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Determination

CDC Pharmaceuticals Limited and Pharmacy Wholesalers (Central) Limited [2014] NZCC 21

The Commission:	Dr Mark Berry
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Summary of application:	A joint application from CDC Pharmaceuticals Limited and Pharmacy Wholesalers (Central) Limited seeking clearance to merge their businesses.
Determination:	Under s 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.
Date of determination:	21 August 2014

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

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The proposed acquisition

1. On 19 June 2014, the Commerce Commission received a joint application from CDC Pharmaceuticals Limited (CDC) and Pharmacy Wholesalers (Central) Limited (PWL Central) seeking clearance to merge their businesses.

2. The proposed acquisition would result in the aggregation of CDC's and PWL Central's respective pharmaceutical wholesaling businesses.

The decision – clearance granted

3. The Commission gives clearance to the proposed merger as it is satisfied that it will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

4. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[1]

The substantial lessening of competition test

5. As required by the Commerce Act 1986, we assess mergers using the substantial lessening of competition test.

6. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[2]

7. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),[3] or reduce non-price factors such as quality or service below competitive levels.

8. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.

9. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.[4]

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[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.
[2] *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].
[3] Or below competitive levels in a merger between buyers.
[4] Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

When a lessening of competition is substantial

10. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.[5] Some courts have used the word 'material' to describe a lessening of competition that is substantial.[6]

11. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

12. A substantial lessening of competition is 'likely' if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.[7]

The clearance test

13. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.[8] If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.[9]

Key parties

14. Both CDC and PWL Central wholesale a range of pharmaceutical products to pharmacists as well as a number of hospitals. These pharmaceutical products include prescription drugs, some specialist hospital products as well as over-the-counter (OTC) pharmaceutical remedies.

15. In addition to CDC and PWL Central, there are two other pharmaceutical wholesalers in New Zealand; Pharmacy Wholesalers (Bay of Plenty) Limited (PWL BOP) and Pharmacy Retailing (NZ) Limited. All wholesalers supply a similar range of prescription and OTC pharmaceutical products to pharmacies.

CDC Pharmaceuticals Limited

16. CDC is a co-operative company and all of its existing [ ] shareholders are pharmacists. The shareholding pharmacists are also CDC's main customers and

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5 *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].
6 Ibid at [129].
7 Ibid at [111].
8 Commerce Act 1986, s 66(1) of the Commerce Act 1986.
9 In *Commerce Commission v Woolworths Limited* (CA), above n 2 at [98], the Court held that "the existence of a 'doubt' corresponds to a failure to exclude a real chance of a substantial lessening of competition". However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

accounted for [ ] of CDC's total pharmaceutical sales for the financial year to March 2014.

17. CDC currently operates three warehouses which are located in Dunedin, Christchurch and Wellington. From these warehouses, CDC primarily supplies customers located in the South Island and the lower North Island on a multiple daily basis, but it also services customers in the Auckland region on an overnight basis.

18. In addition to wholesaling pharmaceutical products, CDC distributes a range of animal related products to veterinaries.[10]

Pharmacy Wholesalers (Central) Limited

19. PWL Central is also a co-operative company that currently has [ ] shareholders. The shareholders include pharmacists and some hospitals. Approximately [ ] of PWL Central's sales for the financial year to March 2014 were to its shareholders.

20. PWL Central currently operates three warehouses located in New Plymouth, Wanganui and Napier. From these warehouses, PWL Central primarily supplies customers located in the central North Island on a multiple daily basis, but it also services customers in the Auckland region on an overnight basis.

Other relevant parties

Pharmacy Wholesalers (Bay of Plenty) Limited

21. Like CDC and PWL Central, PWL BOP is a co-operative company whose [ ] pharmacist shareholders are its main customers. PWL BOP currently has one warehouse in Tauranga from which it primarily supplies customers in the Waikato, Bay of Plenty and Auckland regions.

Pharmacy Retailing (NZ) Limited

22. Pharmacy Retailing (NZ) Limited, most commonly referred to as ProPharma,[11] is part of EBOS Group Limited. EBOS Group Limited is listed on the New Zealand Stock Exchange and is prominent within the healthcare sector, providing various logistics and wholesaling services across Australasia.

23. Pharmacy Retailing (NZ) Limited wholesales pharmaceutical products using three brands. These are:

    23.1 ProPharma, which operates eight warehouses located across the country and is the only provider that currently supplies pharmacies in every region of New Zealand;

    23.2 Pharmacy Wholesalers Russell, which operates one warehouse in West Auckland and focuses on supplying pharmacies in the upper North Island; and

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10 Veterinary supplies account for [ ]in sales. As PWL Central does not supply these types of products, we have not considered veterinary supplies any further.

11 ProPharma is the name most closely associated with Pharmacy Retailing (NZ) Limited and it is the name we use for Pharmacy Retailing (NZ) Limited in these reasons.

23.3 Onelink, which operates from warehouses in Dunedin, Hamilton and Auckland and is focused on wholesaling pharmaceutical products to hospitals, rather than pharmacies.

Industry background

Prescription and OTC products

24. Pharmaceutical wholesalers supply two main types of pharmaceutical products to pharmacies namely:

    24.1 prescription pharmaceutical products; and

    24.2 OTC pharmaceutical remedies.

Pharmac's role in the funding of prescription pharmaceuticals

25. Prescription pharmaceuticals account for around 85% of a pharmaceutical wholesaler's business.[12] Further, the supply and funding of the vast majority of prescription pharmaceutical products is regulated by the Government, via the Pharmaceutical Management Agency (Pharmac).

26. For prescription products that are subject to regulation, Pharmac both regulates the supply of prescription pharmaceuticals and sets the total reimbursement that a pharmacy may receive for dispensing a prescription pharmaceutical. When a pharmacy dispenses a prescription pharmaceutical, the pharmacy is reimbursed:

    26.1 the subsidised price of the drug;

    26.2 a procurement fee equal to 4% of the subsidised price;[13] and

    26.3 a dispensing fee of $5.30. [14]

27. To illustrate this, if the subsidised price of a drug is $100, the pharmacy will be reimbursed $109.30.[15]

28. The reimbursement that Pharmac offers to a pharmacy (the $109.30 in the example above) places an upper limit on the price that a wholesaler can charge to a pharmacy for a prescription drug. Any price above the reimbursement level would mean that the pharmacy is losing money.

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12 The Application at [9.7].

13 At present, the margin which Pharmac allocates for stock holding and procurement costs is currently 4% for items under $150 and 5% for items above $150.

14 The dispensing fee is $5.30 for most items. See Pharmac "Cost Resource Manual" <www.pharmac.health.nz>

15 The pharmacy can charge a co-payment fee of up to $5, and that amount is subtracted from the reimbursement the pharmacy is entitled to. For example, if a pharmacy charges a $5 co-payment on a $100 drug, it would only be reimbursed $104.30.

29. However, Pharmac does not play the same role in respect of OTC pharmaceutical products and there are some prescription products that are not funded by Pharmac.[16]

Why pharmacies use wholesalers

30. One of the main reasons that pharmacists use wholesalers is that demand for prescription pharmaceuticals is difficult to predict. While there are some products that are regularly dispensed, there is a 'long tail' of prescription pharmaceuticals that are only occasionally purchased.[17] Because of this, most pharmacies place daily, often twice daily, orders with their respective wholesaler which allows the pharmacy to reduce the amount of stock it holds.

31. Pharmacies are required under the Community Pharmacy Service Agreement (CPSA)[18] between themselves and the local district health boards to fill 90% of scripts within one hour, 99% by the close of business the next day, and 100% by the close of business two working days after the script is presented.[19]

32. For this reason, pharmacists also tend to use a wholesaler that has a warehouse located in close proximity to their pharmacy to enable them to fill all presented prescriptions within the timeframes stipulated in their CPSA.[20]

Previous decisions

33. The Commission has previously considered acquisitions involving pharmaceutical wholesalers, although those mergers were cleared under the previous dominance test.[21]

34. The most recent determination was Decision 417,[22] which considered two issues that are applicable to the present case, namely the relevant product and geographic markets. In Decision 417, the Commission considered that:

    34.1 the product market included the wholesaling of prescription and OTC pharmaceutical products since all wholesalers stocked these products and they were ordered, handled and delivered in the same way;[23] and

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16 The volume of non-Pharmac funded prescription products supplied is relatively low. For example, ProPharma estimated that [ ]and PWL Central estimated that [ ], of the prescription products they supplied were non-Pharmac funded.

17 For example, [ ]. See interview between Commerce Commission and ProPharma, 22 July 2014.

18 The CPSA is the national agreement between pharmacies and their local district health board and it sets out the funding model for pharmacies services.

19 The Application at [12.10].

20 This is evidenced by Attachment A which shows that the vast majority of a wholesaler's sales are from pharmacies near its warehouse.

21 For example, see Zuellig Pharma Limited and Sigma Limited (Commerce Commission Decision 417, 2 February 2001) and Sigma Company Limited and Amcal Chemists Marketing Limited (Commerce Commission Decision 350, 6 April 1999).

22 Zuellig Pharma Limited and Sigma Limited (Commerce Commission Decision 417, 2 February 2001).

23 Decision 417 at [84].

34.2 there were regional markets for the wholesaling of pharmaceutical products due to the requirement to provide same day deliveries for urgent situations (despite it being cheap to transport pharmaceutical products relative to their value).[24]

With and without scenarios

With the acquisition

35. With the acquisition, CDC and PWL Central would merge their respective businesses, with all existing shareholders of CDC and PWL Central becoming shareholders in the merged entity.

Without the acquisition

36. Without the acquisition, the applicants advised that they would continue to operate their businesses independently.

How the acquisition could substantially lessen competition

37. An important factor in this merger is the fact CDC and PWL Central are co-operatives which are substantially owned by the customers they supply,[25] and existing shareholders of each company would become shareholders in the merged entity.

38. The fact that both parties are co-operatives has implications for the ways in which the merger could lessen competition. There are two ways in which the proposed merger could potentially substantially lessen competition:

    38.1 by reducing the level of competition in the wholesale supply of pharmaceuticals by removing competition between CDC and PWL Central – horizontal effects; or

    38.2 because CDC and PWL Central are co-operative companies owned by pharmacies, the merger may create the ability and incentive for the merged entity to foreclose non-shareholding pharmacies in downstream retail pharmacy markets – vertical effects.

Substantial lessening of wholesale competition – horizontal effects

39. Regardless of the fact that the parties are co-operatives, for there to be a reduction in wholesale competition, they have to be competitors or likely competitors; that is, there would have to be geographic areas where CDC and PWL Central compete, or would be likely to compete, directly with one another.

40. If they do compete, the merged entity would have to have both the ability and incentive to raise prices for there to be a substantial lessening of competition.

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[24] Decision 417 at [79].

[25] PWL Central noted it has some non-trading shareholders. These are shareholders who have ceased trading with PWL Central because either the business has been sold or they have changed wholesaler but the shareholder wants to hold on to the shares.

41. In previous decisions the Commission[26] and the High Court[27] have accepted that suppliers to a co-operative may, through their ownership of the company, prevent or curtail the exercise of the co-operative's market power.

42. This does not suggest that co-operative companies cannot exercise market power. Rather the Commission considers that the particular facts of this case indicate that the merged entity is unlikely to have an incentive to raise prices to its shareholder customers. The vast majority of the shareholders in the merged entity would be its main customers and the wholesaling service of the merged entity is an essential service for all of these shareholders.

43. However, the merged entity will also have non-shareholder customers (hospitals and ad hoc sales to pharmacies whose regular wholesaler is out of stock for a particular pharmaceutical): around [ ] of CDC's sales and [ ] of PWL Central's sales are to non-shareholders. In principle, the merged entity may have an incentive to raise prices to these non-shareholder customers if:

    43.1 pharmaceutical regulations would not prevent it materially altering the conditions of supply; or

    43.2 existing competition, potential competition and buyer power would not provide an adequate constraint.

Substantial lessening of competition in pharmacy market – vertical effects

44. The merged entity would be a co-operative with pharmacies as both its shareholders and its main customers. The transaction may provide the merged entity with the ability and incentive to foreclose its shareholders' downstream pharmacy rivals by the merged entity refusing to supply certain pharmacies with pharmaceuticals (or only supplying at inflated prices).

45. Among the necessary conditions for this to be likely is that pharmacies that were refused supply:

    45.1 are not able to easily become a member of the merged entity; and

    45.2 could not obtain the required pharmaceutical products elsewhere at reasonable cost.

46. While this is a possible way in which the merger could harm competition, we consider it unlikely because we consider neither of these two conditions hold, the latter for reasons discussed in our competition analysis later in these reasons.

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[26] See Fonterra Co-operative Group Limited and New Zealand Dairies Limited [2012] NZCC 21 and Ruapehu Alpine Lifts Limited and Turoa Ski Resorts Limited (in receivership) (Commerce Commission Decision 410, 14 November 2000).

[27] See *Ravensdown Corporation Limited* v *Commerce Commission* AP168/96, 16 December 1996 and *New Zealand Co-op Dairy Ltd* v *Commerce Commission* [1992] 1 NZLR 601.

47. In respect of the former, it appears relatively easy to join either of CDC or PWL Central and we do not consider this will change post-merger. Aside from the requirement that the applicant is a qualified pharmacist, the primary requirement is whether the co-operative is confident that the pharmacy is a safe credit risk. A pharmacy that is already established is likely to satisfy that requirement. An accepted applicant must also pay a small fee to purchase shares in the co-operative. Once a pharmacy becomes a member, they will receive the same terms of trade, regardless of their location.[28]

48. For both CDC and PWL Central, directors are responsible for choosing whether to accept an application to join. Although directors have the discretion to decline an application, the co-operatives' constitutions require directors declare interests and make decisions in good faith.[29]

Competition analysis

49. As discussed above, the co-operative nature of the merged entity means that it is unlikely to be incentivised to raise prices to its shareholding members. Furthermore, Pharmac regulations are likely to limit the extent to which the merged entity would be able to raise prices for prescription pharmaceutical products.

50. However, we need to consider whether there will be sufficient competition after the transaction for supply to non-shareholders and for the supply of pharmaceutical products that are not governed by Pharmac (which includes OTC products and some prescription products). We find that:

    50.1 there are limited existing overlap areas such that there are likely to be few non-shareholders that will be affected by the transaction;

    50.2 non-shareholders that are affected by the transaction are able to purchase from ProPharma, which has national coverage; and,

    50.3 hospitals are able to purchase prescription products directly and both pharmacies and hospitals are able to purchase some OTC products directly or through other channels.

51. For these reasons, we are satisfied that the proposed acquisition would not substantially reduce competition for supply to non-shareholders and for the supply of pharmaceutical products that are not governed by Pharmac.

The relevant market

52. To assess the extent of competition it is useful to consider the "relevant market" in which the co-operatives compete. Determining the relevant market requires us to

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[28] CDC and PWL Central advised that only qualified pharmacists are allowed to join each co-operative. [ ], it was in the best interests of each co-operative to accept new members as this is what generates the economies of scale that are important for wholesalers.

[29] See for example PWL Central "Constitution of Pharmacy Wholesaler (Central) Limited" (2012) at [45.3(a)] and CDC "CDC Pharmaceuticals Limited Constitution adopted 13 August 2008" at [18.2].

judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.

53. In Decision 417, the Commission found that the product market was for the wholesaling of prescription and OTC products and the geographic market was regional. The applicants submitted that industry developments since Decision 417 mean that the markets identified in that decision are no longer relevant.[30]

54. First, the applicants asserted that the wholesale market should include not just the supply to retail pharmacies within hospitals but also the supply of pharmaceuticals to hospitals as:

54.1 most hospitals now use a wholesaler for pharmaceutical purchases;[31] and

54.2 hospitals and pharmacies mostly order the same pharmaceuticals and are treated the same by wholesalers.[32]

55. Second, the applicants assert that a national market is now appropriate as:

55.1 few pharmacies are close enough to a warehouse for same day delivery so most deliveries are overnight; and

55.2 in any event, same day deliveries are seldom required due to improvements in ordering systems and stock management.[33]

The Commission's view of the relevant markets

56. As already described, pharmaceutical wholesalers supply two main types of pharmaceutical products to pharmacies, namely prescription pharmaceutical products and OTC pharmaceutical products.

57. As pharmacies order prescription pharmaceuticals frequently and in small volumes, it is more cost effective for them to purchase prescription pharmaceuticals from a wholesaler rather than directly from manufacturers. The wholesaling function is essential for these products for pharmacies. However, for some OTC products, the pharmacist may order directly from the manufacturer or distributer or purchase via a wholesaler.

58. Unlike pharmacies, hospitals purchase sufficient quantities of both prescription and OTC pharmaceuticals that they are able to purchase those products directly from manufacturers.[34]

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30 The Application at [12.1].
31 The Application at [12.5].
32 The Application at [12.6].
33 The Application at [12.8]-[12.13].
34 In addition to volume, both private and public hospitals purchase a greater range of pharmaceuticals products than would a standard pharmacy. All existing wholesalers supply to hospitals. Typically, these include pharmaceutical products that enter the body during an operation. [ ].

59. Accordingly, for the purposes of this decision, we have considered the relevant product market to be the wholesaling of prescription and OTC products. We acknowledge, however, that the range of alternative options for pharmacies and hospitals can differ depending on the requirements of the customer and the type of product.

60. In terms of the geographic scope of the market, most pharmacies we spoke to expressed a preference for a nearby warehouse that can make frequent deliveries so that they can comply with their service standard requirements and meet customer demand.[35] This would suggest that for pharmacies at least, wholesalers are likely to compete more strongly with those wholesalers that have closer warehouses. However, we have not needed to precisely define the geographic scope of the market for the purposes of this decision.

Current competition

Limited existing overlap between CDC and PWL Central

61. CDC and PWL Central have warehouses in different locations which mean there is limited direct overlap between their activities. This is illustrated in Attachment A, which shows that there are few areas where both CDC and PWL Central make significant sales.

62. The exception is in the Manawatu and Auckland regions.[36] However, Attachment A shows that the sales of both CDC and PWL in those areas are very small compared to the presence of other suppliers, notably ProPharma and, in respect of Auckland, PWL BOP. This suggests that there is only limited existing competition between CDC and PWL Central's operations.

Constraint from ProPharma

63. In all the regions where the merged entity would operate – including Manawatu and Auckland – ProPharma would provide a strong competitive constraint.

64. Attachment A indicates that ProPharma is by far the largest wholesaler and it operates nine warehouses located throughout New Zealand. Last year, ProPharma supplied more pharmaceuticals to pharmacies than all the other wholesalers combined.

65. ProPharma advised us that there are no regions in New Zealand that it is not able to supply and there are limited barriers to expanding its existing service. In particular, ProPharma has a warehouse in Palmerston North which is between CDC's and PWL Central's warehouses. In this respect, all existing customers of either CDC or PWL have the option of purchasing from ProPharma.

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35 See for example interviews with [ ]. See also the data in Attachment A which shows pharmacies tend to purchase from nearby warehouses.

36 For example, CDC delivers to [ ]pharmacies in Auckland on an overnight basis.

66. ProPharma advised that the main reason pharmacists choose ProPharma over one of the co-operatives is that ProPharma offers different terms of trade. Unlike the co-operatives, ProPharma does not offer a yearly rebate. Rather, ProPharma provides a lower mark up on products at the point of sale than the co-operatives so the pharmacists have a lower upfront payment for the products they order.

67. ProPharma advised that any decision to supply a new or existing pharmacist is based on its assessment of the business case of the pharmacy.[37] [ ],[38] [ ].

68. Aside from imposing a constraint on the merged entity, ProPharma's presence throughout New Zealand also makes it unlikely that the merged entity would be able to foreclose non-member pharmacies. The merged entity would not be able to eliminate pharmacies from the retail market by refusing to supply pharmaceuticals because the pharmacy would be able to source from ProPharma.

Limited overlap with PWL BOP

69. The only other existing pharmacy wholesaler is PWL BOP. As noted above, there would be some overlap between CDC and PWL Central in Auckland where both ProPharma and PWL BOP currently have a presence.

70. However, PWL BOP's warehouse is located in Tauranga so there is only limited existing competition between itself and either CDC or PWL Central.

71. PWL BOP advised that it has the ability to supply any customers in the North Island, although it primarily supplies customers in the Bay of Plenty, Waikato and Auckland regions.

72. However, PWL BOP noted that geography is a major limitation in its ability to supply customers in the lower North Island. Given its location in Tauranga, it struggled to supply past Taupo on a regular basis because the courier network going south from Tauranga is very limited. To this extent, PWL BOP considers it only provides a limited constraint on the suppliers based in the lower North Island, namely CDC and PWL Central.

73. PWL BOP advised that [ ] it continues to use third party couriers like all the other wholesalers.

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37 CDC, PWL Central and PWL BOP all use similar criteria when assessing supplying a new customer. The criteria relate primarily to [ ].

38 [ ]

Constraint from direct supply

74. The merged entity would be constrained to some extent by the ability of some non-shareholding customers to bypass pharmaceutical wholesalers and source some products directly.

75. Large non-shareholding customers such as hospitals can and do purchase prescription pharmaceuticals directly from the manufacturer and these purchases are expected to continue post acquisition particularly in respect of public hospitals.[39]

76. Non-shareholding pharmacies and hospitals are also able to purchase some OTC products directly or through other sales channels. For example, some manufacturers of OTC products currently supply directly to most pharmacies throughout New Zealand. [40]

77. It is also common for individual pharmacies to join buying groups that purchase products directly from manufacturers. Buying groups offer individual pharmacies greater scale and are commonly used to coordinate promotional deals with manufacturers of OTC products. Shareholders in PWL BOP, PWL Central and CDC are able to join the Access Buying Group. Other prominent buying groups include the Vantage Buying Group, which is affiliated with ProPharma and Green Cross Health Limited, which represents over 300 pharmacies under the Unichem and Life Pharmacies banners.

Overall conclusion

78. The Commission considers that, in this case, the co-operative nature of the merged entity means that it is unlikely to be incentivised to raise prices or reduce the quality of its services to its shareholding members. Furthermore, Pharmac regulations are likely to limit the extent to which the merged entity would be able to raise prices for prescription pharmaceutical products.

79. In addition, in relation to the impact on non-shareholders and the supply of pharmaceutical products that are not governed by Pharmac, we find that:

    79.1 there are limited existing overlap areas;

    79.2 non-shareholders that are affected by the transaction are able to purchase from ProPharma; and

    79.3 hospitals and some pharmacies are able to purchase some products directly.

80. For these reasons, the Commission is satisfied that the proposed acquisition would not be likely to substantially reduce competition for non-shareholders and for the supply of pharmaceutical products that are not governed by Pharmac.

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39 For example, see Health Benefits Limited “DHBs and Health Benefits launch National Procurement Service”, 11 July 2014. <http://healthbenefits.co.nz>

40 See interviews [ ]
.

Determination on notice of clearance

81. The Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

82. Under s 66(3)(a) of the Commerce Act 1986, the Commission gives clearance to CDC Pharmaceuticals Limited and Pharmacy Wholesalers (Central) Limited to merge their businesses through an amalgamation.

Dated this 21st day of August 2014

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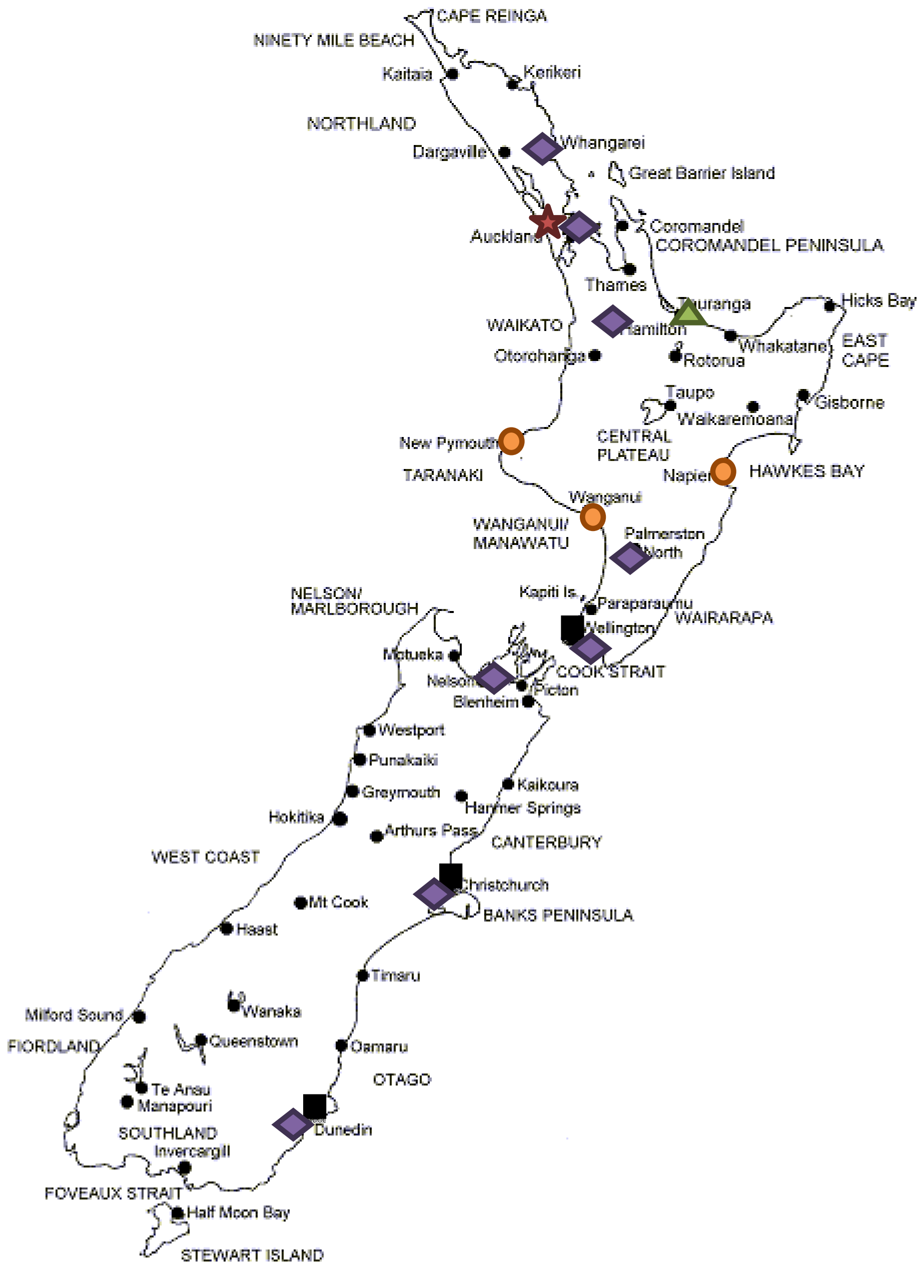
Sue Begg
Deputy Chair

Attachment A: Yearly sales to pharmacist per region

Regions	CDC	Regional %	PWL Central	Regional %	ProPharma	Regional %	PWL BOP	Regional %	Direct	Regional %	Total
Northland	[										
Auckland											
Waikato											
Bay of Plenty											
East Coast											
Hawkes Bay											
Manawatu											
Taranaki											
Wellington											
Marlborough											
Canterbury											
Otago											
Southland											
New Zealand Total											]

Source: IMS Health: New Zealand wholesaler market share report. Moving average total (MAT) data for 12 months to March 2014. Data includes rounding errors. **Bolded data** indicates that a supplier has a warehouse in that region.

Attachment B: Location of warehouses



Map source: Google images

Key

ProPharma (Pharmacy Retailing (NZ) Limited)

Pharmacy Wholesalers Russell (Pharmacy Retailing (NZ) Limited)

PWL BOP

CDC

PWL Central