4.9m

Promissory Note - to Industries	\$ <u>8.6m</u>
	<u>A\$16.5m</u>

The two steps in this transaction were related as they were both concerned with transferring ownership of the Tasman shares to Pratt. Accordingly, it is logical and proper to relate the accounting, within Industries, of the two steps undertaken by Industries.

Sale of 30m Tasman @ \$2.00 per Share	\$60.0m	
Cost of these shares @ \$0.50 per share	( <u>15.0</u> )m	
<u>Gain</u>		45.0m
Sale of Howart shares	\$ 3.0m	
Cost of Howart shares	( <u>46.5</u> )	
<u>Loss</u>		( <u>43.5</u> )m
<u>Net Margin</u>		A\$ <u>1.5m</u>

This net margin reflects the intended gain to Industries of 5 cents per share over its cost:

Sale price	\$0.55
Cost	<u>0.50</u>
Margin	<u>\$0.05 per share</u>

For 30m shares     A\$1.5m "

Capitalcorp acquired Equiticorp group shares in Tasman and  
Mr Hawkins acquired Capitalcorp (para. 8(d) above)

17. The history of the Equiticorp acquisition of its shareholding in Tasman is as follows:

<u>Date</u>	<u>Number</u>	<u>Class</u>	<u>Total Cost</u>
6 April 1985	5,970,956	50¢ f.p.	\$537,000
28 June 1985	24,564,000	paid to 25¢	\$6,141,068
8 August 1985	89,121,616	paid to 25¢	\$24,062,836
December 1985	127,200	50¢ f.p.	-
February 1986	635,732	50¢ f.p.	-
5 March 1986	15,069,917	50¢ f.p.	\$19,590,892
March 1986	545,520	50¢ f.p.	-

(Assumed liability for partly paid shares - 113,685,616 x 25¢ =) \$28,421,404

Total Shareholding	<u>136,034,941</u>	
Total Cost		<u>78,753,200</u>

The net cost of entry by Equiticorp into Tasman was, on this basis, approximately 58¢ per fully paid ordinary share. The price paid on 5 March 1986 was \$1.30 per share.

18. On 5 March 1986 Industries (New Zealand), which held the beneficial interest in some 60 million Tasman partly paid shares, sold these shares and 10 million associated share rights (but not the note and option rights) to Capitalcorp. The value of the shares was set for the purposes of the sale at a figure equivalent to an ex issue value of \$1.70 for each fully paid share and \$1.45 for each partly paid share. These figures were said to be the market values on the date of the transaction. The consideration for the sale was stated to be the issue by Capitalcorp of convertible notes of \$1.00 each at par value. This brought Capitalcorp's total Tasman shareholding to 83,685,616 partly paid shares and 21,803,805 fully paid shares. At the same time Equiticorp sold 5 million Capitalcorp fully paid ordinary \$1.00 shares, being all the issued shares of that company, to Mr Hawkins for \$1.00 each (\$5 million in total). Mr Hawkins was, we were informed, ordinarily resident in Australia. The effect of these transactions was that Capitalcorp, Tasman and Industries (Australia)

were not to be considered foreign interests for the purposes of the Australian Government's foreign investment policy. In the case of Tasman, this was confirmed in a letter to Mr. Hawkins from the Australian Federal Treasurer dated 22 May 1986, a copy of which is attached as Appendix D.

19. Industries (Australia) stated, in the Part A Statement, that the price of \$1.00 per Capitalcorp ordinary share was approximately equal to the net asset value of each Capitalcorp share based on the then market value of each underlying Tasman share. This proposition may be restated as follows:

Capitalcorp Balance Sheet (as at 30 April 1986)

Assets

21,803,805 fully paid Tasman 50¢ shares at \$1.70	\$37,066,469
83,685,616 partly paid Tasman 50¢ shares (paid to 25¢) at \$1.45	\$121,344,143
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	\$158,410,612
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Liabilities and Equity

Share Capital	\$5,000,000
Convertible Notes	\$149,036,610
Other liabilities	\$4,374,002
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	\$158,410,612
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20. The conditions applying to the 149,036,610 convertible notes were:

interest 11% p.a. calculated only on the principal amount and payable

annually or, at the option of the Company, on the Conversion Date or the Maturity Date,

repayable 5 March 1996,

conversion at any time at option of noteholder convertible into ordinary shares 1 for 1 "provided the holder has obtained all necessary consents and approvals required under the Foreign Takeovers Act",

new share issues right to participate pro rata.

Tasman sold finance and merchant banking business (para. 8(e) above)

21. On 3 April 1986 Tasman agreed to sell to Equiticorp all of the share capital of two of its subsidiaries, Equiticorp Australia Limited and Equiticorp Financial Services Limited. This agreement was reprinted in full in the Notice of Extraordinary General Meeting and Information Memorandum distributed to Tasman shareholders on 7 April 1986. In summary, the agreement provided for a sale price equal to aggregate shareholders' funds of the subsidiaries as at 31 March 1986 (\$13.1 million). The two subsidiaries were required to repay loans outstanding to Tasman (\$20.6 million estimated as at 28 February 1986). The two subsidiaries were also expected to pay dividends to Tasman.
22. The sale of the subsidiaries was approved by Tasman shareholders at an Extraordinary General Meeting on 24 April 1986. The Directors' recommendation for the sale was supported by a statement from the company's auditors that -

"The sale of the subsidiaries at book value is the same basis upon which they were acquired on 28 June 1985. In view of the nature of the subsidiaries' assets ... we believe that the sale at book value is a fair price."

23. Tasman acquired the two subsidiaries, and another company, Equiticorp International Limited, from Capitalcorp, an Equiticorp subsidiary at the time, on 28 June 1985 for a consideration of \$6,141,068, "representing the estimated net tangible assets of the companies at that date," which was satisfied by the issue of Tasman ordinary shares.

Feltex acquired interest in Capitalcorp and Tasman (para. 8(f) above)

24. On 21 April 1986 Feltex shareholders at an extraordinary general meeting approved the issue to Equiticorp of
- (i) 5,276,501 fully paid ordinary shares of NZ 50¢ each (based on a market value of \$NZ3.00 per share), and
  - (ii) 14,463,188 \$NZ3.00 subordinated convertible notes convertible into fully paid ordinary shares of NZ 50¢ each on a 1 for 1 basis, and attracting an interest rate "equal to the pre-tax equivalent of the rate of ordinary dividend paid by the Company".

This may be restated as:

5,276,501 Feltex shares @ NZ\$3.00 per share	NZ\$15,829,503
14,463,188 " notes @ NZ\$3.00 per note	NZ <u>43,389,564</u>
	<u>NZ\$59,219,067</u>

The consideration for the issue of these securities was the transfer by Industries (New Zealand) to Feltex of 108,674,164 fully paid Capitalcorp convertible notes of \$1.00 each, having a value to Equiticorp of \$108,674,164 or, at the exchange rate, NZ\$1.00 = A\$0.7312, NZ\$148,624,404.



25. On the exchange rate, NZ\$1 = A\$0.7312, the issue of the above securities satisfied the price of the Capitalcorp convertible notes at \$43.3 million. This gave a sale price to Industries (New Zealand) for each Capitalcorp note sold of some 39.8¢ or a notional price to the Equiticorp group on the sale of Tasman shares of 67.7¢ per fully paid Tasman share.
26. The Feltex shareholders also approved the issue of up to 11,000,000 fully paid ordinary shares at \$NZ3.10 "for the purpose of financing the acquisition of an indirect investment" in Tasman. It was proposed that Feltex invest \$42 million,

"approximately 40% of which will be funded internally, and the balance by a private placement of 11 million ordinary Feltex shares to institutions at a price per share of \$NZ3.10."

The indirect investment in Tasman was the acquisition of 30,129,876 convertible notes and 30,129,876 options under the terms of the Tasman letter of offer to its shareholders of 10 February and the associated sub-underwriting agreement between Feltex and Potts West Trumbull & Company.

27. Feltex also held some 21 million options to acquire Capitalcorp ordinary \$1 shares.

Tasman places shares and options with Howart (para. 8(g) above)

28. On 24 April 1986 Tasman shareholders in general meeting approved the placement of 50 million fully paid Tasman ordinary shares with Howart (now a Pratt company) at \$1.30 per share. Tasman also granted Howart 10 million options to subscribe for fully paid Tasman ordinary shares at \$1.40 per share on or before 28 February 1991, on the same terms and conditions as the 1991 options (see para. 10 above).

29. The directors' recommendation for the placement of shares and grant of options was supported by a report from the auditors that the circumstances justified "the discount at which the shares are to be allotted to Howart Investments". The auditors believed "the proposal is fair and reasonable having regard to the interests of shareholders other than Howart Investments".
30. At about the same time, Howart was also acquiring Tasman shares from Industries (New Zealand) at a price of 65.7¢ per fully paid ordinary share (see para. 15 above).

Tasman places shares with various institutions (para. 8(h) above)

31. On 24 April 1986 Tasman shareholders in general meeting approved the placement of 15 million shares with various persons, companies and institutions at \$1.60 per share. This issue was underwritten by Pratt interests. Allotment was made on 30 June 1986 or 1 July 1986, at the choice of the investor.

Tasman increases authorised capital (para. 8(i) above)

32. On 24 April 1986 Tasman shareholders in general meeting approved an increase in the authorised capital of the company from \$150 million to \$500 million. This was to provide Tasman "with greater flexibility in the future", give effect to the placement of shares with Howart and the various institutions, and "allow for the issue of [Tasman] shares to accepting ACI shareholders who elect to receive such shares as part consideration under the takeover bid".

IV THE COMMISSION COMMENTARY

33. The Commission has decided to comment on the following particular matters -
- (a) the sale by Equiticorp subsidiary, Industries (New Zealand), to Howart on 5 March 1986 of 30,000,000 Tasman shares;
  - (b) the sale by Equiticorp subsidiaries, Capitalcorp and Industries (New Zealand), to Aldington on 5 March 1986 of 1,000,012 Howart shares;
  - (c) the issue to Industries (New Zealand) on 5 March 1986 of 149,036,610 Capitalcorp convertible notes;
  - (d) the sale by Equiticorp subsidiary, Industries (New Zealand), to Mr Hawkins on 5 March 1986 of all Capitalcorp ordinary shares;
  - (e) the sale by Equiticorp subsidiary, Industries (New Zealand), to Feltex on or about 21 April 1986 of 108,674,164 Capitalcorp convertible notes.
34. We consider that the underlying purpose of the Howart transactions as described in paras. 13 to 16 above was the sale by the Equiticorp group of companies to the Pratt group of companies of 35,000,000 fully paid Tasman ordinary shares (ex issue) at a price of 65.7¢ per share (or 53.4¢ per share after discounting - see para. 15 above). This was not known to the Australian market at the time and, we are informed, was not required to be disclosed by any person, under either Australian law or Australian Stock Exchange practice.
35. We observe -
- (a) that on or about 5 March 1986 Equiticorp applied for and received Tasman shares at a cost of \$1.30 per fully paid ordinary share;

- (b) that on or about 5 March 1986 Equiticorp companies sold Tasman shares to fellow Equiticorp company, Capitalcorp, at an effective underlying price of \$1.70 per fully paid ordinary share;
- (c) that on 24 April 1986 Pratt (through Howart) was allotted 50 million ordinary shares at a cost of \$1.30 per fully paid ordinary share;
- (d) that on 30 June 1986 and 1 July 1986 various persons, companies and institutions were allotted shares totalling 15 million at \$1.60 per fully paid ordinary share;
- (e) the market price of Tasman shares was around \$1.70 in the period of the transactions referred to in para. 34 above.

36. Against this background it is possible to assess the combined effect of two sets of transactions:

- (a) The Pratt group acquired from the Equiticorp group 35 million Tasman shares for 65.7 cents per share,
- (b) The Pratt group acquired 50 million Tasman shares by subscription and allotment for \$1.30 per share.

The result in substance was the sale by Equiticorp interests to, and the acquisition by Pratt interests of, a total of 85 million Tasman shares for considerations amounting, net, to \$88 million (an average of approximately \$1.04 per Tasman share).

37. Our view is that, while it is not unlawful that the party should enter into virtually simultaneous contracts to achieve an agreed average price, there is an obligation on the parties to ensure that the public is not misled, albeit unintentionally, by the range of prices adopted as part of the overall strategy.

38. It seems clear that the understanding with Pratt could have been achieved by contracts of a far less complex nature in which the agreed value of Tasman shares would

have appeared at amounts reflecting the agreement of the parties. We have been told that the need for the complexities which have troubled us arose from a request from Pratt.

39. The wide range of stated Tasman share prices (65.7 cents, \$1.04 and \$1.30 when the market price was about \$1.70) to which we have referred in paragraphs 35 and 36, would not in itself be the cause for concern had that information been confined solely to the parties to the transactions. However, if the public has access to some but not all of the facts there exists a capacity for confusion in the market, and for misconceptions as to the value placed on Tasman shares. While we do not allege that Equiticorp had the intention to mislead its shareholders or the public the need to place on public record isolated features of the entire arrangement would, in our opinion, result in misleading information.
  
40. Paragraph 13 refers to the fact that on 5 March 1986 Industries (New Zealand) sold to Howart 30 million fully paid Tasman ordinary shares and matching rights for a total effective price of \$60m or \$2 per Tasman share. This transaction (but not explicitly the price), besides being reported to Tasman and to the Sydney Stock Exchange Limited in a substantial shareholder notice, was also referred to in the Part A Statement of Industries (Australia) which was registered with the Commissioner for Corporate affairs for Victoria on 24 April 1986. Industries (Australia) was the Tasman Company nominated to make the takeover bid for ACI. These publicly available reports provide public information. They contained statements from which it might be inferred that the consideration moving from Howart to Industries (New Zealand) was the equivalent of \$2 for each Tasman fully paid ordinary share. In fact, as between Industries (New Zealand) and Pratt, the series of moves was designed to provide Pratt with an end product of 85 million Tasman at an average cost of \$1.04 each. In our opinion, the terms of entry by Pratt into Tasman were matters of significance in market price analysis, and the documents

did not provide the facts. We appreciate that the documents are in a statutory form.

41. On 5 March 1986 Industries (New Zealand) was allotted 149,036,610 Capitalcorp \$1 convertible notes at par. This was in settlement for the transfer from Industries (New Zealand) of its holding of Tasman ordinary shares at a price of \$1.70 per fully paid share and \$1.45 per partly paid share. Industries (New Zealand), on or around 21 April 1986, sold 108,674,164 Capitalcorp convertible notes to Feltex for \$43.3 million.
42. In its letter to the Commission of 10 June 1987 Equiticorp explained these transactions as follows:

"(a) Gain on Sale of Tasman Shares to Capitalcorp

Tasman shares owned by Capitalcorp  
【had cost Capitalcorp】:

21,803,805 fully paid shares @ \$1.70	AS 37,066,469	
83,685,616 partly paid shares @ \$1.45	<u>121,344,143</u>	
		A\$158,410,612

Cost price of Tasman shares  
【to Industries (New Zealand)】:

6,733,888 fully paid shares @ \$0.50	A\$ 3,366,944	
83,685,616 partly paid shares @ \$0.25	20,921,404	
15,069,917 'new' fully paid shares @ \$1.30	<u>19,590,892</u>	
		<u>43,879,240</u>

Gain to Industries (New Zealand) A\$114,531,372

(b) Loss on Sale of Capitalcorp Notes to Feltex

Sale price of 108,674,164 Capitalcorp  
notes sold by Industries (NZ)  
to Feltex NZ\$59,219,067

Converted at NZ\$1.00 - \$0.7312	A\$ 43,300,982
Cost price of Capitalcorp notes	<u>108,674,164</u>

Loss to Industries (New Zealand) A\$ 65,373,182

(c) Net Gain to Equiticorp

Gain on sale of Tasman shares to Capitalcorp	A\$114,531,372
Loss on sale of Capitalcorp notes to Feltex	<u>(65,373,182)</u>
<u>Net Gain to Equiticorp</u>	<u>A\$ 49,158,190</u>

43. For our part we think the substance of these transactions was the sale by the Equiticorp group of an interest in Tasman shares with an apparent current public market value of \$108.7 million for \$43.3 million. The current market price of Tasman shares was about \$1.70 per share, but the substance of the moves produced 67.7¢ per share. The latter figure is much less than that disclosed by another market indicator, viz the price paid by the Pratt group on the allotment to it of further Tasman shares (\$1.30 per share - see para. 28 above).
44. Initially, we were concerned to find that an essential feature of the series of transactions was the involvement of Capitalcorp, a company owned by Mr Hawkins. Mr Hawkins was Chairman of Equiticorp and Tasman, Deputy Chairman of Feltex, and a Director of Capitalcorp, Industries (New Zealand) and Industries (Australia). He had a substantial personal interest, either direct or indirect, in each of these Companies. It goes without saying that he was very influential in the administration of the affairs of each of them.
45. We are satisfied that there was no intention that Mr Hawkins should benefit personally from the need to involve himself or Capitalcorp in the "game plan". It appears that this involvement was necessary to achieve the "Australianisation" of Tasman. We are informed that formal procedures were in place, and were complied with, to deal with potential conflicts of interest.
46. The point emerging from all of this is that the public market would have been better informed had there been explicit disclosure of particulars of the transactions between the related parties. We consider that directors

of listed companies should be required to disclose related party transactions explicitly to shareholders and the market for the purpose of ensuring that a true and fair view of the "end product" of a sequence of related party transactions is presented. This topic is covered by International Accounting Standard No. 24 but there is no corresponding New Zealand Standard. We have decided:

- (a) to ask the New Zealand Society of Accountants to accelerate its consideration of proposals to issue an accounting standard on related party transactions,
- (b) to publish this report as an aid to the consideration of the public reporting and accounting treatment of related party transactions.

For SECURITIES COMMISSION



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C.I. Patterson  
Chairman

Securities Commission,  
Level 6, Greenock House,  
102-112 Lambton Quay,  
P.O. Box 1179,  
Wellington.



APPENDIX A

Source Documents

New Zealand Stock Exchange Daily Memos, including:

- Equiticorp Tasman Ltd announcement of 7 March 1986
- Feltex New Zealand Ltd " " 22 April 1986
- Equiticorp Tasman Ltd " " 24 April 1986

Prospectuses and Letters of Offer to Shareholders

- Equiticorp Tasman Ltd 12 August 1985
- " " " 12 September 1985
- " " " 7 February 1986
- " " " " " " "

Annual Reports

- Equiticorp Holdings Ltd 1985
- " " " 1986
- Feltex New Zealand Ltd 1985

Notices of Extraordinary General Meetings

- Feltex New Zealand Ltd 27 March 1986
- Equiticorp Tasman Ltd 7 April 1986

Substantial Shareholder Notices

- Equiticorp Holdings Ltd to Equiticorp Tasman Ltd.  
17 January 1986
- Howart Investments Pty Ltd to Equiticorp Tasman Ltd.  
5 March 1986
- Capitalcorp Holdings Ltd to Equiticorp Tasman Ltd.  
10 March 1986
- Capitalcorp Holdings Ltd to Equiticorp Tasman Ltd.  
20 March 1986
- Equiticorp Tasman Ltd to ACI International Ltd.  
3 April 1986

Part A Statement by Equiticorp Industries Ltd relating to ACI International Ltd takeover scheme registered by the Commission for Corporate Affairs for Victoria as delegate of the National Companies and Securities Commission on 24 April 1986.

ACI International Limited v. National Companies and Securities Commission - Supreme Court of Victoria

- transcript of proceedings on 21 May 1986.

Equiticorp Industries Ltd v. ACI International Ltd - Supreme Court of Victoria

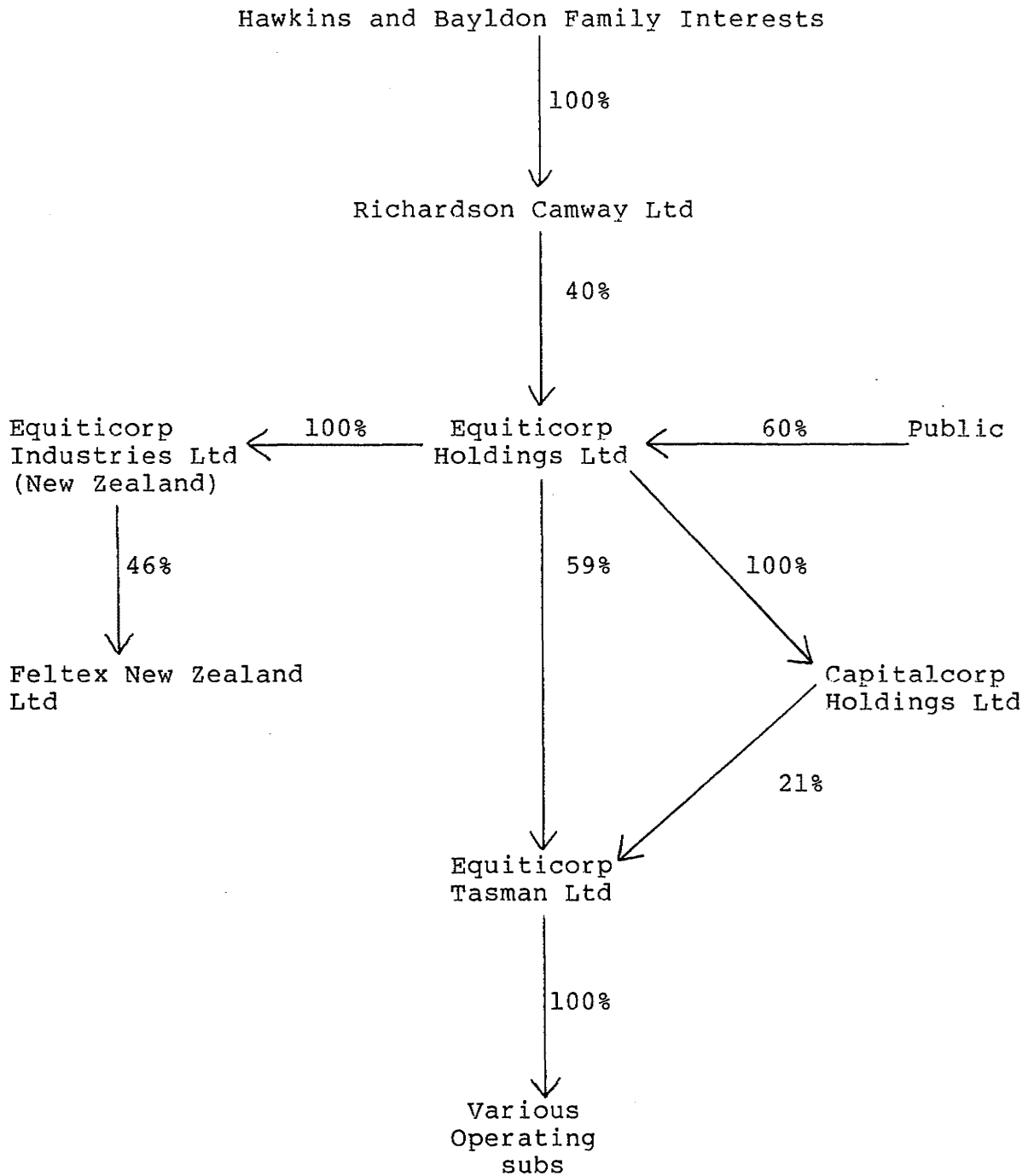
- documents presented in evidence in Court proceedings.
- transcript of the evidence of Mr A.R. Hawkins on 17 June 1986.

APPENDIX B

Relationships between the Parties to the "Series of Moves"

As at 6 February 1986

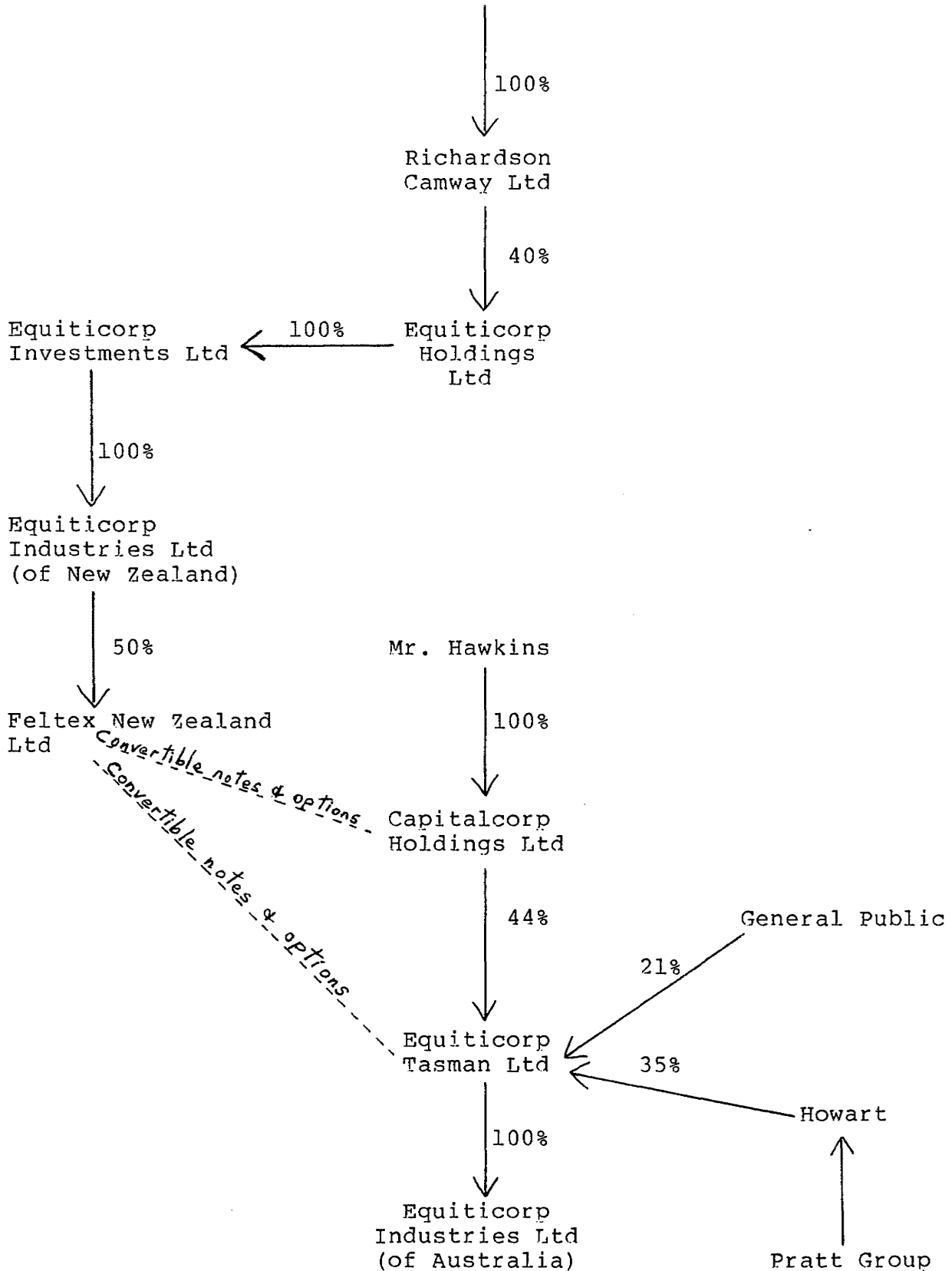
i.e. Before the Moves



As at 1 July 1986

i.e. After the Moves

Hawkins and Bayldon Family Interests



## APPENDIX C

### The Principal Parties to the "Series of Moves"

#### I. Equiticorp Holdings Limited

Equiticorp is the holding company for the Equiticorp Group of Companies in New Zealand. Its directors as at 31 March 1986 were:

A.R. Hawkins (Chairman)  
G. Adams (Deputy Chairman)  
M.H. Coney  
K.J. Gillespie  
I.L. Gunthorp  
T. Marcus Clark  
P.W. Saunders  
M.C. Taylor  
B.V. Walsh

Issued and paid-up capital comprised, as at 31 March 1986:

106,586,000 ordinary shares of NZ40¢ each  
20,000,000 13.5% specified preference shares  
of NZ50¢ each  
100,000,000 16.25% preference shares of  
NZ40¢ each

The only substantial shareholder was Richardson Camway Limited which held 42,634,400 ordinary shares, being some 40 percent of issued ordinary capital. The shares of Richardson Camway Limited were owned and controlled by certain trusts, the Bayldon trusts, of which Mr Hawkins was either a trustee or a beneficiary.

The business of Equiticorp comprised finance, banking, and equity investment. Equiticorp's most significant investment was its interest in Feltex.

2. Equiticorp Tasman Limited

The directors of Tasman as at 1 July 1986 were:

A.R. Hawkins  
R. Pratt  
T. Marcus Clark  
M.W. Naphtali  
I.L. Gunthorp  
J.F. Lester  
P.D.J. Stanes

Securities on issue as at 1 July 1986 were:

Ordinary Shares

157,439,875 fully paid ordinary shares of 50 cents each,  
83,685,616 50 cent ordinary shares paid to 25 cents each,  
34,976 fully paid preference shares of 50 cents each.

Options

67,938,440 options to acquire ordinary shares at \$1.40

Convertible Notes

37,740,785 convertible notes issued at \$1.40 each

The main holders of securities as at 1 July 1986 were:

Shares

Capitalcorp Holdings )	21,803,805 fully paid
Limited )	83,685,616 partly paid
Howart Investments Pty	
Limited ("Howart")	85,000,000 fully paid
Richardson Camway Limited	6,304,611 fully paid

(Howart was an Equiticorp company before the moves and a member of the Pratt group of companies after the moves.)

Convertible Notes

Feltex	30,129,876
Richardson Camway Limited	1,320,753

Options

Feltex	30,129,876
Harrison Investments Limited	20,197,655
Howart	10,000,000
Richardson Camway Limited	1,225,553

Tasman's major asset was its interest in Equiticorp Industries Limited of Australia. It was also interested in Australian listed company Alpha Resources Limited.

Before the series of moves Equiticorp owned some 59% of Tasman shares, and Capitalcorp Holdings Limited some 21%.

3. Capitalcorp Holdings Limited

The directors of Capitalcorp Holdings Limited as at 30 April 1986 were:

A.R. Hawkins (Chairman)  
L.A. Walker

Securities on issue after the moves were:

5,000,000 \$1 ordinary shares	\$5,000,000
149,036,610 \$1 convertible notes	\$149,036,610
20,921,404 options to acquire \$1 ordinary shares	-

All shares were held by Mr Hawkins.

The convertible notes were held by:

Feltex	108,674,164
Equiticorp Industries Limited (of New Zealand)	40,362,446
	<hr/>
	149,036,610
	<hr/>

The options were held by Feltex.

The only significant asset of the company was its shareholding in Tasman as follows:

21,803,805 fully paid 50¢ shares  
83,685,616 50¢ shares paid to 25¢

Before the series of moves Capitalcorp was a wholly-owned subsidiary of Equiticorp.

4. Feltex

The directors of Feltex as at 1 July 1986 were:

L.W. Brown (Chairman)  
A.R. Hawkins (Deputy Chairman)  
I.L. Gunthorp  
J.H. Ingram  
P.J.D. Stanes  
J.M.R. Syme

Securities on issue as at 1 July 1986 were:

130,603,535 ordinary shares of 50¢ each,  
7,539,134 redeemable cumulative specified preference  
shares of \$1.25 each  
148,994 cumulative preference shares of \$1.00 each.

Of this Equiticorp owned 65,202,819 ordinary shares (49.9%) and 3,799,595 preference shares (50.4%).

The principal business of Feltex was the manufacture and marketing of carpets. It also had manufacturing interests in other industries. Feltex had convertible notes and options in Tasman and convertible notes in Capitalcorp.

5. Mr A.R. Hawkins

Mr Hawkins had interests in the above companies as follows:

(i) Equiticorp - Chairman of Directors,

Holder of 672,000 ordinary shares,

Trustee or beneficiary, along with others, of certain trusts which owned or controlled the shares of Richardson Camway Limited which held 42,634,400 ordinary shares (40.00% of total ordinary shares);

(ii) Tasman - Chairman of Directors,

Trustee or beneficiary, along with others, of certain trusts which owned or controlled the shares of Richardson Camway Limited, a company which held 6,304,611 Tasman ordinary shares, 1,320,753 Tasman convertible notes and 1,225,553 Tasman options for ordinary shares,

Holder of all issued shares of Capitalcorp which held some 105.5 million Tasman ordinary shares,

(iii) Capitalcorp - Mr Hawkins was a director and the Secretary,

Owner of 5 million Capitalcorp ordinary shares of \$1 each being the entire share capital of the company;

(iv) Feltex - Deputy Chairman of Directors,

Indirect interest with others through Richardson Camway by way of Equiticorp in some 50% of issued shares.



APPENDIX D



Mr A.R. Hawkins  
Penthouse 1  
14 Eastbourne Road  
DARLING POINT NSW 2027

TREASURER  
PARLIAMENT HOUSE  
CANBERRA 2600

22 MAY 1986

Dear Mr Hawkins

As you know your solicitors have been in contact with the Foreign Investment Review Board about the recent change of ownership of Equiticorp Tasman Ltd. On the basis of the information which has been put to the Board I am informed that, as presently structured, Tasman is not a foreign interest for purposes of the Government's foreign investment policy for so long as the notes on issue by Capitalcorp Holdings Ltd and Tasman remain unconverted. Accordingly, Tasman is presently free to invest in Australia without reference to the Board.

I note that Tasman is presently making takeover offers to the shareholders of ACI. It is possible that the company may also have other takeover offers in contemplation. The Government would be concerned in the event that, following such takeover offers, foreign investment approval were to be sought by Equiticorp Holdings Ltd or Feltex New Zealand Ltd to convert the notes and options they hold in Capitalcorp Holdings Ltd and Tasman. Such an approach would be regarded as tantamount to an attempt to circumvent the foreign investment policy procedure of seeking prior approval for takeover offers.

If your New Zealand associates wish to acquire a substantial interest in ACI it would be preferable for them to make an ordinary application to the Government in advance of takeover offers being made to ACI shareholders. Such an application would be examined on its merits in accordance with foreign investment policy which requires that there should be sufficient economic benefits to offset the loss of Australian equity.

I am sending a copy of this letter to the Managing Director of Feltex New Zealand Ltd for his information and guidance.

Yours sincerely

  
P.J. KEATING