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19 May 2004

The Registrar
Business Acquisitions & Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

PURSUANT TO SECTION 66 (1) OF THE COMMERCE ACT 1986 NOTICE IS HEREBY
GIVEN SEEKING **CLEARANCE** OF A PROPOSED BUSINESS ACQUISITION

PART 1 – TRANSACTION DETAILS

The Proposed Business Acquisition

1 The Business Acquisition for Which Clearance is Sought

- 1.1 The acquisition for which clearance is sought is the acquisition by Gallagher Holdings Limited ('Gallagher Holdings'), or a nominee being a wholly owned subsidiary of Gallagher Holdings, of up to 100% of the ordinary shares of Tru-Test Corporation Limited (**Tru-Test**).
- 1.2 As at the date of this application Gallagher Holdings owns 4,743,352 of the 32,284,552 Tru-Test shares on issue (14.69%).
- 1.3 Should Gallagher Holdings wish to acquire more than 20% of the shares in Tru-Test, then it will need to do so in accordance with the Takeovers Code and will need to make a Code compliant offer to all shareholders of Tru-Test.

2 The Person Giving This Notice

- 2.1 This notice is given by:

Gallagher Holdings Limited
Private Bag 3026
Hamilton
New Zealand
Telephone: (07) 838 9800
Facsimile: (07) 838 9899
Attention: Steve Tucker/Stephen Hoffman
Email: stevet@gallagher.co.nz or stephenh@gallagher.co.nz

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- 2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Quigg Partners
Level 7 The Bayleys Building, 28 Brandon Street
PO Box 3035
Wellington
Telephone: (04) 472 7471
Facsimile: (04) 472 7871
Attention: David Quigg/John Horner
Email: davidquigg@quiggpartners.com or johnhorner@quiggpartners.com

Confidentiality**3 Requested Confidentiality**

- 3.1 Gallagher does not require the fact of the proposed acquisition to be kept confidential.
- 3.2 Gallagher does request that specific information contained in or attached to the notice is kept confidential. Gallagher seeks confidentiality for the information in this application that is contained within square brackets and written in italics (e.g., [*example*]). We have provided a copy of this application with such confidential information deleted for the assistance of the Commission.
- 3.3 Gallagher requests that, on expiry of any confidentiality order that the Commission may make, the confidential information continues to be withheld under section 9 of the Official Information Act 1992. Confidentiality is sought on the grounds that:
- (a) The information is commercially sensitive and valuable and its disclosure is likely to unreasonably prejudice the commercial position of Gallagher; and
 - (b) There are no other considerations that render it desirable in the public interest to make the information available under the Official Information Act 1982.

Details of the Participants**4 The Participants**

- 4.1 The acquirer of the shares is:
- Gallagher Holdings Limited, details of which are set out in paragraph 2.1 above, or a wholly owned subsidiary. Refer www.gallaghergroup.co.nz for further information.
- 4.2 The target company is:
- Tru-Test Corporation Limited ('**Tru-Test**'). Refer www.tru-test.com for further information.

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The suggested contact person and details for Tru-Test is:

Desmond Scott
 Managing Director
 Tru-Test Corporation Limited
 PO Box 51078
 Pakuranga
 Auckland
 Telephone: 09 978 8888
 Facsimile: 09 978 8889

- 4.3 The proposed transaction is a full or partial takeover offer in accordance with the Takeovers Code, for the shares in Tru-Test. In the event that some shareholders do not accept an offer such shareholder will retain a shareholding in Tru-Test. The applicant believes, of the current shareholders, only two have 10% or more of the ordinary shares in Tru-Test. They are the applicant and ANZ Banking Group (NZ) Ltd, Private Equity Division which held [] as at 31 January 2004.

5 Inter-Connected to or Associated Parties

5.1 Gallagher Group/Associates:

- (a) Gallagher Holdings Limited is based in Hamilton and wholly owns Gallagher Group Limited ('Gallagher'), which is the principal operating company of Gallagher Holdings.
- (b) The corporate wiring diagram of Gallagher Holdings is set out in Appendix 1 and includes all trading subsidiaries.

5.2 Tru-Test Group/Associates:

- (a) The corporate wiring diagram of the Tru-Test Group, as the applicant understands it, is set out in Appendix 2.

6 Existing Beneficial Interests

- 6.1 Gallagher currently holds 4,743,352 of the ordinary shares of Tru-Test (14.69%).

7 Links Between Participants and their competitors

- 7.1 Gallagher are not privy to the details of any links, formal or informal, between Tru-Test and their existing competitors, other than Gallagher, in the market.
- 7.2 Gallagher and Hurricane Wire Products Limited ('Hurricane') are party to a manufacturing agreement through Franklin Machinery Limited ('Franklin'), a wholly owned subsidiary of Gallagher, to contract manufacture Hurricane gates and gate hardware products, branded Hurricane. The value of these sales from Franklin to Hurricane was [] for gate hardware and [] for gates in the twelve months ending December 2003. A copy of the

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original agreement for the distribution of Franklin gate hardware by Hurricane is set out in Appendix 4.

- 7.3 Franklin has a hotdip galvanising facility at Pukekohe, which it uses for internal use and external contract manufacturing. Hurricane is a hotdip galvanising customer, primarily for pool fencing panels and products distributed to the building sector. No formal agreement exists.
- 7.4 Franklin also purchases raw material gate rod from Hurricane and tube and flat steel from Steel and Tube Holdings Ltd (Hurricane parent company), as well as from other suppliers. No formal agreement exists.
- 7.5 Franklin contract manufacture gate hardware products for Tru-Test, branded Cyclone. The value of these sales from Franklin to Cyclone was [] for the twelve months ending December 03.
- 7.6 Hurricane acts as sales and marketing agents for Gallagher branded electric fencing products in selected rural and hardware stores. In the twelve months ending December 03, this amounted to [] of sales to Hurricane by Gallagher. A copy of this agreement is set out in Appendix 5.
- 7.7 Gallagher act as sales and marketing agents for Hurricane branded wire and wire products in selected rural stores. In the twelve months ending December 03 this amounted to [] of sales to Gallagher by Hurricane. A copy of this agreement is set out in Appendix 6.
- 7.8 Gallagher has non-exclusive and informal purchasing relationships to purchase incidental fencing components from Robertson Engineering and Taragate, the total sales value of these components was [] for the last twelve months.

8 Common Directorships

- 8.1 Other than noted in 8.2, no director of Gallagher is also a director of any other company involved in the markets in which Tru-Test's business operates other than companies directly or indirectly controlled by the Gallagher group.
- 8.2 A director of Gallagher, Rob Booth, is also a director of Shoof International Limited, a general rural supply company (refer www.shoof.co.nz), which may have some minor product overlaps from time to time, but nothing of significance.

9 Business Activities of the Participants

- 9.1 The Gallagher group comprises of a number of companies with a primary focus on the design, manufacture and marketing of animal and security management systems in New Zealand, and exports to more than 100 countries internationally, through a network of subsidiary and associate companies, and distributors. The group includes the Gallagher Animal Management Systems, Gallagher Security Management Systems and Gallagher Plastic divisions and the Sunplas Engineering and PEC Fuel Pumps companies. Approximately [

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] of Gallagher sales revenue is from export sales, excluding dividends and royalties from overseas investments.

- 9.2 Gallagher is headquartered in Hamilton, New Zealand and, directly or indirectly, employs more than 450 staff in New Zealand.
- 9.3 Gallagher key products are categorised as follows:
- Rural fencing products;
 - Animal weighing systems;
 - Non rural / industrial fencing products;
 - Contract manufacturing products;
 - Security access control products; and
 - Fuel dispensing products.
- 9.4 Tru-Test is headquartered in Auckland, New Zealand, and describes itself as a 'multinational company who designs and develops, and manufactures and markets agritech solutions through an international distribution network' (www.tru-test.com).
- 9.5 Tru-Test's key products can be categorised as follows:
- Rural fencing products;
 - Animal weighing systems;
 - Non rural / industrial fencing products;
 - Contract manufacturing products;
 - Milk metering equipment;
 - Shearing products; and
 - Brain monitoring equipment.
- 9.6 It is estimated that Tru-Test derives approximately 60% of its revenue from export (New Zealand Herald 30/03/04).

10 Reasons for Proposal and Intentions in Respect of the Acquired Business

- 10.1 Gallagher sees the proposed acquisition as expanding offshore competitiveness through a lower average product cost and a larger local manufacturing base. This could be achieved though a merger with the Tru-Test manufacturing and other overhead operations.
- 10.2 Gallagher and Tru-Test combined derive sales from exports of approximately [] per annum of a total combined sales value of approximately [].

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The majority of this combined export sales comes from the export of rural fencing products.

- 10.3 Export of rural fencing products is predominately the export of electric fence products. Whilst current participants do export some wire/wire products and gates, this has not been of significance.
- 10.4 The long term export of electric fence products from New Zealand is increasingly under threat for the following reasons:
 - (a) An increasing number of suppliers are entering the market worldwide. These suppliers have larger home markets from which to establish a strong business (Refer 16.5 for list of offshore electric fence suppliers).
 - (b) Offshore suppliers have a lower cost of supplying their local markets through lower freight and distribution costs, and lower local support costs.
 - (c) The increasing offshore trend for product to be merchandised in larger chain stores as opposed to speciality stores reducing the margin and attractiveness of offshore markets
- 10.5 The pre-acquisition difficult trading environment of competitors is supported by the acquisition prices (relative to net asset value) paid by Tru-Test for the following rural fence businesses:
 - (a) PEL – acquired on 30/4/2001 for \$6.676M, net asset value \$4.453M (source – Note 22, Tru-Test annual accounts, year ending 31/8/2001);
 - (b) Cyclone – acquired on 01/11/2001 for \$7.611M, net asset value \$6.796M (source – Note 26, Tru-Test annual accounts, year ended 31/8/2002).
- 10.6 Gallagher is concerned about the ongoing profitability and viability of Tru-Test. For the 5 year period 1998 to 2002 Tru-Test delivered an audited average annual after tax surplus attributable to shareholders of \$878,800 (source – Tru-Test Investment Statement and Prospectus 9 May 2003, p.14). The net surplus for the 2003 year was \$2.439M, but included a net increase of capitalised development costs of \$2.298M in that same year (source Tru-Test annual accounts 31 August 2003).
- 10.7 Both Tru-Test and Gallagher continue to face a difficult global trading environment with high exchange rates and generally weaker rural trading markets. Tru-Test has reported to shareholders a 2004 half-year deficit of \$502,000, excluding non-recurring items.
- 10.8 Gallagher, having taken an initial stake in Tru-Test intends to more proactively manage its investment in Tru-Test to ensure an adequate return, subject to clearance by the Commission.
- 10.9 The applicant notes that some shareholders of Tru-Test paid considerably more than the price paid by Gallagher for its current stake. The applicant

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understands the senior management of Tru-Test and related parties hold a considerable number of shares in Tru-Test. As such Gallagher's involvement has created an environment where any further involvement may be viewed by Tru-Test management as hostile.

PART 2: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 Markets Where There Would be an Aggregation of Business Activities

- 11.1 The proposed acquisition of the shares of Tru-Test by Gallagher will, if successful, result in aggregation in the business activities of the following markets:
- (a) the manufacture and distribution of rural fencing products to rural resellers in New Zealand, (the 'rural fencing market');
 - (b) the manufacture and distribution of animal weighing equipment to rural resellers in New Zealand, (the 'animal weighing market');
 - (c) the manufacture and distribution of industrial fencing products to industrial fencing contractors in New Zealand, (the 'industrial fencing market').
- 11.2 Both Gallagher and Tru-Test operate in the business of manufacturing various plastic and electronic products on a contract basis (e.g. where a third party manufacturer requires certain plastic products which Gallagher or Tru-Test have capacity to produce from existing manufacturing plants) ('contract manufacturing'). It is estimated that the combined contract manufacturing business for Gallagher and Tru-Test would be less than 5% of the contract manufacturing capability in New Zealand. Also, the applicant has most capacity in, and therefore focuses on, plastic injection moulding opportunities. The applicant understands Tru-Test largely focus on electronic assembly opportunities. For these reasons contract manufacturing is not further considered in this application.
- 11.3 **Product Dimension:** Within the markets defined in 11.1 above, the following product groups within each market can be defined;
- (a) in the rural fencing market:
 - (i) electric fence products – including, but not limited to, insulators, lead out and undergate cable, conductive polywires, tapes and braids, fence energisers and fence testers;
 - (ii) wire and wire products – including, but not limited to, galvanised wire, fabricated wire fences, staples and nails and fencing tools;

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- (iii) fence posts –consisting of steel, fibreglass and wooden post products;
 - (iv) gates and gate hardware – including, but not limited to, steel gates, wooden gates, electric gates, gudgeons, hinge straps and gate fasteners.
- (b) in the animal weighing market weighing indicators, load bars, and accessories.
- (c) in the industrial fencing market as per the product categories outlined in 11.3(a)(i-iv).
- 11.4 Clearly products in the different product groups are not substitutable from a demand perspective. The applicant considers that as far as distribution is concerned, all rural fence products are substitutable from the supply side where it is simple and easy to source or manufacture additional products. Alternative sources of supply are considered elsewhere in this application. A current or potential distributor would simply need to “bundle” the different products required to be in a position to compete directly with the merged entity. In terms of manufacturing, some products will be substitutable from a supply perspective although it is fair to say such instances between the different product groups identified will be limited.
- 11.5 The applicant considers that the product groups defined in 11.3(a) (i-iv) are part of the rural fencing market based on the following supporting evidence:
- (a) in *Queensland Wire Industries Pty Limited v The Broken Hill Proprietary Company Limited* (High Court of Australia) (1989) 167 CLR 177 F.C. 89/004 made various reference to “the market for the supply of rural fencing materials in Australia” in considering the relevant market for a steel rural fence post.
 - (b) In the Commission’s internal memorandum dated 23 June 2003 entitled ‘Investigation Report - Steel and Tube Holdings Limited / Hurricane Wire Products Limited’, the Commission staff member, having conducted an investigation into the acquisition of Hurricane by Steel and Tube Holdings Limited, considered a relevant market for the purposes of the analysis to be ‘the national market for the production and distribution of fencing products.’ (para.69). In consideration of the product dimension of the relevant market the report stated:

“It may be possible to define a separate market for the production of gates, although it is more appropriate for the purposes of this analysis to treat gates and fences as cluster products, as consumers are unlikely to buy fences without gates, and producers of fences are also generally producers of gates. Therefore, for the purposes of this analysis it is considered that gates and fences form part of a broader product market for fencing products.” (para.65).

The report also considered whether other forms of fencing, electric and

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(refer 16) supply both weighing indicators and load bars to rural resellers. Generally these products are sold to the end user farmer as a set from the same manufacturer and products from different manufacturers are not necessarily compatible.

11.8 The applicant considers that the product groups referred to in 11.3(c) form the market for industrial fencing products on similar grounds to the arguments in 11.4 for rural fencing. An industrial fence generally requires a bundle of products, installed/managed by the one installer/contractor, and encompasses gates, posts, wire products, and electrification options.

11.9 The **functional dimension** of the relevant markets is a combination of manufacture and distribution. Both Gallagher and Tru-Test manufacture the products and supply them to rural resellers such as RD1 and Farmlands. Gallagher rarely sells products direct to end-users and, as far as the applicant is aware, neither does Tru-Test. The applicant does not consider manufacture and distribution as distinct functional dimensions because typically suppliers of the relevant products do both. This application has considered the separation of these two functions in respect of certain product groups where appropriate.

11.10 The **geographic dimension** of the markets defined in 11.1 is national.

11.11 In the rural fencing and animal weighing markets, the rural resellers have gone through significant amalgamation and consolidation over the last five years. As a result these organisations cover larger geographical regions and, through centralised purchasing, increasingly source from national suppliers in order to present a consistent reseller brand image. Examples of this consolidation are:

- RD1 formed from amalgamation of New Zealand Dairy Company, Kiwi Dairy Company, Tui Dairy Company, and Northland Dairy Company;
- Pyne Gould Guinness acquired and merged Reid Farmers and Southland Farmers into PGG;
- CRT acquired Landbase and Greenfields;
- Williams and Kettle acquired Fruitfed; and
- RD1 currently owns approximately 19% of the shares in Wrightson. In an announcement to the NZX on 13 May 2004, the following indication of further consolidation in the rural reseller market was signalled.

“Mr Palmer said Wrightson had major initiatives under discussion which, at this stage, are not sufficiently implemented to reflect fully in the Board's value range.

However, he said shareholders should be made aware of the possible initiatives and the Board's view that these could result in a significant further uplift in the value of Wrightson shares over time. Preliminary assessments incorporating these possible initiatives indicate a potential value in excess of \$2 per share.

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These possibilities include:

- Discussions currently underway with Fonterra about a possible combination of rural supplies businesses.”

- 11.12 A table of rural supply stores for rural fencing and animal weighing in New Zealand is as follows:

Rural Stores	Main Area	Approx. No. of Stores	Contact Person – Fencing Category Manager
RD1 Limited (Refer: http://www.rd1.com/)	National – predominant North Island	52	
Wrightson Limited (Refer: http://www.wrightson.co.nz/)	National	77	
Williams and Kettle Limited (Refer: http://www.wilket.co.nz/)	North Island	16	
Farmlands Trading Society Limited (Refer: http://www.farmlands.co.nz/)	North Island	29	
Taranaki/King Country Farmers (Allied Farmers Limited) (Refer: http://www.alliedfarmers.co.nz/)	North Island	14	
CRT Society Limited (Refer: http://www.crt.co.nz/)	South Island	27	
Pyne Gould Guinness Limited (Refer: http://www.pgg.co.nz/)	South Island	42	
Goldpine Industries (Refer: http://www.goldpine.co.nz/)	South Island	14	
Other Stores (of significance)	Throughout	48	
Total		319	

- 11.13 The above table shows 8 significant rural supply organisations in New Zealand with more than 10 stores as part of their affiliation. These 8 organisations represent 85% of the stores available for reasonable level of merchandising rural fencing and animal weighing products.
- 11.14 Gallagher have two manufacturing plants for rural fencing products (both making different product sets) and one South Island warehouse to increase delivery times in the South Island. Freight costs as a percentage of total sales are approximately [].
- 11.15 The industrial fencing market is also considered to be national. The products supplied by Gallagher and Tru-Test are supplied throughout New Zealand to contractors for installation of industrial fences. This is considered due to the low freight costs of the relevant products.
- 11.16 The **customer dimension** of the relevant markets is restricted to rural resellers for rural fencing and animal weighing products and to industrial fencing

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contractors for industrial fencing products. There are very few direct sales to end users from Gallagher or, as far as the applicant is aware, Tru-Test.

11.17 In summary, the applicant will proceed on the basis of the following markets:

- (a) the manufacture and distribution of rural fencing products to rural resellers in New Zealand, (the 'rural fencing market');
- (b) the manufacture and distribution of animal weighing equipment to rural resellers in New Zealand, (the 'animal weighing market');
- (c) the manufacture and distribution of industrial fencing products to industrial fencing contractors in New Zealand, (the 'industrial fencing market').

Differentiated Product Markets

12 Standardised or Differentiated?

12.1 The applicant considers that the products in each of the relevant markets have some levels of differentiation, but believes that price is a significant factor to the rural resellers, industrial fence contractors and ultimate end-users in their purchasing decision.

13 Characteristics of Differentiation

Rural Fencing

13.1 The applicant believes that a number of different considerations are relevant when a farmer determines what type of fence, and consequentially what fencing products, are appropriate in any given situation. Fences can range from permanent to semi-permanent or temporary and of various constructions including electric and non-electric. Different fence constructions will have varying costs, degrees of maintenance required and effectiveness for different types of livestock in varying situations.

13.2 The applicant considers that in general these different types of fences are substitutable, although in some circumstances it will be more practical to use a particular type of fence. For example, when a farmer requires more intensive or rotational grazing a portable system using electric fence components will generally be used.

13.3 Once a farmer has decided on the fencing system to be used he or she will consider where to buy the products to erect the fence from. This is a choice of rural resellers and will largely depend on the resellers present in the region and their reputation with farmers. Often the resellers will have established relationships with the farmers.

13.4 Ultimately the fencing products required will be selected from the range of products offered by the particular rural reseller. It is the control of the reseller in determining what supplier products to stock and how much shelf space each supplier has which ultimately establishes competition for the different rural

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fence products available. The differentiating features of each stage are set out in more detail below.

13.5 For rural fencing products, the applicant considers that the end-user farmer determines the type of fencing system to use based on a combination of factors including:

- (a) Initial price;
- (b) Life of the fence and ongoing maintenance requirements;
- (c) Effectiveness of animal containment required for situation (including structural strength);
- (d) Grazing management considerations; and
- (e) Aesthetic and personal preferences.

Generally, New Zealand end user farmers are business customers who are profit focused and strive to reduce operating inputs. As such, price is a key factor in the above list.

The choice of fencing systems is large and is based on using/substituting products in varying combinations from each of the product groups defined in 11.3(a). The more common combinations used in New Zealand include, post and rail, post, wire and batten, post and electric wire, post and netting, and combinations of each. Some pictures of the different types of fencing are set out in Appendix 7.

As an example of this substitution, a decision to construct an electric wire fence will result in the use of less wire, staples, posts and battens (as a result of running less wires and spacing posts further apart to achieve the same 'strength' or effectiveness) as compared to constructing a post, wire and batten fence. These products would be substituted for the electric fence components e.g., insulators, cutout switches etc.

13.6 After determining which fencing system and the associated products preferred, the end-user farmer determines the retail supplier based on a combination of factors including:

- (a) Price;
- (b) Availability at the preferred rural reseller where his/her account is held (loyalty to the reseller is assisted by some of the rural resellers being member cooperatives); and
- (c) To a lesser extent, brand and reputation of the suppliers.

Within the product categories in rural fencing defined in 11.3, the applicant considers that price is a key factor.

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13.7 For rural fencing products, the rural resellers are likely to consider a number of factors in selecting suppliers including:

- (a) Price (invoice and rebate);
- (b) Range of rural fencing products supplied by the vendor;
- (c) Other services provided – product delivery, in-store and on-farm support, product training; and
- (d) Brand and reputation of the manufacturer.

The applicant considers rural resellers are increasingly placing more weight on price and product range in the vendor selection process and decreasing value on other supplier services and supplier brand value.

With increasing consolidation by rural resellers, the rural resellers are placing more emphasis on building their brand awareness to ensure customer loyalty to their organisation, irrespective of whose products they choose to merchandise. As a result, the brand value of the manufacturer/supplier is decreasing in importance to some of the resellers and the need to merchandise all manufacturer brands by that reseller is reducing. Examples of this includes;

- Wrihstons' decision to carry Speedrite electric fence brand exclusively in New Zealand. Effectively creating a Wrightson 'house brand'
- Williams and Kettle decision to exclude Gallagher electric fence brand, the largest single electric fence brand from their stores. [].

Animal Weighing

13.8 For the animal weighing market, the rural resellers selection criteria are likely to be similar to those criteria for rural fencing products and all of the statements in that respect are relevant.

Industrial Fencing

13.9 For the industrial fencing market, the applicant considers that the end-user determines the type of fencing system to use based on a combination of factors including:

- (a) Initial price;
- (b) Aesthetic and personal preferences;
- (c) Effectiveness and level of required security – detection and deterrent aspects; and
- (d) Life of the fence and ongoing maintenance requirements.

Generally, end users are business customers who are profit focused and strive to reduce operating inputs. As such, price is a key factor in the above list.

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There are many different varieties of industrial fencing systems. Choice of systems and products is believed to be typically based on using/substituting products in varying combinations from each of the product groups defined in 11.3(a).

13.10 Once the type of industrial fence system is selected by the end-user (often on the advice of the installer/contractor) there are a number of factors that the end-user or installer/contractor takes into account in selecting suppliers of the various products including:

- (a) Price;
- (b) Range of industrial fencing products supplied by the vendor;
- (c) Other services provided – product delivery, support, product training; and
- (d) Brand and reputation.

The use of electric fencing components within industrial fencing applications is very small in New Zealand. As such installers/contractors have tended to support preferred electric fence suppliers as opposed to reviewing terms on a job by job basis.

13.11 On the basis of the product differentiation identified above the merged entity will be constrained in its actions by the presence of other manufacturers and distributors in each of its markets. In each market there are other suppliers whom either supply, or are able to supply through expanding their range, the products supplied by the merged entity.

Vertical Integration

14 Vertical Integration Between Firms at Different Functional Levels

14.1 Other than the supply of gate hardware to the Cyclone business of Tru-Test by Franklin (100% owned by Gallagher) the proposal will not result in vertical integration between participants involved at different functional levels. Franklin supplies certain gate hardware products to Cyclone on an informal and commercial basis. The value of these sales for the year end December 2003 was [].

Previous Involvement in Acquisitions

15 Previous Involvement by Gallagher or Tru-Test (or Interconnected Body Corporates)

15.1 In respect of the relevant markets identified above no participant has notified the Commission of a proposed acquisition in the last three years []

15.2 Other acquisitions, which the participants have undertaken in the last three years in the markets, include the acquisition from Fletcher Steel Limited of

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Cyclone by Tru-Test in November 2001 and the acquisition of the business of PEL Industries Limited by Tru-Test in April 2001 (both in the rural fencing market). The Commerce Commission made inquiries of those transactions, Tru-Test answered the Commission's queries and no further issues were raised (Tru-Test Prospectus, dated 9 May 2003 page 13).

VERSION FOR PUBLIC RELEASE**PART 3: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION****16 Existing Competitors**

- 16.1 Market share information (by sales volume) for the relevant markets is as follows:
- 16.2 For each of the markets, the current estimated market share is used. No readily available data exists to provide this for the previous five years. Where significant, any changes to the market composition have been otherwise noted in this application.

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A. Rural Fencing

Table 1: Rural Fencing Market Share

Company	\$M	%
Gallagher		
Tru-Test (Refer: http://www.tru-test.com/)		
Goldpine * Refer: http://www.goldpine.co.nz/)		
Hurricane (Refer: http://www.agritech.org.nz/hurricanewire.shtml)		
Ramsey Roundwood * (Refer: http://www.tenon.co.nz/ourcompany/operations.asp)		
CHH Wood Products * (Refer: www.chhwood.com)		
Greysons (Perry Group Limited)		
Euro Corporation Limited ¹		
Strainrite (Refer: http://www.robertsonengineering.co.nz/)		
Profence (Refer: http://www.profence.com/)		
Arrow (Refer: http://www.arrowint.co.nz/)		
Walker Industries Limited ²		
Others *		
Total Market		100%
Current three firm concentration ratio		
Three firm concentration post-acquisition		
Gallagher/Tru-Test post acquisition		

* Note, the participants, Goldpine, Ramsey Roundwood, CHH Wood Products, and [] of the others are roundwood post manufacturers and distributors only. It is acknowledged that they are not manufacturers and distributors of electric fencing, gates and gate hardware or wire and wire products. However, their products are considered competitive products to other post systems supplied by the other participants and their demand is directly affected by the fencing system chosen.

At the suggestion of the Commission, market share information is provided to allow the Commission to consider a narrower view of the rural fencing market as being each of, or other combination of, the following product groups. In the event that a narrower view is taken, then those product groups not included in the market should be considered as near entrants in Part 4 of this application.

¹ Address details: 25 Smales Road, East Tamaki, Auckland 1701. Telephone: (09) 271-1627, Fax: (09) 271-1637.

² Address details: 208 Hazeldean Road, Sydenham, Christchurch. Telephone: (03) 366 9966.

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Company	\$M	%
Gallagher		
Tru-Test		
Others		
Total Market		100%

Participants: Manufacturers and distributors of electric fence products in New Zealand include:

- Gallagher Group Limited – distributed under the brands Gallagher and Franklin (also a gate and gate hardware brand) to rural resellers;
- Tru-Test Corporation Limited – distributed under the brands Stafix, Speedrite, and PEL to rural resellers;
- Others include:
 - Strainrite Fencing Systems ('Strainrite') – Stainrite products are distributed by Robertson Engineering Limited (refer www.robertsonengineering.co.nz) to rural resellers;
 - Taragate Limited ('Taragate') – distribute to rural resellers (refer www.taragate.co.nz);
 - O'Brien Plastics ('O'Briens') – refer www.obrienplastics.co.nz – new brand to be launched ;
 - Thunderbird – Australian manufacturer County Electronics (refer www.thunderbird.au.com) – energizers are distributed in New Zealand by Technipharm International Limited direct to farmers. (Refer www.technipharm.co.nz);
 - Beattie Insulators Ltd³ ('Beattie') – Kaikoura based – products are distribute to rural resellers; and
 - Imports – Red Snap'r branded products (refer: <http://www.redsnapr.co.nz/>) have at various times been imported from the United States and distributed direct to farmers through National Field days and associations with direct mail distributors.

Source: The competitor information provided in Table 2 is estimated based on shelf space allocations in rural resellers as a percentage of the total estimated account size and is considered to have a high level of accuracy.

³ Address details: 163 Inland Road, Kaikoura 8280. Telephone: (03) 319-5467, Fax: (03) 319-6062.

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Note: The values included in Table 2 include all products sold as part of the Gallagher electric fence range (similar assumption for Tru-Test). These products can be further divided into the sub-product categories including wire and wire products and posts that, as a fencing system, are within the product groups in tables 3 and 5 below. (Refer Table 2(a) below for approximate breakdown). Further, some incidental products included in these values are not specific to electric fencing e.g., wire tighteners.

Table 2(a): Electric Fencing Sub Products

Sub - Product Category	\$M	% Total
Energisers		
Accessories		
Wire and Wire Products		
Post Products		
Total		100%

Wire and Wire ProductsTable 3: Wire Product Group

Company	\$M	%
Tru-Test		
Hurricane		
Euro Corporation Limited		
Strainrite		
Profence		
Arrow		
Total Market		100%

Participants: Manufacturers and distributors of wire and wire products in New Zealand include:

- Tru-Test Corporation Limited – distributed under the brands PEL (also brand used for electric fencing products), Cyclone (also brand used for gates and gate hardware), and Hayes (fencing tools);
- Hurricane – 100% owned subsidiary of Steel and Tube Holdings Ltd. Also distribute electric fencing (refer 7.6);
- Euro Corporation Limited ('Euro Corp') – distributor of galvanised wire and manufacturer of fabricated fence;
- Strainrite – brand also used for electric fencing;

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- Profence – CRT brand, fabricated fence sub contract manufactured by South Fence Machinery Limited;
- Arrownail Industries (‘Arrow’) – nail manufacturer;
- Other suppliers not included supplying through various distribution channels;
 - Fencing Direct Limited – Rangiora
 - Anchor Wire Limited – Auckland
 - Paul Industries - Tauranga

Source: The competitor information provided in Table 3 is estimated based on []. These estimates are considered to have a high level of accuracy and are consistent with []

Gates and Gate Hardware

Table 4: Gates and Gate Hardware Product Group

Company	\$M	%
Gallagher		
Tru-Test		
Hurricane		
Greysons		
Walker		
Total Market		100%

Participants: Manufacturers and distributors of gate and gate hardware products in New Zealand include:

- Gallagher – distributed under the brand Franklin (also an electric fence product brand);
- Tru-Test – distributed under PEL (wire product and electric fence brand) and Cyclone (wire products brand);
- Hurricane – 100% owned subsidiary of Steel and Tube Holdings Ltd;
- Greyson Gates Limited (‘Greysons’) – 100% owned subsidiary of Perry Group Limited. Distribute under Greysons brand;
- Walker Industries (New Zealand) Limited (‘Walker’) – produce gate hardware, majority sub-contract for Tru-Test. The table above shows nominal value for estimated direct sales by Walker but excludes the products manufactured by Walker and distributed by Tru-Test.

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The above table is based on total gates of [] per annum at an average gate value of []. Excluded from these figures are:

- Estimated 60,000 wooden gates and 50,000 steel gates manufactured outside those participants listed, based on Franklin wooden, weld on, and bolt on gate hinges sold at estimated [] market share; and
- Estimated 100,000 electric gates (spring, tape and bungy) based on Gallagher electric gates sold at estimated [] market share.

Source: The information in table 4 is based on sales value distributed to the rural reseller. The market shares figures for the manufacture of gates and gate hardware can be determined using the information provided in paragraph 7 of this application. The competitor information provided in Table 4 is estimated based on yard space allocations in rural resellers as a percentage of the total estimated account size and is considered to have a high level of accuracy. []

Posts

Table 5: Posts Product Group

<u>Company</u>	<u>\$M</u>	<u>%</u>
Goldpine		
Ramsey Roundwood (FCF)		
CHH Wood Products		
Other		
Total Market		100%

Participants: Manufacturers and distributors of post products in New Zealand include:

- Goldpine Industries Limited ('Goldpine') – Approx. 25 years in the industry as a roundwood producer. Vertically expanded to being a rural reseller in 1989, and currently has 15 branch outlets. Extended product offering through supply of fencing tools (Strainrite) and wire/wire products (Hurricane) approx. 7 years ago and electric fencing products (Gallagher) approx. 3 years ago. Goldpines core focus appears to be on the supply of total rural fencing solution. (Refer www.goldpine.co.nz).
- Ramsey Roundwood – division and brand of Tenon Limited, supply roundwood products to rural resellers and building suppliers. (Refer www.tenon.co.nz);
- CHH Wood Products - supply roundwood products (Pinex) to rural resellers, and through own distribution network. (Refer www.chhwood.com);

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- Other – there are an estimated 20 smaller companies producing less than [/] each of roundwood. Including:
 - Santoft Roundwood Products Limited (Bulls);
 - Treeline Timber Limited (Masterton);
 - Mt Pokaka Timber Products Limited (KeriKeri); and
 - Hautapu Pine Products Limited (Taihape).

The above table shows roundwood only; it does not include the electric fence post products in Table 2(a).

Source: The competitor information provided in Table 5 [/].

Summary: If the rural fencing market is accepted as a relevant market by the Commission for the purposes of this application, and suppliers of posts are considered as competitors in that market, the merged entity will have a market share within the safe harbours prescribed by the Commission. Regardless of the Commissions view as to the relevant market and whether supplies of some but not all products are competitors, the applicant believes that existing competition from the smaller competitors in particular product groups and the countervailing market power of the rural resellers will provide a meaningful constraint on the merged entity. This view is based on the applicant’s belief that there are numerous small suppliers of competing products within the relevant markets (however defined), which only need the opportunity to supply a rural reseller to enable the small supplier to grow its business and expand its product range. The rural resellers themselves ultimately control that opportunity. Resellers can simply provide shelf space for smaller suppliers of relevant products or offshore suppliers if additional competition was considered desirable by the resellers. In summary, the applicant considers that existing competitors, near entrants and imports will impose a significant constraint on the ability of the merged entity to exercise market power.

B. Animal Weighing Products

The suppliers of competing products and estimated market share information is set out in Table 6 below;

Table 6: Animal Weighing Products

<u>Company</u>	<u>\$000’s</u>	<u>%</u>
Gallagher Tru-Test Iconix		
Total Market		100%

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Participants: Manufacturers and distributors of animal weighing products include:

- Gallagher Group Limited – new market player in early 2001;
- Tru-Test Corporation Limited; and
- Iconix – Refer www.iconix.co.nz (Oamaru).

Source: Given the small size of the market, the above values are estimated based on general market feedback although are considered by the applicant to be reasonably reliable.

C. Industrial Fencing Products

As with rural fencing, there are numerous alternatives and materials used to construct industrial fencing. The most common method is chain link/barbed wire top fence. It is estimated that these fences are installed in at least [] times as many instances (in the industrial market) as an electric fence.

As with rural fencing, the market for electric fence products is considered to be part of the market for industrial fencing products on the basis that different fencing systems are substitutable for each other and an electric fence is just one of a range of fence systems (including barbed, wooden, wire mesh).

The suppliers of competing electric fence products only is set out in Table 7 below.

Table 7: Industrial Electric Fencing Products

Company	\$000's
Gallagher	
Tru-Test	

Source: Given the small use of these products within the market, the above values are estimated based on general market feedback. It is estimated that the values in Table 7 represent less than [] of the total industrial fencing market.

Other participants in the industrial fence market include:

- Hurricane Wire Products – refer www.agritech.org.nz/hurricanewire;
- Tube Industries Limited, 503-505 Great South Rd, Penrose, Auckland (Ph: 09 579 6373);
- Anchor Wire Ltd - PO Box 97-855, South Auckland Mail Centre, Auckland 1730, Tel: (09) 266-6666;
- Steel and Tube Holdings Limited - refer www.steelandtube.co.nz;

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- Staplelok International, PO Box 101-618, North Mail Centre, Auckland 1333 Tel: (09) 478-9548;
- H J Asmuss and Co Limited - refer www.asmusshj.co.nz;

Other considerations

Near Entrants

- 16.3 There are various firms that are not currently suppliers in the relevant markets but could enter quickly using existing or additional capacity in response to an attempt by suppliers to raise prices or reduce output or quality and therefore can be considered as near entrants.

The information below considers those products within each market both Gallagher and Tru-Test manufacture and distribute.

Rural Fencing

- ***Electric fencing products*** – a significant portion of products in the electric fence range are plastic accessory products, insulated cable products, and conductive wire products. Manufacturers with the capability to manufacture similar products exist in other industries. For example:
 - Plastic accessories – numerous plastic injection moulding firms e.g., O'Briens (Refer: <http://www.obrienplastics.com/>)(See 16A Table 2), Viscount Plastics (New Zealand) Ltd. (Refer: <http://www.viscountplastics.co.nz/>);
 - Insulated cable products – numerous electrical cable manufacturers and plastic extruders e.g., Elastomer Products Ltd (Refer: <http://www.elastomer.co.nz/>), General Cable New Zealand (refer: <http://www.generalcable.co.nz/>), Olex Industries Limited (refer: <http://www.olex.co.nz/>), [];
 - Conductive wire products (polywire/tape/braid) – rope twine and lashing manufacturers e.g., Braidmakers (refer: <http://www.braidmakers.co.nz/>), Donaghys Industries Ltd (refer: <http://www.donaghys.co.nz/>), [];
 - Other accessories – approx [] of products in the electric fence range [] are sourced by Gallagher, from within New Zealand or imported []. Any current supplier could supply the rural resellers direct and other suppliers to the resellers could quickly source supply of these products to expand their product range.
- ***Energisers and electrical accessory products*** – New Zealand has a number of highly regarded and innovative electronic manufacturers which have the resources and competency to enter the market e.g. Tait Communications Limited (refer: <http://www.taitworld.com/>), Invensys

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Appliance Controls New Zealand Ltd (refer: <http://www.powerware.com/>), Navman New Zealand Ltd (refer: <http://www.navman.com/wireless/nz/>).

- **Gates and gate hardware** – there are numerous light engineering firms and residential and industrial gate and fencing firms with the capital equipment and resources to make gates. From this a new entrant could then establish a gate hardware range e.g., Greysons have extended their range from gates into gate hardware in the last two years. Examples of such firms include:
 - Non rural gate manufacturers (source www.ubd.co.nz gate manufacturers) such as:
 - Eric Moess Fencing Limited (Cambridge) (refer: www.emfencing.co.nz;
 - Chaytor Fences Limited⁴ (Tauranga); and
 - Tower Gates (1980) Limited (Carterton) (refer:: <http://towergates.com/>).
 - Stock handling equipment manufacturers (source www.ubd.co.nz stock handling) such as:
 - Racewell Ltd (Te Kuiti) (refer: <http://www.racewell.co.nz/>;
 - Delta StockCrates Limited⁵ (Fielding); and
 - Prattley Industries Limited (Temuka) (refer: <http://www.agritech.org.nz/prattley.shtml>).
 - Light engineering (source www.ubd.co.nz) such as:
 - Kea Equipment (1999) Ltd – Hamilton (trailer manufacturers (refer: <http://www.keatrailers.co.nz/>);
 - Dornoch Farms Ltd⁶ – Mosgiel (farm equipment manufacturers); and
 - Farm Engineering Services Ltd⁷ - Te Awamutu (dairy shed manufacturers).

Animal Weighing Equipment

Animal weighing equipment comprises the weigh indicator and the load bars or platforms, which encompass the load cells.

⁴ Address details: 90 Birch Avenue, Judea, Tauranga 3001. Telephone: (07) 578-6197, Fax: (07) 578-6197

⁵ Address details: 64-66 Washdyke Flat Road, Washdyke. Telephone: (03) 688-2274. Fax: (03) 688-2289.

⁶ Address details: 11 McGlashan Street, Mosgiel 9007. Telephone: (03) 489-4286, Fax: (03) 489-4287.

⁷ Address details: 116 Mahoe Street, Te Awamutu 2400. Telephone: (07) 871-7734, Fax: (07) 871-7792.

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The products are similar to numerous weighing products used in other commercial applications. Many of these industrial distributors or suppliers could with minimal effort, amend their products (or their suppliers products) to suit an animal weighing application. Examples include:

- Wedderburn – Australia/New Zealand (refer www.wedderburn.co.nz);
- Sensortronic Scales – New Zealand (refer www.sensortronicscales.co.nz);
and
- Atrax Weighing and Control Systems New Zealand – (refer www.atraxgroup.co.nz).

In addition, many of the companies noted as near entrants for gate products are potential entrants to construct load bars and platforms using procured loadcells e.g., from Precision Transducer Ltd (Auckland).

Industrial Fencing Products

Gallagher and Tru-Test both supply electric fence products for industrial fencing. The near entrants for rural fencing listed above apply equally to industrial fencing.

Productive Capacity

- 16.4 Productive capacity is not considered to be a barrier to entry for the near entrants listed above. The primary reason that electric fence component suppliers (as opposed to complete product range suppliers) and near entrants (rural fencing and animal weighing) have not entered the market has been inability to gain distribution through the rural resellers. With the consolidation of the rural reseller market (refer 11.9), there has been an increased trend for centralised purchasing, supporting fewer suppliers with national coverage to maximise buying advantage. A near entrant would likely have productive capacity to service one of the key rural resellers as a first or second tier supplier in a narrower product range within a short time period. From this base a larger product range and distribution network could be added to.

Imports

- 16.5 Of those products which both Gallagher and Tru-Test manufacture and distribute, the ability to import provides an effective constraint where distribution channels exist or can be easily established.
- **Electric fence products** (rural and industrial fencing) – Electric fence energisers require higher technical experience than accessory products and for this reason are less likely to be initially manufactured by near entrants and existing suppliers of other particular products within the rural fencing market. The list below identifies a significant number of offshore suppliers, with energisers in their range of products offered. These suppliers have no current distribution into New Zealand rural resellers or through industrial fencing contractors but are likely to be able to tailor their products for the New Zealand market with minimal investment.

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- Zareba - USA - <http://zarebasystems.com/>
- Dare - USA - <http://dareproducts.com/index.asp>
- Daken Farm Equipment - Australia - http://www.daken.com.au/prod_ef.htm
- Thunderbird - Australia - <http://www.thunderbird.au.com/>
- Lacme - France- <http://www.lacme.com/>
- Horizont Agrartechnik - Germany - <http://www.horizont.com/agrartechnik/english/agrartechnik.html>
- Hotline - UK - <http://www.hotline-fencing.co.uk/>
- Rutland - UK - <http://www.rutland-electric-fencing.co.uk/>
- Parmak - USA - <http://www.parmakusa.com/Baygard/index.htm>
- Fi-Shock Inc. USA - <http://www.fishock.com/>
- Force field – UK - <http://www.forcefield.ie/uk-product/product.htm>
- Meps - RSA - <http://www.mepsef.com/>
- Hallman Fence Systems - Canada - <http://www.hallman.ca/>
- Sureguard - Australia - <http://www.sureguard.com.au/>
- Cheetah Electronics - Ireland - <http://www.cheetah.ie/>
- Fence Master - USA - <http://www.fencemasteramerica.com/>
- MaxFlex Fence Systems - USA - http://www.maxflex.com/energizers_page1.htm

Importers of electric fence products would have additional freight costs and their profitability would be subject to exchange rate variations. Albeit, Gallagher are also exposed to the same exchange rate variations on the import costs of a significant portion of raw materials required in manufacturing their products.

On the issue of additional freight costs, based on Gallagher export experience it is estimated that this would add an average of [] (to/from Australia) and []% (to/from USA/Europe) to the product costs based on a container with an average mix of products. On the basis that [].

- **Gates and gate hardware products** – given that current participants do export gates and gate hardware (refer 16.8) it is feasible that offshore manufacturers (particularly Australia) could supply the New Zealand market. However, it is acknowledged that the lower margin and higher freight costs make this more difficult.
- **Animal weighing products** (from internet search) - Existing offshore animal weighing equipment providers include – for example;
 - Thunderbird – Australia – also an electric fence product manufacturer <http://www.thunderbird.au.com/>
 - Digistar – USA – refer <http://www.digi-star.com/>
 - Instaweigh – USA – refer www.mti-weigh.com/InstaWeigh.htm
 - Rice Lake Weighing Systems – USA – refer www.rlws.com/lit/indicat/specs/390.html

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- Avery Weigh-Tronix – USA - www.agscales.com

Exports

16.6 The export figures for electric fencing products of both participants are:

- Gallagher – [] for the full year ending June 03 – Note that this is the sales value from New Zealand to offshore distributors only, i.e., excludes sales value from offshore distributors to their rural reseller network.
- Gallagher exports to an extensive network worldwide including Australia, USA, South America, Canada, UK, Ireland, Europe and Asia.
- Tru-Test export details are not known by the applicant, but are estimated to be less than the Gallagher figures above on the same basis.

The export figures for rural gate products of both participants are:

- Gallagher - [] per annum, include exports to Australia, North America, Europe/UK.
- Tru-Test - not known.

The export figures for animal weighing products of both participants are:

- Gallagher - [] – sales ex New Zealand.
- Tru-Test – not known, but estimated to be significantly more than that sold by Tru-Test in New Zealand.

The export figures for industrial fencing products of both participants are:

- Gallagher - [] per annum, including exports to Australia, USA, Europe, UK, Africa, Asia.
- Tru-Test - not known but estimated to be less than Gallagher.

Tru-Test as a Competitor

16.7 Whilst Gallagher recognises Tru-Test as an obvious competitor in the New Zealand market, Gallagher does not consider Tru-Test to be a particularly vigorous and effective competitor for the following reasons:

- (a) Gallagher considers that it has a stronger reputation and record of innovation in electric fencing products. For example, Gallagher announced in April 04 a leadership role in integrating high technology farm management products through our recently launched sub-brand ‘Select Farm Systems’;

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- (b) Tru-Test has experienced significant sales growth through the acquisition of four companies in the rural fencing business. This has created market activity through Tru-Test repositioning these brands to gain acquisition synergies and in view of a possible public listing. However, Gallagher considers this has not had a material net impact on Gallagher market share;
- (c) Whilst New Zealand is an important market, both Gallagher and Tru-Test have significant export earnings. The larger size of these offshore markets results in less overlapping business opportunities and competition between the participants. Significant offshore competition by other competitors does however continue to drive innovation through the Gallagher product range; and
- (d) The financial performance of Tru-Test and the resulting significant decrease in share value reinforce that Tru-Test is not a long-term effective competitor.

Conditions of Expansion

17 Market Conditions

17.1 Expansion Barrier to Existing Competitors

In respect of the rural fencing and animal weighing –markets any expansion is likely to be the result of increasing distribution. This can be achieved either by a rural reseller opening an account or where an existing reseller provides increased shelf space allocated to the competitor. In such cases the applicant considers that none of the listed conditions are likely to operate as constraints.

The applicant considers that expansion into the industrial fencing market is essentially unimpeded.

Where a competitor is looking to expand through increasing their product range in the rural/industrial fence market or to enter the animal weighing market, then they are likely to be able to achieve this initially with third party sourcing (refer 16.3 and 16.5) to minimise any constraints. The constraints for long term in-house design and manufacture by competitors are dependent on the financial resources available to the competitor, which is directly dependent on the extent of distribution/sales gained.

Examples of expansion in the last five years in the relevant markets include:

- Development of O'Briens electric fence product range;
- Greysons expansion from gate manufacture to gate hardware manufacture;
- Gallagher release of Franklin brand and range of electric fence products, reinforcing the ability for the market to accept a new brand; and
- Gallagher entry into the animal weighing market.

VERSION FOR PUBLIC RELEASE**18 Existing Businesses Which Could Expand**

18.1 Refer 17.1 – Expansion by all participants in their current product range is likely to be by way of either increasing utilisation of existing capacity or through the expansion of existing capacity.

19 Conditions Influencing Expansion

19.1 The applicant believes there are no market conditions that are considered likely to impede the business decision of any participant to increase manufacture and distribution other than prevailing economic conditions and the extent of the additional distribution obtained for this increased output. []

20 Expected Timeframe For Manufacture and Distribution to Increase

20.1 Existing competitors are likely to be able to increase supply of their existing product range using existing capacity within 1-3 months. Where there is no such existing capacity, additional capacity could be easily achieved by expanding existing premises/equipment, relocating or opening and operating an additional site, or outsourcing production. This could be expected to take approximately 3-6 months.

20.2 For competitors expanding their product range outside their current supply, through third party sourcing and rebranding (refer 16.5 and 16.7), this could be achieved within 3-6 months. In-house design and manufacture could follow depending on resources available and distribution/additional sales gained.

21 Extent to Which the Possible Competitive Response of Existing Suppliers Would Constrain Gallagher

21.1 As noted in 13.7, the manufacturer brand in rural fencing is becoming less of a competitive advantage and as a consequence rural resellers are more prepared to adopt new brands and sole brand supply. Gallagher would be constrained by the rural resellers option to create additional shelf space for competitors and to lend them other support in building distribution.

22 Extent Overall to Which the Conduct of Existing Competitors Would Constrain Gallagher

22.1 The countervailing power of the rural resellers, which has been built through their market consolidation, along with the absence of barriers to expansion (both output and product range expansion) means that the merged entity would naturally be constrained by the conduct of existing competitors in the market.

Co-ordinated Market Power**23 Market Characteristics that Would Facilitate or Impede Co-ordination Effects.**

23.1 The applicant submits that the proposed acquisition would not result in a change in the relevant market that will facilitate possible coordination between

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competitors. Rather, there are various characteristic that would impede coordination as follows:

- (a) Products (particularly rural supplies) are relatively price elastic and as a consequence impede co-ordination efforts;
- (b) The markets increased expectation for 'next day' delivery and 'delivery on time and in full' does not facilitate colluding with competitors on output restrictions;
- (c) the presence of small and fringe competitors, including specialist niche product line suppliers, and the ability of those competitors to expand their product lines;
- (d) the countervailing market power, through concentration and account size, of the key rural resellers;
- (e) the relative ease and speed of new and near entrants, including imports, to the relevant market;
- (f) absence of an industry association for the rural fencing market; and
- (g) the absence of any history of price fixing or other collusive behaviour between participants in the relevant market, to the knowledge of the applicant.

24 Market Characteristics Facilitating or Impeding Monitoring and Enforcement of Co-ordinated Behaviour

24.1 There are a number of market characteristics that would, post acquisition, facilitate the monitoring and enforcement of coordinated behaviour by market participants as follows:

- (a) Seller concentration for product groups within the rural/industrial fencing markets and for animal weighing is relatively high. The smaller number of firms that have to be monitored highlights coordinated activities more quickly.
- (b) The nature of sales by the participants is generally small, frequent orders to resellers based on pre-agreed pricing reviewed annually. Any changes to pricing quickly become industry knowledge and are given in advance of implementation.
- (c) With the exception of Goldpine, there is no forward vertical integration that would prevent price cuts being concealed in upstream reseller markets. Such opportunity to Goldpine is mitigated by other rural resellers and the need to remain competitive to end-users relative to them.
- (d) The market for rural fencing and animal weighing products is a mature market with slow, sometimes negative, growth. Market share gains by participants generally translate to market share losses for other firms.

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The use of electric fencing products in the industrial fencing market is less mature but still relatively slow, last two years approximately [] growth for Gallagher.

- (e) The cost structures between firms producing like products are considered to be similar.
- (f) Trade price lists are generally visible in the market, but specific discounts and rebates offered to each reseller are less visible. However, due to the concentration in the reseller industry any significant or unjustified variations are easily detected.

25 Details of Price Co-ordination, Price Matching or Price Following by Market Participants

- 25.1 The applicant is not aware of any price co-ordination, price matching or price following by market participants.

26 Why the Acquisition of Tru-Test Will Not Increase the Risk of Co-ordinated Behaviour in the Market Place

- 26.1 Gallagher has had a long association (65 years) with the rural industry and has a reputation as a responsible market player with high integrity. Brand preservation and reputation are key drivers of Gallagher activity.
- 26.2 Gallagher has a history of acting independently of its competitors' activities and strategy. Rather, Gallagher strives to build on its position as a technology, product and market leader worldwide, - independent of competition.
- 26.3 Further, the proposed acquisition will not increase the risk of co-ordinated behaviour because of the effect of the characteristics of the relevant market detailed in paragraphs 23.1 and 24.1.
- 26.4 The rural resellers have long been partners with Gallagher in the distribution of its product range to rural end-users, and are critical to the future success of Gallagher in New Zealand. The countervailing power by the rural resellers will deter any coordinated behaviour not in the best interests of the resellers and their customers.

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PART 4: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

27 **Market Conditions that would Act as a Barrier to the Entry of New Competitors.**

27.1 Where a new entrant is looking to enter the market, they are most likely to be able to achieve this by entry with a limited part of the product range (as with existing competitors) and filling any product gaps with third party sourcing. The constraints for long term in-house design and manufacture of a more complete range by these entrants are dependent on the financial resources available to the competitor which is directly dependant on the extent of distribution/sales gained.

28 **Businesses which could supply the market**

28.1 Businesses which do not currently supply the relevant markets but could do so through investing in new facilities or diverting production to New Zealand to include:

Electric Fencing Products

- (a) Overseas manufacturers and distributors of electric fence products (refer list in 16.5);
- (b) Current electric fence component suppliers to the participants going direct to rural resellers (refer 16.3). That is raw material suppliers forward integrating;
- (c) Other plastics and electronic design and manufacturing firms looking to expand product offerings (refer 16.3);
- (d) Other key suppliers to the rural resellers, currently outside the identified markets, whom have the in-field support staff, and potential resources to enter the market. This may also be achieved through direct involvement or sourcing from any of the above. Examples include,
 - (i) Skellerup Industries (Dairy Rubberware / Footwear) – refer <http://www.skellerup.co.nz/> - publicly rumoured to have considered Tru-Test acquisition;
 - (ii) Heiniger (Shearing Equipment) – refer http://www.heiniger.com/new_zealand/ - mirroring the acquisition of Supershear (Sunbeam) by Tru-Test;
 - (iii) Ballance (Agri-Nutrients) – refer <http://www.ballance.co.nz/>; and
 - (iv) Merial (Animal Health) – refer <http://nz.merial.com/>;
- (e) Rural resellers being involved directly, or sourcing from any combination of the above to create a ‘house’ brand and utilising their

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existing in-field support staff. That is, rural resellers integrating backwards; and

- (f) Existing suppliers to farming end-users, outside the current rural resellers, distributing electric fence products to end users e.g., Ravensdown (refer www.ravensdown.co.nz). This may be through direct involvement or sourcing from any combination of the above.

Gate and Gate Hardware Products

- (a) Overseas manufacturers and distributors of gates and gate hardware e.g.,
 - (i) Smorgon Steel Rural - Australia (refer <http://www.smorgonsteel.com.au/rural/locations/index.cfm>);
 - (ii) OneSteel Reinforcing – Australia (refer http://www.onesteel.com/images/db_images/productspecs/Ironbark_Rural_Mesh.pdf); and
 - (iii) Poplar Pastoral – Australia (gate hardware) – refer <http://www.poplarpastoral.co.nz/>.
- (b) Near entrants – manufacturers of non rural gates, cattle handling equipment, light engineering equipment – refer 16.5;
- (c) Raw material suppliers integrating forward (as with the acquisition of Hurricane by Steel and Tube). Examples include:
 - (i) Fletcher EasySteel; and
 - (ii) Eagle Wire Products Limited.
- (d) Other key suppliers to the rural resellers, outside the relevant markets, who have the in-field support staff, and resources to enter the market; and
- (e) Rural resellers being involved directly, or sourcing from any combination of the above to create a ‘house’ brand and utilising their existing in-field support staff. That is, rural resellers integrating backwards.

Animal Weighing Products

- (a) Overseas manufacturers and distributors of animal weighing equipment – refer 16.5;
- (b) Near entrants – industrial weighing companies and engineering firms – refer 16.3;
- (c) Other key suppliers to the rural resellers, outside the identified markets, whom have the in-field support staff, and potential resources to enter the market; and

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- (d) Rural resellers being involved directly, or sourcing from any combination of the above to create a 'house' brand and utilising their existing in-field support staff. That is, rural resellers integrating backwards.

Industrial Fencing Products

- (a) Overseas manufacturers and distributors of electric fence products, some of whom, along with the following additional suppliers, have specialist security applications (refer complete list in 16.5) such as,
- (i) Rutland – UK - <http://www.rutland-electric-fencing.co.uk/>;
 - (ii) Nemtek – RSA – refer <http://www.nemtek.co.za/Html/electricfence.html>; and
 - (iii) Pakton - Australia - refer <http://www.pakton.com.au/pte0480.html>.
- (b) Current electric fence component suppliers to the participants going direct to industrial fencing contractors (refer 16.3). That is raw material suppliers forward integrating;
- (c) Other plastics and electronic design and manufacturing firms looking to expand product offerings (refer 16.3); and
- (d) Industrial fencing contractors being involved directly, or sourcing from any combination of the above to create their own solution for the market. That is, contractors integrating backwards.

29 Conditions of Entry Influencing Business Decisions to Enter

- 29.1 None of the conditions of entry would adversely influence a decision to enter the market should the right incentives be present. The primary influence is considered to be access to distribution, which is in control of the resellers.

Likelihood, Sufficiency, and Timeliness of Entry

- 30 For new entrants supply through third party sourcing and rebranding (refer 16.3 and 16.5) could be achieved within 3-6 months. In-house design and manufacture could follow depending on resources available and distribution/additional sales gained.
- 31 The existence of current fringe competitors reinforces that a new entrant would consider entry profitable at current prices.
- 32 A significant portion of rural fencing products – gates and electric fencing accessories, are relatively standardised with price being an important element. A new entrant could compete on price with smaller independent rural resellers and expand in product range and distribution from there. It is the threat of new entrants and their expansion in the larger rural resellers that constrains the behaviour of the already established larger participants. Smaller fringe competitors still cause market participants to react to the benchmarks that they set.

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- 33 A complete de novo entry (i.e., in-house design and manufacture) for a complete range of electric fencing and animal weighing products would likely only be attempted by a new entrant able to gain synergies through their entry e.g., experience in production, reseller relationships, or access to suitable distribution channels (including offshore) to justify the financial investment. Some of the organisations noted in 28 could consider this.

A de novo entry in gates and gate hardware can be achieved without significant investment or skill acquisition costs and entry would not be constrained by the factors listed.

- 34 De novo entry in the form outlined in 33 would likely be 12-24 months for electric fencing and animal weighing. De novo entry for gates and gate hardware is likely to be much shorter, 3-12 months.
- 35 The threat of de novo entry would act as a constraint to the merged entity, but acknowledged to a lesser extent than the threat of new competitors from the sources listed in 28.

VERSION FOR PUBLIC RELEASE**PART 5: OTHER POTENTIAL CONSTRAINTS**

- 36 Because of the vertically integrated manufacturing of Gallagher and Tru-Test there would be a significant number of suppliers of goods and services to the merged entity. In the case of Gallagher there are several hundred suppliers.
- 37 Refer 36 – not applicable
- 38 There exists the possibility that significant raw material providers could integrate forward to secure distribution of their products.

Constraints on Market Power by the Conduct of Acquirers

- 39 The key acquirers of goods and services supplied by the merged entity are as follows:
- 39.1 For the rural fencing market and animal weighing products – the rural resellers listed in the table in 11.12);
 - 39.2 For the industrial fencing market – industrial fencing contractors e.g.,
 - (a) Barakat Contractors – Te Kauwhata;
 - (b) Bruce Pauling Fencing – Christchurch; and
 - (c) Fence It – Kaukapakapa.
- 40 Ownership of rural resellers varies from private firms, to public companies and member cooperatives. Industrial fencing contractors are generally private firms.
- 41 The extent to which conduct of acquirers constrain the merged entity is outlined as follows:
- 41.1 There has been significant consolidation in the rural fencing and animal weighing markets. The top 8 rural resellers represent approximately 85% of the material reseller stores and the gain or loss of any of these key customers by a participant creates a competitive environment which constrains the merged entity;
 - 41.2 As a result of this consolidation the rural resellers have rationalised their purchasing to one and sometimes two larger competitors for each product group, with a relatively small amount, if any, of fringe competitors niche products within the range of rural fencing products;
 - 41.3 The resulting outcome is that the two larger competitors, with such few customers, have significant sales to gain or loose through the change in any rural reseller support;
 - 41.4 The applicant considers that some rural resellers are increasingly placing more weight on shorter term profitability in the vendor selection process and decreasing value on other elements of the suppliers offering, for example on-farm support, long term product innovation, and manufacturer brand value;

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THIS NOTICE is given by Gallagher Holdings Limited.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to Gallagher Holdings Limited which is relevant to the consideration of this notice has been supplied;
- all information supplied is correct as at the date of this notice.

The Company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of May 2004.

Signed for and on behalf of
Gallagher Holdings Limited

William M. Gallagher
Chairperson & Chief Executive Officer

I am an officer of the company and am duly authorised to make this notice.

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APPENDIX 1

VERSION FOR PUBLIC RELEASE**APPENDIX 2: TRU-TEST COMPANY STRUCTURE****Tru-Test Corporation**

The applicant understands the principal subsidiaries of Tru-Test are:

- Tru-Test Limited
- Tru-Test Incorporated (USA)
- Tru-Test Pty Limited (Australia)
- Speedrite de Mexico (Mexico)
- Napier Tool & Die Co Limited
- Stafix Electric Fencing Limited
- BrainZ Instruments Limited
- PEL Industries Limited
- Tru-Test Farms Limited
- Tru-Test Investments Limited
- Tru-Test Properties Limited
- Tru-Test Distributors Limited
- Tru-Test Australia Limited
- Umaster S.A. (Uruguay)

The applicant understands Tru-Test has a 14% stake in Farm Tech Tecnologia Agropecuaria Limitada (Brazil).

Taken from Tru-Test Annual Report 2003, for year ended 31 August 2003, p.14, Note 11 Investments In Subsidiaries and Associates.

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APPENDIX 3: WRITTEN SUPPORT FOR RURAL FENCING MARKET

1 . Support from other electric fence manufacturers and suppliers for rural fencing market

The following shows other electric fence equipment manufacturers and resellers websites where they make reference to using electric fencing over other methods of fencing (thereby defining their main competition as conventional fencing) or indicate that electric fencing is part of a more complete rural fencing solution provided by them.

Daken – Australian electric fence manufacturer

http://www.daken.com.au/prsup_ef_case.htm

- In discussing a case study this website states;

‘Some years ago the Herrods recognised the need for controlling cattle as fundamental to the operation of a successful cattle stud, and began on a project to convert their fences to electric. Since then they have experienced no problems in controlling their stock, including their bulls. Whereas previously fences were being damaged by bulls fighting, now the bulls bellow at each other, but leave it at that. When bulls lock horns, even a barbed wire fence is no deterrent.

Moonoomoo has discovered the benefits of electric fencing to be many and varied. The initial cost is approximately 1/3 that of conventional fencing, which represents a very significant saving in this important area. Additionally, maintenance costs are negligible.

Because their posts are approximately 20 metres apart, falling branches etc., are less likely to do damage; while damage from cattle, kangaroos etc. is nonexistent - kangaroos stay right away! The Herrods check their electric fences only four times a year, in comparison to their conventional fences every two weeks. In fact, cattle stay about 3 meters away from the electric fences even when the fences are not on. They no longer see bulls with damaged pizzlies, or injuries from fighting. They know that cattle put into a paddock will stay there. ‘

- Also makes the following statement;

‘ELECTRIC FENCING is an alternative method of fencing which offers you the following benefits:...’

Zareba – USA electric fence manufacturer

<http://zarebasystems.com/>

In the below statement, Zareba compares conventional and barbed wire fencing as alternatives to electric fencing.

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'Electric fencing provides effective and economical animal control. It's safe, reliable, is easy to install and often lasts longer than conventional or barbed wire fence. Animals quickly learn to avoid the short, safe pulse of electricity.'

Goldpine – New Zealand Rural Fencing Supplier

<http://www.goldpine.co.nz/products.aspx?id=19>

The below statement reinforces the fencing market;

'Goldpine is known for its "one stop shop" approach for ALL the materials needed for fencing. While able to offer deals on bulk post orders, the team at Goldpine can also put together a quote for your entire fencing requirements (such as electrics, wire and accessories). Contact us with your specifications and put us to the test. Click through for more information on the following, as they pertain to sheep & cattle fencing:

- *GoldTan™ Posts*
- *Hurricane Wire & Netting*
- *Farm Gates*
- *Farm Gate Hardware*
- *Gripples*
- *Staples & Nails*
- *Waratah Fencing Standards*
- *Energizers*
- *Permanent Electric Fencing*
- *Portable Electric Fencing*
- *Strainers & Accessories'*

Pyne Gould Guinness – New Zealand Rural Reseller

http://www.pgg.co.nz/downloads/fenceline_ramseys.pdf

In the below announcement (Fenceline, Summer 02), PGG makes reference to the complete fencing package.

'The PGG Farm Supplies Team is pleased to announce a new strategic alliance with Ramsey Roundwood. ... (PGG) is now placed to provide you with the continuous supply of the complete fencing package'

2. Third party support for rural fencing market

The following website references make comparisons between electric fencing and other fencing options, which indicates options for substitutability and support for the rural fencing market.

Iowa State University – University Extension

<http://www.extension.iastate.edu/agdm/livestock/html/b1-75.html>

'Ag Decision Maker is a decision-oriented agricultural business web site designed for farmers, lenders, farm managers, agriculture instructors, and others. Ag Decision Maker is

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written by economics and farm management specialists at Iowa State University and other Universities and institutions across the mid-west.'

The article provides details of required materials and lifetime costing analysis for various fence configurations and states that;

'The type of fencing selected depends on personal preference and the species of livestock to be confined. In general, all configurations shown can be used with cattle. In addition, woven wire and high-tensile electrified fencing can be used with sheep, and woven wire can be used with hogs'

'Fencing can be configured in many different ways using various types of fencing materials. The examples in this publication provide a general comparison among five configurations: woven wire, barbed wire, high-tensile non-electric wire, high-tensile electrified wire, and electrified polywire.'

Ontario Ministry of Agriculture and Food

<http://www.gov.on.ca/OMAFRA/english/engineer/facts/99-057.htm>

This factsheet is another detailed analysis of costs and benefits of various fence constructions.

University of Georgia – College of Agricultural and Environmental Sciences

<http://www.ces.uga.edu/pubcd/C774.htm>

Fences for the Farm - *John W. Worley, Biological and Agricultural Engineering Department*

'The kinds of fences commonly used on farms include board, barbed wire, woven wire, cable, mesh, high-tensile, electric or a combination of any of these.'

<http://www.ces.uga.edu/pubcd/b1192.htm> - **Selecting**

Fences for Horses *Dr. John W. Worley, Biological and Agricultural Engineering
Dr. Gary Heusner, Animal and Dairy Science*

'The kinds of fences commonly used for horses include rail (plank or PVC), various forms of galvanized and vinyl coated wire, electric and combinations of these. Whatever the fence is made of, it needs to be highly visible, resistant to damage by horses, durable, attractive and safe for contact by horses.'

Both articles demonstrate that there are many fencing options and each are substitutable products in many situations; each with their own costs and benefits.

Taranaki Regional Council - New Zealand

http://www.trc.govt.nz/HTMLDOCS/Infoland/24_Rip_fencing/24_Riparian_fencing_1.html

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This page discusses various options for fencing off animals from streams. In discussing options the article states:

'A standard fence design - timber posts at 3 to 4 metre spacings, and 6 to 8 wires with attached battens (Fig 1) - is the best kind of fence for stock control on streambanks. If affordable, go for one of these at a cost of some \$10 a metre. If grazing goats, deer or something more exotic that likes to jump fences, then a permanent post and batten fence, constructed to a height that will act as a barrier, will definitely be needed.

An electric fence is next best. Many dairy farmers already use moveable fences with a single hot wire or electric tape on stream banks, as part of break-feeding. More substantial fences with permanent posts and either two hot wires (for cattle) or four (for sheep) generally give satisfactory stock control (Fig 2). These cost about \$3 a metre.

In Australia, many landcare groups report that they achieve good stock control on stream banks with fences that are lighter in construction than is the case in New Zealand. Typically, timber posts or iron fencing standards are used at 5 to 10 metre spacings, with four wires (two electrified) for sheep or two wires (one electrified) for cattle. No battens are used, adjustable tensioners instead maintaining each wire at a high tension. Materials cost for this type of fence is \$1.00 to \$1.50 a metre. Some Taranaki farmers are already using this type of fence (Fig 3).

As regards the finer points of fence construction, farmers already know these from years of experience. Lifestyle block owners, new to the land and not too sure, can consult some of the old Ministry of Agriculture Aglink pamphlets (nos. FPP114-117, 183- 186, 361-364 and 816-822); these are a good guide for conventional fences, and most farm advisors still have copies. For electric fences, several good guides have been published by component manufacturers.'

Key points from the article;

- Reinforces that a key competitor to electric fencing products is conventional fencing products. Electric fencing reduces costs but viewed as less satisfactory for stock control.
- There are options, with different costs, using products combined from all product sets i.e., posts, wire products, and electric fencing in varying quantities and configurations.

Environment Waikato

<http://www.ew.govt.nz/enviroinfo/land/management/runoff/waterwaymargins.htm>

In line with the Taranaki Regional Council, the site discusses the need to fence farm animals from the waterways. States: *'The different approaches have different costs and benefits. Use our [online calculation sheet](#) to cost different fencing and planting options for your farm.*

The online calculation sheet for beef/dairy cattle on flat land only shows electric options as the preferred, but for sheep/beef hilly country gives three options in descending cost options; 8 wire post and batten, 8 wire (1 electric), 5 wire (3 electric).

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APPENDIX FOUR

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APPENDIX FIVE

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APPENDIX SIX

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APPENDIX SEVEN:

Examples of Rural Fence Types

Fig 1 – Wooden post and batten 6 wire fence



Fig 2 – Wooden post and batten 6 wires + 1 barbed wire fence



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Fig 3 Wooden post and 2 electric + 4 non-electric wire fence (left)
Wooden post and 3 wire electric fence (right)



Fig 4 – Wooden post and fabricated wire fence and one barbed wire



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Fig 5 Wooden post and rail fence (left)
Steel post and 4 electric wire fence (right)



Fig 6 – Self Insulating (‘Gallagher Insultimber’) Post and three wire electric



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Fig 7 – Pigtail post and electric tape fence



Fig 8 – Combination – Wooden post and batten fence with pigtail offsets and electrified tape

