

COMMERCE COMMISSION

Decision No. 522

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

CB NORWOOD DISTRIBUTORS LTD

and

CNH AUSTRALIA PTY LIMITED

The Commission: David Caygill
Peter J M Taylor

Summary of Application: The acquisition by CB Norwood Distributors Limited to acquire the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting of “Case IH” branded agricultural equipment and spare parts.

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

Date of Determination: 18 May 2004

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EXECUTIVE SUMMARY

The Proposal

1. A notice pursuant to s 66(1) of the Commerce Act was received on 26th April 2004. The notice sought clearance for the acquisition by CB Norwood Distributors to acquire the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting of “Case IH” branded agricultural equipment and spare parts.

Market Definition

2. The Commission concludes that, for the purposes of the present application, the relevant markets are:
 - the national distribution of new agricultural tractors and spare parts;
 - the regional retail supply of new agricultural tractors and spare parts,
 - the national distribution of combine harvesters;
 - the regional retail supply of combine harvesters;
 - the national distribution of round balers;
 - the regional retail supply of round balers,
 - the national distribution of large square balers;
 - the regional retail supply of large square balers,
 - the national distribution of disc harrows; and
 - the regional retail supply of disc harrows.

Counterfactual

3. The Commission considers the appropriate counterfactual to be the status quo.

Competition Analysis

Existing Competition

4. In the national distribution of new agricultural tractors and spare parts, the Commission considers that, post acquisition, existing competition is likely to constrain the combined entity due to the presence of three main competitors, John Deere, Power Farming, AGCO/Valtra and two smaller competitors, Landpower and Dan Cosgrove.
5. In the national distribution of combine harvesters, the combined entity would be constrained by two competitors, namely John Deere, which has its own brand, and Landpower which sells the Claas brand of combine harvesters.
6. In the national distribution of round balers and in the national distribution of large square balers, the combined entity would be constrained by several other competitors such as Landpower and Power Farming.
7. The Commission concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the national distribution of disc harrows due to the minor aggregation resulting from the acquisition and the presence of a number of existing competitors.
8. Given that there is sufficient existing competition in the national distribution of new agricultural tractors and spare parts, combine harvesters, round balers and large square

balers and disc harrows, there is likely to be sufficient existing competition in the retail supply of these products in each of the 18 regions where the aggregation occurs.

Overall Conclusion

9. On balance, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
 - the national distribution of new agricultural tractors and spare parts;
 - the national distribution of combine harvesters;
 - the national distribution of round balers;
 - the national distribution of large square balers; and
 - the national distribution of disc harrows.
10. At the retail level, in each of the 18 regions where the aggregation occurs, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
 - the retail supply of new agricultural tractors and spare parts;
 - the retail supply of combine harvesters;
 - the retail supply of round balers,
 - the retail supply of large square balers,
 - the retail supply of disc harrows.
11. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by CB Norwood Distributors to acquire the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting of “Case IH” branded agricultural equipment and spare parts.

THE PROPOSAL

12. A notice pursuant to s 66(1) of the Commerce Act was received on 26th April 2004. The notice sought clearance for the acquisition by CB Norwood Distributors to acquire the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting of “Case IH” branded agricultural equipment and spare parts.

PROCEDURE

13. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under s 66(1) 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 18 May 2004.
14. The Commission’s approach to analysing this proposed acquisition is based on principles set out in the *Commission’s Mergers and Acquisitions Guidelines*.

STATUTORY FRAMEWORK

15. Under s 66 of the Commerce Act (the Act), the Commission may grant clearances for acquisitions where it is satisfied that the proposed acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a market. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.¹
16. The Commission considers that it is necessary to identify a real lessening of competition that is not minimal.² Competition must be lessened in a significant and sustained fashion. For the purposes of its analysis, the Commission is of the view that a lessening of competition and the creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.
17. 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 able to be sustained for a period of at least two years.
18. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced service, quality or innovation, for there to be a substantial lessening, or likely substantial lessening, of competition, these also have to be both material and sustainable for at least two years.

ANALYTICAL FRAMEWORK

19. The Commission applies a consistent analytical framework to all its clearance decisions. The first step 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:

¹ Foodstuffs (Wellington) Cooperative – Society Limited v Commerce Commission (1992) 4 TCLR 713, p 721-722.

² See Fisher & Paykel Limited v Commerce Commission (1990) 2 NZLR 731, 758, and also Port Nelson Limited v Commerce Commission (1996) 3 NZLR 554.

- with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
20. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
- existing competition;
 - potential competition; and
 - various other competition factors, including the countervailing market power of buyers or suppliers.
21. 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 PARTIES

CB Norwood Distributors Limited (“CB Norwood”)

22. C B Norwood is a NZ based company which is a 100% subsidiary of Stevens KMS Investments Limited. Stevens KMS Investments Limited is a 100% subsidiary of Stevens KMS Limited, which is owned by Wahn Investments Limited, which in turn is owned by Interpacific Holdings Limited of Bermuda.
23. CB Norwood is involved in the importation, marketing, distribution, selling and support of the New Holland brand of agricultural tractors, equipment and spare parts to a dealer network of 10 company-owned branches and 20 independent dealers. CB Norwood also distributes the Kubota brand and the Ferrari tractor brand, as well as a wide range of other agricultural equipment imported from different suppliers.
24. CB Norwood was established by the Norwood family in 1936 and the company started importing tractors in 1948. It employs 160 people nation-wide and has supplied over 50,000 units to New Zealand customers.

CNH Australia Pty Limited (“CNH”)

25. CNH is owned by CNH Global N.V. The parent company was formed as a result of the global merger between New Holland and Case in 1999. CNH Global N.V is involved in manufacturing, marketing, distribution, selling and supporting the Case IH brand and the New Holland brand of agricultural tractors, equipment and spare parts internationally.
26. CNH manages, imports, distributes and sells the Case IH brand of products in New Zealand through an independent dealer network. CNH has 20 dealers nation-wide.
27. In Australia, CNH imports and distributes both the New Holland and Case IH brand of products.

Other Relevant Parties

John Deere

28. Deere & Company was founded in 1837 and has grown from a one-man blacksmith shop into a worldwide corporation that does business in more than 160 countries and employs approximately 40,000 people worldwide. The company has its own brand called John Deere.
29. John Deere sells agricultural tractors as well as a wide range of agricultural machinery. In NZ it distributes its products to 38 independent dealers; 19 are tractor and agricultural

equipment dealers and another 19 dealers are active in the supply of commercial and consumer equipment, namely ground-care equipment.

Power Farming Group (“Power Farming”)

30. The Power Farming Group is owned by the Maber Family, who have a three generation history of serving the New Zealand tractor and machinery market. The Group is divided into 5 operating divisions, Power Farming Wholesale, European Tractors and Machinery, Agmark, Group Parts and Retail Trading branches. The group’s turnover is in excess of \$120 million per annum.
31. Power Farming’s head office is located in Morrinsville, where it stocks its spare parts. The group also has a South Island distribution centre. In the supply of tractors, Power Farming has distribution rights for Renault, McCormick, Landini, Daedong and Iseki. In the supply of agricultural machinery, Power Farming has franchises for Kvernland, Vicon, Taarup, Maschio, Gasparido, Accord, Howard, Nobli, Trima, Silvan and Eurospread.

AGCO Australia/Valtra

32. AGCO Australia is part of the AGCO Corporation which manufactures and distributes agricultural equipment around the world. It produces and markets 22 brand names. In New Zealand, AGCO distributes the Massey Ferguson and Fendt brand of tractors.
33. In January this year AGCO purchased Valtra. Valtra was introduced to the NZ market 18 months ago.

Dan Cosgrove

34. Dan Cosgrove has been manufacturing export-quality farm machinery for over thirty years. It provides a one-stop shop for parts, service, used machinery and new sales. It currently sells the SAME brand of tractors. Dan Cosgrove is a NZ owned family business with a head office in Timaru.
35. Dan Cosgrove owns 5 retail branches. It also distributes its products to a network of 22 independent dealers.

Landpower Holdings

36. Landpower is one of the largest privately owned farm machinery distributors in Australasia. It has a network of 13 fully franchised outlets and a further 50 independent dealers throughout Australasia. In NZ it has 13 independent dealers.
37. Landpower distributes farm machinery and agricultural equipment including the Deutz Fahr and JCB tractor range, Claas harvesters, mowers and balers, Amazone fertiliser spreaders, Grimme potato harvesters, Seppi flail mowers.

Tractor and Machinery Association (“TAMA”)

38. The New Zealand TAMA has been established for several years. It currently has 8 members who pay an annual subscription fee³. The association produces a monthly report on tractor sales. The report acts as a way of registering the number of tractors sold. The association is also active in dealing with the government and was recently part of a joint working group on the Land Transport Act 1998. TAMA also helps with training and developing careers for people in the industry.

³ TAMA members consist of Agco, Case IH, Dan Cosgrove, John Deere, Landpower, CB Norwood, Power Farming and Valtra, representing a total of 17 tractor brands.

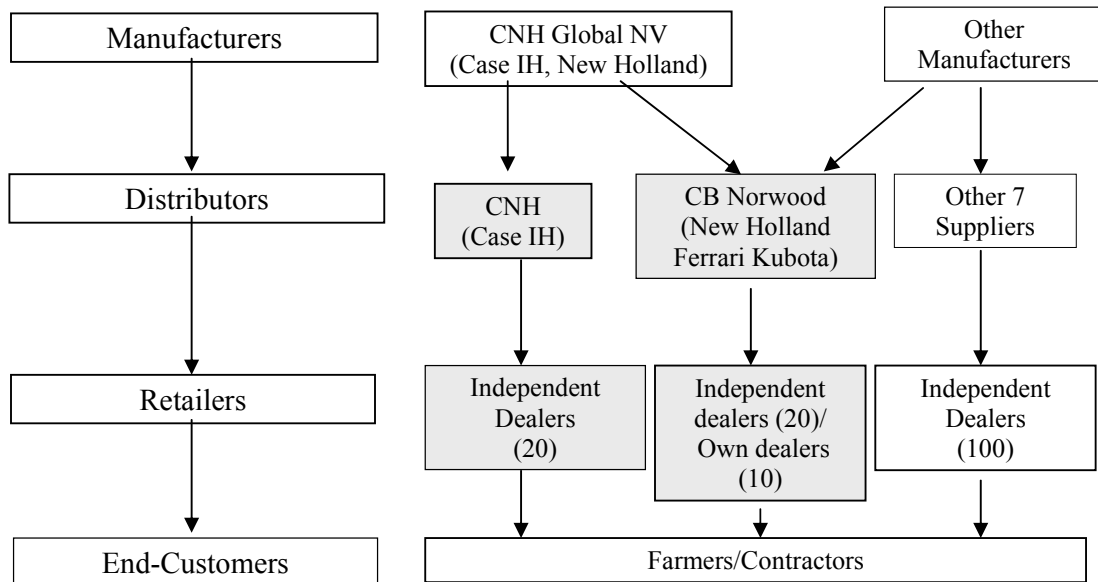
INDUSTRY BACKGROUND

39. In this proposed acquisition, there is an aggregation in the supply of agricultural tractors, machinery and spare parts. In particular, both parties are active in the supply of the following products:
- tractors;
 - combine harvesters;
 - hay balers; and
 - disc harrows.
40. Each of these products is considered in further detail below.

Tractors

41. Tractors are a basic piece of equipment used in farms and other land based businesses. They are generally capable of performing a similar range of functions. Tractors differ by power, specification and weight at different price levels. In terms of power, tractors can range from as low as 10 horsepower (“hsp”) to as high as 300 hsp.
42. In New Zealand, there is also a supply of second-hand tractors. Used tractors are differentiated by price, age and the number of hours they have been used.
43. The supply chain of tractors is shown in Figure 1 and consists of the following participants:
- manufacturers;
 - distributors;
 - retailer; and
 - end-customers.

Figure 1: The Current Supply Chain in the Supply of Tractors



Note: The shaded region shows the parties affected by the acquisition

Manufacturers of Tractors

44. All agricultural tractors sold in New Zealand are imported from an overseas manufacturing plant. Figure 1 shows that the parent company of CNH is active in the manufacturing of the “New Holland” and “Case IH” brand of tractors. These tractors are imported from manufacturing facilities in the US and in the UK. In this proposed acquisition there is no aggregation in the manufacturing of tractors.

Distributors of Tractors

45. The distribution of tractors involves the importing, distributing, and marketing of tractors. Tractors are distributed to retailers known as dealers. Distributors also provide dealers with a range of services, which consist of:
- technical training and assistance;
 - sales target incentives and discounts;
 - access to spare parts; and
 - general management and support.
46. With regard to spare parts for tractors, CNH currently supplies parts to its NZ dealers from its warehouse in Sydney, Australia. Other distributors like AGCO and John Deere also supply spare parts to dealers in New Zealand from Australia. However CB Norwood provides spare parts to its dealers from its warehouse in Palmerston North.
47. Distributors have distribution agreements or terms and conditions of sale with their dealers. In general these agreements can be terminated within 3 months notice by either party. Dealer agreements may contain discount programmes. [

].

48. Distributors, generally, have a nationwide distribution network of dealers, with each dealer responsible for selling tractors in a particular region. Distributors consider a number of factors when deciding which dealer to appoint in a region. These factors range from having a close affinity to the agricultural industry, having a sound financial background and having the resources to market tractors and supply spare parts and servicing.
49. Figure 1 shows that in NZ CNH distributes the Case IH brand of tractors and CB Norwood distributes the New Holland, Kubota and Ferrari brand of tractors. CB Norwood has been distributing New Holland tractors since 1989.
50. In addition to the merging parties, there are currently 7 other distributors of tractors. The distributors and the brands of tractors they import are listed in Table 1 below. Some distributors sell one brand of tractors whilst others, like Power Farming, sell a range of complementary brands in order to provide a full range of agricultural tractors for their customers.

Table 1: List of Distributors and their Brand of Tractors

Distributor	Brand
CB Norwood	New Holland Kubota Ferrari
CNH Australia	Case IH
John Deere	John Deere
Power Farming	McCormick Landini Renault Iseki Daeding
Dan Cosgrove	Same Lamborghini
Landpower Holdings	JCB Deutz
AGCO Australia	Massey Ferguson Fendt
Valtra Tractors	Valtra
Doug McFarlane	Carraro

Retailers of Tractors

51. There are around 150 dealers in NZ and this number has remained stable over the past few years. The number of dealers each distributor has is shown in Table 2.

Table 2: Number of Dealers by Distributors

Distributor	Number of Dealers
CB Norwood	30
CNH	20
Dan Cosgrove	25
John Deere	19
Power Farming	22
Landpower	13
AGCO	17
Valtra	5
Total	151

Note: Includes company-owned dealers

Doug McFarlane is an importer and a single site dealer for Carraro tractors

52. Figure 1 shows that CNH currently distributes Case IH products through an independent network of dealers. However CB Norwood distributes the New Holland brand through ten company-owned dealers and 20 independent dealers.
53. Each distributor has dealers in the major farming areas in NZ. TAMA collects data on tractor sales in 18 different regions⁴.
54. In addition to selling tractors, dealers provide end-customers with the following services:
 - warranties;
 - access to spare parts;
 - after-sales support; and
 - financing deals.
55. Generally, for new tractors, a dealer provides a distributor-backed warranty for 2 years, although some Case dealers offer a warranty for 4 years.
56. Retailers are provided with recommended retail prices (“RRP”) from the distributors. Most industry participants noted that, as an approximation, the retail price of a tractor was \$1,000 per horsepower. It was also noted that actual retail prices of tractors tend to be [] lower than the RRP.
57. Most dealers also sell used tractors. Some industry participants estimated that around 70% of purchases of new tractors involve trading in a used tractor.
58. The demand for tractors is sensitive to customers’ incomes, the exchange rate and the price of steel. Over the past three years, tractor sales have been increasing due to the strong NZ dollar and the strong economy. However industry participants stated that due

⁴ Northland, Auckland, Waikato, Bay of Plenty, East Cape, Central, Taranaki, Hawkes Bay, Manawatu, Wairarapa, Nelson, Marlborough, West Coast, North Canterbury, Mid Canterbury, South Canterbury, Otago, Southland.

to the fall in the NZ dollar and a rise in the price of steel, the price of tractors is likely to rise in the near future.

59. Dealers see the sale of a new tractor as a source of future income from service and spare parts sales. [] stated that spare parts and servicing was a vital part of their business. A [] dealer stated that [] of its total revenue was generated from selling spare parts.

End-Customers of Tractors

60. The end-users of tractors, in the main, consist of cropping and livestock farmers, contractors, as well as orchard and vineyard operators.
61. The table below shows that the most common type of tractor sold in NZ ranges from 60-100 hsp.

Table 4: Total Tractor Sales in 2003

Power (hsp)	Units Sold in 2003	% of total Sales
Under 40	[]	[]
41-60	[]	[]
61-80	[]	[]
81-100	[]	[]
Over 100	[]	[]
Total	[]	[]

Source: TAMA

Combine Harvesters

62. Combine harvesters combine cutting, threshing, separating, cleaning and unloading operations for a variety of crops, primarily small grains (wheat, barley, oats), maize and oilseeds. Combine harvesters differ according to power, specification and price. The retail price of a combine harvester could range from \$300,000 up to \$400,000.
63. The structure of the supply chain for combine harvesters is similar to that of tractors. They are manufactured outside NZ, with a national distributor who distributes them to dealers. These dealers also sell tractors.
64. The distributors of combine harvesters are:

Table 5: Distributors of Combine Harvesters

Company	Brand
CNH	Case IH
CB Norwood	New Holland
John Deere	John Deere
Landpower	Claas

Hay Balers

65. Hay balers are used to perform “packaging” functions in relation to hay, straw and forage. There are two main categories of balers, namely square balers and round balers, reflecting the way hay is packaged.

66. Square balers are available in two sizes, small and large. The Commission found that sales of small square balers have declined, as in the past farmers had their own hay balers but now the work is, generally, contracted out to contractors, who use round balers or large square balers. Nonetheless there are some distributors that sell small square balers, usually to farmers of small properties.
67. Hay balers are normally sold by tractor dealers, although there are some companies that focus on selling agricultural machinery. There is some brand loyalty in the supply of hay balers, as some end-users prefer to buy implements from their original tractor supplier.
68. The main distributors of hay balers are shown in the table below:

Table 6: Distributors of Hay Balers

Company	Brand
CNH	Case IH
CB Norwood	New Holland
John Deere	John Deere
Landpower	Claas
Power Farming	Vicon
Tulloch Farm Machines	Krone/Gehl
AGCO/Valtra	Massey Ferguson

Disc Harrows

69. Disc harrows act as ploughs and are used to break up ground so that seeds can be planted easily. There are two types of disc harrows: those that are used for primary cultivation, which are used for heavy duty purposes, and secondary cultivation disc harrows where the discs are lighter.
70. The supply chain for disc harrows is similar to the supply chain of tractors. The distributors of disc harrows are listed in the table below:

Table 7: Distributors of Disc Harrows

Distributor	Brand
CNH	Case
CB Norwood	Simba, Lemken
Power Farming	Kverneland
Hooper	Hooper
John Deere	John Deere
Landpower	Amazone
Dan Cosgrove	Kuhn
Cloughs	Gregoire Beeson

PREVIOUS DECISIONS

New Holland/Case

71. In 1999, the European Commission⁵ and Department of Justice (“DoJ”) in the US analysed the merger between New Holland/Case at the manufacturing level.
72. The European Commission considered the relevant markets to be the supply of:
 - standard tractors (excluding orchard, vineyard, narrow and speciality tractors (“OV &N”));
 - combine harvesters;
 - forage harvesters;
 - small square balers;
 - large round balers; and
 - large square balers.
73. The European Commission cleared the merger with structural and behavioural undertakings. The most significant undertakings involved divesting a Case manufacturing plant in Doncaster, UK. The plant was purchased by an Italian company, Landini S.p.A. The tractors manufactured from the Doncaster plant were re-branded McCormick and are now sold by Power Farming in NZ.
74. In the US, the DoJ had concerns with the New Holland/Case merger in the following markets:
 - manufacture and distribution of large two wheel drive (“2WD”) and four wheel drive (“4WD”) agricultural tractors in North America; and
 - manufacture and sale of hay tools.
75. Consequently, New Holland divested its 4WD tractor business and its large 2WD agricultural tractor business. Case divested its interests in the company Hay and Forage Industries, which was a joint venture that produced hay tools, such as large and small square balers and self-propelled windrowers.

AGCO/Valtra

76. In December 2003 the European Commission cleared the acquisition of Valtra⁶, a Finnish company, by AGCO. AGCO manufactures OV&N tractors as well as standard tractors. Valtra manufactures standard tractors. The European Commission defined a separate market for standard tractors and OV&N tractors. In the supply of standard tractors, national markets were considered for the distribution and retail markets.

MARKET DEFINITION

77. 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 them⁷”.

⁵ Case M.1571

⁶ COMP /M.3287

⁷ s3 (1) of the Commerce Act 1986

78. For competition purposes, a market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.⁸
79. 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 five 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

80. Initially, markets are defined for each product supplied by two or more of the parties to an acquisition. For each initial market so defined, the Commission considers whether the imposition of a SSNIP would be likely to be profitable for the hypothetical monopolist. If it were, then all of the relevant substitutes must be incorporated in the market.
81. 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. The degree of demand-side substitutability is influenced by the extent of product differentiation.
82. 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.
83. 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 in their relative prices.
84. The Applicant considered the relevant product market to be the “distribution of agricultural tractors, equipment and spare parts.”
85. On the demand side separate product markets can be considered for tractors, combine harvesters, hay balers and disc harrows as they are distinct products that have different functions.
86. In the supply of tractors and hay balers, the various product dimensions need to be considered in further detail in order to define the appropriate market.

Tractors

87. In the supply of tractors, the following key issues have been considered. These are:

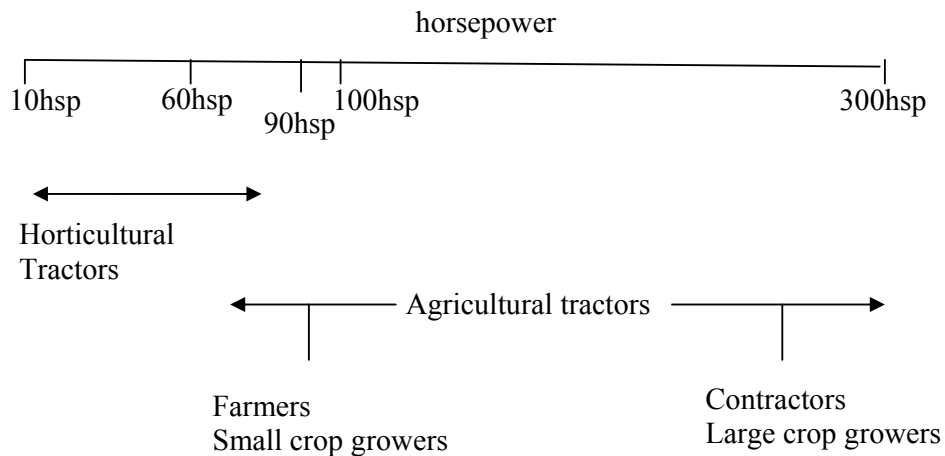
⁸ Australian Trade Practices Tribunal, *Re Queensland Co-operative Milling Association*, above note 10; *Telecom Corporation of NZ Ltd v Commerce Commission & Ors* (1991) 3 NZBLC 102,340 (reversed on other grounds).

- the different types of tractors;
- new tractors and used tractors; and
- the supply of spare parts for tractors.

Different Types

88. The Commission has noted that different types of tractors are, generally, used by customers in the horticultural industry and customers in the agricultural industry. Customers in the horticultural industry tend to use tractors that are smaller so that they can be used on orchards and vineyards. Such tractors are of a lower horsepower, ranging from 10-90hsp, compared to agricultural tractors which range from 40-300hsp.

Figure 2: Diagram to show different types of tractors and customers



89. There may be some instances where customers using horticultural tractors at the top end of the product range may consider switching to an agricultural tractor at the lower end of the scale. However this switching is likely to be at the margins and on the whole, there appears to be limited demand side substitutability between horticultural and agricultural tractors because they have different applications and are generally used by different types of customers.
90. In this proposed acquisition, there is only an aggregation in the supply of agricultural tractors and horticultural tractors are not considered further. The Ferrari brand and Kubota brand of tractors which are distributed by CB Norwood are not considered to be agricultural tractors and are therefore not considered to be in the same market as the New Holland and Case brands of tractors.
91. Within the supply of agricultural tractors, there is a substantial degree of supply-side substitutability as distribution of one type of tractor is largely the same as the distribution of another. Distributors and retailers generally supply a full range of agricultural tractors.
92. On the demand side, agricultural tractors of different size and power may be used for different applications (arable, livestock or mixed) or by different users such as small and large and cropping farmers, and contractors.

93. Although buyers make their purchase decisions on the basis of product characteristics as well as price, the degree to which the different sizes of agricultural tractor are substitutable is unclear, as some customers may be prepared to move some way up or down the horsepower scale, depending on the durability, reliability and after-sale services of the tractor on offer. The Commission found no obvious point on the horsepower scale at which to place the boundary of the market, and therefore has included all different horsepower agricultural tractors in the one product market.

New and Used Tractors

94. The Commission found that there are varying degrees of demand-side substitutability between new tractors and used tractors. The Commission found that for contractors or large commercial growers, reliability of the tractor was an important factor as they use their tractors intensively and it is important that the tractor does not break down during peak season. Therefore they typically purchase new tractors and replace them every 4-6 years.
95. The Commission found that, generally, customers that purchase used tractors are boat owners or small farmers who use their tractor for a small number of hours, or farmers who require an additional tractor for their farm. Some farmers keep one reliable tractor as their main working tractor and use additional tractors as a complement.
96. Further it appears that the price of a new tractor is not directly influenced by the price of a used tractor, although the reverse is generally the case. Distributors informed the Commission that the price of a new tractor is primarily determined by the exchange rate, steel prices and competition rather than giving significant consideration to the price of used tractors. [].
97. The Commission found that the price of new and used tractors moves in the same direction. Industry participants stated that used tractors are valued by [] for each hour the tractor has been used.
98. Finally, the Commission's investigation found that the demand for new tractors is more sensitive to customers' incomes than the price of used tractors. For example, recently farmers' incomes have been comparatively high and they have invested in new tractors. Consequently new tractors sales have increased over the past three years. When farmers' incomes are low, farmers will shop around more and consider the prices and quality of used tractors.
99. It should be noted that there is a trade off between price and reliability and thus between new and used tractors and that if the price of new tractors were to rise significantly then used tractors may become a viable option. However it is unlikely that a 5-10% increase in the price of new tractors would result in a significant number of customers switching to used tractors.

Spare Parts of Tractors

100. The supply of tractors can be considered to be the primary product and the supply of spare parts and service for tractors can be considered to be the secondary product, whose demand arises only as a result of the previous purchase of the primary product.
101. The supply of tractors and the supply of spare parts for tractors can therefore be considered to be in the same market. This is because end-users normally take into account the cost of spare parts and servicing, when deciding which tractor to purchase.

102. Further, customers of a particular brand of tractors are tied into the purchase of spare parts for that brand. This is because distributors restrict the supply of spare parts for their brand of tractors to their dealer networks. The Commission notes that some “pirate” spare parts are imported into NZ but that the amount is small. Also some distributors are able to exert an element of control over the supply of spare parts through intellectual property rights.
103. Overall, the Commission concludes that the relevant product market is the supply of new agricultural tractors and spare parts.

Hay Balers

104. On the demand side, a distinction can be made between round balers and large and small square balers. The Commission found that small square balers are preferred by small farms while large square balers and round balers are used by contractors or owners of large farms. A farmer with a small farm would not, generally, own a large baler as the volume of hay or straw to be baled would not warrant the cost of a large square baler or round baler.
105. Also small square balers traditionally require more manual handling, namely repetitive lifting and carrying of several small bales to storage. Large square balers and round balers involve handling fewer bales. In addition, large square balers, compared to round balers, are easier to transport as they are easier to stack on trucks.
106. Further, there are different methods of storing square balers and round balers. Square bales need to be stored in a shed as the hay bales would become wet during rain, whereas round bales are weather-proof, in the sense that they can be left outside as their structure of packaging prevents the hay bales from getting wet.
107. On the supply side, there is substitutability in distributing the different types of hay balers as distributors of round balers also generally distribute square balers.
108. Due to the limited demand side substitutability, separate product markets can be considered for the supply of round balers, small square balers and large square balers.
109. However, in this proposed acquisition, as there is only aggregation in the supply of round balers and large square balers, the supply of small square balers is not considered further.

Conclusion on Product Markets

110. Following its consultation with industry participants, for the purposes of the present application, the Commission is of the view that the relevant product market is narrower than a market for the “distribution of agricultural tractors, equipment and spare parts”, as contended by the Applicant. Specifically, for the purposes of the present application, it is the Commission’s view that the relevant product markets are:
 - the supply of new agricultural tractors and spare parts;
 - the supply of combine harvesters;
 - the supply of round balers;
 - the supply of large square balers; and
 - the supply of disc harrows.
111. The Commission notes that this approach is conservative and recognises that if it can be satisfied through its competition analysis that the proposed acquisition will not lead to a

substantial lessening of competition under this narrow market definition, then it would also be satisfied under any broader framing of the relevant market.

Functional Markets

112. The production, distribution and sale of a product typically occur through a series of functional levels, conventionally arranged vertically in descending order. Generally, the Commission identifies separate relevant markets at each functional level affected by an acquisition, and assesses the impact of the acquisition on each.
113. Figure 1 above illustrates the functional levels involved in the supply of tractors. The same functional levels can be applied to the supply of combine harvesters, hay balers and disc harrows.
114. There is also a vertical aggregation as CB Norwood is active at the retail level, as well as at the distribution level, whereas CNH is only a distributor and has no retail outlets in NZ. CNH stated that retailing required a different skill set and it was not company strategy to move into retailing. Apart from CB Norwood, Power Farming and Dan Cosgrove, who are both distributors and have some retail outlets, different companies are generally active at the distribution and retail level of tractors, combine harvesters, hay balers and disc harrows.
115. Therefore distribution and retailing are mainly distinct activities and can be considered to be separate markets.

Geographic Markets

116. 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.
117. The TAMA collects data on the number of tractors sold by distributors in 18 different regions in NZ⁹. The list of these 18 regions can be found in Table 1 of the Annex. This data is collected every month and is circulated to the distributors who are able to monitor their market shares in each of these 18 regions.
118. The Applicant submitted that the relevant geographical dimension, at the distribution level, is the whole of New Zealand.
119. At the distribution level, the relevant geographic market for the supply of tractors, combine harvesters and disc harrows can be considered to be national. Distributors import products and distribute them to a nation-wide network of dealers. Further, distributors tend to compete with national advertising.
120. At the retail level, the relevant geographic market for the supply of tractors, combine harvesters and disc harrows can be considered to be regional. This is because the end-customer requires easy access to after-sales support and normal servicing, in the event that the product breaks down. The Commission found that dealers in regions competed on quality of service and there was some dealer loyalty.
121. Further, dealers carry out regional marketing and have assigned territories although there is generally nothing to stop them from making sales outside their areas. Some end-customers may be willing to travel further than their local dealer to buy a new tractor.

⁹ These 18 regions are Northland, Auckland, Waikato, Bay of Plenty, East Cape, Central, Taranaki, Hawkes Bay, Manawatu, Wairarapa, Nelson, Marlborough, West Coast, North Canterbury, Mid Canterbury, South Canterbury, Otago, Southland.

For instance a customer in Hawkes Bay stated that it would consider travelling to Auckland or Waikato.

122. Thus there will be some constraint from neighbouring regions on the regional retail prices. However, whilst end-customers would consider purchasing a tractor from a different region they would deal with their local dealer for after-sales support. Therefore the relevant market is likely to be regional.
123. The Commission considers that it is reasonable to consider each of the 18 regions outlined by TAMA as the relevant geographic markets for the retail supply of tractors, combine harvesters, hay balers and disc harrows.
124. As stated in paragraph 110, the Commission notes that this approach is conservative and recognises that if it can be satisfied through its competition analysis that the proposed acquisition will not lead to a substantial lessening of competition under this narrow geographic market, then it would also be satisfied under any broader framing of the relevant geographic market.

Conclusion on Market Definition

125. The Commission concludes that for the purposes of this application, the relevant markets are:
 - the national distribution of new agricultural tractors and spare parts;
 - the regional retail supply of new agricultural tractors and spare parts,
 - the national distribution of combine harvesters;
 - the regional retail supply of combine harvesters;
 - the national distribution of round balers;
 - the regional retail supply of round balers,
 - the national distribution of large square balers;
 - the regional retail supply of large square balers,
 - the national distribution of disc harrows; and
 - the regional retail supply of disc harrows.

COUNTERFACTUAL AND FACTUAL

126. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a “with” and “without” comparison rather than a “before” and “after” comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).¹⁰ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

127. In the factual scenario the combined entity would operate in the markets defined by the Commission. Several other players including John Deere, Power Farming,

¹⁰ Commerce Commission, *Decision 410: Ruapehu Alpine Lifts Ltd/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

AGCO/Valtra, Landpower and Dan Cosgrove will continue to operate in the markets identified.

128. The Applicant states that post acquisition CNH and CB Norwood's ranges of tractors, combine harvesters, hay balers and disc harrows would be maintained as separate independent dealer networks. Some industry participants highlighted that in the future there may be some rationalisation and CB Norwood may distribute the Case brand through its own dealers or may even cease distribution of the Case brand altogether. These scenarios are considered in the competition analysis.
129. The Applicant stated that the rationale for the acquisition was to have common distribution of Case and New Holland products in NZ and to have spare parts for both brands readily available through CB Norwood's warehouse in NZ, rather than having Case spare parts distributed from Australia. Some industry participants stated that there will be some benefits from the proposed acquisition, as suggested by the Applicant. One industry participant thought that the economies of scale achieved from one distribution outlet of both Case and New Holland products in NZ could lead to lower prices.
130. The Applicant stated that, post acquisition, it is a contractual requirement by CNH Global NV that the "New Holland" and "Case IH" brands continue to be marketed as distinct brands. Therefore, post acquisition, New Zealand franchised dealer networks for Case and New Holland tractors are likely to remain separate.

Counterfactual

131. CB Norwood stated that [

].

132. [

].

133. [

]. However it is not certain that this would occur.

134. Further, there is no indication that CNH is a failing firm or [

].

135. The relevant counterfactual is therefore considered to be the status quo.

COMPETITION ANALYSIS

Existing Competition

136. 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). Supply-side substitution by near competitors arises either from

redeployment of existing capacity, or from expansion involving minimal investment, in both cases involving a delay of no more than one year.

137. 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.
138. The Commission identifies market shares for all significant participants in the relevant market. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used.
139. An aggregation that would result in a low concentration level is unlikely to be associated with a substantial lessening of competition in a market. On this basis, indicative safe harbours may be specified.
140. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exists:
 - where 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 a 40% share; or
 - where 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%.
141. 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. Specifically, the Commission seeks to understand the dynamics of the competition that would exist between the remaining firms in the market, compared to what would exist in the absence of the merger.

Tractors

Distribution of Tractors

142. In the national distribution of new agricultural tractors and spare parts, the combined entity would have a market share of [] by volume, as shown in the table below. Post acquisition, the three firm concentration ratio would be []. This is outside the Commission's safe harbours.

Table 8: Market Shares in the National Distribution of New Agricultural Tractors

Company	Brand	No. of Units	Market Share (by volume)
CB Norwood	New Holland	[]	[]
CNH	Case	[]	[]
Combined		[]	[]
John Deere	John Deere	[]	[]
Power Farming	Renualt Landini McCormick Iseki Daedong	[]	[]
Post Acquisition – 3 firm concentration ratio			[]
AGCO/ Valtra	Massey Ferguson Fendt Valtra	[]	[]
Landpower	Deutz Fahr	[]	[]
Dan Cosgrove	Same	[]	[]
Total		[]	[]

Source: TAMA

143. As part of the competition analysis for the national distribution of new agricultural tractors and spare parts, the following two key issues are considered:
- the degree to which the Case IH and New Holland brands compete; and
 - the degree to which the other brands of tractors would compete with the combined entity.

Competition between Case and New Holland

144. A common theme the Commission found was that some industry participants considered the Case and New Holland tractors to be very similar, with the main point of differentiation being the colour of the tractors. Both brands of tractor are available with a similar range of power and weight specifications.

145. Since 1998, sales of New Holland tractors have been stronger than Case sales, [

].

146. Some commentators stated that due to the divestment of the Case manufacturing plant in the UK, there had been some problems in supplying the Case brand in NZ. The divested plant in the UK re-branded the tractors to “McCormick” and original “Case” customers switched to the new brand because they were more familiar with the tractor than the new

Case or New Holland tractors. This suggests that post acquisition, the McCormick brand of tractors could be a closer substitute for Case customers, than the New Holland brand.

147. While Case tractors may have faced distribution issues as a consequence of offshore divestments, overall the Commission found that Case and New Holland tractors are viable alternatives and that CNH and CB Norwood, as distributors, currently actively compete for sales.

Competition between Tractor Brands

148. Post acquisition, in the national distribution of new agricultural tractors and spare parts, there appear to be several distributors each with a brand of tractor that would compete with the combined entity.
149. The main competitors are John Deere, Power Farming and AGCO. The smaller competitors are Landpower and Dan Cosgrove. Each of these competitors offers a full range of tractors which are substitutes to Case and New Holland both in terms of technical characteristics and price. Some industry participants considered NZ to be over-serviced with brands of tractors.
150. The Commission found that John Deere was an aggressive competitor as reflected in its sales over the past three years []. The other distributors, Power Farming, AGCO/Valtra, Dan Cosgrove and Landpower can also be considered to provide constraint to the combined entity.

Figure 2: Market Shares of All Tractor Sales [

]

151. [] stated that the proposed acquisition would not affect them and that the supply of tractors was a very hostile market. He stated that the combined entity may get volume discounts and bring down the price of tractors but he would be more inclined to compete on quality of service and would focus on educating and training his staff. Further, he thought that the combined entity's market share would fall in the future and that it would face difficulty in selling two similar tractors. In the event that one of the brands was phased out, he was of the view that his business would be able to gain some market share.
152. In conclusion, in the national distribution of new agricultural tractors and spare parts, the Commission considers that, post acquisition, existing competition is likely to constrain the combined entity due to the presence of several active competitors.

Retail Supply of Tractors

153. Table 1 in the Annex shows that in the retail supply of new agricultural tractors and spare parts, in each of the 18 regions affected by the proposed acquisition, the combined entity's market share ranges from [] by volume.
154. Post acquisition, the three firm concentration ratio ranges from [] by volume. Therefore the proposed acquisition would be outside the Commission's safe harbour in [] of the 18 regions.
155. In each of the 18 regions, there are other dealers selling competing brands, namely, John Deere, Power Farming and AGCO/Valtra, Dan Cosgrove and Landpower. John Deere is the strongest competitor and in [] out of the [] regions it would have a [] market share than the combined entity.
156. Post acquisition, the Commission concludes that there would be sufficient existing competition in the retail supply of new agricultural tractors and spare parts, in each of the 18 regions, where the aggregation occurs due to the presence of several competitors.

Vertical Aggregation

157. Vertical acquisitions are those that involve businesses operating at different functional market levels in the production of a particular good or service. Where a vertical acquisition also has horizontal implications, the Commission considers each aspect of the acquisition in its own right.
158. The Commission is of the view that, in general, the vertical aspects of acquisitions leading to vertical integration are unlikely to result in a substantial lessening of competition in a market unless market power exists at one of the affected functional levels. Where such a situation is found to exist, the Commission considers whether the acquisition would strengthen that horizontal position, or have vertical effects in upstream or downstream markets, and whether that change would substantially lessen competition.
159. In the retail supply of new agricultural tractors and spare parts the proposed acquisition would result in vertical aggregation. Whilst CNH distributes its products through a network of independent dealers, CB Norwood has ten company-owned dealers. Some of the Case dealers were concerned with the vertical aggregation and that post acquisition, CB Norwood would favour their company-owned dealers over the independent Case dealers, making it difficult for them to compete at the retail level.
160. As stated above, the Commission concludes that post acquisition, there would be sufficient existing competition at the distribution level and at the retail level. Nonetheless the Commission investigated these concerns and each one is outlined and discussed in further detail below.
- Case dealers were concerned that []].
161. It may be that, post acquisition, Case dealers and New Holland dealers may not compete to the same extent. However, this proposition ignores that it would be normal to expect each dealer to continue to compete in order to maximise individual profits.
162. Further, the combined entity, as a distributor, has an incentive to maximise total sales of both brands and it is unlikely that it would disadvantage Case dealers, as this would, through sales leakage to opposition brands, reduce its sales volumes of Case tractors. []].

].

163. The Commission found that the current dealer agreement between Case dealers and CNH, [

].

164. The Commission also found that the dealer agreement between Case dealers and CNH states that [

]. Additionally, it is unlikely that the combined entity would want to terminate dealer agreements with successful Case dealers.

165. Also if a Case dealer was unhappy with the combined entity there is some scope for Case dealers to switch to another franchise, although these opportunities may be limited. For example, [

].

166. [] considered that it would be easy for existing dealers to switch to the new brand as they would already have the know-how in selling tractors. While some investment would be required that could be as low as \$100,000.

Conclusion on Vertical Aggregation

167. In conclusion, despite vertical aggregation resulting from the acquisition, it is considered that in the retail supply of new agricultural tractors and spare parts, in each of the 18 regions, the combined entity would not be able to distort competition. As stated above, in the national distribution of new agricultural tractors, the combined entity would be constrained by several other competitors. Therefore the proposed acquisition is unlikely to give the combined entity the ability to leverage any market power in the retail supply of agricultural tractors and spare parts.

Overall Conclusion on Existing Competition in Tractors

168. The Commission is of the view that the acquisition of the Case IH brand of tractors by CB Norwood would not result in a substantial lessening of competition in the national distribution of new agricultural tractors and spare parts due to the presence of several other competitors.

169. Further, post acquisition there is unlikely to be substantial lessening of competition in the retail supply of new agricultural tractors and spare parts in each of the 18 regions where the aggregation occurs due to the presence of other competitors.

Combine Harvesters

170. In the national distribution of combine harvesters, the combined entity would have a market share of [] by volume and [] by value. Post acquisition, the three firm concentration ratio would be [], which is outside the Commission's safe harbours.

171. However, there are two other competitors, John Deere with its own brand and Landpower, which distributes the Claas brand. Both are strong competitors with strong brands.

172. At the retail level, sales of combine harvesters were not easily obtainable. However given that there is sufficient competition at the distribution level, there is likely to be sufficient competition at the retail level.

Table 9: National Market Shares in the supply of Combine Harvesters in 2003

Company	Brand	2003		Market Shares	
		No. of Units Sold	Value in \$	By Volume	By Value
CB Norwood	New Holland	[]	[]	[]	[]
CNH	Case IH	[]	[]	[]	[]
Combined		[]	[]	[]	[]
Landpower	Claas	[]	[]	[]	[]
John Deere	John Deere	[]	[]	[]	[]
Total		[]	[]	[]	[]

Source: Commission Estimates

173. The Commission concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the national distribution of combine harvesters, as post acquisition, the combined entity would be constrained by two other active competitors. Consequently, the Commission concludes that there is unlikely to be a substantial lessening of competition in the retail supply of combine harvesters in each of 18 regions where the aggregation occurs.

Hay Balers

174. In the national distribution of round balers, the combined entity would have a market share of [] by volume. Post acquisition, the three firm concentration ratio would be []. This is outside the Commission's safe harbours.
175. In the national distribution of round balers, the combined entity would have a market share of [] by volume. Post acquisition, the three firm concentration ratio would be []. This is outside the Commission's safe harbours.
176. However, as shown in the table below, there are several other competitors like John Deere, AGCO, Landpower, Tulloch Farm Machinery in the national distribution of round balers and large square balers.
177. At the retail level, sales of hay balers were not easily obtainable. However given that there is sufficient competition at the distribution level, there is likely to be sufficient competition at the retail level.

Table 10: National Distribution of Hay Balers in 2003

Company	Brand	Round Balers No. of Units Sold	Large Square Balers No. of Units Sold
CB Norwood	New Holland	[]	[]
CNH	Case IH	[]	[]
Combined		[]	[]
John Deere	John Deere	[]	[]
Landpower	Claas	[]	[]
AGCO	Massey Ferguson	[]	[]
Tulloch Farm Machinery	Krone, Gehl	[]	[]
Dan Cosgrove	Feraboli	[]	[]
Power Farming	Vicon	[]	[]
Total		[]	[]

Source: Commission estimates

Table 11: Market Shares by Volume in the supply of Hay Balers

Company	Brand	Round Balers	Large Square Balers
CB Norwood	New Holland	[]	[]
CNH	Case IH	[]	[]
Combined		[]	[]
John Deere	John Deere	[]	[]
AGCO	Massey Ferguson	[]	[]
Post acquisition three-firm concentration ratio		[]	[]
Tulloch Farm Machinery	Krone, Gehl	[]	[]
Landpower	Claas	[]	[]
Dan Cosgrove	Feraboli	[]	-
Power Farming	Vicon	[]	[]
Total		[]	[]

Source: Commission estimates

178. The Commission concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the national distribution of round balers and large square balers due to the presence of several other competitors. Therefore, there is unlikely to be a substantial lessening of competition in the retail supply of round balers and large square balers.

Disc Harrows

179. There is a minor aggregation in the national distribution of disc harrows and in general, total sales are small in NZ.
180. In the national distribution of disc harrows, the combined entity would have a market share of [] by volume. CB Norwood has a market share of [] whilst CNH has a market share of []. Post acquisition, the three-firm concentration ratio would be []. This is outside the Commission's safe harbours.

Table 12: National Market Shares in the supply of Disc Harrows in 2003

Company	Brand	2003	
		No. of Units Sold	Market Share
CB Norwood	Simba, Lemken	[]	[]
CNH	Case	[]	[]
Combined		[]	[]
Hooper	Hooper	[]	[]
Power Farming	Kverneland	[]	[]
Post acquisition three firm concentration ratio			[]
Landpower	Amazone	[]	[]
Dan Cosgrove	Kuhn	[]	[]
Total		[]	[]

Source: Commission Estimates

181. Post acquisition, there would be several other distributors of disc harrows in NZ. The four main competitors would be Power Farming, Dan Cosgrove, Landpower and Hooper. Three of these competitors each have a distribution agreement for a particular brand. The Hooper brand of disc harrows is manufactured in NZ and is distributed nation-wide to independent dealers.
182. In addition to the four main competitors, the Commission found that there are two other potential suppliers of disc harrows, John Deere and the Clough Group, []].
183. The Clough Group has just started importing and stocking disc harrows. [] with a French brand, Gregoire Beeson. []].
184. Post acquisition, given that there is sufficient competition at the distribution level, there is likely to be sufficient competition at the retail level.
185. The Commission concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the national distribution of disc harrows and in the retail supply of disc harrows in each of the 18 regions where the aggregation occurs, due to the presence of several other competitors.

OVERALL CONCLUSION

186. The Commission has considered the probable nature and extent of competition that would exist in the following markets:
- the national distribution of new agricultural tractors and spare parts;
 - the regional retail supply of new agricultural tractors and spare parts,
 - the national distribution of combine harvesters;
 - the regional retail supply of combine harvesters;
 - the national distribution of round balers;
 - the regional retail supply of round balers,
 - the national distribution of large square balers;
 - the regional retail supply of large square balers,
 - the national distribution of disc harrows; and
 - the regional retail supply of disc harrows.
187. The Commission considers that the appropriate counterfactual is the status quo.
188. In the national distribution of new agricultural tractors and spare parts, the Commission considers that, post acquisition, existing competition is likely to constrain the combined entity due to the presence of three main competitors, John Deere, Power Farming, AGCO/Valtra and two smaller competitors, Landpower and Dan Cosgrove.
189. In the national distribution of combine harvesters, the combined entity would be constrained by two competitors, namely John Deere, which has its own brand, and Landpower, which sells the Claas brand of combine harvesters.

190. In the national distribution of round balers and in the national distribution of large square balers, the combined entity would be constrained by several other competitors such as Landpower and Power Farming.
191. The Commission concludes that the proposed acquisition is unlikely to result in a substantial lessening of competition in the national distribution of disc harrows due to the minor aggregation resulting from the acquisition and the presence of a number of existing competitors.
192. Given that there is sufficient existing competition in the national distribution of new agricultural tractors and spare parts, combine harvesters, round balers and large square balers and disc harrows, there is likely to be sufficient existing competition in the retail supply of these products in each of the 18 regions where the aggregation occurs.
193. On balance, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
 - the national distribution of new agricultural tractors and spare parts;
 - the national distribution of combine harvesters;
 - the national distribution of round balers;
 - the national distribution of large square balers; and
 - the national distribution of disc harrows.
194. At the retail level, in each of the 18 regions where the aggregation occurs, the Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
 - the retail supply of new agricultural tractors and spare parts;
 - the retail supply of combine harvesters;
 - the retail supply of round balers;
 - the retail supply of large square balers; and
 - the retail supply of disc harrows.

DETERMINATION ON NOTICE OF CLEARANCE

195. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by CB Norwood Distributors to acquire the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting of “Case IH” branded agricultural equipment and spare parts.

Dated this day of May 2004

David Caygill
Deputy Chair

REGION	COMPANY									
	Case IH	CB Norwood Other (NH and F)	Combined CB Norwood and Case IH	John Deere	Power Farming	Post Acquisition – 3 firm concentration ratio	AGCO/ Valtra	Landpower Deutz Fahr	Dan Cosgrove	Total
Marlborough	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
West Coast	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Nth Canterbury	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Mid Canterbury	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Sth Canterbury	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Otago	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Southland	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%
Total	[]	[]	[]	[]	[]	[]	[]	[]	[]	100%

Notes

- Market Shares of CB Norwood include sales of Ferrari. These are not considered to be in the same market although sales of Ferrari are very small namely [] in 2003.
- Market Shares of Power Farming include sales of McCormick, Landini, Renault, Iseki and Daedong tractors.
- Market Shares of AGCO consist of sales of Massey Ferguson and Fendt
- AGCO acquired Valtra at the beginning of this year.
- All market shares are measured by volume and include 2WD and 4WD
- Some rounding errors
- All sales of new tractors – some horticultural/agricultural

