

## **Executive Summary**

This is an application by Goodman Fielder Limited (**Goodman Fielder**), or an interconnected body corporate of Goodman Fielder Limited, for clearance to acquire the assets of, River Mill Bakeries Limited (**River Mill**) (the **Acquisition**).

The Acquisition primarily gives rise to aggregation between Goodman Fielder's and River Mill's North Island bread manufacturing and distribution assets, and (to a minimal extent) Goodman Fielder's and River Mill's South Island flour manufacturing and distribution assets.

The Acquisition will not substantially lessen competition in any relevant market.

## **Rationale for the Acquisition**

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## **Bread market**

The bread market is highly competitive, and remain highly competitive post-Acquisition in particular due to:

- The continued presence of Goodman Fielder's principal competitor, George Weston Foods (**GWF**). GWF is part of the NZ\$17 billion Associated British Foods company, and has a strong portfolio of brands. GWF has scope to expand its sales in response to any attempt by Goodman Fielder to price above competitive levels post-Acquisition.
- The continued and likely increasing presence of franchise bakeries, such as Brumby's and Bakers Delight, along with other bakeries, which bake bread on site and which are increasingly competing directly with supermarkets, oil companies and the route trade.
- The countervailing power exercised by supermarkets, oil companies and the organised route trade. The effects of this countervailing power flow across the entire bread market because customers can, and do, acquire bread from a range of different retailers and channels.

## **Flour market**

River Mill owns Canterbury Flour Mills Limited (**CFM**), which supplies flour to River Mill's Huntly bakery. CFM currently supplies some volumes to third parties in the South Island and – adopting the Commission's previous approach to market definitions – the Acquisition therefore gives rise to aggregation in respect of industrial bagged flour.

However, CFM is a relatively small player in terms of sales of flour to external parties, and it imposes little competitive constraint on Goodman Fielder – the real competition occurring between Goodman Fielder and GWF. In addition, flour is currently imported into New Zealand (the Foodstuffs Auckland contract is currently held by Allied and is supplied ex-Australia). As a result, domestic flour prices are set to achieve import parity.

COMMERCE ACT 1986: BUSINESS ACQUISITION  
SECTION 66: NOTICE SEEKING CLEARANCE

Date: 16 January 2007.

The Registrar

Market Structure Team

Commerce Commission

PO Box 2351

WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

## **PART I: TRANSACTION DETAILS**

### **TO BE COMPLETED BY ALL APPLICANTS**

#### **1. What is the business acquisition for which clearance is sought?**

##### **1.1 Identify what is to be acquired and who is to acquire it.**

Clearance is sought for the acquisition by Goodman Fielder Limited (**Goodman Fielder**), or an interconnected body corporate of Goodman Fielder Limited of the assets of, River Mill Bakeries Limited (**River Mill**) (the **Acquisition**).

##### **1.2 Attach a copy of any contract or agreement relating to the proposed acquisition.**

Please see the attached.

#### **2. Who is the person giving this notice?**

This notice is given by:

Phil Hand  
General Manager  
Goodman Fielder Baking, NZ

### **Confidentiality**

#### **3. Do you wish to request a confidentiality order for:**

##### **3.1 The fact of the proposed acquisition?**

No.

##### **3.2 Specific information contained in or attached to the notice?**

Yes. Confidentiality is sought in respect of the information enclosed in square brackets (i.e., [ ]).

Confidentiality is sought under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- the information is commercially sensitive and contains valuable information which is confidential to Goodman Fielder and River Mill; and
- disclosure is likely to give an unfair advantage to Goodman Fielder and River Mill's competitors and prejudice unreasonably their commercial positions.

Goodman Fielder also requests it is notified of any request made to the Commission under the Official Information Act for the confidential information,

and that the Commission seeks Goodman Fielder's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

**4. Who are the participants (i.e. the parties involved)?**

**4.1 Participants**

The participants are Goodman Fielder and River Mill.

Goodman Fielder requests that all correspondence to it in respect of this matter be addressed in the first instance to:

Bell Gully  
48 Shortland Street, Auckland  
PO Box 4199, Auckland  
Attention: Phil Taylor/Torrin Crowther  
Phone: 09 916 8940 / 09 916 8621  
Fax: 09 916 8801

River Mill requests that all correspondence to it in respect of this matter be addressed in the first instance to:

Minter Ellison Rudd Watts  
88 Shortland St, Auckland  
PO Box 3798, Auckland  
Attention: Andrew Matthews  
Phone: 09 353 9847  
Fax: 09 353 9701

**5. Who is interconnected to or associated with each participant?**

**5.1 Acquirer group/associates:**

5.1.1 If the acquirer is a member of a group of interconnected bodies corporate, identify all members of the group.

5.1.2 Identify all companies in which the acquirer or its interconnected bodies corporate own 10% or more of the shares.

5.1.3 Identify any company which owns over 10% of the shares in the acquirer or any company of which the acquirer is a subsidiary.

5.1.4 Identify all interconnected bodies corporate of any company identified under 5.1.3 and all companies in which it, or its interconnected bodies corporate, own over 10% of the shares.

Please see the company structure diagram annexed as Annexure 1.

Because neither Burns Philp nor Rank have any relevant bread or flour interests in New Zealand, further details of their interconnected bodies

corporate are not provided. Further information can be provided if the Commission requires.

## 5.2 Target company group/associates

- 5.2.1 Identify all subsidiaries of the target company and all companies in which the target company or any subsidiary owns 10% or more of the shares.

River Mill currently owns 99.7% of Canterbury Flour Mills Limited (**CFM**), with the remaining 0.3% held by interests associated with Gerald Shand.<sup>1</sup> Post-Acquisition, Goodman Fielder will own 100% of CFM.

River Mill also owns 20% of New Zealand Fine Foods Ltd. This shareholding is not included in the Acquisition.

- 5.2.2 If any company owns over 10% of the shares in the "target company", and will continue to do so **after** the proposed acquisition, then identify all of the interconnected bodies corporate of that company **and** all companies in which it or its interconnected bodies corporate own over 10% of the shares.

The Acquisition is an asset sale pursuant to which Goodman Fielder will acquire the flour and bread assets and business of River Mill. Post-Acquisition River Mill's existing shareholders will continue to own River Mill (the company).

6. **Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?**

No.

7. **Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.**

Goodman Fielder's flour division supplies flour and dry pre-mixed product (e.g. muffin mixes) to a wide range of firms, including Brumby's and Bakers Delight. Goodman Fielder also sells flour to River Mill, where River Mill determines it is more advantageous than acquiring from CFM, or other sources, e.g. George Weston Foods Limited (**GWF**). Other Goodman Fielder divisions would also supply products to bakeries (such as Couplands and Yarrows), for example, dairy products and edible fats and oils.

Goodman Fielder also has a commercial arrangement with GWF pursuant to which each has agreed to supply product to the other in the event of a significant bakery/manufacturing breakdown.

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<sup>1</sup> Interests associated with Gerald Shand own 80% of River Mill.

8. **Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?**

No.

9. **What are the business activities of each participant?**

9.1 **Goodman Fielder**

Goodman Fielder is headquartered in Melbourne and Sydney and employs over 5000 people in Australasia and the Pacific Islands. It has manufacturing plants in Australia, New Zealand, Papua New Guinea, Fiji and New Caledonia. It:

- supplies branded and private label packaged baked goods, spreads, dairy products, smallgoods, sauces, dressings and condiments, convenience foods and various other grocery products to supermarkets and convenience stores (including service stations);
- supplies bulk and packaged edible fats and oils and flour products to food manufacturers and wholesalers in both branded and unbranded format; and
- is also the second largest manufacturer in the domestic New Zealand dairy market, competing across thirteen different categories including fresh milk, yoghurt, dips, cheese, butter and spreads marketed under the Meadow Fresh, Tararua, Chesdale, Puhoi Valley and Meadowlea brands.

(a) **Bread**

Goodman Fielder has baking plants in Auckland (two), Rotorua, Palmerston North, Wellington, Nelson, Christchurch, Hawkes Bay and Dunedin.

In Gisborne, Walter Findlay bakes for Goodman Fielder, GWF and River Mill. In Masterton, Breadcraft bakes for Goodman Fielder.

Goodman Fielder sells the following brands of bread: MacKenzie, Vogel's, Molenburg, Freya's, Nature's Fresh, Quality Bakers, Golden Bake, Sunny Crust and Country Split.

(b) **Flour**

Goodman Fielder has flour mills in Mt Maunganui and Christchurch.

Further information about Goodman Fielder's operations is available at [www.goodmanfielder.com.au](http://www.goodmanfielder.com.au).

## 9.2 River Mill

River Mill is an independent, privately-owned bread and ingredients manufacturer based in Huntly. It manufactures bread, small goods, pizza bases, frozen goods and cookies as well as importing and distributing a variety of food products. River Mill's cookie range is sold under the River Mill brand as well as house brands (Signature Range and Export Meats).

River Mill's bread brands are River Mill, Sun Raised and Millstone. It also produces house brands for Mad Butcher and Export Meats.

River Mill owns CFM in Ashburton, which currently produces over 300 tonnes of flour per week. CFM supplies approximately **[Confidential]**% of its production to River Mill with the rest being sold to a number of small/medium wholesale customers in the South Island and North Island. Wheat is supplied to the mill from South Island growers as well as imported from Australia.

## 10. What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

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## PART II: IDENTIFICATION OF MARKETS AFFECTED

### Horizontal Aggregation

## 11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

### 11.1 Introduction

In Goodman Fielder's view there are three markets relevant to the assessment of the Acquisition:

- the market for the production and sale of bread in the North Island (the **North Island Bread Market**);
- the market for the production and acquisition of industrial bagged flour in the North Island; and



- the market for the production and acquisition of industrial bagged flour in the South Island.

## 11.2 Bread market – Background

Consumers buy bread from a wide range of sources: supermarkets, oil companies, corner dairies, bakeries and speciality stores such as butchers and fruit and vegetable stores.

Bread consumers are highly price sensitive: approximately [CONFIDENTIAL]% of all loaf bread sales in supermarkets are made on promotion. (These figures are based on Aztec supermarket scan data for the period to 10/12/2006.) Figure 1 below highlights the relationship between price and quantity purchased for Molenberg sales at Foodtown and Woolworths stores. [CONFIDENTIAL

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Like most food items, the price of bread varies across channels. This reflects the size of the retailer (supermarket and oil company volumes justify better terms, for example) and also the convenience offered by corner dairies, oil companies and home bakeries.

While prices vary, there is relativity across channels, as a result of the tendency of shoppers to substitute across channels in response to price and convenience. The relativity is further bolstered by the presence of:

- oil companies/petrol stations: which compete squarely against corner dairies in terms of convenience (both outlets where petrol is available but also standalone food outlets, e.g. Caltex's StarMart), which have significant buying power;

- the more than 280 Four Square convenience stores nation-wide, whose owners are all members of the Foodstuffs co-operatives and which buy collectively with other cooperative members and hence achieve better buying terms; and
- other buying groups, such as the “Red Circle” group, which is a buying group of approximately 270 independent fuel outlets.

The wide range of outlets across a wide range of channels successfully competing for bread sales is consistent with the position in Australia. For instance, in Australia, over 26% of all bread is sold by franchise bakeries, such as Bakers Delight and Brumby’s. The oil channel is also growing in importance in Australia, particularly as the relationship between supermarkets and oil companies grows. There is evidence of a similar trend occurring in New Zealand. For example, Progressive Enterprises Limited (PEL) operates Woolworths Micro stores in various petrol stations.

### 11.3 Bread – Product Market

For the reasons set out below, Goodman Fielder considers today’s market conditions mean the bread market is properly defined as including loaves of bread sold in supermarkets, in-store bakeries, franchise bakeries (such as Bakers Delight and Brumby’s), independent (non-franchised) bakeries, petrol stations, traditional route trade (e.g. corner dairies) and specialist stores (such as fruit and vegetable shops, etc.).

#### (a) *Previous Commission Comment*

Prior to Decision 289 (Goodman Fielder/Defiance), in its *Quality Bakers/Klissers* decision, the Commission had concluded there was a single bread market, including plant baked bread and bread produced by in-store bakeries and independent and franchise bakeries (the latter which the Commission termed “hot bread” shops).

In Decision 289, the Commission said the “evidence suggests strongly” that the packaged bread from in-store bakeries is substitutable with that from the independent bakers.

The Commission said the question of whether speciality bread produced by in-store bakeries and “hot bread” shops should be placed in the same market was a “more difficult issue” and that “Staff have been unable to find any clear-cut evidence to decide the matter.” The Commission then noted that “it seems plausible to suggest that the various loaf types form a “chain of substitutes”, such that each adjacent pair along the chain are close substitutes, even though those at either end of the chain are not” and that if there were no break in the chain then (consistent with its conclusion the earlier *Quality Bakers/Klissers* decision) “there would be only one bread product market.” Nevertheless, Commission staff ultimately took the view the two products appear to differ in terms of convenience, marketing channels, and pricing:

- packaged bread was said to be used during the week for convenience for toast and sandwich making and consumers are very price conscious and show low brand loyalty; whereas
- specialty bread was more likely to be purchased during the weekend for its “hot freshness” value, with convenience and price being given less consideration.

A similar approach was adopted by the Commission in its *ABF/NZF* decision in 2004,<sup>2</sup> although the Commission in that case specifically referred to the taste factor – speciality breads been described as having an “interesting” taste, with packaged breads being more “neutral”. The Commission also said the price of packaged bread can range from \$0.99 to \$3.20, whereas specialty bread loaves sold by in-store bakeries can retail for between \$2.99 and \$3.25.

Goodman Fielder does not consider that, in today’s market, considerations of convenience, marketing channels, pricing or taste justify a finding of separate product markets. It is also firmly of the view that the “weekend” speciality bread approach is now very much a view of the market as it was when that conclusion was reached. It considers so called “specialty bread” is not a correct identification of the current “24/7” market, which sees independent and franchise bakers competing directly and aggressively with supermarkets and plant bakeries and identifying themselves as part of the broader bread market.

The Yellow Pages lists more than 1000 businesses in its “Bakeries” section, and many are located next to supermarkets. These bakeries bake bread on-site. Two large examples are Bakers Delight (with 39 outlets in New Zealand<sup>3</sup>) and Brumbys (with 21 franchisees<sup>4</sup> in New Zealand and over 300 throughout both New Zealand and Australia).

An AC Nielsen investigation into the extent to which shoppers shopped across channels for their grocery needs revealed that 45% of shoppers visited a bakery in the previous four weeks, and that the average shopper used 5.44 different stores to acquire groceries over a four week period.

(i) Types of bread

There is significant (and increasing) cross-over between the type of bread sold in bakeries, in-store bakeries and the type of bread sold on supermarket and route trade shelves. This cross-over extends to price and taste and is being aided by the steady increase of non-white (grain) bread sales at the expense of white bread in response to the “healthier” perception associated with non-white bread. For instance, a review of supermarket scan data

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<sup>2</sup> Decision 532.





<sup>3</sup> [www.whitepages.co.nz](http://www.whitepages.co.nz)

<sup>4</sup> <http://www.brumbys.com.au/News/>

reveals that white bread has declined from 50% of all bread sales at the beginning of 2004, to 35.6% of all sales as of 17 September 2006.

Independent and franchise bakeries sell a range of “traditional” loaves of bread, suitable for sandwich making and toast. These firms have access to “off-the-shelf” improvers if they wished to extend the longevity of their bread. Indeed, Brumby’s has access to the Goodman Fielder improver. However, it has (to date) chosen not to acquire these products rather electing to leverage its “freshness” quality competitive advantage. Nevertheless, if Brumby’s considered it was disadvantaged by the (perceived lack of) longevity of its products bread, this “disadvantage” can be readily addressed.

The following examples of Brumby’s and Bakers Delight products illustrate their suitability for toast and sandwiches.

Brumby's		
Bakers Delight		

Brumby’s and Bakers Delight will slice (toast or sandwich cut) and bag bread on request. Goodman Fielder market intelligence suggests around 50-60% of all bread sold by these retailers is sliced on request.

Furthermore, plant bakers such as Goodman Fielder and GWF sell bread that traditionally would only have been available from a bakery, including un-sliced bread.

A particular example is Goodman Fielder’s “MacKenzie” range. MacKenzie bread is sold in supermarkets and the route trade and is actively promoted as a direct competitor to breads produced by bakeries. Goodman Fielder specifically targeted the bread to consumers who would traditionally buy premium breads at a speciality or in-store bakery. The promotional material provided to supermarkets accompanying the MacKenzie launch said:

Currently 30% of your customers regularly purchase bread from outside the supermarket bread aisle.

Baker franchises perceive supermarkets to be their key competitors, and are aggressively targeting the supermarket’s bread aisle for growth.

The total New Zealand bread market is estimated to be worth \$600m. The supermarket bread aisle only accounts for 256.2m.

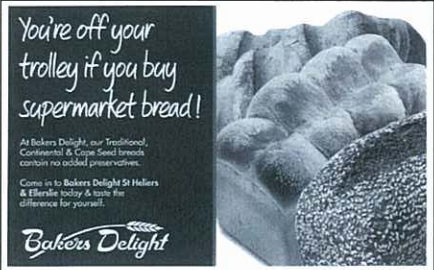



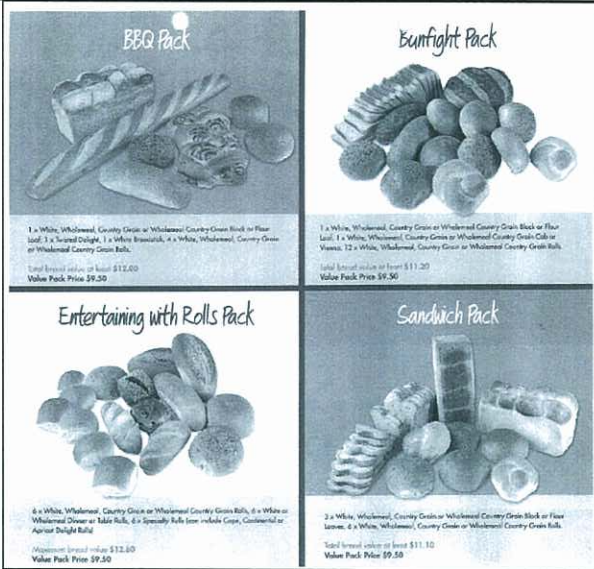
Want to know how to strengthen the total supermarket bread offering, so consumers spend less outside your stores?

This example illustrates the constraint imposed by bakeries on plant bread manufacturers and the ability for both types of producer to position and move products along the product spectrum to compete. The ease with which this can occur underlines the continuity of the chain of substitution for bread, indicating that a single bread market is appropriate.

(ii) Marketing

The growing number of chain bakery stores (such as Brumby's, Bakers Delight, Pandoro) provide consumers with a well-known brand. Franchise bakeries such as Bakers Delight and Brumby's squarely promote their offerings at supermarket customers, often responding to supermarket promotions with promotions of their own.

For instance, a Bakers Delight campaign refers to consumers being off their "trolley" if they buy supermarket bread, and another offers special "Value Packs" to target more price conscious consumers. The MacKenzie example above illustrates how plant bread manufacturers are responding by targeting their offering at bakeries to compete directly with independent and franchise bakeries in the premium segment of the bread market. In-store bakeries within supermarkets are also responding to these initiatives by offering an increasing range of breads, often in attractive display cabinets.

<p><b>Figure 1</b></p> 	<p><b>Figure 2</b></p> 	<p><b>Figure 3</b></p> 
<p><b>Figure 4</b></p> 	<p><b>Figure 5</b></p>  <p><b>BBQ Pack</b>      1 x White, Wholemeal, Country Grain or Wholemeal Country Grain Block or Flour Loaf, 1 x Tinned Delight, 1 x White Brioche, 4 x White, Wholemeal, Country Grain or Wholemeal Country Grain Rolls.      Total Retail value at least \$12.00      Value Pack Price \$9.50</p> <p><b>Bunfight Pack</b>      1 x White, Wholemeal, Country Grain or Wholemeal Country Grain Block or Flour Loaf, 1 x White, Wholemeal, Country Grain or Wholemeal Country Grain Cider or Yeast, 12 x White, Wholemeal, Country Grain or Wholemeal Country Grain Rolls.      Total Retail value at least \$11.20      Value Pack Price \$9.50</p> <p><b>Entertaining with Rolls Pack</b>      6 x White, Wholemeal, Country Grain or Wholemeal Country Grain Rolls, 8 x White or Wholemeal Ovens or Mini Rolls, 6 x Specialty Rolls (one includes Cope, Continental or Ancient Delight Roll).      Maximum Retail value \$12.80      Value Pack Price \$9.50</p> <p><b>Sandwich Pack</b>      3 x White, Wholemeal, Country Grain or Wholemeal Country Grain Block or Flour Loaves, 4 x White, Wholemeal, Country Grain or Wholemeal Country Grain Rolls.      Total Retail value at least \$11.10      Value Pack Price \$9.50</p>	

(iii) Price

Bread prices vary according to product in all channels. The price of each bread product is a function of not only competing products of the same type, but also the prices charged for near substitute products at different places on the price spectrum. For instance, when Goodman Fielder was developing the business case for the MacKenzie bread, it forecast an approximate 20% cannibalisation of (its lower priced) “Freya’s” brand.

The price spectrum for packaged bread in supermarkets ranges from a retail price of \$0.99 to over \$4.50. This price range overlaps the price of basic loaves from bakeries such as Brumby’s and Bakers Delight, which sell for a list price of around \$2.80 although the effective price often varies due to promotions etc. For example, Brumby’s ran a promotion in November whereby

consumers could buy two loaves of bread for \$4.50.<sup>5</sup> The earlier observation by the Commission about bread from franchise bakeries being more expensive no longer applies.

The substantial overlap across brands and price points within the wider “bread market” is illustrated below.

In terms of the sheer number of SKU’s available that make up the continuum of bread products, in the “sliced brown bread” and “sliced white bread” categories at [www.foodtown.co.nz](http://www.foodtown.co.nz) there are 117 different items available for sale. A small sample of the available offerings is set out below.

Figure 6

					
\$4.59	\$3.99	\$3.99	\$3.69	\$3.45	\$3.35
Dovedale (unsliced home)	Mackenzie (GF)	Vogels (GF) – unsliced rice/rye w/free	Vogels (GF) – Sandwich (long slice)	Freyas (GF)	Holsoms (GWF)
					
\$3.25	\$3.15	\$3.09	\$3.00 (also run specials, e.g. 2 for \$4.60)	\$2.90 (also run specials, e.g. 2 for \$4.50)	\$2.85
Ploughmans (GWF)	Burgen (GWF) sandwich bread barley & s/flwr	Tip Top (GWF)	Bakers Delight	Brumby's	Country Split (GF)

<sup>5</sup> Brumby's and Bakers Delight produce a range of breads and a large part of this range is 700g square pan bread, sliced and un-sliced white, wheatmeal and grain breads, which is to all intents and purposes the same as that produced by plant bakeries.

					Sunnycrust Toast Bread Multi - Grain
\$2.75	\$2.49	\$1.99	\$1.89	\$1.55	\$1.49
Molensberg	Signature Range (PEL) – Toast, mixed grain	Signature Range (PEL) – Highland w/meal	Signature Range (PEL) – High Fibre	Signature Range (PEL) – White	GF
					
Home Brand (PEL)					
\$0.94					

NB: Prices are the list (non-promotion) price at [www.foodtown.co.nz](http://www.foodtown.co.nz), Brumby's and Bakers Delight on 10 January 2007.

Finally, while not necessarily claiming they fall within the same market, rolls, buns, foccacia, bagels, wraps and paninis etc. and snacks such as crumpets, pikelets and muffins all contribute to the competitive dynamic of the bread market, because consumers can, and do, substitute to those products from time to time. This is particularly true for bread that is bought to make sandwiches.

#### 11.4 Bread – Geographic Market

Bread is currently transported throughout the entire North Island by Goodman Fielder, River Mill and GWF.

In its previous consideration of geographic scope of the market, the Commission appeared to place material weight on the impact of longer delivery trips on bread shelf life. While it is true that bread does deteriorate over time, the incremental travel time to deliver is minimal when considered in the context of bread's overall shelf life, which is approximately production day plus five days (i.e. 120-144 hours). For example, line hauling bread from Wellington to Auckland (which is one of the lengthier hauls) takes around 11-12 hours. Furthermore, bakeries already frequently alter production and shipping schedules to accommodate delivery to more distant locations.

Indeed, the wide range of products distributed around the North Island suggests a North Island market is appropriate.



## (a) Goodman Fielder's distribution patterns

Goodman Fielder supplies bread produced at its Auckland plant throughout the North Island in the following proportions. In considering these proportions, the Commission should be cognisant that Goodman Fielder has production facilities in Rotorua, Hawkes Bay, Palmerston North, and Wellington.

Region	%
Northland	10
Auckland	64.25
Waikato	13
Rotorua/Gisborne	6.5 (Vogel's, Molenburg, buns, rolls)
Coromandel	2.5
Taranaki	3
Palmerston North	0.25 (Contract rolls, some Vogel's select)
Wellington	0.5 (Contract rolls, some Vogel's select)

Other Goodman Fielder plants also distribute certain product outside their immediate regions:

- Rotorua, distributes to Auckland, Taupo, Whakatane, Tauranga;
- Hawkes Bay, distributes to Palmerston North;
- Palmerston North, distributes to Taranaki, Central Hawkes Bay and Hawkes Bay (for Freya's); and
- Wellington, distributes to Palmerston North, Hawkes Bay and Taranaki.

## (b) River Mill

River Mill supplies the entire North Island from its Huntly bakery, in the following proportions:

Region	%
Northland	8
Auckland	37
Waikato North	15
Waikato South	14
Wellington/Palmerston North	8
Bay of Plenty	6
Taranaki	5

Region	%
Napier Hastings	7

## (c) GWF

Goodman Fielder also understands GWF produces the entire Burgen range (bread, buns and rolls) in Auckland, which it then distributes throughout the entire North Island.

Given the evidence of distribution by major firms North Island-wide, in material proportions, Goodman Fielder considers current practice does not justify an Upper North Island/Lower North Island split.

### 11.5 Flour Markets

For the purposes of this application for clearance, and while not conceding they are necessarily appropriate, Goodman Fielder has adopted the markets found by the Commission in its Defiance/Goodman Fielder decision. Of the flour markets previously defined by the Commission, the acquisition of CFM gives rise to aggregation in the South Island and North Island Industrial Bagged Flour Markets.

In terms of the constraints operating in the markets in question, it is relevant that:

- Goodman Fielder actually installs silos in many customers' premises, resulting in them substituting to bulk flour; and
- **[CONFIDENTIAL]**% of CFM's production is transferred to the River Mill plant at Huntly.

## 11.6 Other affected markets

The Acquisition will result in some overlap between River Mill's and Goodman Fielder's existing cookie and pizza base businesses.

The aggregation in respect of these products is relatively minor and the Acquisition is unlikely to have any material impact on competition.

- Goodman Fielder and River Mill sell cookies. The relevant market is wider than simply that for cookies, and the presence of Arnotts and Griffins in this wider market overwhelms the Goodman Fielder and River Mill cookie presence.
  - Even in respect of cookies, Arnotts has the leading position, with more than a [CONFIDENTIAL]% share of all cookies sold in supermarkets (and for which scan data is available).<sup>6</sup>
  - River Mill's supermarket business consists entirely of a contract to manufacture PEL's "Signature Range" of bagged cookies. River Mill sells cookies via the route trade, in respect of which Goodman Fielder has no real presence.
  - Goodman Fielder has only an approximate [CONFIDENTIAL]% share of cookie sales to supermarkets. Signature Range (currently produced by River Mill) accounts for [CONFIDENTIAL]%.
- In respect of pizza bases, the Acquisition will give rise to minimal aggregation.

## Differentiated Product Markets

12. Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).

Bread is a differentiated product.

13. For differentiated product markets:

- 13.1 Please indicate the principle characteristics of products that cause them to be differentiated one from another.

Bread is differentiated principally on the basis of type (white or grain bread, sliced or un-sliced) and price. The illustration at 11.3(a)(iii) above is a sample of the breads available in New Zealand, and illustrates the range of breads

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<sup>6</sup> AC Nielsen, Current MAT to 05 November 2006.

available for sale, from the lowest price white breads, to the higher priced grain breads, with a large range of grain and white breads in between.

**13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?**

Firms tailor their offerings to appeal to different consumer needs. For instance, low priced white sandwich bread will appeal to cost conscious consumers, e.g. those with children and budgetary constraints, while the more expensive grain breads will be positioned to appeal to those that are more health and diet conscious.

**13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? – which are more distant substitutes?**

Goodman Fielder and GWF both supply a wide range of white and wholegrain breads, and both supply various types of white and grain along a wide spectrum of quality, taste and price. They both compete for, and supply, supermarket private label accounts.

In contrast, River Mill tends to focus on the more 'traditional' or 'plain' types of bread.

**13.4 Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?**

While bread is differentiated, this is not a merger of the closest two firms on a differentiated product spectrum. Rather, Goodman Fielder (and GWF) supply a range of breads. River Mill supplies a more limited range, but one that directly competes with both GWF and Goodman Fielder's offerings.

## **Vertical Integration**

**14. Will the proposal result in vertical integration between firms involved at different functional levels?**

The Acquisition does not result in vertical integration. Both firms are already vertically integrated upstream.

**15. In respect of each market identified in questions 11 and/or 14 identify briefly:**

**15.1 all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case the outcome of the notification and whether the proposed acquisition has occurred.**

In respect of bread or flour acquisitions affecting New Zealand, Goodman Fielder (or any of its interconnected bodies corporate or associated persons) have not been involved in any such acquisitions.

Goodman Fielder is unaware of any such acquisitions by River Mill.

- 15.2 **any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

In respect of bread or flour acquisitions affecting New Zealand, Goodman Fielder acquired the business of Northern Bakeries in 2006. Prior to its acquisition, Northern Bakeries was an affiliated Goodman Fielder plant bakery, which operated in a specified franchise area principally under an exclusive franchise agreement from Goodman Fielder. Goodman Fielder contracted production accounted for 46% of Northern Bakeries' revenue. As a result, Northern Bakeries imposed no practical competitive constraint on Goodman Fielder, which pursuant to the franchise arrangement did not operate in the franchise area.

*PLEASE ANSWER QUESTIONS 16 - 26 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14*

## **COUNTERFACTUAL**

Goodman Fielder believes the counterfactual involves the status quo, or possible acquisition of River Mill by a third party.

## **PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION**

### Existing Competitors

16. **In the market or markets, who are the suppliers of competing products, including imports?**

#### 16.1 **Market Shares**

River Mill accounts for only **[CONFIDENTIAL]**% of the total North Island bread market.

Goodman Fielder has a **[CONFIDENTIAL]** share (based on retail sales value), meaning a combined Goodman Fielder/River Mill would account for **[CONFIDENTIAL]** of the North Island bread market. GWF would account for **[CONFIDENTIAL]**, with Others (including Yarrows) accounting for some **[CONFIDENTIAL]**.

Goodman Fielder considers private label products should be excluded from market share data since they are made under short term contract-pack arrangements where the quality profile and price are determined by the retailer (i.e. supermarket).

However, if, as is the Commission's practice, the private label volumes are included with the manufacturers' volumes, then Goodman Fielder's view is that

the ability of supermarkets to award the contract to another manufacturer must be taken into account in any analysis where the market shares are taken into account. In essence, the controlled label volumes are substantially within control of the supermarkets.

In any event, the Acquisition does not give rise to an aggregation in respect of supermarket private label breads – those contracts being held by Goodman Fielder and GWF.

In respect of packaged bread (i.e. as opposed to total bread), a combined Goodman Fielder/River Mill would have an estimated **[CONFIDENTIAL]** of the North Island market on the basis of value and **[CONFIDENTIAL]** on the basis of volume as set out in Table 1.

**Table 1: Packaged Bread Shares<sup>7</sup>**

North Island (Value)							
Firm	Branded	Controlled Label	Total KA	Route, Foodservice	Total	% (excluding Controlled Label)	% (including Controlled Label)
GF Rivermill GWF Yarrows Other	CONFIDENTIAL				CONFIDENTIAL	CONFIDENTIAL	CONFIDENTIAL
North Island (Volume)							
Firm	Branded	Controlled Label	Total KA	Route, Foodservice	Total	% (excluding Controlled Label)	% (including Controlled Label)
GF Rivermill GWF Yarrows Other	CONFIDENTIAL				CONFIDENTIAL	CONFIDENTIAL	CONFIDENTIAL

Source: Goodman Fielder management estimates

Figure 8 below illustrates the share trend in the packaged bread market over the last 6 years. Goodman Fielder's value share has declined over this period from **[CONFIDENTIAL]**. Correspondingly, GWF's value share has been trending upwards from **[CONFIDENTIAL]**. Private label share has remained static, which might be explained by the fact there is ample competition as between GWF and Goodman Fielder.

<sup>7</sup> Values are NZ\$m per year and volumes are millions of units per year.

Figure 8: Share trend last 6 years - Total packaged bread

Furthermore, GWF's share of total *productive capacity* might be somewhat higher, [CONFIDENTIAL

].

## 16.2 Existing Competitors

### (a) George Weston Foods (GWF)

GWF is Goodman Fielder's principal bread competitor and has been present in New Zealand baking markets since the 1950s.<sup>8</sup>

GWF is a wholly owned subsidiary of Associated British Foods Plc, one of the world's leading food companies. Associated British Foods is a diversified international food, ingredients and retail group with sales of £6.0 billion (NZ\$17B) and over 75,000 employees in 46 countries.<sup>9</sup> GWF's principal operations are undertaken throughout Australia and New Zealand. The company also has joint ventures in the United States, the United Kingdom, South Africa and Thailand.<sup>10</sup>

GWF is New Zealand's second-largest bread baker, and produces bread under the well known Tip Top, Burgen and Ploughmans brand names. Its bakeries are located in Auckland, Wellington and Christchurch, and it supplies the route trade and supermarkets with branded bread. It competes aggressively for supermarket private label contracts and currently holds all three Foodstuffs (Auckland, Wellington and South Island) contracts. Goodman Fielder holds the PEL contract. GWF and

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<sup>8</sup> <http://www.gwf.com.au/about/heritage.htm#timeline>

<sup>9</sup> <http://www.abf.co.uk>

<sup>10</sup> <http://www.gwf.com.au/about/index.htm>

Goodman Fielder also compete aggressively against each other for the oil company/petrol station accounts , which are awarded on an exclusive basis and hence are extremely valuable. The supermarkets and the oil companies play the suppliers off against each other, and are not adverse to reassigning volumes where they consider it is in their interests to do so.

GWF has established relationships with supermarkets, the oil channel and the route trade. Goodman Fielder estimates **[CONFIDENTIAL**

**]** meaning it has significant capacity to increase production. Overall, GWF is well placed to increase production and sales in response to any attempt by Goodman Fielder to increase price above competitive levels post-Acquisition.

**[CONFIDENTIAL**

**]**

**[CONFIDENTIAL**

**]**

Overall, GWF faces no constraints on expanding in response to any attempt by Goodman Fielder to increase price, including in respect of the



route trade. Goodman Fielder considers GWF would do so in the event Goodman Fielder sought to increase price above competitive levels.

GWF has proved adept at exploiting any opportunities:

- [CONFIDENTIAL

]

- It currently holds the contract to supply private label bread to all three Foodstuffs cooperatives.

(b) Yarrows

Yarrows (The Bakers) Limited (**Yarrows**) is a family-owned baking business based in Manaia, Taranaki. Yarrows is one of New Zealand's largest independent bread makers. In addition to its branded bread lines, Yarrows is a major producer and exporter of frozen dough. It makes frozen dough for several companies in New Zealand, such as Subway and Foodstuffs. Yarrows also has a bakery in Perth, Australia.

Yarrows currently concentrates on supplying the lower North Island, but if the opportunity presented itself it could be expected to supply the Upper North Island.

(c) Bakers Delight

Bakers Delight was established as a single bakery in 1980 in Hawthorn, Melbourne. By 1987 the company had expanded to incorporate 15 stores and today it is Australia's largest bakery franchise. By mid 1997 there were 260 stores and turnover was estimated to be \$130 million for the 1997 year. By mid 1999 there were 310 stores in Australia with sales of about \$150 million.

Today it employs approximately 15,000 people in around 700 bakeries across Australia, New Zealand and Canada.<sup>11</sup>

Each of its bakeries produce the bread it sells onsite. Its website records it is "committed to international expansion" and has almost 40 franchises in New Zealand. Its website also says the "bread market in New Zealand is worth over \$600 million per annum. Bakers Delight holds a 9.4% share of this market" – citing Roy Morgan Research December 2004.

In mid 1999 the company introduced a \$30 million programme to assist people own their own franchised store. The programme allows the franchise holders to manage a bakery as if it were their own while they save enough money to buy a franchise in three to five years. Usually a

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<sup>11</sup> [www.bakersdelight.co.nz](http://www.bakersdelight.co.nz)

potential franchisee needs one third (\$110,000) of the total \$330,000 average start up costs.

(d) Brumby's

Brumby's is a specialist bread retailer, operating a franchise system of 23 stores in New Zealand and more than 300 stores throughout Australia and New Zealand. Like Bakers Delight, all bread sold by the bakeries is manufactured on site. Its website records that "It was in the early '90s that a franchise consortium was put together to buy Brumby's. Since then the shareholders have seen the franchise chain grow from 51 stores to over 300 throughout Australia and New Zealand." Since Brumby's listed on the Bendigo Stock Exchange in December 2003, its share price has more than tripled from \$0.55 to its current price of \$1.80.

Brumby's is looking to expand. Its Managing Director, Michael Sherlock, is reported to have said the franchise group had already identified several acquisition opportunities which it could pursue in the next 12 months.<sup>12</sup> As evidence of its aspirations to expand, Brumby's has negotiated a deal with The Warehouse whereby Brumby's is located within The Warehouse's "Extra" grocery stores. Brumby's Operations Manager has said, "At present we have three bakeries at the entry to Warehouse stores and they have been trading exceptionally well so this new partnership is very exciting and has immense potential."<sup>13</sup> Brumby's has stated publicly it has a long term goal of 60 stores in New Zealand.<sup>14</sup>

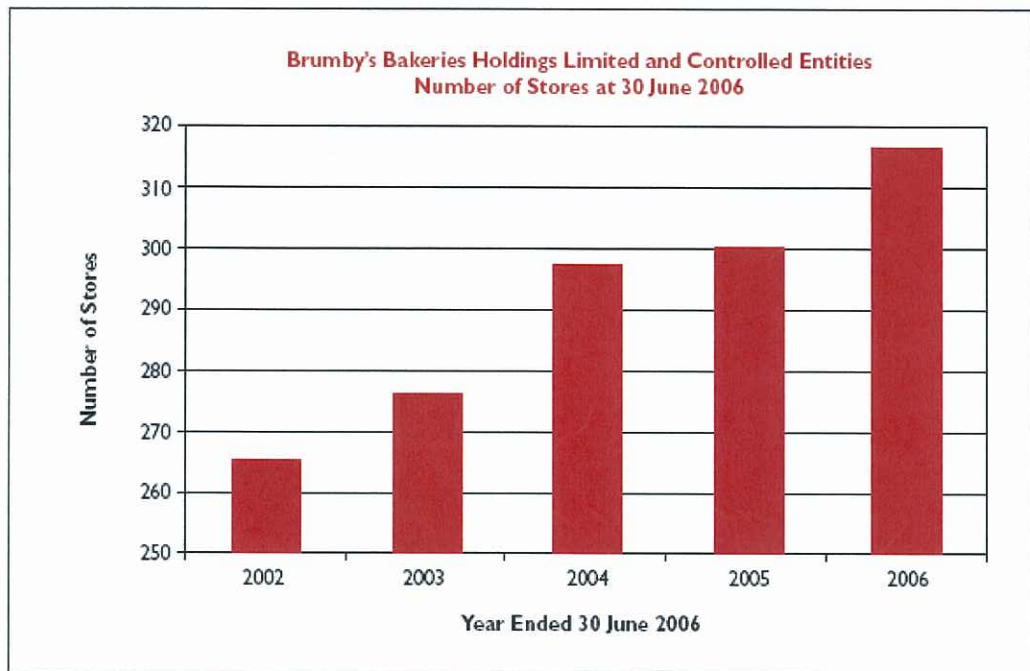
The growth of Brumby's is graphically depicted in the graphs below, which appeared in the Chairman's Report to the 2005 AGM and the 2006 Annual Report respectively.

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<sup>12</sup> <http://www.scoop.co.nz/stories/BU0611/S00281.htm>

<sup>13</sup> <http://www.brumbys.com.au/News/Default.aspx?ID=15>

<sup>14</sup> <http://www.brumbys.com.au/News/Default.aspx?ID=15>



As noted above, Bakers Delight and Brumby's produce a range of bread that competes directly with packaged bread. These firms directly target their offering at supermarket customers, and continue to force the larger plant bakers to respond (e.g. Goodman Fielder's MacKenzie range).

(e) Couplands

Couplands Bakeries is a family owned and operated business based in Christchurch which commenced operations in 1971. Couplands Bakeries is one of the largest independently owned bakery chains in New Zealand with more than 20 retail bakeries throughout the South Island.

Given its know-how and experience in the market, Couplands could readily expand its franchise system into the North Island.

These firms are expanding today, are actively looking to expand further. For the reasons set out in 17 below they can be expected to further expand in response to any opportunity presented by Goodman Fielder, post-Acquisition.

### 16.3 Australian experience

The Australian marketplace provides some insights into the competitive dynamic that can be imposed by franchise bakeries. Competition for bread sales in Australia is very high. Speciality shops (including Bakers Delight and Brumby's) number over 7,000 in Australia and account for 26% of all bread sales.<sup>15</sup>

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<sup>15</sup> AC Nielsen 2004.

## Other Considerations

- 16.4 **Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').**

There are no firms that could enter without constructing a plant or a retail bakery.

- 16.5 **Estimate the productive capacity that such near entrants potentially could bring to the market.**

Not applicable.

- 16.6 **Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?**

Bread is not imported to any significant degree.

- 16.7 **To what extent is the product exported?**

Bread is not exported to any significant degree.

- 16.8 **Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.**

Goodman Fielder does not consider River Mill is any more vigorous a competitor than the other firms in the market.

While it is true that River Mill offers the so-called "sub-\$1" bread in the North Island, so does Goodman Fielder and GWF. Goodman Fielder does not believe that illustrates River Mill is any more aggressive, or important for competition, than the other players. In fact, the sub-\$1 bread was driven by consumer demand and emerging new channels (e.g., fruit/vegetable shops and butchers). Sub \$1 bread increased overall demand and it was largely historical accident which determined the initial participant to respond to this demand. For instance, in the South Island, where River Mill is not present, sub \$1 bread is available.

If, post-Acquisition, Goodman Fielder attempted to stop the supply of sub \$1 bread to the route trade, acquirers would look to increase their purchases from other suppliers, e.g. GWF, who would increase production, with its existing capacity, to service the demand. The consumer demand for cheaper bread, coupled with its availability at supermarkets, particularly in private label, and hence the ability of consumers to substitute from the route trade to supermarkets if needed, provides an additional reason why Goodman Fielder would continue to supply such product.

## Conditions of Entry and Expansion

### 17. Barriers to entry and expansion

The courts and the Commission have stated that, regardless of the combined entity's market share, an acquisition is unlikely to substantially lessen competition if barriers to entry or expansion are low because the combined entity will be constrained by:

- the threat of new entry; or
- the threat of expansion by existing competitors.

There is absolutely nothing to stop either GWF or Bakers Delight/Brumby's from expanding. GWF has spare capacity [CONFIDENTIAL], which it can use to gain economies of scale and to pressure its competitors. By increasing its utilisation to, say, [CONFIDENTIAL]% it would be able to supply an additional [CONFIDENTIAL] loaves per day, which is around [CONFIDENTIAL]% of the total North Island bread market. It is an existing, well regarded firm, with capacity, relationships and an existing distribution infrastructure.

Bakers Delight and Brumby's face no impediments to growing their franchises throughout New Zealand. They have said they intend to do so and in Australia they are a major competitive force. They face very low barriers to entry and expansion in terms of establishment costs, staff training (since the franchisors with no baking experience are trained in approximately three months), and brand recognition. Because of the high level of penetration they have achieved in Australia and their proximity to the entrances of major key accounts, they have further blurred the lines between the supermarket and route channels. Brumby's strategy with The Warehouse (where they have established at the entrance to certain stores, and *within* an Auckland store) demonstrates that they can be expected to follow the same strategic growth path in New Zealand.

An independent bakery that produced up to 1000 loaves of sliced bread per day would cost in the vicinity of \$200,000. Bakers Delight and Brumby's both actively recruit new franchisees and represent another option to enter. The cost of a turn key operation such as these range from \$250,000-400,000. Included are ongoing support to the franchisee as well as participation in national marketing campaigns, etc.

In terms of a more substantial operation, Goodman Fielder estimates the cost of a new plant at \$2-3m. As the Commission has acknowledged in the past, branding is not a significant barrier to entry.

Goodman Fielder's view is that successful new entry could occur. An entrant would most likely look to establish a low cost plant, initially with only a single tin size (e.g. standard sandwich loaf). Initial concentration on route and food service customers and commercial customers in a larger market such as Auckland is likely to be the most attractive means of building a steady volume, and hence a base from which to expand in response to opportunities.

Existing competitors located further a field could compete by increasing (or commencing) delivery to other locations by line hauling product, as existing suppliers do currently.

18. **Please name any business which already supplies the market - including overseas firms - which you consider could increase supply of the product concerned in the geographic market by any of the following means:**

Any of the existing competitors in the market could expand production and increase supply given the very low expansion barriers. There are no customer switching costs and there is material excess capacity in relation to plant bakeries. Goodman Fielder considers:

- GWF and Yarrows could expand immediately by increasing utilisation of existing capacity to produce additional bread.
- Brumby's, Bakers Delight and Couplands face no impediments to expansion as evidenced by their substantial recent entry and growth.

19. **Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?**

The price at which suppliers can sell bread and the desire to increase utilisation would influence the decision to increase supply.

20. **How long would you expect it to take for supply to increase in each case?**

In the case of GWF and Yarrows expanding by increasing plant utilisation, this could occur within a matter of days. Such expansion would require additional labour and an increase in the number of working shifts.

21. **New retail expansion would take some time, but could occur relatively rapidly and probably within a period of 12 months.**

Goodman Fielder estimates a new Brumby's or Bakers Delight store could be opened within 3-4 months.

22. **In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?**

In addition to the buying power of large customers, the real constraint in the market for Goodman Fielder is the competition provided by GWF. Its ability to expand supply in response to any attempt by Goodman Fielder to increase prices above competitive levels will remain post-Acquisition.

In addition to GWF, the ability of franchise bakers (Bakers Delight and Brumby's) and independent bakers to increase production and open additional sites will continue to impose competitive constrain post-Acquisition.

23. **Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what**

**extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

The ability of existing competitors to expand, in particular, Goodman Fielder's key competitor, GWF, means Goodman Fielder will continue to be constrained post-Acquisition.

**Coordinated Market Power**

**24. Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.**

When assessing whether an acquisition is likely to substantially lessen competition by materially enhancing the scope for co-ordinated market power (such as tacit collusion) to develop, it is necessary to ask whether the market current exhibits signs of tacit collusion, and:

- If not: why? Does the acquisition change any of those factors currently preventing tacit collusion?
- If so: why? Does the acquisition enhance any of those factors?

Currently, the market does not exhibit signs of tacit collusion. In Goodman Fielder's view, this is due to:

- (a) The absence of wholesale price transparency:
  - (i) Wholesale prices are not publicly available.
  - (ii) List prices often have applied to them a range of confidential discounts and deferred rebates to arrive at a net 'in-store' price.
  - (iii) Suppliers may offer non-price support to retailers, e.g. promotional assistance, merchandising, shelving etc.

At best, suppliers will obtain market intelligence from time to time, although there is always the risk that it is out of date, or does not encompass the full suite of benefits the supplier is providing the retailer.

- (b) The presence of large, sophisticated buyers, such as the supermarkets and oil companies and buying groups.
- (c) The presence of a competitive fringe in the form of franchise and other bakeries.
- (d) The wide variety of bread products sold, meaning it is very difficult to tacitly agree, and enforce, a price.

None of these factors will change as a result of the Acquisition, in which case it cannot be said the Acquisition will facilitate tacit collusion.

25. Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

In addition to the above, set out below is an application of the factors the Commission considers relevant to the question of co-ordinated market power, applied to the post-Acquisition environment.

<b>Scope for co-ordinated market power</b>	
High seller concentration	Yes
Undifferentiated product	No – bread is a differentiated product
Static production technology	Technology is relatively static
Speed of new entry	No
Fringe competitors	No – large number of independent and Franchise bakeries
Acquisition of an unusually vigorous or effective competitor	No
Price elastic market demand	Yes
History of co-ordinated conduct	No
Absence of countervailing power of acquirers	No – acquirers have strong countervailing power
Existence of excess capacity	Yes
Industry associations/fora	No more than typical in other industries. Examples include the New Zealand Bakers' Association, "BIRT" (Bakers Industry Research Trust) and the Flour Millers Association.

<b>Detection of deviation from co-ordination</b>	
High Seller concentration	Yes
Frequent sales	Varies – largely yes. However, large supermarket and oil company contracts put up for tender every 1-2 years.
Vertical integration	Some - upstream
Growth in demand	Overall demand is increasing although bread is a relatively mature market. However, there is movement within the category – e.g., demand for white bread is decreasing and demand for grain and speciality breads is increasing
Cost similarities	No – varying utilisation and methodology (plant bakers, franchise and independent "on-site" bakers) means costs vary.
Multi market contact	Some (flour) – but different divisions.
Price transparency	No – extremely limited market intelligence



26. **Indicate whether the markets identified in paragraph 9 above show any evidence of price coordination, price matching or price following by market participants.**

Participants ensure that their prices are competitive with other suppliers, which means that prices will be matched when competitors move or they will lose market share.

27. **Please state the reasons why, in your opinion, the transaction will not increase the risk of coordinated behaviour in the relevant market(s).**

For the reasons set out above, the Acquisition does not impact any of the factors currently precluding any coordinated conduct.

Goodman Fielder does not believe the 'loss' of River Mill as an independent competitor will increase the scope for tacit collusion – the key price setting determinants being large customers and GWF.

## **PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION**

*PLEASE ANSWER QUESTIONS 27-41 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14*

### **Conditions of Entry**

Please see the responses to paragraph 17.

28. **The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:**
29. **Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:**
30. **What conditions of entry do you consider would most influence the business decisions to enter in each case?**

### **Likelihood, Sufficiency and Timeliness of Entry**

31. **How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?**
32. **Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?**
33. **Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?**
34. **What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie *de novo* entry?**
35. **How long would you expect it to take for *de novo* entry to occur?**
36. **In your opinion, to what extent would the possibility of *de novo* entry constrain the merged entity?**

## PART V: OTHER POTENTIAL CONSTRAINTS

### Constraints on Market Power by the Conduct of Suppliers

Goodman Fielder is not claiming it will be constrained by suppliers post Acquisition.

37. N/A

38. N/A

39. N/A

### Constraints on Market Power by the Conduct of Acquirers

40. **Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?**

The acquirers would be:

- the two supermarket chains (Foodstuffs and PEL);
- the four major oil companies (Shell, BP, Mobil, and Caltex);
- buying groups (e.g. Red Circle);
- individual route trade customers; and
- commercial and food service customers (hospitals, prisons, restaurants etc.)

41. **Who owns them (where appropriate)?**

Supermarket and oil company ownership is as per the above. Individual route trade outlets are often owner-operated. The Four Square banner group stores are owner-operated, but are members of the wider Foodstuffs co-operatives.

42. **In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?**

The countervailing power imposed by supermarkets has been accepted by the Commission in a wide range of previous circumstances.

Between 60-70% of all bread is sold in supermarkets. The supermarkets can, and do, play suppliers off to secure the best list and promotional pricing. The supermarkets' private label brands also represent significant volumes to plant bread manufacturers and provide another means for supermarkets to impose their power. Goodman Fielder supplies a wide range of other products to the supermarkets (and to Woolworths in Australia), further increasing the supermarkets' power vis a vis Goodman Fielder.

Finally, the high proportion of bread sold on promotion [CONFIDENTIAL] further enhances supermarkets' countervailing power, because the ramifications of a supermarket punishing a supplier by allocating more promotional slots to a competitor are significant.

A further way in which supermarkets exercise countervailing power is through their positioning of in-store bakeries. In general, these bakeries are positioned such that a customer will encounter the in-store bakery prior to reaching the bread aisle providing the in-store bakery with some degree of first-mover advantage. Supermarkets typically also ensure the in-store bakery pricing is attractive when compared to branded bread.

The oil channel now accounts for a material volume of total sales of staple foods such as bread and milk (sales being made both at petrol stations and stand-alone sites such as Caltex's "Star Mart"). The oil channel is highly organised and each oil company buys collectively. They award tenders to manufacturers for exclusive supply. The oil channel is also increasing its profile in terms of in-store food offerings – for example, Mobil announced in December 2006 that customers purchasing \$4 or more on shop items would receive a 4 cents/litre discount on this fuel. Such behaviour means they have significant buying (and hence countervailing) power. (In fact, in Australia, many oil companies offer a private label bread.)

Supermarket and oil company buying power, and hence pricing, also flows through into the traditional "route" channel. This occurs as a result of:

- the ability of consumers to acquire from supermarkets if the price for the 'convenience' factor of acquiring from a corner dairy or petrol station becomes too great;
- oil companies: which compete squarely against corner dairies in terms of convenience (both outlets where petrol is available but also standalone food outlets, e.g. Caltex's StarMart), which have significant buying power; and
- there are more than 280 Four Square convenience stores nation-wide, whose owners are all members of the foodstuffs co-operatives and who buy collectively with other cooperative members and hence who achieve better buying terms.

Goodman Fielder's pricing structure is largely volume based. The price supermarkets, oil companies and buying groups can negotiate using their countervailing power in turn impacts what the 'traditional' route trade is prepared to pay for bread from Goodman Fielder and other suppliers. This is because there is a limit to the premium consumers are prepared to pay for the convenience of buying from the route trade when most bread is already acquired from supermarkets. If that premium becomes too high, consumers will substitute to supermarkets or oil channels, particularly given the large number of supermarkets and petrol stations conveniently located in close proximity to large numbers of consumers.

The incentive for Goodman Fielder is likewise to retain this relativity because:

- its products are widely available from a range of sources, given the tendency of customers to acquire from a range of sources; and
- its commercial interests are to ensure its own customer base does not become too concentrated.

The need for the traditional route trade to maintain competitive prices is further increased by the presence of the oil channel. For large numbers of consumers, purchasing bread from an oil company is as convenient as purchasing from a corner dairy – either because they live near a petrol station, or because they are buying petrol for their car. Petrol stations also tend to have attractive geographic locations with easy access.

The highly “organised” nature of the oil channel and the resulting leveraging of their buying power has a similar impact on the “disorganised” route trade (e.g. corner store dairy) in the sense they must maintain price competitiveness with the entire market (supermarkets and oil), which means they will not permit suppliers to raise their prices. The presence of both GF and GWF means all customers have, and will continue to have, the option of switching suppliers.

Because traditional route trade customers, such as dairy owners, are unable to identify and price discriminate against those consumers for which a supermarket or oil company is an alternative, they must ensure their prices are competitive across the board. This in turn has a direct impact on the price and volumes of bread acquired from bakers such as Goodman Fielder.

A review of the price of Goodman Fielder’s “Nature’s Fresh” bread between supermarket (or “Key Account”), route and convenience (oil) channels illustrates the relationship of prices charged by Goodman Fielder across the channels.

**Figure 7: Nature's Fresh selling prices by channel**

[CONFIDENTIAL]

## Flour

Goodman Fielder estimates a combined Goodman Fielder/CFM would have post-Acquisition shares of [CONFIDENTIAL]% in the South Island and [CONFIDENTIAL]% of the New Zealand industrial (non-retail) bagged flour markets respectively – although in respect of the later CFM's share is only [CONFIDENTIAL]%, and hence the level of aggregation is not substantial. These shares reflect 'external' volumes only, i.e. the exclude internal sales.

While CFM currently has an [CONFIDENTIAL]% share of the South Island industrial bagged flour market, an estimated [CONFIDENTIAL] of CFM's total volume is due to the Foodstuffs South Island contract. This volume could be lost at the next tender round.

Competition almost solely occurs between Goodman Fielder and GWF, and CFM is not on Goodman Fielder's "radar" when it comes to setting price. In fact, prices are set by reference to import parity – domestic suppliers taking into account the landed price of flour when setting their domestic prices.

The relationship with import prices is illustrated by comparing current import pricing (F07 Q2), where imported flour from Australia can be landed cheaper than domestic South Island flour. Ultimately, the change is a result of the annual South Island wheat tender prices versus changes in the Australian and world wheat costs. The result is that the annual South Island wheat tender price will always be driven by the import cost parity at the time. As a result, regardless of the presence of CFM in the market, local South Island flour costs will always be comparable to import parity.

Consistent with this pricing structure, Allied has won the Foodstuffs Auckland (Gilmours) contract, which it is supplying ex-Australia. Freight rates to the South Island and the North Island are similar, and as a result there is no reason why imports from Australia to the South Island would not be viable. For instance, 20kg bags of flour are likely to be marginally costed in Australia and shipped to New Zealand in containers.

The Commission has previously said that the North Island is more suited to imports because prices are higher in the North Island than they are in the South Island. Goodman Fielder does not believe this is currently the case – rather, in some years they are, and in some years they are not.

GWF has excess capacity and has recently lost the significant Couplands account to Goodman Fielder, increasing the likelihood it would respond in order to lift utilisation, thus thwarting any attempt by Goodman Fielder to increase price post-acquisition.

### *Tacit collusion*

Goodman Fielder does not believe the exercise of co-ordinated market power is currently a feature of the relevant flour markets, principally due to:

- the absence of price transparency; and

- the relatively large size of many of the contracts involved, meaning the risks of the other party 'cheating' (by departing from any tacitly agreement price) are significant because the rewards from doing so are large.

Neither of the above will change as a result of the Acquisition, in which case the Acquisition cannot be said to substantially lessen competition on account of materially increasing the scope for tacit collusion.

THIS NOTICE is given by

\*[individual/s and company]

Phil Hand, Goodman Fielder Limited

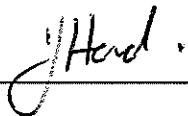
\*I hereby confirm that:

- \* all information specified by the Commission has been supplied;
- \* all information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
- \* all information supplied is correct as at the date of this application/notice.

\*I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 16th day of January 2007.

\*Signed by



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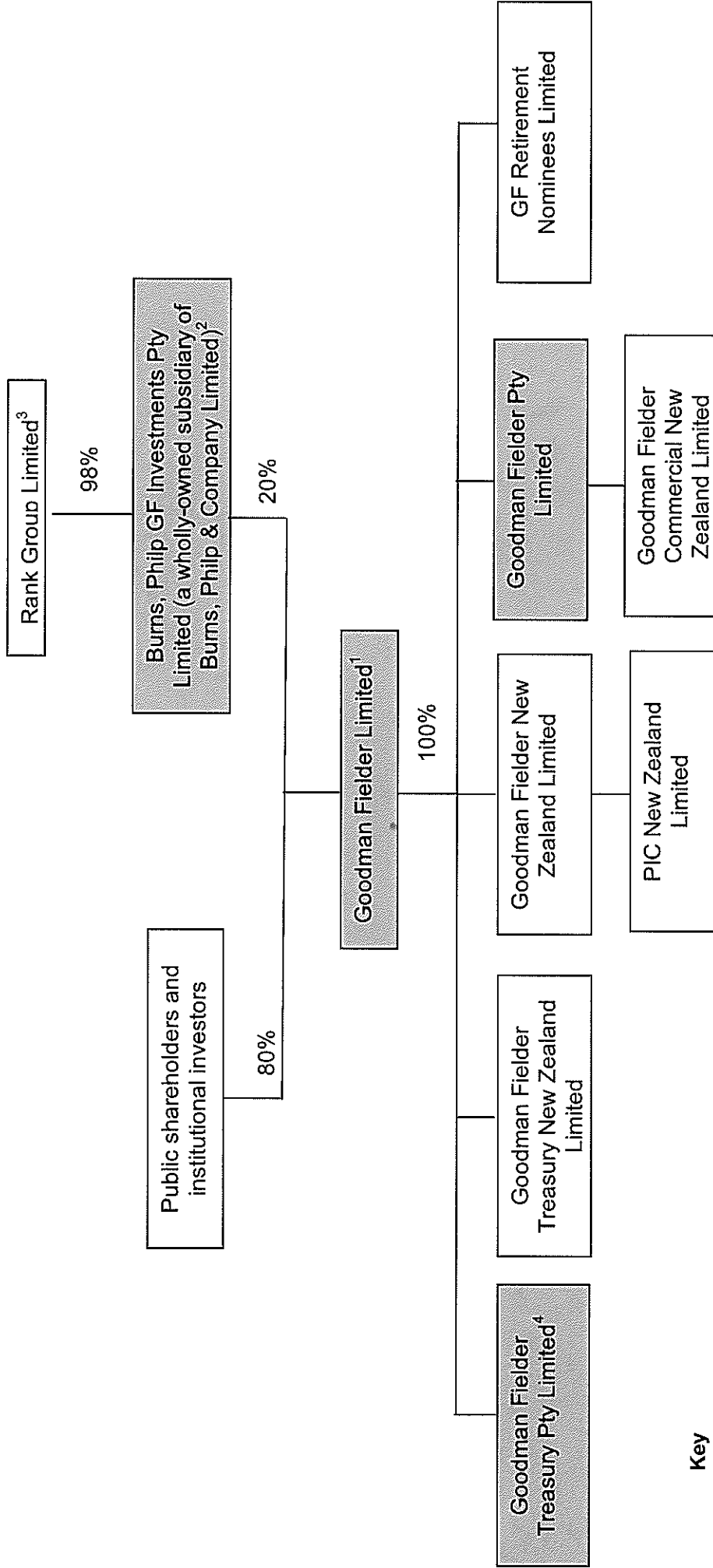
Managing Director – Goodman Fielder Baking NZ

I am a director/officer of the company and am duly authorised to make this application/notice.



Annexure 1 - Company Structure

**GOODMAN FIELDER NEW ZEALAND LIMITED OWNERSHIP DIAGRAM**



**Key**

- New Zealand Company
- Australian Company

**Notes**

1. Goodman Fielder Limited is listed on the Australian Stock Exchange (ASX) and on the NZSX market operated by New Zealand Exchange Limited.
2. Burns, Philip & Company Limited is listed on the ASX and NZSX. However, it has recently been the subject of a takeover offer made by a wholly-owned subsidiary of Rank Group Limited. Subsidiaries of Rank Group Limited now hold approximately 98% of the shares in Burns Philip and a compulsory acquisition process is ongoing for the remaining shares. Once that process has been completed, it is expected that Burns Philip will be delisted from the ASX and the NZSX.