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COMMERCE COMMISSION

DECISION NO. 309

Determination pursuant to the Commerce Act 1986 (the Act) in the matter of an application for clearance of the proposed acquisition involving:

MENTEC LIMITED

and

ANNETT & DARLING LIMITED

- The Commission:** Dr Alan Bollard (Chairman of Division)
Peter Allport
Kate Brown
- Summary of the Proposed Acquisition:** That Mentec Limited, acquire up to 100% of the shares in Annett & Darling Limited.
- Determination:** Pursuant to s 66(3)(a) of the Act, the Commission determines to give clearance for the proposed acquisition.
- Date of Determination:** 2 October 1997

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MEMORANDUM

To: Alan Bollard; Peter Allport; Kate Brown

From: John Preston; Jeff Orr; Jeff Hamilton

Date: 2 October 1997

Subject: **Commerce Act 1986: Business Acquisition:
Mentec Limited/Annett & Darling Limited**

Working Day 10: 2 October 1997

Confidential material in this report is contained in square brackets

THE PROPOSAL

- 1 On 18 September 1997, the Commission registered a notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) seeking clearance for the acquisition by Mentec Limited (Mentec) of up to 100% of the shares in Annett & Darling Limited (Andar).

PROCEDURES

- 2 Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. As no extension has been agreed, a determination is required by 2 October 1997.
- 3 This report concludes that staff are satisfied that implementation of the proposal would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in any relevant market. Accordingly, it is recommended that in terms of s 66(3)(a) of the Act, the Commission give clearance to the proposal.

INVESTIGATION

- 4 Staff discussed the proposal with a range of parties with interests in the wool scouring industry. These included international wool scour manufacturers, local wool scourers, and the Wool Research Organisation of New Zealand (WRONZ). Additional information was sought, and obtained, from the parties to the proposed acquisition.

PARTICIPANTS

Mentec Limited

- 5 Mentec carries out general engineering and manufacturing activities from its workshop at Timaru. The company has produced a range of engineering products since it was established in 1987. Several years ago, Mentec began manufacturing dry wool processing equipment for use in the preparation and finishing of wool for scouring. The company then diversified about 3 years ago into the production of the full range of woolscouring equipment.
- 6 Mentec is owned as to 66.6% by Wengay Investments Ltd (Wengay) and as to 33.3% by its Managing Director, James Irvine. Wengay is owned in equal proportions by the spouses of Messrs Brent Turnbull and Don Quested who in turn are directors of Mentec. Mr Turnbull is the Managing Director of Fairlie Woolscour (Timaru NZ) Ltd (Fairlie Woolscour), a wool scouring company based in Timaru. Mr Quested is the Chairman of Fairlie Woolscour and the Managing Director of Chargeurs Prouvosthart NZ Ltd, a wool trading and exporting company, of which Fairlie Woolscour is a wholly owned subsidiary.

Annett and Darling Limited

- 7 Andar was founded in 1947 as a general engineering company. The company moved into woolscour maintenance contract work which provided the basis for the manufacturing of replacement machinery for wool scours, and subsequently the production of complete woolscouring systems.
- 8 Andar was purchased in 1990 by the New Zealand Wool Board (NZWB) and has remained a 100% subsidiary ever since. The NZWB now wishes to divest itself of Andar in keeping with its overall policy to withdraw from all non-core

activities, and to concentrate on its principal activity, which is the promotion of New Zealand-produced wool. After enjoying several years in which it was able to generate an adequate rate of return for its shareholder, Andar has over recent years been sustaining trading losses.

- 9 To the extent that work can be obtained, Andar continues to design and manufacture machinery and systems for wool and other textile fibre processors. However, due to a contraction in the wool scouring industry, Andar is currently providing primarily general engineering services and supplies from its Timaru workshop and store.

BACKGROUND TO THE INDUSTRY

- 10 Prior to 1947, wool scours were imported into New Zealand from England. In that year, two New Zealand engineers, Dave Annett and Les Darling, began repairing the English wool scours from their workshop in Timaru. Gradually, they began manufacturing their own equipment. For about 40 years Andar was the sole domestic producer of wool scour systems until Mentec expanded into the manufacture of full wool scour lines. Currently, those two companies are the sole manufacturers of complete woolscouring systems in New Zealand. There are, however, many engineering and other companies which are available to manufacture certain spare parts for wool scours. Most wool scourers can and do source replacement parts from a range of local engineering companies, and other suppliers. Also, wool scourers carry out much of the maintenance and servicing of the plant themselves.
- 11 The role of Mentec and Andar in the maintenance of wool scouring equipment is generally confined to the supply of specific componentry for which they carry stocks. In those instances, it will often be cheaper and quicker for the wool scourer to buy the parts from Mentec and Andar than to commission a local engineering firm to manufacture them. According to Mentec, while up to \$200,000 is spent maintaining a firm's wool scours each year, the manufacturers usually only receive 10% of that amount.
- 12 There has been a rapid decline in the number of wool scourers operating in New Zealand over the last decade. In 1984/5, there were 35 scourers, with the number reducing to 22 in 1994/5, and 13 presently. There are six wool scourers in the North Island and seven in the South Island. Further, trade

sources expect that the number of scourers will reduce to about 8 by about the year 2000.

- 13 The reduction in the number of scourers appears to be due primarily to two developments:
- a major decline in the total sheep flock in New Zealand - from about 70 million in the early 1980's to about 49 million in 1996, with the number expected to continue to fall to about 45 million over the next 12 month to two year period; and,
 - the sale of a greater proportion of New Zealand wool in unscoured form to countries with low labour costs, such as China, which elect to do their own scouring.
- 14 The cumulative impact of the above developments has been to reduce the domestic customer base of both Mentec and Andar. Over the past five years, there have been orders for only four new scours from New Zealand firms. In addition, neither Mentec nor Andar expect that there will be any New Zealand based demand for a new scour over the next 3 years. []]. In these circumstances, the companies are now dependent on overseas sales of scours, and their efforts are currently being directed towards concluding overseas sales.
- 15 There have been a number of sales of reconditioned wool scours in recent years. Some of the reconditioning work has been performed by Mentec and Andar, while the rest has been done by general engineering firms and the wool scourers themselves. Even though a reconditioned, second-hand scour sells for only about \$1 million compared to \$2 to \$4 million for a new scour, New Zealand firms purchase new scours only. There are various reasons why there are no domestic sales of used wool scours, including:
- there has been no new entry to wool scouring in recent history, indeed it is a declining market;
 - there is an unwillingness to sell second-hand equipment to a domestic scouring competitor, and, in any event, there is not much reason to replace one old scour with another old one since they may be maintained almost indefinitely;
 - there is a demand for reconditioned wool scours in a number of foreign countries (eg, Russia, Czechoslovakia, Turkey, England, Argentina, South Africa and Australia); and,

- there is an incentive to purchase the latest technology to increase productivity and to improve quality, and to thereby obtain a competitive edge.

- 16 A reduction in the demand for wool scours has had a major impact on the profitability of both Mentec and Andar. In particular, there has been insufficient work to maintain the profitability of the companies. For the year ended 31 March 1997, Mentec posted a []. Andar, on the hand, [] for the year ended 30 June 1997. In the absence of demand for wool scours, Andar has been required to undertake general engineering work. According to information provided by the company, only one-third of its income last year was from wool scour related sales. Other sources of income included the sale of engineering supplies, general workshop jobbing for farmers and others, and contract engineering for varied customers such as []. Continued operation of Andar for general engineering work is not within NZWB's strategic plan.
- 17 The applicant alleges (paragraph 8.1 of the application), and most industry participants agree, that there is unlikely to be enough domestic scour manufacturing work available to support the continued existence of two manufacturers. According to the manufacturers, the competition for work has become so keen that the price for wool scours domestically has dropped to unsustainably low levels. Without overseas sales and/or diversification into general engineering work, Andar and/or Mentec are likely to face closure.

THE RELEVANT MARKETS

Introduction

- 18 The purpose of defining markets is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in terms of s 47(1) of the Act.

19 Section 3(1A) of the Act provides that:

“the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”

20 In a 1984 decision, the Commission, drawing upon the Australian Trade Practices Tribunal decision in *Queensland Co-operative Milling Association*¹, defined a market as:

“a field of actual or potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive.”²

21 Markets are defined in relation to product type, geographical extent, and functional level. With the first two dimensions, market boundaries are determined by testing for substitutability, in terms of the response to a change in relative prices of the good or service in question and possible substitute goods or services. A properly defined market will include products which are regarded by buyers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension), and are thus products to which they could switch if a small yet significant and *non-transitory* increase in price (*ssnip*) of the product in question were to occur. It will also include those suppliers currently in production who are likely, in the event of such a *ssnip*, to shift promptly to offer a suitable alternative product, even though they do not do so currently. Such suppliers have been referred to by the Commission as “near entrants”.

22 In addition, markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products proceeds through a series of functional levels. For example, that between manufacturers and wholesalers might be called the “manufacturing market”, while that between wholesalers and retailers is usually known as the “wholesaling market”. The functional levels affected by the application have to be determined as part of the market definition.

Market Definition

- 23 As described above, the parties to the proposal are both involved in the manufacture and distribution of wool scouring systems and ancillary equipment. In addition, there would also be some aggregation in relation to the provision of general engineering services.
- 24 The wool scouring process involves the use of a range of equipment which together form a continuous system for the preparation, washing and cleaning of grease and other impurities from wool. Initially, wool is fed through dry processing equipment which opens and blends the wool. This prepares the wool for the wet processing stage which comprises a series of steps designed to wash and squeeze the wool to remove grease and other contaminants. The wool is then dried and undergoes a finishing process.
- 25 Each new scouring system is custom designed to meet the individual requirements of the wool scouring firm. The wool scour must be sized to fit the configuration of the building where it will be situated. Moreover, the scours will vary based upon the type of wool being processed, although this is generally more of a consideration when manufacturing scours for international use where wool is often fine rather than cross-bred as in New Zealand.
- 26 Typically, a complete wool scouring line is replaced once every 15 to 20 years, but some scourers write off the equipment and replace them after 10 years. In contrast, some scourers may retain a plant well beyond 20 years and merely upgrade it by replacing worn parts. This contributes to a very “lumpy” demand for wool scouring systems. Indeed, most market participants have estimated that the next domestic order for a wool scour will not be placed for two or three years. []

Conclusion on Market Definition

27 We conclude that the relevant product and functional markets for the purpose of assessing the dominance implications of the current proposal are as follows:

- the manufacture and distribution of wool scouring systems; and,
- the provision of general engineering services.

28 In each case the relevant geographic market is New Zealand.

ASSESSMENT OF DOMINANCE

29 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to decline to give clearance to a proposed acquisition if it is not satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market.

30 Section 3(9) of the Act states that a person is in a dominant position in a market if:

“... that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”

31 That section also states that a determination of dominance shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

32 In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing non-exhaustive factors and any other relevant matters that may be found in a particular case.³ Important factors to consider in this case include entry barriers, the viability of imports and the existence of near entrants to the market.

33 In *Port Nelson Ltd v Commerce Commission*⁴, the Court of Appeal approved the following dominance standard adopted by the High Court (McGechan J):

... [“dominance”] involves more than “high” market power; more than mere ability to

behave “largely” independently of competitors; and more than power to effect “appreciable” changes in terms of trading. It involves a high degree of market control.

- 34 A dominance assessment for each of the relevant markets follows.

General Engineering Services Market

- 35 While implementation of the proposal would lead to some aggregation in relation to the provision of general engineering services, this market is likely to remain highly competitive with numerous other companies capable of providing an effective constraint. Accordingly, we consider that the proposal does not give rise to any competition concerns in relation to the market for the provision of general engineering services.

Conclusion on General Engineering Services Market

- 36 Based on the large number of existing general engineering firms in New Zealand, staff conclude that the proposed acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the market for the provision of general engineering services.

Wool Scouring Systems Market

Market Shares

- 37 Implementation of this proposal will lead to the combined entity having a 100% share in the market for the manufacture and distribution of wool scouring systems in New Zealand. However, as the High Court (Tipping J) stated in *New Zealand Magic Millions Limited & Anor v Wrightson Bloodstock Limited* (1990) 3 NZBLC 99-175, on the relevance of market share in a dominance analysis:

“...[M]arket share is not the sole determinant of the presence or absence of dominance or market power. The most that can be said is that dominance is frequently attended by a substantial market share but all other relevant factors must be brought to account. For example, a substantial market share without barriers to entry will seldom, if ever, be indicative of dominance.”

38 Accordingly, before a conclusion on dominance is reached, it is necessary to consider all factors listed in s 3(9) and any other relevant factors.

Constraint from Market Entry

39 As there would be no existing domestic competitors to the combined entity, it is necessary to determine whether the combined entity would be subject to significant constraints from the threat of market entry. Potential competition which could act as a constraint could come from either new entry to the market or imports.

Constraint from New Entry

40 Apart from potential competition from overseas suppliers, the parties to the proposal consider that a number of existing local engineering workshops have the appropriate plant and equipment to produce wool scours.

41 Staff enquiries reveal that it is relatively straightforward for a number of engineering shops to supply many replacement parts and componentry. Most wool scourers can and will buy standard replacement parts from local engineering firms and rely on Mentec or Andar for a limited range of items for which those companies hold stocks.

42 Given the prospect of a satisfactory return on their investment, several engineering firms could likely develop the capability to construct wool scours. Staff approached one engineering company, Napier Engineering and Contracting Ltd, seeking comments on the likelihood of it commencing manufacture of wool scours. The manager of the company told us that his firm possesses much of the necessary expertise to produce wool scours, and has experience in modifying and reconditioning second hand plant. However, the company indicated that there would be significant hurdles to overcome if it was to compete successfully with a combined Mentec/Andar, particularly the strong reputation developed by the parties to the proposal.

43 Dr Garth Carnaby, the managing director of WRONZ, stated that if so directed by the wool scourers, WRONZ could, through its commercial subsidiary WRONZ Developments Ltd, develop and produce a wool scour. WRONZ has a substantial workshop and qualified mechanical engineers on staff, and could subcontract other work as necessary to local engineering firms.

44 Other than the reputation of the combined entity, the conditions of entry to the market do not appear unduly burdensome. The primary conditions of entry are discussed below.

a. Access to Equipment and Capital

45 Mentec and Andar state that there is no specialist engineering plant required to produce wool scours, and that for an outlay of around \$200,000 a new entrant could commence production of wool scour lines. An existing, well-equipped engineering firm could likely expend considerably less than \$200,000 to enter the market.

46 Staff's visits to the workshops of Mentec and Andar confirmed that only general engineering equipment was in use. Plant included items such as lathes, mills, welders, grinders, profile cutters, and guillotines; all are readily available general engineering equipment.

b. Technical Expertise

47 While expertise relating to the production of wool scours is necessary, the parties do not consider that this represents an onerous condition of entry, noting that wool scour technology is well known world wide. WRONZ is available to provide technical expertise in New Zealand, while the Commonwealth Scientific and Industrial Research Organisation (CSIRO), and private parties are able to offer similar expertise in Australia. In addition, post-acquisition, there will be technical expertise available from redundant Andar staff. Moreover, with the past and anticipated future closures of wool scouring firms, some technical expertise could likely be found from that source as well.

48 The best evidence of the availability of technical expertise is the fact that Mentec was able to commence business by hiring mechanical engineering graduates from Canterbury University. With their assistance, Mentec produced a state of the art wool scour within 12 months. Half of this time was for development and planning, with construction occupying the other six months.

c. Intellectual Property Rights

- 49 There has been considerable investment in wool scouring technology (along with other wool processing technology) to develop new products and to improve existing products. Some of the funding for research and development has originated from Andar, but most has been generated by way of a levy paid by wool scourers. Although they are under no obligation to do so, the wool scourers typically contract with WRONZ for research and development work. WRONZ uses the funds it obtains from the wool scourers and other sources to develop new processes and machinery for wool scouring and processing in New Zealand. Andar, and now Mentec, assist WRONZ in carrying out the practical development of the machinery designed.
- 50 As result of the above arrangements, Andar and Mentec are granted exclusive and non-exclusive licenses to produce certain items of plant in accordance with the intellectual property rights nominally owned by WRONZ. The overall effect is, therefore, that both Andar and Mentec hold exclusive rights to specific parts of wool scouring and processing systems with neither party able to duplicate the items licensed to the other without infringing intellectual property rights. However, this situation has not prevented the parties from competing head-to-head for local and overseas wool scouring equipment business over the last three years.
- 51 Intellectual property rights would offer an advantage to the combined entity, but would not raise an insurmountable barrier to entry. Most of the technology for manufacturing wool scours is in the public domain. Moreover, some of the patents which have not yet expired will soon do so. Also, royalties could be paid for the use of newer patented technologies. And, importantly, although WRONZ owns the intellectual property rights over its inventions, the wool scourers apparently control the issuance of licenses. According to Dr Carnaby, if the combined entity gave them a reason to do so, the wool scourers could encourage new entry through the control of WRONZ's intellectual property rights.

Constraint from Imports

- 52 Both Mentec and Andar consider that they face strong competition from overseas suppliers of wool scouring equipment. They have identified several

overseas companies as potential sources of supply for new wool scours, including Fleissner GmbH & Co (Fleissner), Germany, Jord Engineering Pty Ltd (Australia), Ardara Innovations Pty Ltd (Australia) and C&B Fabrications (England).

- 53 According to Mentec and Andar, Fleissner sold scours to two Australian based wool scour companies in 1994 and has supplied Chile, a country with similar conditions and requirements to that of New Zealand. Fleissner also tendered to supply Clifton Woolscour Ltd, Invercargill, when that company recently sought to purchase a new wool scour plant. Ultimately, Mentec was the successful bidder, but the Managing Director of Mentec told staff that his company had to drop its price substantially to win the contract. In Mentec's view this demonstrates that overseas suppliers provide a major potential constraint on the pricing and other behaviour of the local wool scour suppliers.
- 54 The only other New Zealand company which staff know has contemplated purchasing new scour lines from an overseas supplier is E Lichtenstein & Co Ltd. That company explored the possibility of buying a wool scour from Petrie & McNaught (now called Smith and Petrie), a United Kingdom-based company, about 6 years ago, but after further study of the matter it decided that there were no significant advantages to be achieved by purchasing from an off-shore supplier.
- 55 Apart from Fleissner, the two Australian companies which are engaged in the production of wool scouring lines may represent a potential source of competition to the combined entity: Jord Engineering Pty Ltd (Jord) and Ardara Innovations Pty Ltd. We have spoken to Jord who advised us that it considers that Mentec and Andar have driven prices to such a low level to make it unfeasible to compete in the New Zealand market. When asked what would be Jord's likely response if the combined entity were to raise its prices above the "normal" competitive level, the company said that it might be interested in supplying the market, but had not developed a definitive strategy on the matter.
- 56 A representative from Jord considers that the company has the necessary plant and expertise, and has had the experience of designing a new scour for a plant in New South Wales, Australia. However, he anticipated that it would be difficult to overcome the parochialism of the New Zealand wool scourers and

that it would be difficult to break into a market which has been dominated by a single supplier for a long period of time. The company stated that it has never received any serious invitations to quote for wool scour lines in New Zealand.

57 None of the wool scourers we spoke to viewed Jord as a significant or credible threat to the market incumbents. Similarly, Ardara is regarded as a small engineering firm and was largely discounted as a practical option by wool scour firms. Staff spoke to the managing director of Ardara, who stated that his firm could manufacture wool scours suitable for supply into the New Zealand market, but that it could not presently compete on price with Mentec. At the moment, he believed that his firm's prices were comparable with that of Andar, exclusive of freight and insurance costs.

58 Other wool scour firms spoken to also commented that imports do not represent a viable option. This appears to arise largely because of the different technological requirements of the New Zealand wool scouring industry. That is, New Zealand wool scour technology is based largely on cross-bred wool, and is widely acknowledged to be a global leader in this area, whereas the technology of many overseas suppliers is primarily based on processing fine wool.

59 In addition, at current prices, imports do not appear to be price competitive. One wool scourer stated that "the prices for imported scours are the same as New Zealand scours except that the prices quoted are in pounds rather than New Zealand dollars. Plus, you have to add in freight and insurance."

60 Staff conclude that imports would place some constraint on the combined entity. However, that constraint is a largely a function of price, and a significant increase in prices may be required before it would occur.

Conclusion on Constraint from Market Entry

61 Before the Commission will consider that new entry will provide an adequate constraint on a combined entity so as to allay dominance concerns, such entry must be shown to be *likely*, of sufficient *extent*, *timely* and *sustainable* (the "*lets*" test).⁵

62 Staff do not believe that new entry to the wool scouring systems market by way of imports is likely, since an importer would not have "a reasonable

prospect of achieving a satisfactory return on its investment”,⁶ should it decide to enter the market. Entry would appear to be unprofitable at present and for the foreseeable future based upon the much lower domestic prices (including transport costs) and the better local technology for the processing of cross-bred wool. The combined entity would likely have to raise prices substantially (beyond a “ssnip”) before a local scourer would seriously consider purchasing from a foreign manufacturer.

- 63 New entry to the wool scouring systems market by way of manufacture is considered far more likely. Should the combined entity raise prices or lower quality or service, an opportunity for “another Mentec” would be afforded. Regarding timeliness of potential entry, the Commission considers that entry which cannot be achieved within two years from initial planning is unlikely to be sufficiently timely to allay dominance concerns. Based on Mentec’s experience, new entry could certainly occur in a timely fashion. Mentec manufactured its first wool scour in 12 months and its second in only four months.
- 64 With respect to the extent of entry, there are so few transactions in the market, that one sale would likely represent a sufficient constraint to alleviate dominance concerns. And, provided that wool scour sales could be made to overseas purchasers and/or general engineering work could be obtained to supplement local orders, entry could be sustainable.
- 65 Accordingly, staff consider that potential entry to the wool scour systems market by general engineering firms would act as a constraint on the combined entity.

Constraint from New Technology

- 66 In addition to the possibility of entry by overseas manufacturers or new entrants, the applicant has identified an alternative technology which has been developed by an Australian company, Wooltech Ltd, a member of the Kerry Packer group of companies. The process is designed to remove the grease from wool by a chemical process.
- 67 The applicant has acknowledged (paragraph 18.1 of the application) that the “success and expansion of the Wooltec [sic] process has yet to be determined

and it would be fair to say that at this point in time, it does not constrain the manufacturing and sale of wool scour equipment in New Zealand.”

- 68 Discussions with Dr Carnaby of WRONZ have confirmed that the Wooltech process is not likely to pose a serious commercial challenge to wool scouring in the short to medium term. Likewise, other alternative technologies have not produced promising results.

Conclusion on Constraint by New Technologies

- 69 On the basis of the foregoing, staff are unable to give any significant weight to the Wooltech process or any alternative wool cleaning process as a potential competitive constraint on the wool scouring systems market generally or the combined entity in specific.

Constraint by Acquirers

- 70 It has been claimed by the parties that wool scourers as major contributors to research and development (typically, through WRONZ), and having control over intellectual property rights developed with their funds, could use their influence to encourage a new entrant into the manufacture of wool scouring equipment. The wool scourers could direct WRONZ to support a new entrant through favourable treatment with respect to intellectual property licenses. As discussed above, WRONZ could also, if directed by the wool scourers, manufacture wool scours through its commercial subsidiary WRONZ Developments Ltd.

Conclusion on Constraint by Acquirers

- 71 Wool scour firms would appear to have countervailing power in the event that the combined entity attempted to exert its market power by raising prices or reducing quality or service. They could direct WRONZ to either issue intellectual property licenses to new entrants or produce wool scours. Accordingly, staff conclude that acquirers would likely act as a constraint on the combined entity.

Constraint by Suppliers

- 72 Machinery and raw materials for the manufacture of wool scours are readily available from multiple sources in New Zealand. Most requirements are available ex-stock although steel is often purchased through indentors to lower costs.⁷

Conclusion on Constraint by Suppliers

- 73 Given the general availability of general engineering equipment and materials, staff conclude that the combined entity is unlikely to be constrained by suppliers.

Conclusion on Wool Scouring Systems Market

- 74 Implementation of the proposal would lead to the combined entity being the sole manufacturer and distributor of complete wool scour systems in New Zealand and would account for a 100% market share of the wool scouring systems market.
- 75 However, staff consider that, should the combined entity attempt to exercise its market power, new entry by local engineering companies would be likely, of sufficient extent, timely and sustainable. Moreover, the wool scourers possess substantial countervailing power through their funding of research and development work, and would be in a position to effectively constrain the conduct of the merged entity through the management of intellectual property rights.
- 76 While not as significant a factor as new entry or constraint by acquirers, potential imports would provide some constraint on the combined entity. Given that some increase in wool scour equipment prices is foreseeable post-acquisition, the possibility of importation will likely be considered by wool scourers in making their purchasing decisions.
- 77 In short, it appears that there would be sufficient constraints on the combined entity to eliminate concerns that a dominant position would be acquired or strengthened in the New Zealand market for wool scouring systems by implementation of the proposal.

CONCLUSION

- 78 Having regard to the factors set out in section 3(9) of the Act and all other relevant factors, staff conclude that the proposed acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the New Zealand markets for:
- the manufacture and distribution of wool scouring systems; and
 - the provision of general engineering services.

RECOMMENDATION

- 79 It is recommended that the Commission give clearance to the proposal under s 66(3)(a) of the Act.

Jeffrey Orr
Investigator

Jeff Hamilton
Investigator

John Preston
Chief Investigator

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DETERMINATION ON NOTICE OF CLEARANCE

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3) (a) of the Commerce Act 1986, we hereby give/decline to give clearance for Mentec Limited to acquire up to 100% of shares in Annett & Darling Limited.

Dated at Wellington this day of October 1997

Alan Bollard
Chairman

Peter Allport
Member

Kate Brown
Member

- ¹ *Queensland Co-operative Milling Association*, (1976) ATPR 40-012 at 17,247.
- ² *Edmonds Food Industries/WF Tucker & Co Limited*, Decision No. 84, 21 June 1984.
- ³ *Business Acquisition Guidelines*, 1996.
- ⁴ *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554.
- ⁵ *Business Acquisition Guidelines*, at pp 19-20.
- ⁶ *Business Acquisition Guidelines*, at p. 19.
- ⁷ Indenting is the purchase of generally substantial quantities of a good, often from overseas, with delivery direct from the port without warehousing by the indenter.