



## COMMERCE COMMISSION

### **Decision No. 560**

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

**BLUEBIRD FOODS LIMITED**

**and**

**HANSELLS (NZ) LIMITED**

**The Commission:** Paula Rebstock  
Donal Curtin  
Gowan Pickering

**Summary of Application:** The acquisition by Bluebird Foods Limited of certain businesses and assets of Hansells (NZ) Limited and PLC (NZ) Limited.

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

**Date of Determination:** 5 October 2005

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

<b>EXECUTIVE SUMMARY .....</b>	<b>I</b>
<b>THE PROPOSAL .....</b>	<b>1</b>
<b>PROCEDURE .....</b>	<b>1</b>
<b>STATUTORY FRAMEWORK.....</b>	<b>1</b>
<b>ANALYTICAL FRAMEWORK.....</b>	<b>2</b>
<b>THE PARTIES.....</b>	<b>2</b>
<b>Bluebird .....</b>	<b>2</b>
<b>Hansells.....</b>	<b>3</b>
<b>OTHER RELEVANT PARTIES .....</b>	<b>3</b>
<b>Manufacturers and Wholesalers.....</b>	<b>3</b>
<i>ETA .....</i>	<i>3</i>
<i>Arnott’s New Zealand Limited (Arnott’s) .....</i>	<i>3</i>
<i>Other manufacturers and suppliers .....</i>	<i>3</i>
<b>Supermarkets.....</b>	<b>4</b>
<i>Progressive Enterprises Limited (Progressive).....</i>	<i>4</i>
<i>Foodstuffs.....</i>	<i>4</i>
<b>INDUSTRY BACKGROUND .....</b>	<b>4</b>
<b>PREVIOUS DECISIONS.....</b>	<b>5</b>
<b>MARKET DEFINITION .....</b>	<b>5</b>
<b>Product Market .....</b>	<b>5</b>
<b>Functional Markets .....</b>	<b>11</b>
<b>Geographic Markets.....</b>	<b>11</b>
<b>Conclusion on Market Definition.....</b>	<b>11</b>
<b>COUNTERFACTUAL AND FACTUAL .....</b>	<b>11</b>
<b>Factual .....</b>	<b>12</b>
<b>Counterfactual .....</b>	<b>12</b>
<b>COMPETITION ANALYSIS.....</b>	<b>13</b>
<b>Existing Competition.....</b>	<b>13</b>
<i>Conclusion on Existing Competition .....</i>	<i>19</i>
<b>Potential Competition .....</b>	<b>19</b>

<i>Barriers to Entry and Expansion</i> .....	20
<i>Conclusions on Potential Competition</i> .....	21
<b>Countervailing Power</b> .....	<b>21</b>
<i>Conclusion on Countervailing Power</i> .....	23
<b>OVERALL CONCLUSION</b> .....	<b>23</b>
<b>DETERMINATION ON NOTICE OF CLEARANCE</b> .....	<b>24</b>

## **EXECUTIVE SUMMARY**

1. A notice pursuant to s 66(1) of the Commerce Act 1986 was registered on 31 August 2005. The Notice sought clearance for the acquisition by Bluebird Foods Limited of certain brands and assets of Hansells (NZ) Limited and PLC (NZ) Limited.
2. The Commission cleared the proposed acquisition as the combined entity would be constrained, primarily, by existing competition, notably ETA and by the countervailing power of the two main supermarket chains.
3. The Commission considered the relevant market to be the national market for the manufacture and wholesale supply of potato chips, corn chips and extrusions (the savoury snacks market), noting the degree of substitutability between these products on the demand-side.
4. The Commission considers that, post-acquisition, ETA would continue to be a strong competitor in the savoury snacks market. ETA has an established presence in the market, is not constrained by any significant capacity considerations and would provide sufficient constraint to any attempt by the combined entity to exercise market power.
5. The Commission notes that although there are a number of smaller competitors in this market, these competitors would only provide a limited amount of constraint on the combined entity.
6. Further, the Commission considers entry, whether through de novo entry or importation, would be limited and unlikely to be of a sufficient extent to constrain the combined entity.
7. However, the Commission considers that, post-acquisition, the two main supermarkets are likely to continue to provide a constraint on the combined entity through their ability to limit promotional activity, limit shelf space and support other competitors.
8. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in the affected market.

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 31 August 2005. The Notice sought clearance for the acquisition by Bluebird Foods Limited or any interconnected body corporate (Bluebird or the Applicant) of certain brands and assets of Hansells (NZ) Limited and PLC (NZ) Limited (together, Hansells).
2. The proposed acquisition would include all the brands and assets used by Hansells in the manufacture and wholesale supply of: potato chips, corn chips and extrusions under the Krispa, Aztec and Poppajacks brands; and house brand or private label products manufactured for supermarkets and other retailers.

## PROCEDURE

3. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 7 October 2005.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.<sup>1</sup>

## STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal is, or is likely to have the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition then it is required to grant clearance to the application. Conversely, if the Commission is not satisfied it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.<sup>2</sup>
6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:
 

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.<sup>3</sup>
7. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not

<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

<sup>2</sup> *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

<sup>3</sup> *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

minimal.<sup>4</sup> Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

## **ANALYTICAL FRAMEWORK**

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
  - with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).
11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
  - existing competition;
  - potential competition; and
  - other competition factors, such as the countervailing market power of buyers or suppliers.

## **THE PARTIES**

### **Bluebird**

12. Bluebird is a wholly-owned subsidiary of Goodman Fielder Pty Limited (Goodman Fielder). Goodman Fielder is an Australian-based company which manufactures and supplies a range of consumer goods including breads, margarines, cereals and bakery ingredients.

---

<sup>4</sup> See *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

13. Bluebird manufactures a range of savoury snacks including the labels Bluebird Originals, Delisio, Health Plus, Kettles, Grainwaves, Burger Rings and CC's corn chips.

#### **Hansells**

14. Hansells (NZ) Limited jointly owns PLC (NZ) Limited with its parent company, Hansells Holdings Limited. Hansells is a subsidiary of Lane Capital Group Limited.
15. Hansells manufactures a range of savoury snacks including the labels Krispa, Aztec and Popperjacks. In addition, Hansells currently supplies a number of other products such as baking powders and essences, powdered drinks, instant desserts and soups.

### **OTHER RELEVANT PARTIES**

#### **Manufacturers and Wholesalers**

##### *ETA*

16. ETA is an operating division of Griffins Foods Limited (Griffins), which in turn is owned by the Danone Group of France. ETA manufactures a number of savoury snacks including the labels ETA Ripples, O'Ryans, Uppercuts, ETA Corn Chips, Munchos. ETA is also a supplier of snacking nuts.
17. Griffins manufactures a number of other consumer goods under the Griffins brand label, which include Mallowpuffs, Gingernuts, Cameo Cremes, Toffee Pops and Cookie Bear biscuits.

##### *Arnott's New Zealand Limited (Arnott's)*

18. Arnott's is a subsidiary of Australian based manufacturer Arnott's Limited, which in turn is owned by the Campbell Soup Company. Arnott's manufactures and distributes a number of consumer goods, notably biscuits and crackers.
19. Currently, Arnott's is in a joint venture with the Proctor & Gamble Company (P&G) for the distribution of the Pringles range of potato chips. In Australia, Arnott's Limited also manufactures a number of savoury snacks through its 'Snackfood' division.

##### *Other manufacturers and suppliers*

20. In addition to the suppliers listed above, there are a number of other suppliers of savoury snacks in New Zealand. Typically, these suppliers only manufacture a particular type of savoury snack such as potato chips, corn chips or extrusions. The other suppliers in New Zealand include:
  - Mexican Supplies Limited (MSL);
  - Fresher Foods Limited (Fresher); and
  - AB Food Industries Limited (ABF).

## Supermarkets

### *Progressive Enterprises Limited (Progressive)*

21. Progressive is owned by Foodland Associated Limited (Foodland), a public company incorporated in Australia.<sup>5</sup> Foodland conducts wholesale and retail supermarket operations in Western Australia and New Zealand.
22. Progressive includes the Foodtown, Countdown and Woolworths banner groups. Through its wholesale distribution operation, Progressive supplies the FreshChoice and SuperValue chains. Progressive's house brand labels are 'Signature' and 'Basic'.

### *Foodstuffs*

23. Foodstuffs is comprised of three separate co-operative companies based in Auckland, Wellington, and the South Island. Each Foodstuffs company is a co-operative, owned by the individual owners of the supermarkets within the chain. Foodstuffs's house brand labels are 'Pams' and 'Budget'.
24. Each of the co-operatives runs independently, and there is no overlapping ownership or directorship. The three Foodstuffs companies share ownership of Foodstuffs (New Zealand) Limited, which owns the brands 'New World', 'Pak 'N Save', and '4 Square' and leases them to the three Foodstuffs companies.

## INDUSTRY BACKGROUND

25. In this proposed acquisition, there is aggregation in the supply of potato chips, corn chips and extrusions. Of these three products, potato chips are the most popular and most widely manufactured product.
26. For potato chips, the production process is similar between manufacturers. The process begins with the delivery of raw potatoes to the plant and these potatoes are typically unloaded directly into the production line. For example, [ ] has a number of trucks which rotate between the factory and the potato grower's field to ensure a constant supply of raw product.
27. The potatoes are then put through a cleaning machine to remove any dirt, stones and skin (although some manufacturers choose to leave the skin on the potato). The potatoes are then checked to remove any damaged, rotten or green potatoes.
28. The potatoes are then put through a slicer which cuts the potato into the desired style and thickness. After slicing, the chip enters a fryer where it is cooked for a short period of time.
29. Next, the specific flavour is added to the chip. To achieve this, the chip is fed through a drum where the flavour, such as salt & vinegar or chicken, is sprinkled onto the chip and the drum slowly rotated to combine the flavouring with the chip.
30. The flavoured chip is then fed through a machine to measure the correct amount of chips to make the desired packet size. The weighted portion of chips is then dropped through a bag-making machine which then creates a new bag and then

---

<sup>5</sup> Woolworths Australia Limited has recently offered to buy Progressive from Foodland. The sale and purchase is expected to conclude by the end of October.



automatically seals it. The bag is then packed and shipped to its desired destination.

31. The process is slightly different for corn chips. Ground corn is turned into a dough which is then flattened and cut into the required shape and size before baking. However, the flavouring and packaging processes are very similar to potato chips.
32. Extrusions are a savoury snack product where the ingredients, such as ground corn or cereals, are cooked under pressure in an extruder. As the cooked dough exits the machine, its water content disperses as steam leaving a light textured product. The cooked dough can be modified to produce a variety of different shapes such as rings, curls and round balls.

### **PREVIOUS DECISIONS**

33. The Commission has previously considered the snack industry in *Decision 156: Fielder Gillespie Davis Limited / Goodman Group Limited*, 13 March 1986 (the Goodman Decision). In this decision, the Commission cleared the proposed acquisition and considered there to be a national market for the manufacture and supply of snack foods, which included potato chips, extrusions and nuts.
34. In the Goodman Decision, the Commission concluded there were no significant anti-competitive effects from the proposed acquisition. In regards to market definition, the Commission included potato chips, extrusions and nuts in the same market due to their demand-side substitutability.

### **MARKET DEFINITION**

35. The Act defines a market as:
 

“... a market in New Zealand for goods or services as well as other goods or services that as a matter of fact and commercial common sense, are substitutable for them.”<sup>6</sup>
36. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

### **Product Market**

37. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market.

---

<sup>6</sup> s 3(1) of the Commerce Act 1986.

38. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
39. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
40. The Applicant submitted the relevant market for the proposed acquisition is the national market for the manufacture and wholesale supply of 'salty snack foods', which includes several product categories, namely:
  - potato chips;
  - corn chips;
  - extrusions and other cereal snacks<sup>7</sup>; and
  - nuts.
41. The Applicant submitted that within the proposed 'salty snack market' there is a strong degree of demand-side and supply-side substitution with adjacent products, such as potato chips, extrusions and nuts, constraining each other. Further, it claimed that the 'salty snack market' reflects industry views and is replicated in such things as internal reporting, competitors' marketing activities, AC Nielsen information and the placement of products in supermarkets.
42. However, the Commission notes that the market submitted by the Applicant included products which are not directly involved in the proposed acquisition. The Commission also received conflicting views from industry participants on how broad, or narrow, the relevant market should be. Further, given the length of time since the Goodman Decision, the Commission considered it appropriate to revisit its previous assessment of this industry.
43. Therefore, the Commission has considered whether there is a 'salty snack market' or whether there are narrower product markets for potato chips, corn chips and extrusions, respectively. The Commission also considered the approach taken by other jurisdictions when analysing this industry.

#### *International Jurisdictions*

44. In 1982, the United Kingdom's Monopolies and Mergers Commission (MMC) considered the merger between Nabisco Brands Inc and Huntley Palmer Foods Plc. The MMC defined a wide market for 'savoury snack foods' which included potato chips, extrusions and nuts noting that the market comprises three distinct but closely related segments.
45. Within this savoury snack foods market, the MMC considered whether nuts were a distinct market. It found that nuts and potato chips were regarded as close substitutes by consumers, many manufacturers produced both nuts and chips, and the sales of nuts were relatively small. Subsequently, the MMC

---

<sup>7</sup> The Applicant submitted separate categories for 'extrusions' and 'other cereal snacks'. The Commission found that these terms denote similar products although some cereal snacks may be manufactured in such a way that they are not technically extrusions. However, for the purposes of this report the Commission will refer to these products as extrusions.

considered it convenient to accept the then industry practice and included nuts in its market definition.

46. The MMC also noted the inter-relationship between the savoury snack food market and other markets such as confectionery and biscuits, but considered there to be sufficient differences to warrant a separate market for savoury snack food. These differences included price points, taste, their placement in outlets, customer appeal, product packaging and preparation.
47. In 2002, the United Kingdom's Office of Fair Trading (OFT) revisited this market definition and found no evidence to suggest that a wide savoury snacks market was inappropriate.<sup>8</sup> The OFT suggested that all savoury snacks, which at their widest consist of potato chips, corn chips, extrusions and nuts could be regarded as demand-side substitutes.
48. The Australian Competition and Consumer Commission (ACCC) also considered these products in 2002 in regard to the proposed acquisition of Snack Foods Limited by Arnott's Biscuits Limited. The ACCC defined a separate market for the manufacture and distribution of salty snacks.
49. In 2000, the European Commission considered a joint venture for the manufacture and distribution of nut snacks.<sup>9</sup> The European Commission made no conclusions on market definition, however, it indicated that the relevant market was at least as wide as all nut snacks although it may be as wide as all savoury snacks.

*Supply-side Substitutability*

50. The Commission consulted manufacturers on their ability to switch production processes between different products, such as between a corn chip and potato chip. The Commission consider there to be a degree of substitution at certain stages of the production processes. For example, the end process of weighing, packaging and boxing the finished product (as well as the wholesaling) is very similar between potato chips, corn chips and extrusions.
51. However, the initial stages of the production process differ. For example, in manufacturing potato chips the raw potato is cleaned, peeled and then cut into the desired thickness before it is placed in the fryer. For corn chips, ground corn is turned into a dough which is flattened and then cut into the required shape and size before baking. Further, all existing manufacturers, who produce potato chips, corn chips and extrusions, have separate manufacturing lines for these products. [
 

]
52. Arnott's Limited manufactures a range of potato chips in Australia although presently these products are not distributed through Arnott's in New Zealand. [
 

]

---

<sup>8</sup> This was in regard to the acquisitions between Frito Lay and Golden Wonder Group and separately, Longulf Trading UK and Golden Wonder Group.

<sup>9</sup> Case No COMP/JV.32, Granaria / Ultje / Intersnack / May Holding, 28/02/2000.

53. The Commission considers that there is only a limited degree of supply-side substitutability between potato chips, corn chips, extrusions and this substitutability primarily concerns the finishing stages of the production process.

*Undifferentiated/Differentiated Products*

54. Differentiated product markets are those in which the product offerings of suppliers vary to some degree and in which buyers make their purchase decisions on the basis of product characteristics as well as price. Suppliers' products are imperfect substitutes for one another and less close substitutes impose a lesser competitive constraint than others.
55. A "chain" of substitutes may be evident and, if there is no obvious break in the chain, there may be no obvious point where the boundary of the market can be drawn. If the competition analysis of an acquisition is sensitive to the market definition used, the Commission might not define the market precisely and instead focus on the competition analysis and the impact of the acquisition on prices.
56. As set out in the Commission's Mergers and Acquisitions Guidelines, "This approach recognises that in a differentiated product market, a structural analysis that takes into account market definition and market share may not be as helpful in judging market power as one that focuses on the degree of substitutability between products, and on the amount of competitive constraint that each imposes upon the others."
57. The Applicant stated that although for the majority of consumers price is the paramount importance, it believes consumers do consider the particular attributes of the product, such as flavour, ingredients, shape and texture, packaging, positioning and purchase type.
58. The Commission found snack products, such as those involved in the proposed acquisition, to be characterised by examples which would indicate differentiated products. For example:
- Both ETA and Bluebird have targeted an adult, or entertainment, segment of with their Uppercuts and Delisio ranges;
  - Extrusions, such as Twisties and Burger Rings, are targeted predominately to children;
  - Packaging varies from small individual packets to larger 300g or 400g bags with some bags including a re-sealable zip. Also, Pringles is known worldwide for its distinctive tube packaging design;
  - Hansells has the 'Salute' range which is cooked in olive oil and is marketed for its healthier properties. Bluebird has the 'Health Plus' range which is also sold as a healthier product; and
  - Although in New Zealand the traditional favourite flavours are ready salted, chicken and salt & vinegar, new flavours are regularly launched and currently there are flavours such as French onion, crispy bacon and steak & peppercorn.
59. All industry participants advised the Commission that price is an important driver in this market. The Commission has found that approximately 70% of snack foods are sold on promotion in supermarkets, whether it is a potato chip,

corn chip or extrusion. A main driver for the promotions has been the supermarkets who are actively seeking the best deal, often selling a standard size bag of potato chip as a 'loss-leader'. However, industry participants stated that where brand is more important everyday sales are typically stronger and as a result the proportion of those products sold on promotion is less.

60. The Commission found that prices differ between brands, as is often the case with differentiated products. For instance, Pringles is typically the most expensive potato chip while ETA recently changed its pack size and is slightly cheaper than Bluebird. Supermarket house brand products are typically less expensive than branded products. However, it should be noted that this is not always the case depending on which brand is on promotion for a particular sales period.
61. The Commission considers that although the brands are differentiated to some extent, the differentiation is not sufficient to prevent the different brands from being substitutable for each other. Accordingly, the various brands are not so differentiated as to affect the market definition.
62. The Commission also found that prices differ between the potato chip, corn chip and extrusion categories. Industry participants stated that potato chips, on average, are slightly cheaper than corn chips or extrusions. However, as with the pricing between brands, this is not always the case depending on whether a particular category, or individual product line, is on promotion.
63. The Commission found that nuts are significantly more expensive than either potato chips, corn chips or extrusions. However, the two main suppliers of nuts are ETA and Prolife Foods Limited and neither the Applicant nor Hansells currently supplies nuts. Therefore, the Commission is of the view that it is appropriate to consider products that are directly related to the present Application, namely potato chips, corn chips and extrusions.
64. Accordingly, for the purposes of the present Application the Commission does not consider nuts to be part of the relevant market. The Commission considers that if there are no competition concerns in the narrowly defined market, there are unlikely to be any in a more broadly defined market that included nuts.

*Demand-side Substitutability*

65. The Commission found conflicting views on the degree of demand-side substitutability between products in the 'salty snacks' market, as claimed by the Applicant. The Commission surveyed industry participants and found that some consumers would not switch between, say a potato chip and an extrusion, given a five to ten percent increase in price while other consumers are more flexible. All participants stated it is difficult to quantify this behaviour.
66. The Applicant submitted that it considers the 'occasion' of use when examining snack foods, for instance, school lunches, entertaining after work, barbecues or the afternoon (or 4:00pm) snack. [

]

67. The Applicant submitted the following information:

- [

]

68. The Applicant advised the Commission that its research emphasises a wider market, rather than individual lines (such as a separate market for potato chips), for snacks [

]

69. The Commission considers that this research is indicative of the views of other industry participants spoken to during the investigation. The Commission found that, typically, should a consumer choose to purchase a snack product, the consumer may then make a purchase decision from a number of different snack categories. If the consumer's preference, or mood, leads him or her to choose a savoury or salty product the consumer is more likely to choose either a potato chip, corn chip or extrusion. The Commission considers this is because:

- the products fulfil the requirements of the consumer at the time;
- the products are of a similar price, but differentiated by packaging, flavour, styles, etc; and
- consumers choose a product (or brand) based on their own preferences.

70. The Commission considers that the typical consumer considers a range of substitutes when choosing a 'snack' product such that there is unlikely to be a separate product market for potato chips, corn chips and extrusions. The Commission found that consumer preferences, on the whole, outweigh any supply-side factors which limit existing manufacturers switching production between potato chips, corn chips and extrusions.

71. As mentioned previously, the Commission does not consider it appropriate, for the purposes of the present Application, to include nuts in the relevant market as claimed by the Applicant.

72. Therefore, the Commission considers that potato chips, corn chips and extrusions fall within the same product market because of the degree of demand-side substitutability.

#### *Conclusions on Product Market*

73. The Commission considers that, for the purposes of assessing the competition implications of the proposed acquisition, the relevant product market is potato chips, corn chips and extrusions (savory snacks).

### Functional Markets

74. The production, distribution and sale of a product typically occur through a series of functional levels – for example, the manufacturing/import level, the wholesale/distribution level and the retail level. It is often useful to identify the relevant functional level in describing a market, as a proposed business acquisition may affect one horizontal level, but not others. Generally, the Commission will seek to identify separate relevant markets at each functional level affected by an acquisition and assess the impact of the acquisition on each.
75. Bluebird, Hansells, and ETA all manufacture and distribute savoury snacks direct to supermarkets. Industry participants advised the Commission that the supermarket trade accounts for approximately 80% of all savoury snacks sold. The remaining sales are through the ‘route trade’ which includes service stations and local dairies.
76. Bluebird services the route trade through contractors [ ]. Hansells does not distribute to the main service stations and uses a number of independent distributors to supply its products to individual outlets. All manufacturers distribute to the ‘Cash n Carry’ warehouses such as Gilmours, Toops<sup>10</sup> and Moore Wilson, which in turn supply various outlets such as dairies, cafes and other food service providers.
77. However, given that Bluebird, ETA and Hansells manufacture and distribute their products, the Commission considers the appropriate functional level is the manufacturing and wholesale supply of savoury snacks.

### Geographic Markets

78. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.
79. All the major suppliers of savoury snacks supply their product on a national basis and advertise their brands nationally. The Commission therefore concludes that the geographic market is national.

### Conclusion on Market Definition

80. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the relevant market is the national market of the manufacture and wholesale supply of potato chips, corn chips and extrusions (the savoury snacks market).

### COUNTERFACTUAL AND FACTUAL

81. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgment considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (the counterfactual).<sup>11</sup>

<sup>10</sup> The Commission notes that both Gilmours and Toops are subsidiaries of the Foodstuffs chain of supermarkets.

<sup>11</sup> *Air New Zealand & Qantas Airways Ltd v Commerce Commission (No 6)*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

### **Factual**

82. In the factual scenario there would be two main manufacturers, the combined entity and ETA, who would supply all products in the savoury snacks market. There would also be a number of smaller manufacturers who manufacture a particular type of product in this market, such as either corn chips or potato chips.
83. The Applicant submitted that, as with other fast-moving consumer goods, the market is characterised by manufacturers regularly launching and re-launching snack food brands and this activity serves to underline the intensity of competition in the market. [

].

84. The Applicant advised the Commission that acquiring the existing brands of Hansells is [

].

85. The Applicant also stated that the acquisition of a low price brand would [

].

86. The Commission considers that the proposed acquisition would result in a duplication of facilities and products and that this duplication would in due course result in consolidation between the Bluebird and Hansells brands.

### **Counterfactual**

87. Hansells advised the Commission that it [

].

88. [

].

89. [

].

90. Accordingly, the Commission considers that the appropriate counterfactual would be that the Hansells savoury snack businesses is sold to another party, other than Bluebird.



91. However, while some industry participants considered Hansells to be an established player in the savoury snacks market, several parties questioned the on-going viability of the Hansells brands. For example, [
- ].
92. Therefore, the Commission considers that, absent the acquisition by Bluebird, there would be some form of rationalisation in regard to Hansells and this rationalisation would be driven by the sales performance of certain product lines. Accordingly, the Commission is of the view that in both the factual and counterfactual scenarios Hansells is likely to undergo some form of consolidation.

## **COMPETITION ANALYSIS**

### **Existing Competition**

93. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).
94. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.
95. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
  - the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
96. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.
97. The main existing competitors in the savoury snacks market are Bluebird, Hansells and ETA. All three manufacturers produce a range of savoury snack products. A number of other manufacturers are active in this market although they predominately produce a particular type of product, such as corn chips or potato chips.

98. The Applicant submitted that the most appropriate source of market share information is AC Nielsen supermarket data. The Applicant submitted that this data, which it estimates accounts for approximately [ ] of sales, is a good proxy for the overall market.
99. The Commission surveyed various industry participants to provide their own estimates of the market based on their sales data and industry experience. All industry participants stated that AC Nielsen data is the best available data source and is commonly used in the industry to deduce market share information.
100. The Commission notes that approximately [ ] of the market is for supermarkets' own house brand savoury snacks. The market shares indicated below include any house brand contracts that are undertaken for supermarkets. These contracts currently account for approximately [ ].
101. Table 1 shows the estimated market shares for the manufacture and wholesale of savoury snacks in the 2004/2005 year.

**Table 1: Estimated Market Shares for the Savoury Snacks Market for 2004/2005**

Manufacturer/Wholesaler	Retail Sales	Market Share
Bluebird	[ ]	[ ]
Hansells	[ ]	[ ]
<i>Combined entity</i>	<i>[ ]</i>	<i>[ ]</i>
ETA	[ ]	[ ]
Arnott's	[ ]	[ ]
Other <sup>12</sup>	[ ]	[ ]
<i>Total</i>	<i>[ ]</i>	<i>100%</i>

Source: AC Nielsen / Industry participants

102. Table 1 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three-firm concentration ratio would be [ ]. This is outside the Commission's safe harbour guidelines.
103. The Applicant submitted that the combined entity would be significantly constrained by existing competitors in the snack market, post acquisition. It also submitted that the current level of competition is intense and none of the factors that give rise to this intense level of competition would change in the factual scenario.
104. Industry participants confirmed that the current market is very competitive. Several participants stated that compared to other countries, notably Australia, the pricing of savoury snacks is very competitive and, typically, the retail price in New Zealand is significantly less than the retail price of a comparable product in Australia.
105. The Commission considered a number of different areas where manufacturers compete in the savoury snacks market including:

<sup>12</sup> This category includes suppliers such as Fresher and MSL as well as a number of niche competitors, which supply a limited range of products.

- Promotional activity;
- Product innovation;
- Existing capacity; and
- House brand contracts.

*Promotional Activity*

106. All industry participants advised that a high proportion of sales are made on promotion. For example, Bluebird submitted that within the potato chip segment, which makes up the bulk of the savoury snacks market, approximately [ ] of product is sold on promotion. This figure was confirmed by industry participants for all products in the savoury snacks market. For example, [ ]
107. Although the two supermarkets operate slightly different promotional activities, typically a manufacturer will submit an application for a promotional slot (or slots) in a supermarket's advertising calendar. These slots are then assigned by the respective supermarkets. Generally, a supplier with the higher market share will submit for, and be accepted for, more slots than a supplier with a smaller market share. As the assigned promotional slot draws nearer the exact details of the promotion are then negotiated such as the specific SKU (Stock Keeping Unit), the specific price and the expected volume of product.
108. The Commission found that where brand is more important, the product will have stronger base sales and as a result the proportion sold on promotion will be less. The reverse is also true such that when price is more important the proportion sold on promotion is higher. For example, [ ]<sup>13</sup>
109. All industry participants advised the Commission that promotional activity and discounting drives volume in this market. For example, [ ] stated that if you lose a promotional slot then you lose sales to the competitor who picks up that promotional slot. Further, any short-term loss in volume would then affect your shelf space in the supermarket and this would in turn result in further losses. Industry participants stated volume is important in this market because the longer your production line is operating the greater economies of scale you are able to realise.
110. [ ]

].

*Product Innovation*

111. All industry participants stated that the savoury snack market, as well as snack products in general, is characterised by product innovation and regular product launches.

---

<sup>13</sup> [ ]

]

112. The Commission found that, typically, a manufacturer will have flavour rotations every year and new flavours are being constantly introduced. Although the traditional favourite flavours of New Zealand consumers have remained relatively constant, notably ready salted, chicken and salt & vinegar, there is currently an extensive range of exotic flavours on the market ranging from tomato sauce, to rosemary & garlic and honey soy.
113. All manufacturers stated that there are no exclusive flavours or any ‘secret’ formulas in this market. Further, all parties stated that it is relatively common for a manufacturer to consult a ‘flavour house’ and experiment with different flavour offerings.<sup>14</sup> Also, should a new flavour enter the market and gain market share, it is relatively easy for a competitor to approach the flavour house to duplicate the desired flavour.
114. All industry participants advised the Commission that the savoury snack market is becoming more mature in that the typical consumer is demanding greater variety and quality from the goods they purchase. Both supermarket chains stated that, in general, snack food is following other food categories in the sense that consumer preferences are becoming more sophisticated.
115. Bluebird and ETA stated that recently the savoury snack market has seen the introduction of what they both call a ‘premium’ segment. [ ] ETA launched its Uppercut range of chips last year, which included such flavours as mature cheese & caramelised onions and roast lamb & mint, at a higher price point than its other ranges.<sup>15</sup> Historically, both Bluebird and ETA had standard prices for their different brands across a specific segment such as potato chips.
116. Bluebird advised that it had launched six new product ranges in the last three years and these products [ ]. For instance, this year Bluebird has introduced a range of vegetable chips under its Healthplus label, a variation of its Grainwaves range called ‘Select’ and the previously mentioned Delisio range. For each of these new products, Bluebird spent approximately [ ]
117. International Flavours & Fragrances (NZ) Limited (IFF) informed the Commission that [ ]. IFF stated that it is relatively common for manufacturers to do this, and this is also the case in other food categories. Further, [ ]
- [ ]. Typically, it takes one week to ten days to produce a desired flavour and IFF charges a fee based on the volume ordered.
118. Products are also regularly re-launched by a manufacturer to stimulate demand for a particular product, or segment. Hansells recently re-launched its Salute range at a cost of approximately [ ]
- ].

<sup>14</sup> The two main ‘flavour houses’ in New Zealand are Kerry Ingredients (NZ) Limited and International Flavours and Fragrances (NZ) Limited.

<sup>15</sup> [ ]

] ]

119. Even if a manufacturer does not re-launch a new product, it may decide to regularly re-promote the product to retain the presence in the market and to maintain a degree of brand loyalty. For instance, Hansells promotes its Popperjack extrusion with its clown logo. Competitions are also a regular feature of the market particularly in regard to extrusions, which are primarily targeted towards children.
120. Industry participants stated that some consumers would remain very loyal to a certain type or flavour of chips for its particular attributes. For instance, Hansells leaves the skin on its potato chip, while other consumers prefer a particular texture or taste. Both Bluebird and ETA have a ‘crinkle-cut’ style of potato chip with the same core flavours, such as salt & vinegar or chicken.
121. Further, Bluebird is the only manufacturer in New Zealand which has a blancher in the production process. The blancher removes sugar content in the potato chip before the cut chip is placed in the fryer. This has the effect of whitening the potato chip as chips that are high in sugar have a tendency to darken as a result of the frying process. Bluebird considers that blanching [ ]].

#### *Existing Capacity*

122. All existing manufacturers stated it is difficult to accurately assess the current capacity of their plants as they have to balance the number of shifts that the production line is run for with the mix of product that is run on that particular line.
123. For instance, the Commission found that manufacturers will typically run only one variety of one particular style of chip per shift and by doing this they are able to create economies of scale. Further, the flavours are rotated in a particular order to limit the possibility of cross-contaminating the different batches with foreign flavouring. Manufacturers stated that because of this it is very important to adequately forecast demand as they are not, typically, able to shift production automatically to a desired product line in periods of under supply.
124. For example, [ ]].
125. All manufacturers stated that capacity is also affected by seasonal demand. The peak period of demand is the summer months and in the lead up to the Christmas period [ ] indicated that they would be operating at close to full capacity, based on their current shift timetable.
126. However, all of the manufacturers indicated that they have the ability to increase the length of their shifts or the number of shifts they perform. For instance, [ ]].<sup>16</sup>

---

<sup>16</sup> [ ]].

127. [ ] Fresher stated that Fresher only manufactures its range of potato chips [ ]. Currently, Fresher has only eight supermarket SKUs with four different flavours. The supermarkets did not consider Fresher to be a significant player although [ ]
128. [ ] MSL, stated that it currently has [ ].  
Further, MSL has previously [ ] and the Commission considers this indicates an ability, and willingness, to expand its current production capacity.
129. [ ] stated that efficiency is also an important consideration. [ ] recently upgraded its [ ] and has been able to make efficiency gains as a result. With other considerations being equal, the upgrade has enabled it to increase its capacity by [ ].
130. Arnott's currently distributes Pringles in a joint venture arrangement with P&G. P&G manufactures Pringles in Belgium and exports them worldwide. The joint venture was established two years ago and Arnott's stated that [ ]
131. The Commission is of the view that none of the existing competitors are sufficiently constrained such that they would be unable to increase their capacity if given an incentive to do so.
132. Accordingly, in the event that the combined entity raised its price or reduced its quality of product, or its product range, the Commission considers that existing competitors like ETA and smaller competitors such as MSL would have the incentive to expand and would have sufficient capacity to do so.

#### *House Brand Contracts*

133. The two supermarket chains have introduced a range of house brand savoury snacks in recent years. This has followed other categories in the retail food sector. Currently, house brand savoury snacks represent approximately [ ] of the retail sales through the supermarkets although the supermarkets indicated that this is [ ].
134. [ ]
- [ ]
135. Within the savoury snack market, house brand products have predominately been only in potato chips and corn chips. Industry participants stated that because of the strong brand loyalty of the leading extrusions, such as Bluebird's Twisties and Burger Rings, there has been limited scope for, not only house brand extrusions, but also other competing extrusions.
136. The Commission surveyed industry participants to investigate the reasons for competitors' producing house brand savoury snacks for supermarkets. Manufacturers stated that there are several reasons for producing house brands, including:

- Economies of scale - given any excess capacity it is pragmatic to limit down time and have the production line operating for as long as possible;
  - Inevitability of house brands – as with other food categories, house brands are here to stay and that if you do not manufacture for the supermarkets, then your competitor will; and
  - Relationship – manufacturers considered the relationship with the supermarket as critical to their success and that given an invitation by the supermarket, they consider it appropriate to tender for such business.
137. Manufacturers stated that there was a trade-off between manufacturing house brand products as there is always the potential to cannibalise your own brand. All manufacturers stated that house brands are [
- ]
138. [ ] contract with Progressive for house brand products makes up [ ]. [ ] considered it far more efficient to produce the house brand product rather than have its production line idle. However, there are some savings as house brands because, by their nature, they do not require the same marketing and management expenditure.
139. Currently only [ ] hold a house brand contract for either potato chips or corn chips. No other manufacturer has produced potato chips or corn chips for the supermarkets in sufficient scale. [ ]
140. [ ]
- ].
141. The Commission considers that competition for house brand contracts in the savoury snacks market occurs during the tender process for the potato chip and corn chip contracts with the two main supermarkets. Historically, there has only been [ ] successful manufacturers who have held a house brand contract and this would reduce [ ], in the factual scenario.

#### *Conclusion on Existing Competition*

142. The Commission considers that, post-acquisition, ETA would continue to be a strong competitor in the savoury snacks market. ETA has an established presence in the market and it is not constrained by any significant capacity considerations. Therefore, ETA would provide sufficient constraint to any attempt by the combined entity to exercise market power.
143. The Commission notes that although there are a number of smaller competitors in this market, these competitors would only provide a limited amount of constraint on the combined entity.

#### **Potential Competition**

144. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints

from the threat of market entry. The Commission's focus is on whether businesses would be able to enter the market and thereafter expand should they be given an inducement to do so, and the extent of any barriers they might encounter should they try.

*Barriers to Entry and Expansion*

145. The likely effectiveness of the threat of new entry in preventing a substantial lessening of competition in a market following an acquisition is determined by the nature and effect of the aggregate barriers to entry into that market. The Commission is of the view that a barrier to entry is best defined as anything that amounts to a cost or disadvantage that a business has to face to enter a market that an established incumbent does not face.
146. Industry participants considered that if entry is to occur in the savoury snacks market it would most likely occur through either de novo entry or through importation, most notably from existing Australian manufacturers.
147. The Commission considers that, due to the significant proportion of sales through the supermarkets, a new entrant would require access to supermarkets to be viable. Industry participants advised the Commission that for this to occur a potential entrant would require:
- a product with a point of difference and suitable branding;
  - sales representatives and distribution network to promote and support the product; and
  - sufficient volumes for a supermarket to justify its support.
148. The Applicant submitted that there are no barriers to entry (or expansion) in the market. Further, Bluebird advised that the costs of establishing production capacity and the related promotional costs are not significant given the total size of the market.
149. Industry participants estimated the cost of establishing a suitable production process for the market to be approximately [ ]. As stated in the section on existing competition, a new entrant would also have to invest in product innovation and promotional activity. The Commission understands that these costs can range from \$50,000-\$100,000, for a small promotion and up to half a million dollars or more for a major product launch. However, given the total size of the market, the Commission does not consider these costs to be insuperable for a potential entrant.
150. [ ] stated that the main issue it is facing, as well as other small manufacturers, is gaining the same economies of scale and buying power that the main competitors are able to achieve, notably for inputs into the production process.
151. The Applicant also submitted there are no restrictions on imports and supermarkets have the ability to control shelf space and foster new entrants. [ ] advised the Commission that it has previously investigated importing savoury snacks from Australia. However, the extra unit cost that importing added (to an already low priced product) meant that [ ] did not consider it viable to import such snacks. Further, [

]



152. Arnott's advised the Commission that its Australian counterpart produces a full range of savoury snacks although these products are not currently distributed in New Zealand. [

].<sup>17</sup>

153. Currently, the only product in the savoury snacks market that is imported in significant quantities is Pringles, which is distributed by Arnott's. Arnott's market share is approximately [

].

154. The Commission notes that Pringles has a strong international presence and is a strong brand. Industry participants stated that a number of other products are imported but these are niche products and their market share is negligible. Further, two of the established competitors in Australia are constrained to a certain extent in their ability to import their products in New Zealand. The Commission considers the same scenario applies for de novo entry.

155. Accordingly, given the high transportation cost into New Zealand and the need for a legitimate brand to be viable in this market, the Commission considers that entry is unlikely to occur within the next two years. The Commission considers the state of existing competition would also constrain potential entry.

#### *Conclusions on Potential Competition*

156. The Commission considers entry, whether through de novo entry or importation, would be limited and unlikely to be of a sufficient extent to constrain the combined entity.

#### **Countervailing Power**

157. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.

158. The Applicant claimed that the supermarket chains have countervailing power through the way they purchase from suppliers. It claimed that any attempt to increase prices would result in the supermarket responding by:

- reducing shelf space and the number of SKUs;
- limiting promotional activity in favour of other competitors; and
- encouraging new entry or expansion.

159. All manufacturers advised the Commission that supermarket sales are crucial for the sales of savoury snacks. For instance, [ ] of Bluebird sales are in the supermarkets while other manufacturers have a similar figure, if not slightly higher. This is because Bluebird has a stronger presence in the route trade

---

<sup>17</sup> [

particularly in the service station outlets.<sup>18</sup> Hansells is not in any of the main service stations.

160. As indicated in previous sections, a high percentage of sales in the supermarkets is on promotion. [ ] informed the Commission that consumers are aware of these promotions and have been “trained” to only buy when on promotion. The Commission also found this form of consumer behaviour in other consumer good categories.<sup>19</sup>

161. The Applicant submitted that competition for access to promotional slots is fierce. Further, if the combined entity attempted to increase its prices, post-acquisition, the supermarket would simply promote a competing product or their own house brands. For example, [

]

162. Both the supermarket chains have standard trading terms with manufacturers and they do not have any fixed contracts for supply.<sup>20</sup> Further, the supermarkets do not sell or charge manufacturers for normal shelf space, but determine the positioning of stock based on their own calculations on consumer preference, market share and anticipated market growth.

163. [

].

164. [

].<sup>21</sup>

165. The Commission has previously considered the countervailing power of supermarkets in other consumer good categories where the percentage of overall sales is high.<sup>22</sup> In these previous decisions, the Commission considered the supermarkets to have significant countervailing power over the ability of the combined entity to raise prices in the factual scenario.

---

<sup>18</sup> For example, Bluebird has a [ ] for potato chips and corn chips with Caltex and the Starmart outlets.

<sup>19</sup> *Decision 542: Fonterra Co-operative Group Limited / National Foods Limited*, 9 December 2004.

<sup>20</sup> This is absent any house brand contact that may exist between a manufacturer and a supermarket.

<sup>21</sup> [

]

<sup>22</sup> *Decision 487* (in regard to yellow spreads), *Decision 529* (in regard to fabric softener) and *Decision 542* (in regard to yoghurt and dairy food).

*Conclusion on Countervailing Power*

166. The Commission concludes that, post-acquisition, the two main supermarkets are likely to continue to provide a significant constraint on the combined entity through their ability to limit promotional activity, limit shelf space and support other competitors.

**OVERALL CONCLUSION**

167. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the national market for the manufacture and wholesale supply of potato chips, corn chips and extrusions (the savoury snacks market).
168. The Commission considers that, post-acquisition, ETA would continue to be a strong competitor in the savoury snacks market. ETA has an established presence in the market and it is not constrained by any significant capacity considerations. Therefore, ETA would provide sufficient constraint to any attempt by the combined entity to exercise market power.
169. The Commission notes that although there are a number of smaller competitors in this market, these competitors would only provide a limited amount of constraint on the combined entity.
170. Further, the Commission considers entry, whether through de novo entry or importation, would be limited and unlikely to be of a sufficient extent to constrain the combined entity.
171. However, the Commission considers that, post-acquisition, the two main supermarkets are likely to continue to provide a significant constraint on the combined entity through their ability to limit promotional activity, limit shelf space and support other competitors.
172. The Commission is therefore satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in the affected market.

**DETERMINATION ON NOTICE OF CLEARANCE**

173. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Bluebird Foods Limited of certain brands and assets of Hansells (NZ) Limited and PLC (NZ) Limited.

Dated this 5<sup>th</sup> day of October 2005

---

Paula Rebstock  
Chair  
Commerce Commission