



COMMERCE COMMISSION

Decision No. 422

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

PACIFIC DUNLOP HOLDINGS (NZ) LIMITED

and

SARA LEE APPAREL (NZ) LIMITED

The Commission: MJ Belgrave
MN Berry
DF Curtin

Summary of Application: The acquisition by Pacific Dunlop Holdings (NZ) Limited of certain businesses and assets from Sara Lee Apparel (NZ) 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 March 2001

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THE PROPOSAL

1. On 23 February 2001 Pacific Dunlop Holdings (NZ) Limited (Pacific Dunlop) registered a notice with the Commission seeking clearance under s66 (1) of the Commerce Act 1986 to acquire from Sara Lee Apparel (NZ) Limited (Sara Lee) the following businesses/assets:
 - The finishing, sourcing and marketing of hosiery
 - The marketing of men's underwear and outerwear
 - The sourcing and marketing of thermal underwear
 - The sourcing and marketing of women's intimate apparel
 - The assignment of various brands and trade names relating to the above businesses and the benefit of certain licence agreements.

2. Section 66 of the Act states that
 - (1) A person who proposes to acquire assets of a business or shares may give the Commission a notice seeking clearance for the acquisition.

 - (3) Within 10 working days ... the Commission shall ..
 - (a) if it is satisfied that the acquisition will not result in an effect described in paragraph (a) or (b) of section 47(1) of this Act, give a clearance for the acquisition.

3. The Commission's decision will, therefore, refer to the acquisition of assets, and not businesses, by the applicant.

THE PROCEDURES

4. 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 the notice agree to a longer period. An extension in time was sought by the Commission. Accordingly, a decision on the application was required by Thursday 15 March 2001.

5. The applicant initially requested confidentiality as to fact for the proposed acquisition until 20 days after the Commission's determination but after discussions with Commission staff, agreed to amend the request to one of fact confidentiality up until and including Wednesday 28 February 2001. The applicant also requested confidentiality for specific information contained in the notice, and a confidentiality order was made in respect of this information for a period of 20 working days from the Commission's determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply.

6. The Commission's determination is based on an investigation conducted by its staff and their subsequent advice to the Commission.

THE PARTIES

Pacific Dunlop Holdings (NZ) Limited (Pacific Dunlop)

7. Pacific Dunlop is owned by South Pacific Tyres N.Z. Limited and Pacific Dunlop Ltd, an Australian company. It has five divisions, Pacific Brands being the one relevant to the proposed acquisition.
8. Pacific Dunlop is engaged in the sourcing, manufacture and marketing of industrial and consumer goods including sporting products, foam products, bicycles, bedding, flooring, footwear, and clothing, including underwear, socks, thermal underwear, and hosiery. It is also engaged in automotive goods distribution.
9. Pacific Dunlop's turnover for the last financial year in each of the areas relevant to the proposed acquisition was:
 - Men's underwear – []
 - Women's underwear, including bras – []
 - Pantyhose – []
 - Thermal Underwear – []
 - Children's socks – []
 - Adult socks – []
 - Men's outerwear – [].

Sara Lee Apparel (NZ) Limited (Sara Lee)

10. Sara Lee's parent company is Sara Lee Corporation, a substantial USA based conglomerate. Sara Lee Corporation made its initial investment in the Australian and New Zealand apparel industry in 1991. It is now proposing to divest its Australasian apparel operations.
11. Sara Lee Corporation has market shares in New Zealand in men's and women's underwear, including bras, hosiery, thermal underwear, and socks.

INDUSTRY BACKGROUND

Manufacturing

12. A certain amount of all types of garment relevant to this investigation, except for bras, is manufactured in New Zealand, with the remainder being imported. There is no manufacturing of bras in New Zealand. Many of the manufacturers, as well as manufacturing under their own brand, also contract manufacture for other suppliers or for retailers under the retailers' brands. Columbine Industries, for example, sells [] of its annual production under its own brand names with the other [] being contract manufactured for retailers such as [], which sell the products under their own brands.

Imports

13. As a result of a progressive reduction in tariffs, a substantial percentage of underwear, socks, pantyhose, men's outerwear and thermal underwear sold in New Zealand is imported, either by the supplier or directly by the retailer. The amount of product imported by Pacific Dunlop is shown below.

Product	Percentage Imported
Men's Underwear	[]
Women's Underwear	[]
Pantyhose	[]
Adults Socks	[]
Children's Socks	[]
Men's Outerwear	[]
Thermal Underwear	[]

14. Farmers directly imports [] of men's underwear and [] of women's underwear and Deka imports [] of men's and women's underwear. The Warehouse directly imports [] of men's underwear, [] of adult socks and [] of women's underwear and thermal underwear.
15. Very little parallel importing of the relevant products occurs. Farmers does no parallel importing and The Warehouse parallel imported [].

Retailers

16. The Warehouse and Farmers are responsible for approximately 57% of sales of men's and women's underwear, socks and hosiery and a significant percentage of the sales of men's outerwear. The Warehouse estimates that it sells [] of the national sales of men's underwear, thermal underwear and socks, and [] of women's underwear and thermal underwear. Farmers estimates that it sells [] of men's underwear, [] of women's underwear, at least [] of pantyhose and women's socks and [] of men's socks. Farmers also sells a considerable percentage of the thermal underwear sold nationally.
17. Pacific Dunlop states that [] of its production is sold to Farmers and Deka and [] to The Warehouse.
18. A significant amount of the products sold by The Warehouse, Farmers, Hallensteins and other large retailers is sold under their own house brands rather than the suppliers' brands. For example, [] of underwear and socks sold by Farmers is sold under their own brands of Chisel, More and Lyric.
19. There are no formal contracts between the suppliers and the retailers. Furthermore, retailers have ready access to imports of the products relevant to the proposed acquisition.

MARKET DEFINITION

Introduction

20. 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. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in any market in terms of section 47(1) of the Act.
21. Section 3(1A) of the Act provides that:
- “. . . the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”
22. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,¹ *Commerce Commission v Carter Holt Harvey Building Products Limited*,² and in the Commission’s *Business Acquisition Guidelines* (“the Guidelines”).³ A brief outline of the principles follows.
23. Markets are defined in relation to three dimensions, namely 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 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.
24. A properly defined market includes products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ 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” (the “*ssnip*” test), assuming that other terms of sale remain unchanged.
25. Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products takes place through a series of stages, which may be visualised as being arranged vertically, 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”.

¹ (1991) 4 TCLR 473.

² Williams J, 18 April 2000, HC, yet to be reported.

³ Commerce Commission, *Business Acquisition Guidelines*, 1999, pp. 11-16.

Relevant Markets

Product Markets

26. The applicant has suggested that the key determinant of substitutability means that the appropriate product markets are:

- Men's underwear
- Women's underwear
- Bras
- Pantyhose
- Thermal underwear
- Children's socks
- Men's socks
- Women's socks
- Men's outerwear

27. In Decision 383 in which the Commission gave clearance for the proposed acquisition by Pacific Dunlop of LWR Hosiery and Underwear Limited and R & WH Symington Limited, the Commission concluded that men's and women's socks could be considered as a single market of adults socks. As men's and women's socks are manufactured on the same machinery, are supplied through the same distribution channels to similar purchasers, being major retailers and speciality stores, and can be worn by both men and women, it is still appropriate to consider a single adults' socks market.

28. On the face of it, from a supply perspective, bras would appear to be a separate market because of the specialist machinery and knowledge required to manufacture them. However, the majority of industry participants regard women's underwear and bras as belonging to one market. All suppliers of bras also supply other women's underwear. Furthermore, the major retail outlets consider that there is a single women's underwear market. Accordingly, for the purpose of considering the impact on competition of the proposed acquisition, the appropriate market is women's underwear, which includes bras.

29. With the exception of adults' socks and women's underwear, the strong demand side characteristics of these products support separate product markets being defined. The Commission therefore concludes that for the purpose of assessing the competition implications of the proposed acquisition, the appropriate product markets are:

- Men's underwear
- Women's underwear
- Pantyhose
- Thermal underwear
- Children's socks
- Adults' socks
- Men's outerwear.

Function Markets

30. The applicant has submitted that the merged entity will act as a manufacturer/importer/wholesaler, which supplies retailers and will therefore be competing in the supply market.
31. In Decision 383 it was concluded that the appropriate functional level was the manufacture and supply of products. This is also the appropriate level for assessing the current proposed acquisition.
32. The Commission therefore concludes that the appropriate functional level for assessing the competition implication of the proposed acquisition is the manufacture (including imports)/supply of products.

Geographic Market

33. The manufacture and supply of the relevant products occurs on a national scale. Accordingly, the geographic market is national.

Conclusion on Markets

34. The Commission concludes that the relevant markets are:
 - The national market for the manufacture (including imports)/supply of men's underwear
 - The national market for the manufacture (including imports)/supply of women's underwear
 - The national market for the manufacture (including imports)/supply of pantyhose
 - The national market for the manufacture (including imports)/supply of thermal underwear
 - The national market for the manufacture (including imports)/supply of children's socks
 - The national market for the manufacture (including imports)/supply of adults' socks
 - The national market for the manufacture (including imports)/supply of men's outerwear.

COMPETITION ANALYSIS

Introduction

35. 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

36. 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.”

37. 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.”

38. The test for dominance has been considered by the High Court. McGechan J stated:⁴

“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*.”

39. Both McGechan J and the Court of Appeal, which approved this test,⁵ stated that a lower standard than “a high degree of market control” was unacceptable.⁶ The Commission has acknowledged this test:⁷

“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.” (p21)

40. 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

⁴ Commerce Commission v Port Nelson Ltd (1995) 5 NZBLC 103,762 103,787 (HC).

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

⁶ *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC).
and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA).

⁷ Business Acquisition Guidelines, Section 7.

give a clearance. Where the Commission is not so satisfied, clearance must be declined. The dominance test is applied in the following section.

National Market for Manufacture (Including Imports)/ Supply of Men's Underwear

Market Concentration

41. An examination of concentration in a market is often an indicator 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.
42. 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)
43. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged firm and its rivals are relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The guidelines further state 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.”
44. 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 within the market and constraints provided through possible market entry, also typically need to be considered and assessed.
45. The current market shares in the national market for manufacture (including imports)/supply of men's underwear are:

Supplier	Market Share
Pacific Dunlop	[]
Sara Lee	[]
Davenport / Calvin Klein	[]
Bendon	[]
Others	[]

46. The proposed acquisition would therefore result in the merged entity having a [] market share with its closest competitor having a [] market share. These levels of market share are outside the Commission's safe harbour guidelines.

Existing Competition

47. Davenport Industries NZ Pty Ltd (Davenport) is a wholly owned subsidiary of an Australian company. Davenport supplies the market with Davenport and Calvin Klein men's boxer shorts, briefs, sleepwear, ties and socks and women's bras and briefs all of which are supplied by the Davenport production department in Australia.
48. The Davenport products are marketed nationally through department stores and speciality retail stores. The Davenport brand is marketed as a mid market brand while Calvin Klein is targeted at the upper part of the market.
49. Davenport competes on the basis of product differentiation. It supplies a branded product that has been in the market for some time. It is a large organisation with the necessary infrastructure for importing and the capacity to expand supply if the merged entity attempted to exercise market power. It would provide considerable restraint on the pricing behaviour of the merged entity.
50. It is the Commission's view that the merged entity would face effective competition from an existing competitor.

Potential Competition

51. A business acquisition is unlikely to result in the acquisition or strengthening of dominance if there is a credible threat of market entry. Potential competition can act as a constraint on market power, and so an examination of the nature and extent of this constraint is part of the Commission's assessment of competition.
52. Entry conditions, including the nature and height of any entry barriers, must be considered before the threat of new entry, which might constrain the conduct of a merged entity, can be evaluated.
53. The view of industry participants is that it would be very unlikely for a new entrant to commence manufacture of men's underwear because of the cost of the equipment and the low tariffs. They point out, however, that a new entrant could be successful if they imported quality products at competitive prices. Skills in sourcing and marketing are the key competencies required for success.
54. Farmers and The Warehouse both state that they would switch to a new supplier if the merged entity increased prices above an acceptable level and if the prices and quality and reliability of supply offered by the new entrant were acceptable. Neither company is legally bound to their current suppliers.

55. Product differentiation occurs when consumers perceive that a product differs from its competition on any physical or nonphysical characteristic, including price.⁸ Such differentiation may in certain circumstances present a barrier to entry. Established products in a market may enjoy consumer acceptance and preference because of consumer satisfaction or repeated advertising over time. Many buyers prefer the products of known or tried firms over those of new firms of which less is known. This is especially so when quality is neither apparent nor cheaply sampled. An entrant may have to charge less or advertise more than incumbents.⁹ A newcomer would have to entice customers away from established firms with more than just satisfactory prices.
56. On the facts of the present case, there are a number of established brands in the market, and evidence from industry participants suggests that there is a degree of brand loyalty. In the present case, it appears that the cost of establishing brand loyalty and reputation can be regarded as a moderately low barrier to entry. An entrant with an established overseas brand could enter and market the brand in New Zealand.
57. It is the Commission's view that the merged entity could face effective competition from potential competitors

Countervailing Power of Buyers

58. A firm may be constrained by any countervailing power possessed by its customers. Buyer power is likely to be high when there is a concentration of buyers and the volume purchases of the buyers are high.¹⁰
59. Farmers, Deka and The Warehouse have a high degree of purchasing power. For example, [] of Pacific Dunlop's production is purchased by Farmers and Deka and [] purchased by The Warehouse. Both Farmers and The Warehouse have stated that if the merged entity increased its prices they would discuss the increases with it and if they were unable to prevent the increase in prices, they would look at other ways to get the products at the right prices, e.g. importing. Farmers stated that []].
60. Neither retailer is bound legally to its suppliers and could switch at any time.
61. It is the Commission's view that the larger retailers such as Farmers, Deka and The Warehouse have a high degree of countervailing power.

Conclusion on National Market for the Manufacture (Including Imports) / Supply of Men's Underwear

62. The proposed acquisition would result in Pacific Dunlop obtaining a [] market share, which falls outside the Commission's safe harbour guidelines. However, the merged

⁸ FM Scherer & D Ross, *Industrial Market Structure and Economic Performance*, (Houghton Mifflin Co, Boston, 1990).

⁹ P E Areeda, H Hovenkamp, J L Solow, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* (Vol IIA, Little, Brown and Company, 1995).

¹⁰ G Johnson, K Scholes, *Exploring Corporate Strategy* (4th ed, Prentice Hall, Europe, 1997) 111

entity would be constrained by existing competitors, potential competitors and the retailers' countervailing power.

63. The Commission therefore is satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/ supply of men's underwear.

National Market for Manufacture (Including Imports)/Supply of Women's Underwear

Market Concentration

64. The main current market shares in the national market for manufacture (including imports)/supply of women's underwear are:

Supplier	Market Share
Pacific Dunlop	[]
Bendon	[]
Triumph International	[]
Sara Lee	[]

65. The proposed acquisition would therefore result in the merged entity having a [] market share. The proposed acquisition therefore falls within the Commission's safe harbour guidelines. Furthermore, existing competition within the market and the countervailing power of retailers would provide considerable restraint on the merged entity.

Conclusion on National Market for Manufacture (Including Imports)/ Supply of Women's Underwear

66. The Commission is satisfied that the merged entity would not acquire or strengthen dominance in the national market for manufacture (including imports)/ supply of women's underwear.

National Market for Manufacture (Including Imports) / Supply of Pantyhose

Market Concentration

67. The main current market shares in the national market for manufacture (including imports)/supply of pantyhose are:

Supplier	Market Share
Pacific Dunlop	[]
Columbine	[]
Sara Lee	[]

68. The proposed acquisition would therefore result in the merged entity having a [] market share, which is outside the Commission's safe harbour guidelines.

Existing Competition

69. The main existing competitor of the merged entity would be Columbine Industries Limited (Columbine). Columbine products are sold nationally through Farmers Deka and other retail stores. It competes partly by means of branding but primarily through quality, diversity of range and customer service.

70. Other existing competition consists of imported brands that are sold by smaller department chains and speciality retail stores.

71. Farmers and The Warehouse advise that they would be prepared to switch to other suppliers such as Columbine and to imports if the merged entity increased its prices.

72. It is the Commission's view that the merged entity would face effective competition from existing competitors.

Potential Competition

73. The view of industry participants is that it would be very unlikely for a new entrant to commence manufacture of pantyhose because of the cost of the equipment and the low tariffs. They point out, however, as with men's underwear, that a new entrant could be successful if they imported quality products at competitive prices. Skills in sourcing and marketing are the key competencies required for success.

74. Farmers and The Warehouse both state that they would switch to a new supplier if the merged entity increased prices above an acceptable level and if the prices and quality and reliability of supply offered by the new entrant were acceptable.

75. It is the Commission's view that the merged entity could face effective competition from potential competitors.

Countervailing Power of Buyers

76. As with men's underwear, both Farmers and The Warehouse have a high degree of purchasing power. Both Farmers and The Warehouse have stated that if the merged entity increased its prices they would be in a position to switch to a new supplier or to import pantyhose themselves.

77. It is the Commission's view that the larger retailers such as Farmers and The Warehouse have a high degree of countervailing power.

Conclusion on National Market for the Manufacture (Including Imports)/ Supply of Pantyhose

78. The proposed acquisition would result in Pacific Dunlop obtaining a [] market share, which falls outside the Commission's safe harbour guidelines. However, the merged entity would be constrained by an existing competitor, potential competitors and the retailers' countervailing power.
79. The Commission therefore is satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/ supply of pantyhose.

National Market for Manufacture (Including Imports)/ Supply of Thermal Underwear

80. The main current market shares in the national market for manufacture (including imports)/supply of thermal underwear are:

Supplier	Market Share
Pacific Dunlop	[]
Survival Apparel	[]
Sara Lee	[]

81. The proposed acquisition would therefore result in the merged entity having a [] market share and its closest competitor, Survival Apparel Ltd, having a [] market share. This is just outside the Commission's safe harbour guidelines.

Existing Competition

82. The largest competitor of the merged entity would be Survival Apparel Ltd (Survival). It is a New Zealand manufacturer and supplier of the Everwarm brand of thermal underwear. It has been in the market for about 16 years and sells its product nationally to outdoor retailers.
83. Other firms such as Finespun Wools Ltd and Weft Industries Ltd also supply thermal underwear nationally to department stores and tourist stores.
84. Further competition in this market is provided by The Warehouse which has its own brand of thermal underwear, which is sourced offshore and is very price competitive.
85. As with the men's underwear market, these competitors are competing on the basis of product differentiation. Survival, for example, differentiates its product on the basis of quality and fit. They have supplied the market with branded product for sometime and have a degree of brand loyalty. The Commission considers that if the merged entity attempted to exercise market power by increasing its product prices or by offering less in terms of service, the existing competitors could offer considerable constraint by

increasing their supply to the market. They are established suppliers with the necessary capacity and infrastructure to expand supply to the domestic market.

86. It is the Commission's view that the merged entity would face effective competition from existing competitors and imports.

Potential Competition

87. To successfully enter the thermal underwear market, a new entrant must have the ability to source yarn or wool, access to knitting equipment or contracting out to knitting companies and a knowledge base of what is required for knitting construction and manufacture.
88. Acquisition of knitting machines would involve considerable capital costs. However, it is possible to contract a knitting company within New Zealand to carry out all knitting. The new entrant would then only need to acquire the machines necessary for sewing up the garments. This machinery does not involve considerable capital outlay.
89. There are no barriers to sourcing yarn or wool. Other entry conditions include access to distribution channels and brand reputation. These are similar to the entry conditions for men's underwear as discussed above.
90. It is the Commission's view that the merged entity could face effective competition from potential competitors.

Countervailing Power of Buyers

91. As with men's underwear, both Farmers and The Warehouse have a high degree of purchasing power. They could constrain an attempt by the merged entity to exercise market power, by negotiating with other contract manufacturers either domestically or overseas.
92. It is the Commission's view that the larger retailers such as Farmers and The Warehouse have a high degree of countervailing power.

Conclusion on National Market for the Manufacture Including Imports)/ Supply of Thermal Underwear

93. The proposed acquisition would result in Pacific Dunlop obtaining a [] market share, which falls outside the Commission's safe harbour guidelines. However, the merged entity would be constrained by an existing competitor, potential competitors and the retailers' countervailing power.
94. The Commission therefore is satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/supply of thermal underwear.

National Market for Manufacture (Including Imports)/ Supply of Children's Socks

95. As Sara Lee does not participate in this market, there is no aggregation and therefore no competition issues arise.
96. The Commission therefore is satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/supply of children's socks.

National Market for Manufacture (Including Imports)/ Supply of Adults' Socks

Market Concentration

97. The main current market shares in the national market for manufacture (including imports)/supply of adults' socks are:

Supplier	Market Share
Pacific Dunlop	[]
NZ Sock Co	[]
Alp Socks	[]
Columbine	[]
Performance Hosiery	[]
Sara Lee	[]

98. The proposed acquisition would therefore result in minimal aggregation in the adults socks market. Furthermore, as with the markets considered above, the merged entity would be constrained by existing competitors, potential competitors and the retailers' countervailing power.

Conclusion on National Market for Manufacture (Including Imports)/ Supply of Adults' Socks

99. The Commission is therefore satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/supply of adults' socks.

National Market for Manufacture (Including Imports)/ Supply of Men's Outerwear

Market Concentration

100. The relevant current market shares in the national market for manufacture (including imports)/supply of men's outerwear are:

Supplier	Market Share
Pacific Dunlop	[]
Sara Lee	[]

101. The proposed acquisition would therefore fall within the Commission's safe harbour guidelines. It would also result in minimal aggregation in the men's outerwear market.

Conclusion on National Market for Manufacture(Including Imports)/ Supply of Men's Outerwear

102. The Commission is satisfied that the merged entity would not acquire or strengthen dominance in the national market for the manufacture (including imports)/supply of men's outerwear.

OVERALL CONCLUSION

103. The Commission has considered the impact of the proposed acquisition in the following markets:

- The national market for the manufacture (including imports)/supply of men's underwear
- The national market for the manufacture (including imports)/supply of women's underwear
- The national market for the manufacture (including imports)/supply of pantyhose
- The national market for the manufacture (including imports)/supply of thermal underwear
- The national market for the manufacture (including imports)/supply of children's socks
- The national market for the manufacture (including imports)/supply of adults' socks
- The national market for the manufacture (including imports)/supply of men's outerwear.

104. Having regard to the various elements of section 3(9) of the Act, and all the other relevant factors, the Commission is satisfied that implementation of the proposed acquisition would not result or be likely to result in any person acquiring or strengthening a dominant position in any of the above markets.

DETERMINATION ON NOTICE OF CLEARANCE

105. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Pacific Dunlop Holdings (NZ) Limited from Sara Lee Apparel (NZ) Limited the following assets:

- The finishing, sourcing and marketing of hosiery
- The marketing of men's underwear and outerwear
- The sourcing and marketing of thermal underwear
- The sourcing and marketing of women's intimate apparel
- The assignment of various brands and trade names relating to the above businesses and the benefit of certain licence agreements.

Dated this 13th day of March 2001

MJ Belgrave
Chair