



COMMERCE COMMISSION

Decision No. 566

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

GALLAGHER GROUP LIMITED

and

GREYSON GATES LIMITED

The Commission: Paula Rebstock
David Caygill
Peter JM Taylor

Summary of Application: The acquisition by Gallagher Group Limited of all of the business assets of Greyson Gates Limited.

Determination: Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 30 November 2005

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CONTENTS

EXECUTIVE SUMMARY	i
THE PROPOSAL	1
STATUTORY FRAMEWORK.....	1
ANALYTICAL FRAMEWORK.....	2
THE PARTIES.....	2
Gallagher Group Limited (Gallagher).....	2
Greyson Gates Limited (Greyson).....	3
OTHER PARTIES.....	3
Tru-Test Corporation Limited (Tru-Test)	3
Hurricane Wire Products Limited (Hurricane).....	3
Tornado Industries Limited (Tornado)	4
Walker Industries (NZ) Limited (Walker)	4
Rural Resellers	4
PREVIOUS COMMISSION DECISIONS.....	5
MARKET DEFINITION	5
Product Market.....	5
<i>Demand-side substitutability</i>	<i>6</i>
<i>Supply-side substitutability</i>	<i>7</i>
Conclusion on Product Markets.....	7
Functional Markets.....	7
Geographic Markets	8
<i>Gates</i>	<i>8</i>
<u><i>Demand-side substitutability</i></u>	<u><i>8</i></u>
<u><i>Supply-side substitutability.....</i></u>	<u><i>8</i></u>
<i>Gate Hardware</i>	<i>9</i>
<u><i>Demand-side substitutability</i></u>	<u><i>9</i></u>
<u><i>Supply-side substitutability.....</i></u>	<u><i>10</i></u>
Conclusion on geographic markets	10
Conclusion on Market Definition	10
COUNTERFACTUAL AND FACTUAL	10
Factual.....	10
Counterfactual.....	10
COMPETITION ANALYSIS	11
North Island Gates Market.....	11
<i>Existing Competition.....</i>	<i>11</i>
<u><i>Hurricane.....</i></u>	<u><i>12</i></u>
<u><i>Tru-Test.....</i></u>	<u><i>13</i></u>
<u><i>Others.....</i></u>	<u><i>14</i></u>
<i>Countervailing Power.....</i>	<i>14</i>
Conclusion on competition in the North Island gates market	14
South Island Gates Market	15
<i>Existing Competition.....</i>	<i>15</i>
Conclusion on competition in the South Island gates market.....	15
National gate hardware market.....	16
<i>Existing Competition.....</i>	<i>16</i>
<u><i>Walker.....</i></u>	<u><i>16</i></u>
<u><i>Tru-Test.....</i></u>	<u><i>17</i></u>
<u><i>Hurricane.....</i></u>	<u><i>17</i></u>

<i>Conclusion on Existing Competition</i>	17
<i>Potential Competition</i>	17
<u>Imports</u>	17
<i>Conclusion on Potential Competition</i>	18
<i>Countervailing Power</i>	19
Conclusion on competition in the New Zealand gate hardware market	19
OVERALL CONCLUSION	19
DETERMINATION ON NOTICE OF CLEARANCE	21

EXECUTIVE SUMMARY

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 31 October 2005. The notice sought clearance for the acquisition by Gallagher Group Limited of all of the assets of Greyson Gates Limited.
2. The Commission considers the relevant markets to be the North Island market for the manufacture and wholesale supply of rural gates, the South Island market for the manufacture and wholesale supply of rural gates, and the New Zealand market for the manufacture and wholesale supply of gate hardware.
3. The Commission considers that the relevant counterfactual is that Greyson continues to compete in the rural gates and gate hardware markets, either owned by Perrys or a third party.
4. The Commission considers that the proposed acquisition would not result, nor would be likely to result, in a substantial lessening of competition in the North Island or South Island markets for the manufacture and wholesale supply of gates, due to the presence and strength of existing competitors such as Hurricane and Tru-Test.
5. In addition, the Commission considers that the proposed acquisition would not result, nor would be likely to result, in a substantial lessening of competition in the national market for the manufacture and wholesale supply of gate hardware. Post-acquisition, there would be significant constraint provided by imports, as well as competitors such as Tru-Test and Hurricane.
6. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in any market.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 31 October 2005. The notice sought clearance for the acquisition by Gallagher Group Limited of all of the business assets of Greyson Gates Limited.
2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 1 December 2005.
3. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have, the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition, then it is required to grant clearance to the application. Conversely, if the Commission is not so satisfied, it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²
6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, ie dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.³
7. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not minimal.⁴ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

³ *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

⁴ *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

ANALYTICAL FRAMEWORK

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual) ; and
 - in the absence of the acquisition (the counterfactual).
11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
 - existing competition;
 - potential competition; and
 - other competition factors, such as the countervailing market power of buyers or suppliers.

THE PARTIES

Gallagher Group Limited (Gallagher)

12. Gallagher is a privately owned company based in Hamilton, New Zealand. Gallagher manufactures and supplies animal and security management systems in New Zealand and in over 100 countries around the world. Gallagher's key products are:
 - rural and security electric fencing products;
 - animal weighing systems;
 - contract manufacturing;
 - security access control products; and
 - fuel dispensing products.

13. Gallagher manufactures and supplies gates and gate hardware through its fully owned subsidiary Franklin Machinery Limited (Franklin).
14. Gallagher has been operating in New Zealand since the 1930s, and employs [] staff in New Zealand. Gallagher has an annual turnover of approximately \$[], of which approximately []% is derived from exports.

Greyson Gates Limited (Greyson)

15. Greyson is based in Putaruru and employs approximately 39 staff. The company primarily manufactures and distributes rural gates and gate hardware.
16. Perry Group Limited (Perrys) owns 100% of the shares in Greyson. Perrys has the following key business divisions:
 - Perry Developments – commercial, industrial, and residential property development;
 - Perry Environmental – waste management and resource recovery;
 - Perry Entertainment – leisure sector interests;
 - Perry Metal Protection – galvanising facilities, and the manufacture of rural gates and gate hardware through Greyson; and
 - Perry Aggregates – aggregates, quarry, and lime processing activities.

OTHER PARTIES

Tru-Test Corporation Limited (Tru-Test)

17. Tru-Test is a public unlisted company whose 200 shareholders include its management ([]%) and a range of family trusts and private investors. Until recently, Gallagher held 14.69% of Tru-Test's shares. []. Like Gallagher, Tru-Test manufactures and supplies animal and security management systems in New Zealand and in over 70 countries worldwide. Tru-Test lists its key products as:
 - rural electric fencing (under the Stafix, PEL, and Speedrite brands) and security electric fencing;
 - conventional fencing (under the 'Cyclone' brand);
 - animal weighing systems;
 - contract manufacturing;
 - milk metering equipment;
 - shearing products; and
 - brain monitoring equipment.
18. Tru-Test has been trading in New Zealand in its current form since 1963, and has an annual turnover of approximately \$[].

Hurricane Wire Products Limited (Hurricane)

19. Hurricane is a wholly-owned subsidiary of Steel & Tube Holdings Limited (Steel & Tube). Steel & Tube acquired the assets of Hurricane in mid-2003. Hurricane is New Zealand's second-largest producer of wire products, with manufacturing operations in Auckland and Christchurch.

20. Hurricane manufactures and distributes gates from its manufacturing plant in the South Island. Gallagher and Hurricane are party to a manufacturing arrangement, whereby Franklin (Gallagher) toll-manufactures gates and gate hardware for Hurricane in the North Island.
21. Hurricane distributes Gallagher-branded electric fencing products through a sales and marketing arrangement with Gallagher. In addition, Gallagher acts as sales and marketing agent for Hurricane-branded wire and wire products in selected rural stores.
22. Steel & Tube (Hurricane's parent company) is a publicly-listed company on the New Zealand Stock Exchange (NZX), and is the parent company of a number of subsidiaries involved in the merchandising, processing and manufacture of a range of steel products. Steel & Tube has a total of 54 business units and service centres servicing the construction, rural, and manufacturing sectors throughout New Zealand.

Tornado Industries Limited (Tornado)

23. Tornado is a family-owned and operated manufacturer and distributor of steel farm gates and fencing products. Tornado is based in Christchurch and supplies gates to farming merchants around the South Island. Tornado has an annual turnover of approximately \$[].

Walker Industries (NZ) Limited (Walker)

24. Walker is a privately-owned Christchurch-based company, established in 1984. Walker manufactures and supplies gate hardware, and produces a small quantity of gates, supplying them to building supply stores and independent rural resellers throughout New Zealand. Walker has an annual turnover of approximately \$[].

Rural Resellers

25. A high proportion of agricultural products are sold to customers/farmers through rural resellers. The Commission estimates that approximately 85% of gates and gate hardware are sold through six large rural resellers:⁵
 - RD1.com Limited (RD1);⁶
 - Wrightson Limited/ Pyne Gould Guinness Limited/ Williams & Kettle Limited (Wrightson);⁷
 - Farmlands Trading Society Limited (Farmlands);
 - CRT Society Limited (CRT);
 - Goldpine Group Limited (Goldpine); and
 - Allied Farmers Limited (Allied Farmers).
26. The remaining 15% of agricultural products are sold through a mixture of small independent rural resellers and building supply stores.

⁵ The estimate that approximately 85% of electric fencing products are sold through the eight largest rural resellers was confirmed by the resellers themselves and a number of other industry participants.

⁶ RD1 is a wholly-owned subsidiary of Fonterra Co-operative Group Limited.

⁷ Wrightson acquired Williams and Kettle Ltd (W&K) in early 2005. Subsequently, in August 2005, the Commission granted clearance for the merger of the Wrightson and PGG businesses.

PREVIOUS COMMISSION DECISIONS

27. The Commission previously considered the rural gates and gate hardware industries in the first of the two Gallagher Group / Tru-Test clearances - Decision 531: Gallagher Holdings Limited and Tru-Test Corporation Limited.
28. In this decision the Commission considered the following markets related to gates and gate hardware:
 - the North Island market for the manufacture and wholesale supply of rural gates and gate hardware (the North Island gates market); and
 - the South Island market for the manufacture and wholesale supply of rural gates and gate hardware (the South Island gates market).
29. In both markets, the Commission considered that existing competition would be likely to constrain the combined entity post-acquisition due to:
 - the presence of Hurricane, Greyson, and Walker Ltd; and
 - the presence of a number of small local engineering firms, and the farmers themselves, who could bypass the rural resellers and construct wooden or steel gates.
30. The Commission concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition in the North Island or the South Island gates and gate hardware markets due to the presence of existing competition.

MARKET DEFINITION

31. The Act defines a market as:

“... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.”⁸
32. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.
33. The Applicant submits that the relevant market for the purposes of analysing the competition effects of the proposed acquisition is the market for the manufacture and wholesale supply of rural gates and gate hardware in New Zealand.

Product Market

34. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market.

⁸ s 3(1) of the Commerce Act 1986.

35. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
36. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
37. New Zealand farmers use a variety of gates, and their choice of gates appears to be largely based on the type of livestock being farmed or personal preference. Rural gates are generally wooden or steel (bar gates or mesh chain-link gates), and are usually sold through rural resellers. Some farmers may bypass their rural reseller and purchase custom-built gates from local engineering firms, or construct the gates themselves. Gate hardware consists of hinges, gudgeons and latches that may need replacing from time to time.
38. Within the market defined above, the Applicant submits that the following product groups can be defined:
 - Rural Gates – primarily steel or wooden gates. However a gate in a gateway can also be created using other materials, e.g., tape and spring electric gates;
 - Rural Gate Hardware – consisting of hinges, gudgeons and latches used in the hanging of a rural gate.
39. The Applicant submits that the product groups identified above fall within a broadly defined gate and gate hardware market, and that this is consistent with the Commission’s approach in Decision 531: Gallagher Holdings Limited and Tru-Test Corporation Limited. In that decision, the Commission considered that ‘it was not inappropriate to treat gates and gate hardware as falling in the same product market.’
40. However, in that decision, the Commission also noted that

‘...it may also be possible to define rural gates as falling in a separate product market to rural gate hardware...the Commission considers that, for the purposes of this application, the implications for the competition analysis would be the same under a broader market definition’.
41. In this case, the Commission considers that the competition issues raised by the proposed acquisition may vary for gates and gate hardware because the manufacturers and suppliers of gate hardware differ from the manufacturers and suppliers of gates in New Zealand.
42. Accordingly, the Commission has analysed the scope for demand and supply-side substitution to occur between gates and gate hardware.

Demand-side substitutability

43. The ability of rural resellers to switch between various products is heavily influenced by substitution at the retail customer (farmer) level, as they are strongly constrained by the purchasing preferences of their customers; wholesale demand is heavily driven by retail demand.
44. The Applicant submits that ‘it is generally accepted in the industry that gates and gate hardware are treated as a product category by buyers within rural resellers.’

45. The Applicant submits that hardware is seen as incidental to the gate. Thus, the two products are complementary. The test for market definition is, however, substitutability not complementarity. The Commission considers that gates and gate hardware have specific uses and are not substitutable. Gate hardware cannot be used for use as a gate, and vice versa.
46. In addition, rural resellers advised the Commission that while most customers purchase gates and gate hardware at the same time, customers do not invariably do so. Gates are sometimes purchased for use as temporary fences, in which case hardware is not necessary. Gate hardware is also sometimes removed from an old gate and installed on a new one.
47. In conclusion, the Commission considered that gates and gate hardware are not substitutable on the demand side.

Supply-side substitutability

48. Industry participants advised the Commission that it is not easy to switch from producing gates to producing gate hardware, or vice versa.
49. Although some of the machinery required is the same, additional machinery is required to manufacture gate hardware. The equipment required to manufacture gates includes hydraulic pipe benders, mig welders, metal cutting saws, electric drills and basic welding jigs. The equipment needed to manufacture gate hardware includes welders, basic welding jigs, lathes and thread rolling machines.
50. Switching production would involve acquiring new machinery and this would represent at least a partial sunk cost to the producer.
51. In addition, as discussed below, the Commission considers that the geographic dimensions of the market may differ due to the lower freight cost associated with the smaller size of gate hardware products.
52. Hence, the Commission concluded that gates and gate hardware are not close substitutes on the supply side.

Conclusion on Product Markets

53. The Commission concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate product markets are separate markets for rural gates and gate hardware.

Functional Markets

54. The production, distribution, and sale of a product typically occurs through a series of functional levels, conventionally arranged vertically in descending order. Generally, the Commission identifies separate relevant markets at each functional level affected by an acquisition, and assesses the impact of the acquisition on each.
55. Suppliers of gates and gate hardware in New Zealand typically act as wholesalers to rural resellers. Rural resellers in turn retail these products to users.
56. The Commission recognises that wholesale supply across these product categories is presently achieved in two ways. Suppliers manufacture the products themselves (either in-house or through toll-manufacturing

arrangements), or import the finished product from overseas in order to on-sell to resellers.

57. Local manufacture is by far the most common method of supply in the product markets identified. The majority of gates and gate hardware supplied in New Zealand is manufactured domestically. Some gate hardware is currently being imported directly from overseas.
58. The Commission concludes, for the purposes of the present application, that the relevant functional market is the manufacture and wholesale supply of rural gates, and the manufacture and wholesale supply of gate hardware.

Geographic Markets

59. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

Gates

Demand-side substitutability

60. Rural resellers advised the Commission that they could source a gate supplier from the North Island or the South Island, provided freight is already included in the price. If freight is not included, a South Island-based rural reseller would be unlikely to source supply from the North Island, as the freight cost would make these purchases much more expensive for the reseller. The Applicants state that, whenever possible, a supplier will seek to recover freight costs from the customer. However, gate manufacturers such as Gallagher, Greyson, Hurricane and Tru-Test stated that freight is typically absorbed by the supplier, so a rural reseller would usually not face a higher price when sourcing a gate from the North Island or the South Island.
61. However, North Island and South Island demand appears to be tied to the type of gate. North Island farmers tend to prefer bar gates, while South Island farmers tend to prefer chain-link mesh gates. Industry participants advised the Commission that approximately 90% of gates sold in the North Island are bar gates and approximately 90% of the gates sold in the South Island are mesh gates. Accordingly, a manufacturer based in the North Island would usually focus on the manufacture of bar-style gates, while a manufacturer in the South Island would focus on the manufacture of mesh-style gates.
62. Thus, although a reseller in the South Island could technically source supply from the North Island, it may be unable to purchase large volumes of the type of gate needed for the South Island from a North Island supplier.

Supply-side substitutability

63. The Applicant submits that the market for gates should be considered as a national market. The Applicant considers that there is [

]. The Application states that average freight costs for Gallagher are:

- [

].

64. Industry participants considered that freight costs for transporting gates from the North Island to the South Island and vice versa are significant. Some manufacturers such as [] considered that it would not be feasible to economically supply gates between islands.
65. Greyson and Gallagher both have production facilities in the North Island only. Greyson supplies RD1 stores nationally []. Approximately []% of both Gallagher's and Greyson's gates are supplied to the North Island. Gallagher and Greyson may be able to [].
66. However, it appears that other gate manufacturers do routinely transport significant volumes of gates between islands. Tru-Test transports a [] of gates to the South Island from its production facility in Auckland. Approximately []% of Tru-Test's gates are supplied to the South Island. [].
67. Hurricane has a toll-manufacturing arrangement with Gallagher, whereby Gallagher manufactures gates for Hurricane in the North Island. However, approximately []% of the gates manufactured by Gallagher for Hurricane are sold in the South Island. In addition, approximately []% of the gates manufactured by Hurricane in the South Island are sold in the North Island.
68. The Commission acknowledges that some suppliers are able feasibly to transport gates to the South Island from their North Island production facilities, and vice versa. For this reason, the Commission considers that there are arguments in favour of a national market for rural gates. However, freight costs are significant and the majority of manufacturers tend to supply primarily into the island in which they have their own production facility. In addition, there appears to be a clear difference between the type of gate sold to farmers in the North and South Islands.
69. Therefore, while acknowledging that there are arguments in favour of both a narrow and broad geographic market, the Commission considers that for the purposes of the present application, the relevant competition effects are best identified by defining separate geographic markets for the North Island and the South Island. The Commission considers that if competition concerns are not identified within the narrowly defined market, they are unlikely to arise in a more broadly defined market.

Gate Hardware

Demand-side substitutability

70. The Applicant submits that rural resellers operating in both islands have traditionally sourced their gate hardware nationally from one supplier. The Applicant states that Gallagher and Greyson [].
71. National rural resellers such as Wrightson and RD1 advised the Commission that they have national supply agreements with one supplier. For instance, RD1

sources all of its gate hardware from Greyson and Wrightson sources all of its gate hardware from Gallagher.

Supply-side substitutability

72. The three New Zealand manufacturers of gate hardware supply nationally. Industry participants advised the Commission that due to the small size of the hardware being transported, freight between islands is economically feasible and occurs commonly.

Conclusion on geographic markets

73. The Commission concludes that the appropriate geographic markets are:
- the North Island market for the manufacture and wholesale supply of rural gates;
 - the South Island market for the manufacture and wholesale supply of rural gates; and
 - the national market for the manufacture and wholesale supply of gate hardware.

Conclusion on Market Definition

74. The Commission concludes that the relevant markets are:
- the manufacture and wholesale supply of rural gates in the North Island;
 - the manufacture and wholesale supply of rural gates in the South Island; and
 - the manufacture and wholesale supply of gate hardware in New Zealand.

COUNTERFACTUAL AND FACTUAL

75. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a “with” and “without” comparison rather than a “before” and “after” comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).⁹ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

76. In the factual scenario, Gallagher would acquire the business assets of Greyson. []].

Counterfactual

77. Kim Willoughby, Chief Operating Officer, Perrys, stated that Greyson Gates []. If the acquisition did not proceed, Mr Willoughby considered that Greyson would continue to operate in the rural gates and gate hardware markets. However, Mr Willoughby advised

⁹ Commerce Commission, *Decision 410: Ruapehu Alpine Lifts/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

the Commission that []].

78. Perrys advised the Commission that it was not aware of any other potential purchasers of the business, but would welcome any interested buyers. [

] the Commission considers that the counterfactual scenario could involve Perrys selling out to another company that would compete in its place.

79. Accordingly, the Commission considers the relevant counterfactual to be that Greyson continues to compete in the rural gates and gate hardware markets, either owned by Perrys or by a third party.

COMPETITION ANALYSIS

North Island Gates Market

Existing Competition

80. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).
81. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.
82. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
 - the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
83. Table 1 details the North Island market shares for the manufacture and wholesale supply of gates. These market shares are based on the annual wholesale sales value for 2004-2005 submitted by the Applicant and other major gate manufacturers.

Table 1: North Island Market Shares

Company	Wholesale sales value (\$M)	Market Share	Manufacturing Market Shares¹⁰
Gallagher	[]	[]%	[]%
Greyson	[]	[]%	[]%
<i>Combined Entity</i>	[]	[]%	[]%
Hurricane	[] ([] manufactured by Gallagher)	[]%	[]%
Tru-Test	[]	[]%	[]%
Other (wooden and steel) ¹¹	[]	[]%	[]%
Total	11.9	100%	100%

84. Table 1 indicates that the combined entity would have a market share of []% and the three-firm concentration would be []%. This is outside the Commission's safe harbour guidelines.
85. Post-acquisition, the combined entity would be the largest provider of gates and gate hardware in the North Island. However, the combined entity would continue to face competition from existing competitors such as Tru-Test and Hurricane.

Hurricane

86. Hurricane and Gallagher are party to a toll-manufacturing arrangement whereby Gallagher (Franklin) manufactures bar-style gates for Hurricane in the North Island, which are branded Hurricane and distributed by Hurricane primarily in the North Island. A 1998 sales and marketing agreement, attached as Appendix 3 to the Application, describes this relationship. However, Steve Tucker and Steven Hoffman of Gallagher advised staff that this contract no longer truly reflects the arrangements between Gallagher and Hurricane. There is no formal contract for the current arrangement. It involves Gallagher toll-manufacturing gates and gate hardware for Hurricane, which is then branded Hurricane. The value of these sales from Gallagher to Hurricane was \$[] for gates for the twelve months ending September 2005. Gallagher stated (and Hurricane confirmed) that this arrangement can be terminated by either party at any time.

¹⁰ These are market shares of manufacturers only, to highlight the arrangement involving Hurricane and Gallagher, whereby Gallagher manufactures gates for Hurricane in the North Island.

¹¹ The Applicant submitted higher figures for 'other' which were based on []. However, after consultation with industry participants and small gate manufacturers, the Commission considered this number to be an inaccurate reflection of market shares. The 'other' market share used here is based on an estimate that approximately 85% of all gates are sold through a large reseller, while the other 15% are sold direct to farmers. These direct sales make up the 'other' category. Thus, although the Commission received higher estimates of the 'other' category, it has taken a conservative approach in order to highlight the market shares of the main competitors to the combined entity.

87. Post-acquisition there would be at least one other large supplier other than Hurricane – Tru-Test. In this situation, Hurricane would be likely to provide some constraint on the combined entity. Hurricane would not be able to pass on any potential price rise to resellers, as it would become uncompetitive with other suppliers such as Tru-Test, and would likely lose market share. It would instead have to review its options for supply. [

]:

- []].

88. []% of Hurricane’s sales in the North Island is made up of Hurricane-manufactured product from the South Island. Hurricane advised the Commission that if the relationship with Gallagher broke down, it would easily be able to set up a gate manufacturing plant itself in the North Island. Steel and Tube (Hurricane’s parent company) has two manufacturing facilities, one in Auckland and one in Christchurch. Industry participants advised that the main barrier to entry is access to the rural resellers. Hurricane would already have its distribution network set up with the rural resellers. Hurricane considered it would cost about \$[] to set up a gate manufacturing plant.

89. Nick Calavrias, CEO Steel and Tube, stated that:

[

].

90. Hurricane stated that it would have the incentive to investigate another source of supply rather than pass on any potential price rise from Gallagher, as it must still remain competitive with Tru-Test gates. The Commission considers that Hurricane would provide a degree of constraint on the combined entity post-acquisition.

Tru-Test

91. Tru-Test supplies gates nationwide to a number of rural resellers. The Applicant stated that Tru-Test has a competitive advantage over Gallagher and Greyson, in its ability to supply wire and wire products to the rural resellers as well as gates and gate hardware. Tru-Test stated that it typically bundles a range of products for supply to the rural resellers, including gates, gate hardware, wire products, electric fencing products, animal scales and shearing equipment. Gallagher may also be able to bundle a range of products, as it supplies electric fencing products to rural resellers, and acts as sales and marketing agents for Hurricane-branded wire and wire products in selected rural stores.

92. Tru-Test has historically been a major supplier to Wrightson, PGG, and W&K. [

].

93. Tru-Test advised the Commission that it has the capacity to be able to expand its gate manufacturing business beyond current volumes. It stated that it is always looking to increase market share.

94. The Commission considers that Tru-Test would provide some constraint on the combined entity post-acquisition.

Others

95. The Commission notes the presence of a number of small local engineering firms who are able to produce and supply wooden or steel gates to farmers. Examples of these are Bargain Timber and Fencing Supplies Limited, Tower Gates Limited, Dunlea Products Limited, and Pratley Industries Limited. Although in general these firms do not have the critical mass or wide product range to be able to sell into the large rural resellers, they do sell significant volumes direct to farmers.
96. The Commission understands that farmers themselves also make their own gates. The Commission estimates that together, local engineering firms and the farmers themselves would make up approximately []% of the market. Accordingly, there is some scope for farmers to source gates from a local firm, or simply construct the gate themselves, in the face of the combined entity either raising its price or reducing the quality of its service.

Countervailing Power

97. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
98. The Applicant submitted that the countervailing power of the large rural resellers would provide a significant constraint on the combined entity post-acquisition. It stated that this countervailing power has increased as a result of the recent consolidation of rural resellers.
99. All of the large rural resellers interviewed¹² believed that they had a substantial degree of countervailing power with respect to the purchase of gates. Many resellers stated that they readily switch between providers of gates, based on price and quality offerings. Others stated that imports were increasing over their range of products, and they would be likely to explore importing opportunities for gates in the future¹³. Resellers considered that post-acquisition they would continue to have a number of options for gates.
100. The Commission concludes that the large rural resellers would continue to have a degree of countervailing power to constrain the combined entity from exercising market power.

Conclusion on competition in the North Island gates market

101. The Commission considers that existing competition would be likely to constrain the combined entity post-acquisition due to:
- the presence of Hurricane and Tru-Test; and
 - the presence of a number of small local engineering firms, and the farmers themselves, who could bypass the rural resellers and construct wooden or steel gates themselves.
102. On this basis, the Commission concludes that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening

¹² RD1, Wrightson/PGG, Farmlands, CRT, Allied Farmers, and Goldpine

¹³ Red Stag Gates imports approximately [] gates a year (wholesale value of \$[]). These are sold through Red Stag retailers. Despite significant freight costs, these gates retail at a lower price than locally-manufactured gates.

competition in the North Island market for the manufacture and wholesale supply of rural gates.

South Island Gates Market

Existing Competition

103. Table 2 details the South Island market shares for the manufacture and wholesale supply of gates. These market shares are based on annual wholesale sales value for 2004-2005 submitted by the Applicant and other major gate manufacturers.

Table 2: South Island Market Shares

Company	Wholesale sales value (\$M)	Market Share (%)
Gallagher	[]	[]%
Greyson	[]	[]%
<i>Combined Entity</i>	[]	[]%
Hurricane	[]	[]%
Tru-Test	[]	[]%
Tornado	[]	[]%
Other (wooden and steel) ¹⁴	[]	[]%
Total	5.85	100%

104. The proposed acquisition would result in minimal aggregation in the South Island gates market. The major suppliers in the South Island gates market are:

- Tru-Test - supplier to Wrightson and PGG;
- Tornado - supplier to CRT; and
- Hurricane – supplier to Goldpine.

Conclusion on competition in the South Island gates market

105. The Commission considers that existing competition would be likely to constrain the combined entity post-acquisition, due to:

- the presence of Hurricane, Tru-Test and Tornado; and
- the presence of a number of small local engineering firms, and the farmers themselves, who could bypass the rural resellers and construct wooden or steel gates themselves.

106. On this basis, the Commission concludes that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening

¹⁴ As stated above for the North Island, although the Commission received higher estimates of the 'other' category, we have taken a conservative approach in order to highlight the market shares of the main competitors to the combined entity.

competition in the South Island market for the manufacture and wholesale supply of rural gates.

National gate hardware market

Existing Competition

107. There are currently only three manufacturers of gate hardware in New Zealand – Gallagher, Greyson and Walker Industries (a specialist gate hardware manufacturer).
108. Greyson started manufacturing gate hardware two years ago. Prior to this, there were only two manufacturers of gate hardware in New Zealand - Gallagher and Walker. Tru-Test and RD1 are Greyson’s two major customers for gate hardware. Table 3 details the national market shares for the manufacture and wholesale supply of gate hardware. These market shares are based on annual wholesale sales value for 2004-2005.

Table 3: Gate Hardware Market Shares

Company	Wholesale sales value (\$M)	Market Share	Manufacturing Market Share¹⁵
Gallagher	[]	[]%	[]%
Greyson	[]	[]%	[]%
<i>Combined Entity</i>	[]	[]%	[]%
Walker	[]	[]%	[]%
Hurricane	[] (manufactured by Gallagher)	[]%	[]%
Tru-Test	[] (manufactured by Greyson)	[]%	[]%
Imports	[]	[]%	[]%
Total	6.3	100%	100%

109. Table 3 indicates that the combined entity would have a market share of []% and the three-firm concentration would be []%. This is outside the Commission’s safe harbour guidelines.

Walker

110. Walker Industries is a specialist gate hardware manufacturing business with an annual turnover of approximately \$[]. Walker manufactures security gate fittings, domestic gate fittings as well as rural gate fittings.
111. Walker primarily supplies to hardware chains such as Benchmark/Bunnings, Mitre 10, Placemakers, and ITM. Walker has recently commenced the supply of products to PGG. Walker advised staff that it is eager to gain business with the large rural retailers, and stated that it would be able to provide the volume

¹⁵ These are market shares of manufacturers only, to highlight the toll-manufacturing arrangement involving Hurricane and Gallagher, and Greyson and Tru-Test.

necessary if it won a contract to supply a large rural reseller. Wrightson stated that Walker was a viable contender for the national gate hardware supply to the amalgamated Wrightson/PGG/W&K. CRT stated that it is still keen to do business with Walker. Walker is comfortable with the proposed acquisition, and believes it would create opportunities for the expansion of its business.

Tru-Test

112. Tru-Test and Greyson are party to a toll-manufacturing arrangement for the manufacture of gate hardware by Greyson of Tru-Test-branded hardware. This hardware is distributed under the 'Hayes' brand-name. The value of these sales from Greyson to Tru-Test was \$[] for the twelve months ending August 2005. Tru-Test represents approximately []% of Greyson's annual revenue from gate hardware.

113. Tru-Test advised the Commission that [

]. However, the Commission was advised [

].

Hurricane

114. Hurricane has a contract manufacturing arrangement with Gallagher for gate hardware. This agreement forms part of the gate manufacturing agreement. The value of these sales from Gallagher to Hurricane was \$[] for gate hardware in the twelve months ending September 2004. As discussed above, both parties consider that this agreement could be terminated at any time.

115. Hurricane stated that it has manufactured a range of gate hardware in the past. It presently considers that it is more cost-effective to source supply from a specialist manufacturer. If this arrangement broke down, Hurricane stated that it would consider getting back into the manufacture of gate hardware. Alternatively, it would source another supplier, either locally or from China.

Conclusion on Existing Competition

116. The Commission considers that existing competition would be likely to provide some constraint on the combined entity post-acquisition, due to the presence of Walker, Hurricane, and Tru-Test.

Potential Competition

Imports

117. There are currently a number of companies in New Zealand involved in imports of gate hardware:

- Eurocorporation Limited is a wire and fencing manufacturer and supplier. As part of the range of products supplied to rural resellers and hardware merchants, Eurocorporation supplies imported gate hardware from China. This imported gate hardware is sold to rural resellers such as CRT, RD1, Farmlands, Wrightson/PGG and independent merchants.
- NZ Fitting Supplies Limited is a specialist manufacturer, importer and distributor of pressed, forged, cast and plastic fittings, including rural gate hardware. NZ Fitting Supplies has a manufacturing plant set up in China for

the production of these products, which are then wholesaled and retailed in New Zealand.

118. Although imports for gate hardware are currently small in comparison with the total gate hardware market, industry participants considered that there would likely be increased numbers of imports of gate hardware into New Zealand in the near future. For example:
- Gallagher, Greyson and Walker advised the Commission that a large proportion of the steel components for gate hardware is currently imported from Asia.
 - Industry participants advised the Commission that imports are already cheaper than locally-manufactured hardware, due to the cheaper labour and materials available in China and Vietnam.
 - Greyson stated that ‘nearly every week we receive enquiries from Chinese or Vietnamese manufacturers looking to manufacture our gate hardware’.
 - Walker stated that []].
119. Rural resellers advised staff that they have explored options for importing, and will continue to do so. For example:
- Wrightson stated that importing will be a consideration for them in the near future. []].
 - Goldpine advised that some of its local building contractors use imported gate hardware when they need large volumes, as it is usually cheaper.
 - RD1 has a []. It currently imports a number of other products and stated that it would consider importing gate hardware.
 - CRT stated that it would explore direct importing opportunities for gate hardware if the prices of locally-made product increased. []].
 - Allied Farmers stated that ‘if prices for gate hardware went up, someone will go overseas. It’s only a matter of time before somebody has a crack at imports’.
 - Farmlands stated ‘we import a number of products and would look at importing gates and gate hardware if we needed to’.

Conclusion on Potential Competition

120. The Commission considers that potential competition would be likely to provide significant constraint on the combined entity post-acquisition, due to the presence and increasing numbers of imports.

Countervailing Power

121. As stated above, the Applicant submitted that the countervailing power of the large rural resellers would provide a significant constraint on the combined entity post-acquisition. It stated that this countervailing power has increased as a result of the recent consolidation of rural resellers.
122. All of the large rural resellers interviewed¹⁶ believed that they had a substantial degree of countervailing power with respect to the purchase of gate hardware. Many resellers stated that imports were increasing over their range of products, and they would be likely to explore importing opportunities for gate hardware in the future. Some resellers stated that they were already stocking some imported gate hardware. Resellers considered that post-acquisition, they would continue to have a number of options for gate hardware.
123. The Commission concludes that the large rural resellers would continue to have a degree of countervailing power to constrain the combined entity from exercising market power.

Conclusion on competition in the New Zealand gate hardware market

124. Although the acquisition would reduce the number of gate hardware manufacturers from three to two, the Commission considers that there would be significant constraint provided by imports, as well as competitors such as Tru-Test and Hurricane. Tru-Test and Hurricane would provide some competitive constraint in their ability to either set up their own gate hardware manufacturing plant, or source another supplier of gate hardware. Imports, while minimal at this stage, are a real threat to gate hardware manufacturers and distributors in New Zealand, and would be likely to provide constraint on the combined entity post-acquisition.

OVERALL CONCLUSION

125. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the North Island market for the manufacture and wholesale supply of rural gates, the South Island market for the manufacture and wholesale supply of rural gates, and the New Zealand market for the manufacture and wholesale supply of gate hardware.
126. The Commission considers that the relevant counterfactual is that Greyson continues to operate in the rural gates and gate hardware markets, either as Greyson (owned by Perrys), or as another company that acquires it.
127. The Commission concludes that the proposed acquisition would not result, or would not be likely to result in a substantial lessening of competition in the North Island or South Island markets for the manufacture and wholesale supply of gates, due to the presence and strength of existing competitors.
128. In addition, the Commission concludes that the proposed acquisition would not result, or would not be likely to result in a substantial lessening of competition in the national market for the manufacture and wholesale supply of gate hardware. There would be significant constraint provided by imports, as well as competitors such as Tru-Test and Hurricane.

¹⁶ RD1, Wrightson/PGG, Farmlands, CRT, Allied Farmers, and Goldpine.

129. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in any market.

DETERMINATION ON NOTICE OF CLEARANCE

130. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Gallagher Group Limited of all of the business assets of Greyson Gates Limited.

Dated this 30th day of November 2005

Paula Rebstock
Chair
Commerce Commission