



## COMMERCE COMMISSION

### **Decision No. 438**

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

**PROGRESSIVE ENTERPRISES LIMITED**

**and**

**WOOLWORTHS (NEW ZEALAND) LIMITED**

**The Commission:** M J Belgrave  
P R Rebstock  
D R Bates QC

**Summary of Application:** Progressive Enterprises Limited has sought clearance to acquire all the shares in Woolworths (New Zealand) Limited and/or its immediate holding company Denstree Corporation Limited.

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

**Date of Determination:** 13 July 2001

**CONFIDENTIAL MATERIAL IN THIS REPORT IS CONTAINED IN SQUARE  
BRACKETS**

# CONTENTS

<b>THE PROPOSAL .....</b>	<b>1</b>
UNDERTAKINGS .....	1
<b>THE PROCEDURES.....</b>	<b>1</b>
<b>THE PARTIES.....</b>	<b>2</b>
PROGRESSIVE ENTERPRISES LIMITED .....	2
WOOLWORTHS (NEW ZEALAND) LIMITED.....	2
FOODSTUFFS .....	3
<i>Association</i> .....	3
FRESHCHOICE/SUPER VALUE .....	3
<b>MARKET DEFINITION .....</b>	<b>4</b>
INTRODUCTION .....	4
IDENTIFYING RELEVANT MARKETS.....	5
<i>Supermarkets and other Retail Outlets.....</i>	5
<i>Geographic Dimensions of the Supermarket Market .....</i>	7
<i>The Wholesale Supply of Groceries .....</i>	10
<i>Conclusion on Market Definition.....</i>	10
<b>COMPETITION ANALYSIS .....</b>	<b>11</b>
INTRODUCTION .....	11
<i>The Dominance Test.....</i>	11
<i>Market Concentration .....</i>	12
THE MARKET FOR THE RETAILING OF GROCERIES IN SUPERMARKETS.....	13
<i>Introduction.....</i>	13
<i>Existing Competition.....</i>	14
<i>Constraint from Non-Supermarket Retailers .....</i>	15
<i>Potential Competition .....</i>	16
<i>Expansion.....</i>	17
<i>Constraint from Suppliers .....</i>	17
<i>Constraint from Pricing Behaviour.....</i>	18
<i>Conclusion on Competitive and other Constraints .....</i>	19
GEOGRAPHIC MARKETS OF POSSIBLE CONCERN .....	19
<i>Te Awamutu.....</i>	19
<i>North Shore of Auckland.....</i>	20
<i>Impact on Glenfield and Adjoining Suburbs.....</i>	24
<i>West Auckland .....</i>	25
<i>Nelson/Stoke/Richmond.....</i>	26
<i>Tauranga/Mt Maunganui .....</i>	29
THE NATIONAL MARKET FOR THE WHOLESALE SUPPLY OF GROCERIES.....	31
<i>Introduction.....</i>	31
<i>Market Share .....</i>	32
<i>Current Competitors .....</i>	32
<i>Countervailing Power .....</i>	33
<i>Conclusion.....</i>	33
<b>OVERALL CONCLUSION.....</b>	<b>34</b>
<b>DETERMINATION ON NOTICE OF CLEARANCE.....</b>	<b>35</b>

## THE PROPOSAL

1. On 25 May 2001, the Commerce Commission (“the Commission”) registered a notice pursuant to section 66(1) of the Commerce Act 1986 (“the Act”), in which clearance was sought by Progressive Enterprises Limited (“Progressive”) for the acquisition of all the shares in Woolworths (New Zealand) Limited (“Woolworths”) and/or its immediate holding company Denstree Corporation Limited (“Denstree”).

## Undertakings

2. The applicant has amended the original application to include the undertaking (“undertaking”) that, within twelve months of the completion of the acquisition, it will divest to a person not interconnected or associated with it the following interests:
  - ? All its legal and equitable interest in the land and buildings at [            ], Te Awamutu, currently operated as a [     ] supermarket; and,
  - ? All its legal and equitable interest as lessee in the land and buildings at 180 Mokoia Road, Birkenhead, which is currently operating as a Foodtown supermarket.
3. Section 69A states:
 

Commission may accept undertakings –

  - (1) In giving a clearance or granting an authorisation under section 66 or section 67 of this Act, the Commission may accept a written undertaking given by or on behalf of the person who gave notice under section 66(1) or section 67(1) of this Act as the case may be, to dispose of assets or shares specified in the undertaking.
  - (2) The Commission shall not accept an undertaking in relation to the giving of a clearance or the granting of an authorisation under section 66 or section 67 of the Act, other than an undertaking given under subsection (1) of this section.
  - (3) An undertaking given to the Commission under subsection (1) of this section is deemed to form part of the clearance given or the authorisation granted in relation to the acquisition to which the undertaking relates.
4. The Commission is satisfied that the undertaking has been given by, or on behalf of the applicant in this case, and that it relates to the disposal of assets or shares. Accordingly the Commission is able to accept the undertaking in accordance with section 69A(1). The undertaking forms part of the application considered below.

## THE PROCEDURES

5. The notice was received on 25 May 2001. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. Three extensions were sought by the Commission and agreed to by the applicant. Accordingly, a decision was required by 13 July 2001.
6. In its application, Progressive sought confidentiality for specific aspects of the application as well as various supporting documents. Confidentiality orders were made in respect of the information for a period of 20 working days from the Commission’s determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply to the information.

7. The Commission's decision is based on an investigation conducted by staff. In the course of its investigation, Commission staff spoke to a wide range of industry participants including:
  - ? Foodstuffs (Auckland) Limited;
  - ? Foodstuffs (Wellington) Co-operative Society Limited;
  - ? Foodstuffs (South Island) Limited;
  - ? Woolworths;
  - ? FreshChoice/SuperValue;
  - ? Fringe competitors;
  - ? Suppliers to supermarkets;
  - ? Various industry associations; and
  - ? Various district/city councils.
8. The Commission also sought further information from the applicant.

## **THE PARTIES**

### **Progressive Enterprises Limited**

9. Progressive is owned by Foodland Associated Limited ("FAL"), a public company incorporated in Western Australia. FAL conducts wholesale and retail supermarket operations in Western Australia and New Zealand. It recently purchased 36 Franklin stores in Queensland and New South Wales. In New Zealand, as well as owning Progressive, FAL owns the Farmers and Deka department chains.
10. Progressive includes the Foodtown, Countdown, and 3 Guys banner groups. Progressive also operates a wholesale grocery distribution conducted through The Supply Chain and Red Arrow. Through its wholesale distribution operation, Progressive supplies the FreshChoice and SuperValue chains.

### **Woolworths (New Zealand) Limited**

11. Woolworths and Denstore are ultimately owned by Dairy Farm International Holdings Limited ("Dairy Farm"), a public company listed on the Hong Kong and London stock exchanges. Dairy Farm operates supermarkets, hypermarkets, convenience stores, and drugstores throughout the Asia-Pacific region. Dairy Farm has recently sold its Australian supermarket chain Franklins.
12. Woolworths operates the Woolworths, Big Fresh, and Price Chopper groups. There are around 50 Woolworths stores, which are broad-range supermarkets with an average size of 30,000 sq ft. The 13 Big Fresh stores are larger, with an average size of 51,000 sq. ft, and offer an even wider selection. The 18 Price Choppers are compact with an average size of 14,000 sq ft, and are limited-range discount stores located mainly in small towns. Woolworths also has three dry grocery distribution centres with a total area of 463,000 sq. ft.
13. Woolworths has recently formed an alliance with independent petrol retailer Gull Petroleum to operate Woolworths outlets in its 17 service stations located mainly in the Auckland and Bay of Plenty areas. Woolworths has also announced that Price Chopper

stores and many Big Fresh stores will be phased out and replaced by the Woolworths brand.

### **Foodstuffs**

14. There are three separate Foodstuffs companies: Auckland, Wellington and South Island. Each Foodstuffs company is a co-operative, owned by the individual owners of supermarkets within the chain. The three Foodstuffs companies have no overlapping ownership or directorships. They do share ownership of Foodstuffs (New Zealand) Limited, which is a small company used primarily as a lobby group, and which represents the three co-operatives on industry bodies. Foodstuffs (New Zealand) also has ownership of the brands New World, Pak’N Save, and 4 Square and leases them to the three Foodstuffs companies.
15. Each Foodstuffs company operates similarly to a franchise such as McDonalds. The franchise agreement covers store format, product range, pricing, marketing and store fit out. There is a formal lease document covering the premises and each store pays various levies to Foodstuffs to pay for group advertising, training, and other support services.
16. Foodstuffs operates the chains Pak’N Save, New World, 4 Square and Write Price (which is being phased out). Pak’N Save is a discount supermarket chain, which has relatively limited range and service. It is acknowledged as generally having the lowest prices of any chain. Pak’N Save stores have been highly successful since their introduction to the market, and account for twenty of the top thirty supermarkets in New Zealand in terms of turnover. New World offers a greater range and service. Four Square stores are more convenience stores rather than supermarkets and are typically located in small catchment areas.
17. Each Foodstuffs company also operates a cash-and-carry operation. In Auckland this is called James Gilmour & Co Limited, in Wellington, Toops Wholesale Limited, and in the South Island, Trents Wholesale Limited.

### *Association*

18. The applicant has argued that the three independently owned Foodstuffs co-operatives are “...so closely linked operationally as to be considered together as one entity...”. The three Foodstuffs companies have advised the Commission that each co-operative operates quite separately, which was a proposition supported by most, but not all, suppliers to supermarkets. Without an in-depth analysis of the links between the co-operatives association cannot be definitely established. For the purposes of the competition analysis, the Commission has considered the three Foodstuffs companies to be separate from each other. The Commission has adopted this position because it represents the most conservative scenario when considering the proposed acquisition.

### **FreshChoice/SuperValue**

19. FreshChoice and SuperValue (together “FCSV”) are independent owner-operated supermarkets, based mainly in the South Island. FCSV mainly source their goods through Progressive’s distribution centre “the Supply Chain”. This arrangement is not an exclusive purchasing arrangement.

20. The FreshChoice chain offers a wide product range and full service, similar in nature to Woolworths and New World. In comparison, SuperValue generally has a smaller range, a lower level of service, and is located in smaller catchment areas. In total there are around 39 stores in FCSV chain. This comprises seven FreshChoice stores and 32 SuperValue stores. These stores are mainly based in the South Island, although there are three SuperValues in the North Island.
21. The applicant has argued FCSV is independent of Progressive. The Commission has considered whether either FCSV or Progressive has a strong degree of influence over the other, which would imply association. The following points are noted:
- ? [ ];
  - ? [ ];
  - ? [ ];
  - ? [ ];
  - ? [ ];
  - ? [ ];
- ]; and
- ? [ ].
22. Although the above links are not necessarily definitive on suggesting association between FCSV and Progressive, they show close ties between the chains. Therefore, for the purposes of this application the Commission will consider FCSV and Progressive to be associated.

## MARKET DEFINITION

### Introduction

23. The purpose of defining a market 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, and in which the application of section 47(1) of the Act can be examined.
24. Section 3(1A) of the Act provides that:
- “... the term ‘market’ is a reference to 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.”
25. Relevant principles relating to market definition are set out in *Telecom v Commerce Commission*<sup>1</sup> (“the AMPS A case”) and in the *Business Acquisitions Guidelines*<sup>2</sup>. A brief outline of the principles follows.
26. Markets are typically defined in relation to three dimensions: product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to

<sup>1</sup> *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473

<sup>2</sup> Commerce Commission, *Business Acquisitions Guidelines*, 1999.

which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit-maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.

27. A properly defined market includes products which are regarded by buyers or sellers as being not too different (the product dimension), and not too far away (the geographic dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (“*ssnip*”), assuming that other terms of sale remain unchanged.
28. Markets are also defined by functional level (the functional dimension). Typically, production, distribution, and sale occur through a series of stages, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence the functional market level affected by the application has to be determined as part of the market definition. 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.

### **Identifying Relevant Markets**

29. To identify the markets relevant to the application, it is necessary to consider the business activities undertaken by the merging firms and to assess whether, post-acquisition, dominance would, or would be likely to, result or be strengthened.
30. Thus the relevant market can vary depending on the matter at issue. As stated in the AMPs A case:

‘The boundaries {of the market} should be drawn by reference to the conduct at issue, the terms of the relevant section or section, and the policy of the statute. Some judgment is required, bearing in mind that “market” is an instrumental concept designed to clarify the sources and potential effects of market power that may be possessed by an enterprise.’

31. In respect of those activities undertaken by one or other of the firms, but not both, it may be that the competitive situation will not change by the acquisition, and in these circumstances the Commission will not usually need to identify the specific market in which the activities may fall.

### *Supermarkets and other Retail Outlets*

32. The application notes that in the past the Commission has generally considered supermarkets to comprise a separate market. However, it states that supermarkets face competition from non-supermarket competitors “which may include significant ranges of goods from various chains (The Warehouse, Star Marts), specialist shops, bulk discounters, or convenience stores (less so dairies, more so service stations), and other goods available from specialist outlets: hot bread shops, butchers, liquor stores and bottle shops, greengrocers, fish marts, newsagents, hardware stores, etc”.

33. The applicant considers that this competition and the changing trends mean that a market broader than that for supermarkets is now indicated. However, the application goes on to state:

“... consistent with convention, the conservative approach to market definition has continued to be adopted for the purposes of this application, on the basis that if a clearance is justified on the narrow definition then it must be justified on the broader. The influence of those factors which it is submitted would otherwise justify a broader market definition, should be taken into account nonetheless in assessing constraints and reinforcing that dominance would not arise by virtue of the proposal (just as they were in respect of the retail aspects of the Foodstuffs/Countdown proposals cleared in 1992).”

34. Competition between supermarkets and other retail outlets was also discussed in the NZIER Report<sup>3</sup>. The Report states at page 5:

“Larger supermarkets may have 15 to 20 ‘departments’ ranging from meat to magazines. For each of these ‘departments’ there are non-supermarket competitors which may be various chains, specialist shops, or convenience stores. However, as a worst case analysis, we have assumed for this report that supermarkets comprise a separate market (eg. defined by a combination of functional elements such as ‘one stop’ shopping, brand consistency, and price positioning). In addition, both mainstream and price impact banners are taken as competing in the same market, even though average prices, and associated travel patterns may differ, as between the two tiers of market participant.”

35. The applicant suggests that by adopting the “conservative” or “worst case” approach the relevant market is that for “the sale of groceries (ie, food and drink and frequently purchased household items like cleaning materials and toiletries) at retail in generally larger quantities than from specialist shops, in particular geographic localities”.
36. The Commission accepts that specialist stores and convenience stores do provide competition to segments of supermarkets and for some of their customers. It is possible, as the applicant suggests, that there is a long-term trend away from supermarkets to specialist stores. However, this is not sufficient in itself to justify placing them within the one market at this time.
37. Rather when determining the scope of the market the Commission must consider whether specialist and convenience stores are sufficiently substitutable for supermarkets for sufficient numbers to preclude supermarkets from imposing a small yet significant and non-transitory increase in price. The Commission is not satisfied that this is the case. Supermarkets attract customers because they provide customers with convenient one-stop shopping at low or moderate prices for a wide range of fresh or dry grocery lines. Specialist and convenience stores cannot provide this.
38. The general view given to the Commission by suppliers to supermarkets and by other retailers was that there would not be a significant switch from supermarkets to specialist stores in the event of a small yet significant price increase by the latter. This tends to be confirmed by the indications that the prices charged by specialist and convenience stores do not have a major influence on the prices charged by supermarket chains. Rather, the most important factor for each supermarket chain is the prices being charged by competing chains.

---

<sup>3</sup> *Supermarket Merger Analysis – Report to Progressive Enterprises, June 2001*, NZ Institute of Economic Research (Inc.)



39. While for these reasons specialist and convenience stores are not included in the market as defined, the Commission has given full regard to the competitive constraints they place on supermarkets in the competition analysis below.
40. The Commission accepts that there is often not a clear dividing line between a large convenience store and a small supermarket. For the purpose of considering this application, the Commission has included in the relevant market all stores trading under the names of Foodtown, Countdown, 3 Guys, FreshChoice, SuperValue, Woolworths, Big Fresh, Price Chopper, Pak'N Save, New World, and Write Price.
41. In the competition analysis below, full regard is given to the competitive impact on these stores from large convenience stores that fall outside the defined market.
42. In the Commission's view it is not necessary or appropriate to place in discrete markets "discount" supermarkets and "full service" supermarkets. The Commission considers that they are in different market segments rather than in different markets.

#### *Geographic Dimensions of the Supermarket Market*

43. In its report provided to the Commission with the application, NZIER stated that it found that the limiting distance between stores within which stores are substitutes from the point of view of customers was 5.5 km for full service supermarkets and 8 km for discounters. It has acknowledged, however, that any figure cannot be hard and fast and should be based on groups of people rather than circles around supermarkets.
44. The Commission has not previously attempted to define the geographic dimensions of the market with any precision. To do so in this case would be an extremely difficult exercise. The answer would vary from region to region with such factors as population density and demographics, the level of motor vehicle ownership, the ease of traffic movement, physical impediments to transportation, the average size of the shopping basket, and so on.
45. The Commission believes that it would be impractical to attempt to define separate dimensions for each part of the country. Rather for the purpose of analysing the current application it has assessed factors which are relevant to the area, and has adopted a conservative distance which it has used as a starting point for the consideration of the impact on competition in areas where the acquisition would appear to lead to a significant degree of market concentration.
46. In reaching a figure for this distance the Commission has had regard to the views of the supermarket chains and other retailers, the evidence of distance shoppers travel to supermarkets at present, the impact on supermarket shopping patterns of the opening of a new supermarket, and the economic model produced by NZIER.

#### The NZIER Model

47. In its assessment of the dimensions of the geographic market, NZIER has taken into account:
  - ? the maximum reduction in sales revenue which a supermarket could withstand if a 5% price increase was to be profitable (28.6%);
  - ? the minimum size of the shopping basket represented by the highest spending customers who account for 28.6% of sales revenue (\$160 for food barns and \$110 for full service supermarkets);

- ? the additional cost of groceries faced by these customers if the supermarket increased its prices by 5% (at least \$8 (160 x 5%) for food barn customers and at least \$5.50 (\$110 x 5%) for full service supermarket customers); and,
  - ? Motor vehicle and time costs faced by customers travelling to supermarkets (50 cents/km).
48. From this information NZIER has calculated that a 5% price increase would not be profitable for a supermarket if customers had an alternative supermarket within 8 km (in the case of a food barn), or 5.5 km (in the case of a full service supermarket). It has suggested, therefore, that if the distance between two supermarkets is less than 8 km (or 5.5 km) those supermarkets fall within the one geographic market.
  49. The Commission notes that NZIER has intended that its calculations be used as a general guide rather than as a precise measurement. Also, it notes that NZIER was of the view it had adopted a conservative approach to its analysis when there was a range of possible options, by adopting the figures which would lead to a narrower rather than a broader geographic market.
  50. Nevertheless the Commission has some reservations about NZIER's assessment of the dimensions of geographic markets. Some of the bases used in its analysis will not apply across the board. For instance, where car ownership levels are low, or there are crowded roads or physical barriers to travel, the average cost of transport between supermarkets is likely to exceed 50 cents/km. Other factors relevant to the analysis which can vary from supermarket to supermarket include the population spread, the average size of shopping baskets, the ratio of fixed and variable costs, and so on.

#### Views of Supermarket Chains on Geographic Dimensions of the Market

51. In brief, Progressive considered the assessment made for it by NZIER of the geographic dimension of the market was very conservative.
52. Woolworths also said that it believed the NZIER assessment was conservative and gave examples of where new stores beyond those distances had a significant impact on existing Woolworths stores.
53. SuperValue/FreshChoice indicated views similar to those of Woolworths.
54. In contrast, the three Foodstuffs companies each considered that the 5.5 km and 8 km distances over which supermarkets were claimed to compete were unrealistically large. Foodstuffs (Auckland) stated that an 8 km radius for a discount group is highly ambitious. It said that consumers are driven by matters of convenience much more than would be indicated by the NZIER research and that Foodstuffs' catchment studies indicate that supermarket penetration falls way far more quickly than the exercise undertaken by NZIER would suggest. It suggested to Commission staff that 3 km was a reasonable maximum distance over which full-service supermarkets compete, and that distance would be greater when there is a discount supermarket.

#### Distance Travelled by Shoppers

55. The Commission sought from each of the main chains information they had on the distance customers travelled to do their supermarket shopping.
56. Progressive made reference to marketing reports it had commissioned. It stated:

[

]

57. Woolworths stated:

[

]

58. Foodstuffs (Auckland) provided the Commission with information from three studies it had carried out which indicate that:

[

]

59. The Commission notes that the distance shoppers travel to supermarkets under current circumstances is not directly relevant to the test applied to determine the market dimension. (The more relevant question is how far would shoppers be prepared to travel in the event of a small, yet significant, price increase.) Nevertheless it provides some indication of the willingness of customers to travel reasonable distances to the supermarket of choice.

60. Because of the confidential nature of the information provided by the different companies, the Commission has not been able to reconcile the information provided by the three companies. It appears that the survey and comments of Foodstuffs do not line up with those of Progressive and Woolworths. From the information provided the Commission has concluded only that a reasonably significant proportion of the population currently travel 4 km or more to undertake supermarket shopping.

#### Impact on Existing Supermarkets from the Opening of Competing Supermarkets

61. The Commission sought from each of the supermarket companies information about the impact of new store openings on their stores. Where possible, monthly sales figures six months before the opening and six months after were provided.

62. These figures did not show a totally consistent pattern. Clearly the turnover of many stores were affected by external factors other than the appearance of a new competitor in the area. However, the Commission believes that it is possible to draw some general conclusions from the information provided.

63. First, the greatest impact appears to arise when a discount supermarket is opened in an area that had previously been served by full service supermarkets. As stated by Mr Shelton (for Progressive) it can be inferred that “a new discount supermarket is more likely to attract price conscious shoppers from a greater distance, especially those who do not have access to a discount supermarket in their area or those who drive some distance to undertake major monthly shop at a discount supermarket outside their area”. A new discount store appears to have a significant impact on other stores up to 8 – 10 km away.

64. Second, a new full service supermarket appears to have an immediate impact over a smaller distance – perhaps around 5 km. It has been suggested that typically a new

supermarket that seeks to compete on range and service builds up its customer numbers over a longer period. A high level of service does not have the immediate drawing power that lower prices may have.

65. The evidence from the opening of new stores is consistent with the view that reasonable numbers of supermarket shoppers are prepared to travel up to 10 km, particularly where there is the sort of price advantage a discount store has over a full service store. This advantage is commonly in the 5-10% range. (To achieve this advantage customers will normally be required to accept lower service levels and a smaller range of goods from which to choose.)

#### Conclusion on the Geographic Dimensions of the Market

66. The Commission has concluded that there is not one sized market that applies to all areas. Rather there are a range of factors which will influence how far customers will be willing to travel when faced with a small but significant price increase.
67. The Commission is satisfied from the information provided to it that stores within 5 km of each other are generally substitutable for each other, and in many regions the dimensions of the market will be greater, particularly where there is a discount store. It is noted that this figure could change in the future if there are changes in the cost of commuting.
68. The Commission has adopted as a starting point for its competition analysis geographic markets with a radius of 5 km. Where there are competing stores within consecutive 5 km distances, by the chain of substitution those stores will fall within the one market and the market will, therefore, be greater than 5 km in dimensions.
69. In each area where the proposed acquisition would lead to a high level of concentration, the Commission has given careful consideration to the special features applying to those areas to determine whether they justify using a market greater or less than 5 km in radius.

#### *The Wholesale Supply of Groceries*

70. Supermarkets and groceries together account for around 43% of retail sales of fast moving consumer goods ("FMCG"), 63% of household food FMCG expenditure and around 20% of non-food FMCG expenditure.<sup>4</sup> Clearly access to supermarket outlets can be a critical factor in the wholesaling of food and non-food grocery items.
71. Consideration of the proposed acquisition requires an assessment of the market power that would be held by the merged entity as buyers in the wholesale market. The Commission considers that this can be analysed fully using a national market. Most suppliers supply nationally and there do not appear to be important differences in the way the market operates in different parts of the country.

#### *Conclusion on Market Definition*

72. The Commission concludes that the relevant markets for the consideration of the application are:

---

<sup>4</sup> Coriolis Research *Fast Moving Consumer Goods Retailing in New Zealand, Report to Progressive Enterprises, June 2001.*

- ? The market for the retailing of grocery items in supermarkets, incorporating regional markets not less than 5 km in radius; and
- ? The national market for the wholesale supply of groceries.

## COMPETITION ANALYSIS

### Introduction

73. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of dominance.

### *The Dominance Test*

74. Section 47(1) of the Commerce Act prohibits certain business acquisitions:

- “No person shall acquire assets of a business or shares if, as a result of the acquisition, -
- (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
  - (b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”

75. Section 3(9) of the Commerce Act states:

“For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and 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 and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-

- (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
- (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
- (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

76. The test for dominance has been considered by the High Court. McGechan J stated:<sup>5</sup>

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”

...

“Dominance includes a qualitative assessment of market power. It 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*.”

77. Both McGechan J and the Court of Appeal, which approved this test,<sup>6</sup> stated that a lower standard than “a high degree of market control” was unacceptable.<sup>7</sup> The Commission has acknowledged this test:<sup>8</sup>

<sup>5</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

<sup>6</sup> *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>7</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.”

78. The Commission’s *Business Acquisitions Guidelines* state:

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor {or} customer reaction.”

...

“A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.”<sup>(p21)</sup>

79. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined.

80. The Commission applies the dominance test in the following competition analysis.

#### *Market Concentration*

81. An examination of concentration in a market often provides a useful first indication of whether a merged firm may or may not be constrained by others participating in the market, and thus the extent to which it may be able to exercise market power.

82. The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of s 47 of the Act -

“In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:

- ? the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
- ? the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.” (p 17)

83. These safe harbours recognise that both absolute levels of market share, and the distribution of market shares between the merged firm and its rivals, is relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Commission went on to state (at page 17) that:

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”

84. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by s 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry

---

and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>8</sup> *Business Acquisition Guidelines*, Section 7

within the market and constraints provided through market entry, also typically need to be considered and assessed.

## **The Market for the Retailing of Groceries in Supermarkets**

### *Introduction*

85. The section below comments on factors affecting competition and market power in supermarket retailing in general. An analysis of the impact of the acquisition in the relevant geographic markets then follows.
86. Based on AC Nielsen data, Progressive<sup>9</sup> stores currently account for around 24% of supermarket shopping, while Woolworths stores account for around 18%. Implementation of the acquisition would therefore result in the combined Progressive/Woolworths accounting for around 42% of all supermarket shopping nationally. It would face competition from each of the three Foodstuffs companies, which collectively account for a market share of about 58% nationally.<sup>10</sup>
87. The number of stores in each banner group, as provided by Coriolis Research, is shown in Table 1 (over page).

---

<sup>9</sup> For the purpose of this analysis, the Commission has included SuperValue and FreshChoice supermarkets with those owned by Progressive.

<sup>10</sup> It is noted that sales made by Asian supermarkets are not included.

**Table 1**

<b>Company</b>	<b>Banner Group</b>	<b>Number of Stores</b>
<b>Progressive</b>	Foodtown	30
	Countdown	28
	3 Guys	9
	SuperValue/FreshChoice	38
	<i>Total Progressive</i>	<b>105</b>
<b>Woolworths</b>	Woolworths	50
	Price Chopper	18
	Big Fresh	13
	<i>Total Woolworths</i>	<b>81</b>
<b>Foodstuffs (all three companies combined)</b>	New World	123
	Pak'N Save	32
	Write Price	8
	<i>Total Foodstuffs</i>	<b>163</b>

*Existing Competition*

88. The applicant contends that competitive constraint exists in each of the relevant geographic markets. In particular, it considers that Foodstuffs holds significant market power, with the ability to constrain the merged entity.
89. The Commission considers that each of the Foodstuffs companies is a strong competitive force in its region. In particular, the Commission notes that:
- ? All three Foodstuffs companies have increased their market share over recent years. According to information prepared for the applicant by Coriolis Research, a market research firm, Foodstuffs companies have exhibited the fastest growth level within the supermarket sector in the 1995-2000 period with a growth of their market share in excess of 7%.<sup>11</sup> This contrasts with Woolworths and Progressive, whose market shares have declined by 7% and 2 % respectively over the same period. Coriolis Research has estimated that 26 of the top 30 supermarkets nation-wide are now Foodstuffs' stores;
  - ? Foodstuffs' Pak'N Save stores provide the major reference point for the setting of retail prices for most grocery products sold in supermarkets. As noted by Coriolis Research, the Pak'N Save format has proven very successful, and has been the main source of the Foodstuffs' growth both in terms of the number of stores developed, and sales volume generated. Coriolis believes that this has been achieved by Pak'N Save offering groceries at very competitive prices;
  - ? each of the Foodstuffs companies appears to have the resources, infrastructure and buying strength necessary to continue to play a major role in the market.

<sup>11</sup> The Coriolis analysis is based on data from Statistics New Zealand, AC Nielsen, and Dairy Farm, FAL and Foodstuffs' annual reports.



*Constraint from Non-Supermarket Retailers*

90. The applicant has submitted that the merged entity's competitors in various specialist categories also exercise a significant constraint, and that the trend is for competition from those sources to continue, and to intensify. The applicant cites the following existing suppliers of goods in this category:
- ? Star Mart, a chain of convenience stores developed by Caltex New Zealand at its service stations and other sites. Currently there are 28 stand-alone Star Mart stores with plans to develop further stores as sites become available;
  - ? other service station convenience stores (eg "BP Select", "Mobil on the run", etc);
  - ? The Warehouse, which stocks a range of dry grocery goods, including confectionery lines, soft drinks, and washing powders;
  - ? bulk discounters, such as Bin Inn;
  - ? "category killers", such as the Mad Butcher and Bakers Delight;
  - ? Asian and other stores catering for ethnic food and other requirements;
  - ? fresh produce outlets, including Pumpkin Planet and Vegie World; and
  - ? hardware stores, dairies, butchers, greengrocers, liquor stores, etc.
91. Most of the above categories of retailers have shown growth over recent years, and appear likely to continue to develop in future. The Commission notes that:
- ? The major impact of specialist retailers has been in the major metropolitan areas and Auckland in particular;
  - ? Convenience stores carry a smaller range of goods than supermarkets. For example, convenience stores tend to stock products for immediate consumption (for example, soft drinks) and other convenience lines (for example, milk, bread, snack foods etc). Their prices tend to be significantly higher than those of supermarkets. The applicant, however, has provided information showing that certain specialist fresh produce and butchery shops are selling products at lower prices than supermarkets in close proximity to their stores;
  - ? Although grocery shopping patterns and behaviour are changing, the available information indicates that supermarkets continue to provide the major destination for the main grocery shop for the majority of New Zealand consumers. However, there is information to suggest that specialist retailers in some product lines (eg fresh produce and meat) are exercising a greater impact than in the past. Should a supermarket increase its prices unilaterally by a significant amount, it is likely to face the loss of some business to specialist stores; and
  - ? To an extent, supermarkets act as a convenience store for consumers living in the immediate vicinity. That is, these consumers buy their bread and milk at the supermarket, separate from their main grocery buying expedition. There are usually other convenience stores nearby who would provide a satisfactory alternative if the supermarket were to increase prices on convenience lines.
92. For these reasons, the Commission attaches some limited weight on the ability of specialist and convenience retail outlets to provide a competitive constraint. The extent

of constraint will, however, depend on the specialist category, and the specific region. For example, fresh produce outlets are likely to impact on supermarkets, while the tendency to purchase fresh produce at specialist outlets appears to be more prevalent in Auckland, and some other large metropolitan centres. In contrast, the Commission has been advised that certain speciality and convenience stores, such as Bin Inn and The Warehouse, have only a relatively limited impact on supermarkets. [

] However, on the basis of available information, the Commission cannot discount the possibility of specialist retailers exercising a more significant role over time.

### *Potential Competition*

93. The Commission considers that potential competition to the market, from new entry or expansion by existing market participants, can act as a constraint on the behaviour of the merged entity in that market. An assessment of conditions relevant to entry and expansion conditions is provided below.

### Access to Suitable Sites

94. The Commission has previously identified the issue of access to a sufficiently large site as a key requirement for supermarket development. This is particularly important for larger supermarkets, such as those in the Pak‘N Save and Countdown formats.
95. Foodstuffs contend that there are difficulties in obtaining access to suitable sized sites. This may require the aggregation of individual parcels of land for a supermarket development, which may take some time.
96. While it appears that access to an appropriate site does not provide an impediment in many smaller provincial centres, it is often a major issue in metropolitan areas, where there is a greater pressure on land. Even in some smaller centres, there may be limited scope for supermarket development because of planning stipulations. Access to a suitable site is also linked to resource consents (see below).
97. Expansion of an existing site is unlikely to raise any major regulatory issues, but will depend on the nature and location of the site as well as land availability.

### Resource Consents

98. In many instances, it is necessary to obtain appropriate resource consents, or similar planning designations, from the relevant local authority before a supermarket can be established. This can be a costly and lengthy process. For example, the Commission is aware that in some instances, it can take 10 years or more to obtain the relevant planning consents. In the case of a proposed Pak‘N Save development at Wairau Park on Auckland’s North Shore, Foodstuffs (Auckland) has been endeavouring to obtain planning approvals to develop a supermarket for over 10 years. It has faced resistance from the local council, which opposes the development of supermarkets away from traditional shopping precincts. Progressive, Woolworths and other retail interests, also oppose the proposed development. In this case, on the basis of available information, the Commission considers that it is likely that at least another two years will be required to obtain the necessary consents, and to construct a supermarket at the Wairau Road site.

99. However, there are examples of resource consents taking a much lesser period of time, while approvals to expand existing sites are less likely to cause major difficulties. The key consideration appears to be the zoning status of the land. If the site does not have the appropriate classification for supermarket development, this is likely to cause delays and involve significant compliance costs. Subject to obtaining the appropriate consents, supermarkets can be erected relatively quickly (for example, NZIER has suggested 6-9 months).

#### Economies of Scale/Critical Mass

100. To be a viable and effective operator, a supermarket chain must achieve a minimum economic size to justify the capital expenditure and other infrastructure costs, although this will depend on the extent and nature of services offered. Size is also necessary to achieve the buying power necessary to compete with the incumbent chains.

#### Prospects for New Entry

101. The applicant contends that there is the possibility of entry from an Australian supermarket group. It notes that the Commission has acknowledged such a possibility previously. In particular, the applicant considers that there is a real possibility of entry from Aldi, a German discount grocery retailer. Aldi has opened around 13 stores in New South Wales, Australia, since the beginning of the year, and is in the process of expansion into Victoria . [

]

102. The Commission notes also that, apart from the development of new supermarkets by the existing operators there have been no examples of *de novo* entry for at least 10 years. Indeed, consolidation has been the major trend over that period.

#### Conclusion on Potential Competition

103. In light of the above factors, the Commission considers that *de novo* entry cannot be relied on to constrain any market power held by the merged entity.

#### *Expansion*

104. The scope for existing Foodstuffs companies to expand their existing presence will vary region by region. This will be affected by such factors as availability and access to suitably large parcels of land, zoning considerations, and where applicable, the ease/difficulty of obtaining resource consents. This matter has been considered by the Commission within each of the relevant geographic markets.

#### *Constraint from Suppliers*

105. The applicant has suggested that supermarkets are constrained to a significant degree by their suppliers and that suppliers are in a position to exercise countervailing power. It has noted that suppliers to supermarkets include some of New Zealand's and some of the world's largest companies.

106. However as discussed elsewhere in this report, the Commission considers that suppliers are now in a relatively weak position in their relationship with the supermarket chains. Most suppliers spoken to believe that, because of the very large amount of retail grocery trade passing through the small number of supermarket chains, suppliers are much more dependent on supermarkets than the other way around. Examples were given where major suppliers were “disciplined” effectively by supermarkets withdrawing shelf space from them for a period of time.
107. The Commission does not consider that suppliers are in a position to exercise material countervailing power on supermarkets.

*Constraint from Pricing Behaviour*

108. The applicant has argued that, irrespective of the number of competing supermarkets in any geographic market, each banner group faces restrictions on its ability to increase prices in individual stores.
109. The applicant has advised that the following currently applies:
- ? the head office of each supermarket chain sets the price that can be charged in each of its stores (or at least the maximum price – some chains give some discretion to store managers to reduce prices to meet local circumstances). The range of goods in each store and the central buying practice means that it would be impractical and inefficient for prices to be determined other than by the head office;
  - ? to achieve coordination and minimise promotional costs, it is necessary for special promotions to be run from head office;
  - ? the head office of each chain has an incentive to preserve the overall reputation of the banner group. This reputation could be at risk if any store gained a reputation of being high cost or of providing a poor service; and
  - ? the advertising and promotion of each banner group takes place on a regional (at least) basis. Special advertising in selective areas, such as in the immediate vicinity of one store, would usually be very inefficient. Foodtown, for instance, has one mailer throughout the North Island. Each store in the region covered by the promotion is required to offer the advertised goods at the advertised prices.
110. To test the proposition that the above factors provide a constraint on individual stores pricing behaviour now, and whether they would if the proposed acquisition went ahead, the Commission has considered the prices being charged and level of service offered by supermarkets in towns where there is only the one supermarket. Kaitaia (Foodstuffs (Auckland)), Dargaville (Woolworths) and Huntly (Progressive) are examples. In those supermarkets prices and service are at or very close to levels elsewhere, including in areas of quite intense competition.
111. The Commission considers that the above factors may constrain pricing behaviour to some extent in the future. The Commission recognises that it is possible a chain could change its pricing policies and be prepared to introduce store by store pricing, although at present such an approach does not appear to be practical. The Commission has placed some weight on these factors in its analysis of the individual markets below, but less than it gives to the existence of a nearby competitive store.

*Conclusion on Competitive and other Constraints*

112. The Commission concludes that where it has a significant presence in a geographic market, Foodstuffs will provide an effective constraint on the merged entity. In most markets where it has a presence, Foodstuffs will have the ability to expand that presence, including by increasing the size of its store in some instances. However, the Commission recognises that the construction of a new store can sometimes face a major barrier in obtaining consent under the Resource Management Act.
113. The Commission places limited weight on the constraint provided by competition from specialist and convenience stores.
114. The Commission is not satisfied that *de novo* entry by a new chain is sufficiently likely to act as an effective competitive constraint. Nor does it consider suppliers provide an effective constraint on supermarkets.
115. The Commission considers that national and regional pricing and advertising place some restriction on supermarket chains from increasing prices in areas where there is not immediate competition from other supermarkets.

**Geographic Markets of Possible Concern**

116. The Commission has identified the following markets in which the parties to the acquisition would have market shares exceeding, or close to the “safe harbours” outlined in the Business Acquisition Guidelines:
- ? Te Awamutu;
  - ? North Shore Auckland;
  - ? West Auckland;
  - ? Nelson/Stoke/Richmond; and
  - ? Tauranga/Mt Maunganui.

*Te Awamutu*

Overview

117. Te Awamutu is serviced by two supermarkets: a 3 Guys store, which is operated by Progressive, and a Woolworths store. The nearest supermarkets are located at Cambridge (23 km) and Hamilton (28 km).

Market Shares

118. Market share estimates based on sales turnover information obtained from Progressive and Woolworths are outlined in Table 2 below:

**Table 2:  
Estimated Market Shares in the Te Awamutu Market**

	<b>\$ Sales Turnover (GST incl)</b>	<b>Market Share (%)</b>
Progressive	[ ]	[ ]
Woolworths	[ ]	[ ]
<i>Total</i>	[ ]	[ ]

### Dominance Assessment in the Te Awamutu Market

119. As noted above, Progressive has given an undertaking to divest all of its equitable interest in the land and buildings located at [ ], Te Awamutu, which is currently operated as a [ ] supermarket. This would mean that implementation of the acquisition would not lead to any aggregation of market share. Nor would it raise any other competition concerns.

### Conclusion on Dominance

120. The Commission concludes that, subject to the divestment undertaking, implementation of the acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in this market.

### *North Shore of Auckland*

#### Overview

121. The Commission has assessed below the competitive impact of the proposed acquisition in the North Shore as a whole. However, it also recognises that there are particular features of the region, which may suggest that the size of the markets could be smaller than elsewhere. In particular, the Commission is aware that traffic congestion at times may limit the distance shoppers are prepared to travel. The Commission has also considered separately below the region within the North Shore where there is the greatest level of concentration arising from the acquisition as if it were a distinct market. This area encompasses Glenfield, Birkdale, Beachhaven, Birkenhead and Northcote.
122. The North Shore as a whole extends from Torbay in the north along the East Coast bays to Devonport in the south. It also includes the adjoining suburbs of Glenfield, Birkenhead, Northcote and surrounding residential areas. The North Shore region has been characterised by rapid population growth over the past decade. The current population is about 180,000.
123. There are currently 16 supermarkets on the North Shore. Progressive operates six stores throughout the region: five Foodtown stores and one Countdown store. Woolworths has five supermarkets, and Foodstuffs (Auckland) has five supermarkets: four New World and one Pak’N Save. In addition, Foodstuffs (Auckland) is proposing to develop a Pak’N Save store at Wairau Road, but has experienced lengthy delays in obtaining a resource consent (see paragraphs 98-99 for details).
124. As discussed above, Progressive has undertaken to divest its legal and equitable interest in the land and buildings at 180 Mokoia Road, Birkenhead, which is currently operated as a Foodtown supermarket. The store occupies a stand-alone leased site. The current lease is due to expire on [ ]

#### Market Shares

125. Market share figures for the North Shore, which are based on sales turnover figures provided by each of the market participants, are provided in Table 3 below.

**Table 3:  
Estimated Market Shares in the North Shore Market**

	<b>\$ Sales Turnover (GST inclusive)</b>	<b>Market Share (%)</b>
Progressive	[ ]	[ ]
Woolworths	[ ]	[ ]
<i>Combined Entity</i>	[ ]	[ ]
Foodstuffs	[ ]	[ ]
Progressive Birkenhead	[ ]	[ ]
<i>Total</i>	[ ]	100

126. Foodstuffs notes that, in respect of its Pak’N Save supermarket at Albany, the location of the store at the northern perimeter of the North Shore market, and its close proximity to the motorway, leads to it transacting significant business from outside the catchment area. On the basis of its survey analysis, Foodstuffs (Auckland) estimates that around [ ]% of the turnover of the Albany store is transacted from areas beyond the affected market, as it is normally defined. As a result, Foodstuffs (Auckland) considers that the sales turnover for its North Shore supermarkets reduces by around [ ] to [ ].
127. However, for the purpose of assessing the relevant market shares the Commission considers that it is appropriate to attribute the entire sales turnover figure of the Albany supermarket to the North Shore market. This is because the Albany supermarket is situated within the boundaries of the North Shore market, and failure to make similar adjustments to the sales turnover figures of the other market players, may distort the overall market shares. However, even if the market share calculations were adjusted to reflect the issue raised by Foodstuffs (Auckland), this is unlikely to lead to any material change to the conclusions reached in this decision.
128. Having regard to the factors discussed above, and the divestment undertaking, the acquisition would result in Progressive increasing its market share from around [ ]% to about [ ]%. Foodstuffs (Auckland) would hold [ ]% share of the market. The remaining [ ]% is potentially available for a rival supermarket operator.

#### Constraint from Existing Competition

129. The applicant submits that the combined entity would continue to face a sufficient competitive constraint from Foodstuffs (Auckland). In particular, it notes that Foodstuffs (Auckland) has a very large Pak’N Save store at Albany, which since its opening in August 1998, has developed a substantial supermarket business.
130. The applicant has provided information to show the effect of the Albany store turnover on its own stores on the North Shore, and the ability of the Albany store to draw customers from throughout the North Shore area. [ ]

131. [ ]

]

132. The applicant has also claimed that consumers on the North Shore are highly mobile, often travelling a considerable distance from their homes for work, and are willing and able to travel major distances to undertake their supermarket shopping. In support of this view, it has provided data and analysis prepared by McDermott Fairgay Group Ltd relating to North Shore shopping trends. Progressive claims that the material supports the proposition that a sufficiently significant proportion of shopping is performed outside generalised catchment areas based on a main shopping centre. The Commission acknowledges that such data indicates that North Shore residents travel significant distances, but is not necessarily conclusive that they travel such distances to carry out their supermarket shopping on a regular basis.

133. Foodstuffs (Auckland) considers that the Albany store has a limited impact in the southern parts of the North Shore. It notes however that:

“There are specific features of Albany Pak’N Save which makes {its impact on other stores in the region} greater than normal for the opening of a new store. These are:

- ? Albany Pak’N Save at 90,000 sq ft is significantly the largest in New Zealand.
- ? The roading structure on this part of the North Shore, particularly the significance of the motorway, greatly assists access. This does not apply to the lower parts of the shore (especially Birkenhead, Highbury, Northcote) where it constitutes a significant geographic barrier in this context.
- ? Albany Pak’N Save is our only Pak’N Save on the North Shore, and thus its pulling power extends over a greater distance than normal.”

134. Information provided by Foodstuffs (Auckland) show that more than [ ]% of sales of Albany Pak’N Save are made to those living further than 5 km away from the store.

135. [

] New World stores normally,  
however, draw custom from a much narrower catchment area than a discount barn.

136. [

]

137. The Commission considers that the Albany Pak’N Save has had an important impact on the North Shore, particularly in the northern part. It currently occupies a substantial site in an expanding town retail centre. The store is currently generating a weekly turnover of close to [ ] per week, and accounts for around [ ] of supermarket turnover on the North Shore. It is located in close proximity to the motorway and, therefore, is readily accessible for many residents on the North Shore, although traffic conditions, and other factors will affect its accessibility at certain times.

138. The Commission recognises that the Albany store, like other stores, is limited by the size of its store, the number of checkouts, and car parking spaces available at any one time. However even if it was to face capacity constraints in its present format, there is scope in the short term to accommodate additional shoppers by, for example, extending trading hours, or for consumers to alter their shopping habits (for example, shopping in less busier periods).

139. The Commission also considers that the Albany store exercises a valuable pricing constraint in adjoining areas. For example, it impacts in the areas along the East Coast Bays and in Glenfield.



140. Aside from the Albany Pak’N Save, the Commission notes that Foodstuffs (Auckland) also operates a relatively large New World store at Devonport, and a number of smaller outlets at Browns Bay, Milford and Takapuna respectively. These appear to draw most of their patronage from localised catchments. The Commission considers that such stores provide a competitive constraint, especially in their immediate catchment areas.
141. Foodstuffs (Auckland) also opened a New World store in June 1999 at Victoria Park, which is just south of the Auckland Harbour Bridge. While this supermarket lies outside the southern boundary of the North Shore market, it appears to have had a significant competitive impact, including on the North Shore. [
- ]
142. Nevertheless, the Commission considers that the Victoria Park New World exercises some competitive influence on the North Shore market. For example, it is likely that many North Shore residents travelling to and from Auckland City, and other parts of Auckland, patronise Victoria Park New World. Also, as noted by the applicant the prices at Victoria Park are for the most part the same as the New World stores at Devonport and Takapuna.
143. The Commission is also of the view that the combined entity would continue to be constrained to some extent by external factors, as discussed in paragraphs 90-111.

#### Constraint from Non-Supermarket Operators

144. The applicant has identified several examples of specialist and convenience retail stores, which provide competition on the North Shore. These range from the Mad Butcher, Bakers’ Delight, Green Rebel, and The Warehouse. Although for reasons outlined earlier the Commission discounts the extent of competition from such outlets, there appears to be a more pronounced trend in Auckland towards shopping at specialist and convenience outlets. In particular, there is information to show that Auckland consumers are more likely to purchase their fresh produce at speciality outlets, of which there are several chain store operations.
145. It is concluded, therefore, that competition from non-supermarket operators is likely to provide some constraint on the combined Progressive/Woolworths, if the acquisition proceeds.

#### Potential Competition

146. As noted previously, Foodstuffs has been attempting for over 10 years to establish a Pak’N Save supermarket at Wairau Road, but has been prevented from doing so because the site is not zoned for supermarket development, and because of lengthy delays in the processing of its application for a resource consent (see paragraphs 98-99 for further details). The application is opposed by several parties, including Woolworths, Progressive, Westfield (which owns several shopping mall complexes), and the North Shore City Council. A hearing in the Environment Court to consider the matter is currently scheduled for November of this year. However, on the basis of available information, the Commission cannot attach significant weight to the construction of the Wairau Road site proceeding within the two-year time, even in the event of a relatively speedy resolution of the resource consent issues.

147. The Commission concludes, therefore, that it cannot be certain that potential competition will provide an effective constraint on the combined entity in the North Shore market post-acquisition.

#### Conclusion on Dominance

148. The Commission concludes that, if the relevant market is as wide as the North Shore, the divestment undertaking, together with the competitive constraint from Foodstuffs (Auckland), and to a lesser extent non-supermarket operators, would be sufficient to prevent the combined entity from acquiring or strengthening a dominant position in that market.

#### *Impact on Glenfield and Adjoining Suburbs*

149. The Commission has also assessed the impact of the proposed acquisition within the Glenfield, Birkdale, Beachhaven, Birkenhead and Northcote suburbs (referred to collectively below as the Glenfield district), notwithstanding that they fall within the greater North Shore area.

#### Current Competition

150. Within the Glenfield district there are currently three Progressive stores and two Woolworths stores. However, as part of its application Progressive has undertaken to divest its interests in the Foodtown site in Birkenhead. That store currently represents around [ ] of total Glenfield district supermarket sales.
151. Foodstuffs (Auckland) does not currently have a supermarket in the Glenfield district.

#### Competition from the Fringes of the Glenfield District

152. There is one large Pak'N Save (Albany) and two relatively small New World supermarkets (Takapuna and Milford) within 5 km of the boundary of the Glenfield district.
153. The Albany Pak'N Save store services a relatively extensive catchment, including those in the Glenfield district. Information provided by Foodstuffs (Auckland) show that around [ ] of the turnover of the Albany store is transacted by those living in the Glenfield district. Of this [ ] comes from those living north of the Glenfield mall, and [ ] comes from those living south of the mall. These figures suggest that Glenfield district residents currently transact around \$[ ] million in the Albany Pak'N Save – which is equivalent to the sales of a moderate sized supermarket. It can reasonably be expected that if supermarkets in the Glenfield district increased their prices or reduced levels of service, the move to Albany would increase.
154. The Commission considers, however, that there are limitations on the ability of some consumers in the Glenfield district to access the Albany Pak'N Save. Those in the south would have a significant distance to travel, while others may face additional costs associated with traffic congestion.
155. The New World supermarkets at Takapuna and Milford provide an option for residents in the Glenfield district. However, they are relatively small and are of an older style, and some have suggested that the motorway acts as a barrier to the movement from Glenfield to those on the eastern side. The Commission has placed only a small weight on these supermarkets when considering competition within the Glenfield district.

### Other Constraints

156. The Commission also considers that post-acquisition Progressive would be constrained in its ability to exercise market power by the difficulty it would face if it attempted to operate different pricing policies in stores in neighbouring regions. This is discussed in paragraphs 108-111 above. There are practical and competitive reasons why supermarket banner groups operate one pricing structure over a wide area. This tends to be supported by evidence provided to the Commission that indicates that sole supermarkets in small towns, for instance, have similar prices to supermarkets facing much more direct competition.
157. The Commission has placed some weight on this factor when assessing the impact of the acquisition in the Glenfield district.

### Conclusion on the Impact in the Glenfield District

158. Taking the above factors into account and the divestment undertaking, the Commission is satisfied that the proposed acquisition would not give rise to significant competition concerns in the Glenfield district.

### *West Auckland*

#### Overview

159. The West Auckland market is defined in this report as that area extending from Avondale and Blockhouse Bay west and north west to Henderson and Massey.
160. There are currently 13 supermarkets in the West Auckland area. Progressive operates five supermarkets: one Countdown and four Foodtown stores. Woolworths has four supermarkets: three under the Woolworths brand, and one under Price Chopper. Foodstuffs (Auckland) runs two Pak’N Save stores and two New World stores in the region. In addition, Foodstuffs (Auckland) has one Pak’N Save store at Mt Albert, while Progressive has a 3 Guys store at Lynfield. Both the Pak’N Save and 3 Guys stores are close to the eastern boundary, as defined above.

#### Market Shares

161. Market share figures, which are based on sales turnover data supplied by each market participant, are outlined in Table 4 below:

**Table 4:  
Estimated Market Shares for West Auckland**

	<b>\$ Sales Turnover (GST inclusive)</b>	<b>Market Share (%)</b>
Progressive	[ ]	[ ]
Woolworths	[ ]	[ ]
<i>Combined Entity</i>	[ ]	[ ]
Foodstuffs (Auckland)	[ ]	[ ]
<i>Total</i>	[ ]	[ ]

162. The acquisition would lead to Progressive increasing its market share to about [ ]% in the West Auckland market, as defined. Foodstuffs (Auckland) would account for the remaining [ ]% share in this market. These market share figures fall just outside the Commission's "safe harbours".

#### Constraint from Existing Competition

163. The combined entity would face an effective constraint from Foodstuffs (Auckland), which is represented throughout this market with two large Pak'N Save stores, and two smaller New World banner stores. In addition, there is a large Pak'N Save supermarket at Mt Albert, which draws some of its patronage from consumers residing in the West Auckland area. According to Foodstuffs (Auckland), fractionally less than [ ] of the business conducted by the Mt Albert store, which has a turnover of around [ ], is contributed from people living west of Avondale.

#### Constraint from Non Supermarket Operators

164. The factors discussed above in the North Shore market are relevant to the assessment of the constraint provided by non-supermarket operators. Further, the Shelton Report notes the large number of produce outlets that are located within, or in close proximity to the West Auckland area.
165. The Commission concludes that competition from non-supermarket operators would provide some degree of constraint to the combined entity post-acquisition.

#### Constraint from Potential Competition

166. Entry and expansion conditions have been discussed above. For the reasons outlined above including the section on the North Shore, the Commission does not attach any significant weight to potential competition as providing an effective constraint on the combined entity in this market post-acquisition.

#### Conclusion on Dominance

167. The Commission considers that the combined entity would be constrained to a significant degree by Foodstuffs (Auckland), and to a lesser degree by non-supermarket operators. The Commission concludes, therefore, that the acquisition would not result, or would not be likely to result, in the combined entity acquiring or strengthening a dominant position in the relevant market.

#### *Nelson/Stoke/Richmond*

##### Overview

168. This market comprises Nelson together with the adjacent areas of Stoke and Richmond. The population of Nelson City (including Stoke), and Richmond is about 54,000.
169. The Commission considers that Nelson, Stoke and Richmond constitute a discrete market for the purpose of assessing the acquisition. This is because each of those areas contain supermarkets which are located within about 5 km on a consecutive basis of each other, and are connected by means of a major State highway.

170. Currently, there are eight supermarkets in the Nelson/Stoke/Richmond area. In Nelson City, Progressive has one Countdown supermarket, and Woolworths operates one Big Fresh supermarket. Foodstuffs South Island has three supermarkets in this market: a relatively large Pak‘N Save store at Richmond, and two smaller New World stores (one each in Nelson and Stoke). The remaining three supermarkets comprise two FreshChoice stores (one each at Stoke and Richmond), and a SuperValue store in Nelson, which are all operated under franchise to Progressive.

#### Market Shares

171. Estimated market shares based on sales turnover figures supplied by each of the market participants are provided below in Table 5. For the reasons outlined earlier, the market shares of FreshChoice and SuperValue have been attributed to Progressive for the purpose of the analysis.

172. The acquisition would result in the combined Progressive/Woolworths increasing its market share from around [ ] to about [ ]%. Foodstuffs South Island, which accounts for about [ ] of this market, would hold the balance of market share.

**Table 5:  
Estimated Market Shares in the Nelson/Stoke/Richmond Market**

	<b>\$ Sales Turnover (GST inclusive)</b>	<b>Market Share (%)</b>
Progressive	[ ]	[ ]
Super Value/FreshChoice	[ ]	[ ]
Progressive/Super Value/FreshChoice sub total.	[ ]	[ ]
Woolworths	[ ]	[ ]
<i>Combined Entity</i>	[ ]	[ ]
Foodstuffs (South Island)	[ ]	[ ]
<i>Total</i>	[ ]	100

#### Constraint from Existing Competition

173. The combined entity would face competition from Foodstuffs (South Island), with its Pak‘N Save supermarket at Richmond, and two smaller New World supermarkets in Stoke and Nelson.

174. However, Foodstuffs (South Island) contends that the topography of the region, and the nature of the roading system leads to limited access between Stoke and Nelson City, thereby inhibiting traffic movement between Richmond, Stoke and Nelson. Further, the owner-operator of the Pak‘N Save at Richmond has told the Commission that his store achieves [ ] He has provided some data based on customer cards, indicating that Nelson residents account for only around [ ] of shoppers who patronise the Richmond store, and contends that only around [ ] shop there on a regular basis. This is attributed to the reluctance of Nelson residents to incur the extra costs (including time costs), to travel to Richmond to undertake their supermarket shopping.

175. The applicant has provided data commissioned from the Bank of New Zealand for various Countdown stores to illustrate that discount barns draw customers from a greater catchment area than full service supermarkets. According to the data provided,

the Countdown store at Nelson draws less than [ ] of its custom from Nelson itself. The applicant also emphasises that the Countdown store at Nelson is much smaller than the Pak‘N Save store at Richmond, and therefore it is likely to have less drawing power than the larger Pak‘N Save store. This appears consistent with the Commission’s findings in other geographic markets where a Pak‘N Save store has been developed (eg North Shore).

176. Foodstuffs (South Island) states that its New World store in Nelson, which is located in the inner city, is severely restrained, as it does not have any “on-site” parking, relying instead on a nearby public parking facility. The store can neither develop any car parking sites of its own, nor can it expand its current store because of the physical limitations of the site.
177. Taking into account the above factors, the Commission considers that Foodstuffs (South Island) would provide a competitive constraint on the combined entity through its existing supermarkets, which are located in each of the major population catchment areas in this market. Further, there appear to be sufficient numbers travelling between Richmond, Stoke and Nelson on a regular basis for work, and other activities. Therefore, it is unlikely that that combined entity would be able to charge prices which do not correspond with those charged by Foodstuffs (South Island) in each of its locations. Moreover, as the Pak‘N Save store at Richmond draws customers from Stoke, it is likely to constrain the supermarkets in that catchment, which in turn would constrain prices in Nelson City. In this way, it is likely that Foodstuffs (South Island) would provide an effective competitive discipline throughout the entire Nelson/Stoke/Richmond market.
178. Accordingly, the Commission concludes that Foodstuffs (South Island) would provide a sufficient competitive discipline on the combined Progressive/Woolworths, if the acquisition proceeds.

#### Constraint from Non-Supermarket Outlets

179. There are a variety of specialty and general retail stores in this market, including The Warehouse, butchery shops and produce outlets.
180. Although such outlets provide some competition in this market, the Commission does not consider that they would be sufficient to provide effective competition on the combined entity (see paragraphs 90-92 for further details).

#### Potential Competition

181. Foodstuffs (South Island) claim that “There are severe barriers to entry into the Nelson City catchment due to the very tight zoning and the lack of flat land suitable for supermarket development.”
182. The Nelson City Council has told the Commission that its planning policies provide for supermarket development in the Inner City Zone, which incorporates the city centre and the fringe area. However, access to a site of sufficient size may raise difficulties for the construction of supermarket in central Nelson. The Council has also advised the Commission that there is quite a large site at Tahunanui, which is zoned industrial, and which therefore has the potential to be developed into a supermarket. In these circumstances, the Commission considers there may be scope for a rival supermarket

operator to open a store in Nelson, although it attaches less weight to this factor than existing competitive factors.

### Conclusion on Dominance

183. Taking into consideration the above factors, the Commission considers that the combined entity would face an effective competitive constraint, should the acquisition proceed. Accordingly, it is concluded that the acquisition would not result, or would not be likely result in any person acquiring or strengthening a dominant position in this market.

### *Tauranga/Mt Maunganui*

#### Overview

184. This market incorporates Tauranga, Mt Maunganui, Papamoa and surrounding areas of the Western Bay of Plenty. The population of this geographic region is around 90,000 and has been characterised by relatively high population growth over recent years.
185. There are nine supermarkets in the Tauranga/Mt Maunganui area. Progressive has three supermarkets, comprising two Countdown and one Foodtown stores. Woolworths operates three supermarkets, and Foodstuffs (Auckland) has three supermarkets: two New World stores and one Pak’N Save store.

#### Market Shares

186. Estimated market share figures based on sales turnover information provided by each of the supermarket chains, are provided in Table 6 (over page).
187. Implementation of the acquisition would lead to Progressive increasing its market share from about [ ] to around [ ]. Foodstuffs (Auckland), with around [ ] of this market, would hold the balance of the market share. On the basis of this information, the market share of the combined entity would fall within the Commission’s “safe harbours”.

**Table 6:  
Estimated Market Shares in the Tauranga/Mt Maunganui Market**

	\$ Sales Turnover (GST inclusive)	Market Share (%)
Progressive	[ ]	[ ]
Woolworths	[ ]	[ ]
<i>Combined Entity</i>	[ ]	[ ]
Foodstuffs (Auckland)	[ ]	[ ]
<i>Total</i>	[ ]	100

#### Constraint from Existing Competition

188. Following the acquisition, Foodstuffs (Auckland) is likely to continue to exercise significant competitive pressure on the enlarged Progressive/Woolworths. Foodstuffs (Auckland) has a major presence in Tauranga, with its Pak’N Save and New World stores, and at Mt Maunganui, where it has a single New World outlet.
189. Foodstuffs (Auckland) contends that the acquisition would raise competition issues at Mt Maunganui, where the combined entity would own three of the four existing outlets, including the only two outlets at Bayfair, a major shopping destination point in the Tauranga/Mt Maunganui area.
190. The Commission considers that while Tauranga and Mt Maunganui are physically separated there is considerable traffic movement between the two areas, primarily by means of a toll bridge.<sup>12</sup> That factor, combined with the strong constraint provided by the Pak’N Save and New World stores in central Tauranga (which are around 7 km on average from Mt Maunganui), would in the Commission’s view, offset any possible concerns arising from any undue concentration in the Mt Maunganui area.
191. In addition, the Commission considers that some competition would continue to be provided by specialist and convenience retail stores, including produce outlets like Pumpkin Planet, The Warehouse and butchery shops, such as Farmer Jones.

#### Constraint from Potential Competition

192. The Commission notes that resource consents have been granted to major property development projects at Gate Pa and Bethlehem, although consents for traffic have yet to be finalised. These sites are likely to provide scope for the development of supermarkets in the Tauranga/Mt Maunganui market. Further, the local council advises that there is a site suitable for supermarket development at Papamoa, a fast growing area in the Western Bay of Plenty. That site, which is zoned suitable for supermarket development, may provide further scope for expansion by a supermarket operator.

#### Conclusion on Dominance in Tauranga/Mt Maunganui

193. In light of the above factors, the Commission concludes that the acquisition, if implemented, would not result, or would not be likely to result in the combined entity acquiring or strengthening a dominant position in this market.

<sup>12</sup> A \$1 toll is charged on this bridge but it has been announced that this charge is due to end shortly.



## The National Market for the Wholesale Supply of Groceries

### Introduction

194. Supermarkets are a very important distribution outlet for most suppliers of FMCG in New Zealand. In a concentrated market, each supermarket chain has strong buying power. The proposed acquisition will significantly increase the proportion of product purchased by Progressive and therefore enhance its buying power. Concerns have been raised by some suppliers that the acquisition could result in Progressive becoming a dominant buyer.
195. Although supermarkets are a very important distribution channel they are not the only one. Other distribution channels include the route trade (such as dairies and petrol stations, although many of these are already supplied by supermarket-owned cash-and-carry operations), “category killers” (such as Pumpkin Planet and the Mad Butcher), and export. These represent alternative distribution channels for suppliers.
196. The importance of supermarket channels for suppliers vary significantly for different industries and firms. Table 7 below gives examples of the proportion of food products sold through supermarkets.

**Table 7:**

	Approximate proportion through NZ supermarkets
<i>Categories:</i>	
Wine	35%+
Meat	20%
Fruit and Vegetables	65-70%
Dairy Products	8%
<i>Manufacturers:</i>	
[            ]	15%
[        ]	85%
[            ]	97%
[        ]	99%

197. For meat, wine, and dairy products, which are all exported in significant volumes, New Zealand supermarkets do not account for a large proportion of production. Fruit and vegetable suppliers have a reasonably high level of dependence on supermarkets. For dry goods such as biscuits, bread and cereals the dependence is a lot higher, often in excess of 90% goes to supermarkets.
198. Despite recognition of other distribution channels, supermarkets have been considered alone for assessing market share. This is due to the difficulty of assessing an overall proportion of goods accounted for by supermarkets. The market shares below will therefore present a worse case scenario – that is, they will tend to overstate the importance of Progressive as a buyer in the market.

### Market Share

199. Market share for the merged entity has been assessed below. These market shares were assessed through consultation with industry parties. As noted earlier, the Commission has considered the three Foodstuffs co-operatives to be separate entities as it is the most conservative scenario in which to consider the acquisition.

**Table 8:  
Estimated Market Share for the National Market for the  
Wholesale Supply of Groceries  
(Supermarkets Only)**

Firm/Chain	Market Share (%)
Progressive Enterprises	[ ]
FreshChoice/SuperValue	[ ]
Woolworths	[ ]
<i>Combined Entity</i>	[ ]
Foodstuffs (Auckland)	[ ]
Foodstuffs (Wellington)	[ ]
Foodstuffs (South Island)	[ ]
<i>Total</i>	100

200. The market shares show the merged entity would have around [ ]% market share, which includes the market share of FreshChoice and Super Value. The next biggest purchaser is Foodstuffs (Auckland) which has a market share of around [ ]%, while Foodstuffs (Wellington) and Foodstuffs (South Island) have [ ]% and [ ]% respectively.
201. As noted above, these market shares reflect a worst case scenario. First, FCSV does not purchase all its goods through Progressive, however, its full market share has been allotted to the merged entity. Second, while being an important distribution channel, supermarkets are not the only distribution outlet for suppliers. Other outlets include the route trade (for those not supplied by supermarket-owned distributors), “category killers” (such as Pumpkin Planet), and export. In the case of some suppliers, supermarkets collectively account for a very small proportion of their production.

### Current Competitors

202. The merged entity’s main competitors for the purchase of goods are the three regional Foodstuffs companies. The Foodstuffs companies operate the Pak’N Save, New World and 4 Square banners. Pak’N Save is a particularly strong chain and has been experiencing strong growth at time when many other chains are static or declining. At a regional level, each of the Foodstuffs companies have very strong positions, and would account for about 50% of the supermarket throughput. Their position at a national level, however, is diffused somewhat because they generally purchase their products separately. Despite this, they will remain strongly competitive with Progressive for purchasing goods.

203. It is recognised that Progressive is likely to have more power against suppliers for a given market share than Foodstuffs due to its company structure. Progressive has full control over its supermarkets and operates on a national basis. This may give Progressive greater ability to threaten to withhold purchases of a supplier's products within their chain. In comparison, Foodstuffs' owner operators have final say on what they stock which lessens the ability of Foodstuffs as a group to threaten a supplier with a complete boycott of its product.

#### Conclusion

204. The Commission is of the view that current competitors will provide important alternative outlets for wholesale suppliers of groceries.

#### *Countervailing Power*

205. Over the past ten years there has been a significant shift in power between manufacturers and supermarkets. It is recognised that manufacturers such as Heinz Watties do not have the same power over supermarkets as they once did. Rather, supermarkets now hold a lot of influence over suppliers. However, there would appear to be a degree of mutual reliance on each other; manufacturers need supermarkets as a distribution outlet, while supermarkets need the brands to draw customers into the shop. This applies to firms with strong, established brands, such as Coca Cola Amatil, Heinz Wattie's, Goodman Fielder, and the milk companies.

#### *Conclusion*

206. The Commission has considered whether Progressive may acquire or strengthen dominance in the national purchasing market for the wholesale supply of groceries. Although Progressive, with its greater volumes, may increase its ability to gain discounts, the following conditions are relevant:
- ? Market share is not suggestive of a dominant position;
  - ? Although supermarkets are the major distribution channel, they are not the only one;
  - ? Three strong competitors exist in Foodstuffs (Auckland), Foodstuffs (Wellington) and Foodstuffs (South Island). These companies are all exhibiting strong growth; and
  - ? Some large manufacturers are likely to have some influence over the supermarkets.
207. The Commission is therefore satisfied that the acquisition will not result, or be likely to result, in any person acquiring or strengthening a dominant position in the national purchasing market for wholesale supply of groceries.

**OVERALL CONCLUSION**

208. The Commission has considered the likely effects of the acquisition in the following markets:

- ? The market for the retailing of grocery items in supermarkets, incorporating regional markets not less than 5 km in radius; and,
- ? The national market for the wholesale supply of groceries.

209. Having regard to the various elements of section 3(9) of the Act, and all other relevant factors, the Commission concludes that it is satisfied that the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any market.

**DETERMINATION ON NOTICE OF CLEARANCE**

210. Accordingly, pursuant to section 66(3)a of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Progressive Enterprises Limited of all the shares in Woolworths (New Zealand) Limited and/or its immediate holding company Denstree Corporation Limited.

Dated this 13<sup>th</sup> day of July 2001

---

M J Belgrave  
Chair