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COMMERCE COMMISSION

Decision No. 678

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

PFIZER INC

and

WYETH CORPORATION

The Commission:	Dr Mark Berry Anita Mazzoleni Sue Begg
Summary of Application:	The acquisition by Pfizer Inc of Wyeth Corporation.
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:	20 August 2009

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EXECUTIVE SUMMARY

E1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 9 June 2009. The notice sought clearance for the proposed acquisition by Pfizer Inc (Pfizer) of Wyeth Corp (Wyeth).

E2. The proposed acquisition would involve aggregation in both the human and animal health industries although the aggregation in human health products is limited. In this respect, the Commission focused its investigation on the impact in the animal health industry.

E3. Both Pfizer and Wyeth (under the trading name Fort Dodge Animal Health) supply a range of animal health products and the Commission identified a number of different markets in three main areas of the animal health industry where competition issues could potentially arise. The three main areas were:

- products for the treatment of internal parasities in livestock animals such as sheep and cattle;
- vaccines for sheep, cattle, swine and horses; and
- vaccines for companion animals, such as cats and dogs.

E4. In parallel to its consideration of this proposed acquisition, the Commission has also considered a proposed acquisition involving Schering-Plough Corporation (Schering-Plough) and Merck & Co., Inc (Merck). Both these parties are active in many of the same markets as Pfizer and Wyeth.

E5. In this respect, the Commission has taken the proposed Schering-Plough/Merck acquisition into consideration when assessing the relevant factual and counterfactual scenarios for the proposed Pfizer/Wyeth acquisition. Particularly, the Commission has taken into account that the two proposed acquisitions may, or may not, go ahead.

E6. As a starting point, the Commission has adopted the factual scenario that would give rise to the greatest competition concerns for the Commission, which is if the Pfizer/Wyeth and Schering-Plough/Merck transactions proceed contemporaneously. In this instance, the Commission has compared the factual to the most competitive counterfactual scenario in which neither of the proposed acquisitions goes ahead, which is essentially the status quo. It did so because if no significant competition concerns were evident in this comparison, then it is unlikely that other likely factual and counterfactual scenarios would give rise to competition concerns.

E7. The Commission considered that in most of the markets it identified, the combined entity would likely be constrained by the presence of existing competitors. The majority of these competitors are large, international suppliers with an established presence in New Zealand who could readily expand if the combined entity were to increase prices or reduce service levels.

E8. In several other markets, where there would be a limited number of competitors in the factual scenario, the Commission considered that the threat of potential competition from a manufacturer with an established presence in other markets would act as a constraint on the combined entity.

E9. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening

competition in any of the affected markets. Therefore, the Commission granted clearance to the proposed acquisition.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 9 June 2009. The notice sought clearance for the proposed acquisition by Pfizer Inc (Pfizer or the Applicant) of Wyeth Corp (Wyeth).

THE TRANSACTION

2. In accordance with an Agreement and Plan of Merger dated 25 January 2009, Pfizer proposes to acquire the stock and/or assets of Wyeth in a cash and stock transaction. Once the proposed merger is completed, Wyeth will remain as a wholly owned subsidiary of Pfizer.
3. The transaction involves aggregation in both the human and animal health industries. There are numerous manufacturers and developers of human health products and the Commission notes that the overlap between the human health products manufactured and developed by Pfizer and Wyeth is limited.
4. In this respect, the Commission concludes that the proposed acquisition is unlikely to give rise to competition concerns in respect of human health products.
5. Accordingly, the Commission has focused its investigation and the discussion of competition concerns in this report on the impact in the animal health industry.

DECISION

6. The Commission is satisfied that existing and potential competition in all the relevant markets would be likely to constrain the combined entity. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

ANALYTICAL FRAMEWORK

7. The Commission uses an analytical framework[1] for assessing a substantial lessening of competition in the context of an acquisition. The first step is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target, and then considers what, if any, products and geographic regions, constitute relevant close substitutes from both a customer's and a supplier's point of view.
8. The Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely, so, 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).

[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

9. 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.[2]

10. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:

    - existing competition - the degree to which existing competitors compete and their ability and incentives to expand production in the event that the combined entity raises prices;
    - potential competition - the ability of businesses to enter the market and thereafter expand, given an inducement to do so;
    - other competition factors, such as the countervailing market power of buyers - the combined entity may be constrained if purchasers were able to exert a substantial influence on the price, quality or terms of supply of a good or service;
    - coordinated behaviour - whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.

11. A comparison of the extent of competition in the relevant markets in both the factual and counterfactual scenarios enables the Commission to assess the probable extent of the lessening of competition under the proposed acquisition, and whether that contemplated lessening is likely to be substantial.

THE PARTIES

Pfizer

12. Pfizer is a global pharmaceutical company operating in the human health and animal health sectors. The company has a wholly owned subsidiary, Pfizer New Zealand Limited, which is engaged in supplying a range of vaccines for both companion and livestock animals and a range of products for the treatment of parasites for livestock animals. Pfizer supplies its animal health products exclusively through the veterinary channel (i.e., veterinary wholesalers and veterinary clinics).

Wyeth

13. Wyeth is also a global pharmaceutical company that, through its subsidiary Wyeth (New Zealand) Limited, supplies a range of human health and animal health products in New Zealand. In particular, Wyeth, under the trading name Fort Dodge Animal Health (Fort Dodge), imports and distributes within New Zealand a range of vaccines for both companion and livestock animals as well as supplying a range of products for the treatment of parasites on livestock animals.[3]

14. Fort Dodge has entered into an [ ] agreement with Pacificvet Limited (Pacificvet) whereby Pacificvet supplies Fort Dodge's range of swine, equine and poultry vaccines and related products in New Zealand.

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[2] Where a transaction gives rise to two or more likely counterfactuals, the Commission assesses the possibilities, discards those that have only a remote prospect of occurring, and considers each of the real and substantial possibilities as counterfactuals against which the factual is to be assessed. (See *Decision 650: The Southern Cross Health Trust / Aorangi Hospital Ltd;* 4 September 2008, p 16).

[3] The Commission has used the Fort Dodge name to identify Wyeth's presence in the animal health industry.

Pacificvet also holds the registration for certain Fort Dodge vaccines in its own name.

OTHER RELEVANT PARTIES

Schering-Plough Corporation (Schering-Plough)

15. Schering-Plough is a global science-based healthcare company with activities in the prescription pharmaceutical, over-the-counter (OTC) human healthcare and animal health sectors.

16. Of particular relevance to this application are Schering-Plough's activities in the animal health business where it develops, manufactures and markets OTC and prescription veterinary pharmaceuticals, biologicals (vaccines) and various speciality products, including those for livestock animals such as cattle, sheep and horses as well as for companion animals such as domestic cats and dogs.

17. At the same time that it has been considering this application, the Commission has also been considering an application from Schering-Plough seeking clearance to acquire Merck & Co., Inc (Merck), which involves aggregation in some of the same markets.

Merck

18. Merck is a global research-driven pharmaceutical company with activities in human health products. In New Zealand, Merck has one operating subsidiary, Merck Sharp & Dohme New Zealand Limited.

19. Merck also has an interest in the animal health sector, through its 50/50 joint venture with Sanofi-Aventis Limited, in Merial S.A.S. (Merial). The Merial joint venture operates in New Zealand through Merial New Zealand Limited, trading as Merial Ancare New Zealand.[4]

20. Merial is involved in the manufacture and supply of various animal health products in New Zealand. Primarily, these products are for the treatment of internal and external parasites in or on livestock animals. Merial distributes its entire product range of animal health products exclusively through the veterinary channel.

Other Manufacturers/Suppliers

21. Other major manufacturers and suppliers of animal health products of relevance to the proposed merger, together with a description of their activities, are detailed in Table 1.

Table 1: Manufacturers/Importers and Suppliers of Animal Health Products in New Zealand

Company	Activities	Notable Brands
Bomac Laboratories Limited (Bomac)	Manufacturer/supplier of parasiticides and certain vaccine products for sheep and cattle.	Bomatak, Bomectin

[4] The Commission notes that Sanofi-Aventis Limited and Merck have announced recently that they have reached a conditional agreement under which Merck will sell its 50% interest in Merial to Sanofi-Aventis Limited.

Bayer New Zealand Limited (Bayer)	Importer/supplier of parasiticides for sheep and cattle.	Baymec, Baycox, concur
Novartis New Zealand Limited (Novartis)	Importer/supplier of parasiticides for sheep and cattle.	Fasinex, Rycozole, Leveiben, Levipor
Norbrook New Zealand Limited (Norbrook)	Importer/supplier of parasiticides for sheep and cattle.	Noromectin, Parafend
Jurox New Zealand Limited (Jurox)	Importer/supplier of parasiticides for sheep and cattle.	Strategik, Paramectin
Ravensdown Fertiliser Co-operative Limited (Ravensdown)	Supplies directly to farmers a range of parasiticides for sheep and cattle, which it sources from Jurox's parent company in Australia. Ravensdown holds the registration for these products in NZ and markets these products under its own brand name.	Ravensdown branded Abamectin and Albendazole
Virbac New Zealand Limited (Virbac)	Importer/supplier of parasiticides for sheep and cattle.	Equimax, Virbamec
Boehringer Ingelheim NZ Limited (Boehringer Ingelheim)	Importer/supplier of vaccines for companion and livestock animals.	Ontavac
Argenta Manufacturing Limited (Argenta)	Engages in research and development of animal health products and contract manufacturing of various animal health products for a variety of customers.	Clients include [ ]

Source: Industry participants

Regulatory Agencies

New Zealand Food Safety Authority (NZFSA)

22. NZFSA is the statutory organisation that is responsible through its Animal Compounds and Veterinary Medicines division, for the registration of veterinary medicine products in New Zealand, and the licensing of animal health manufacturing plants, both of which are requirements in terms of the Agricultural Compounds and Medicines Act 1997.

Environmental Risk Management Authority (ERMA)

23. ERMA is the statutory organisation which is responsible for approving any new hazardous substance or new organism in New Zealand in terms of the Hazardous Substance and New Organisms Act 1996. Such approvals are required for some animal health products.

INDUSTRY BACKGROUND

Animal Health Products

24. The animal health industry involves the manufacture and supply of products for a range of animal species. The key species for the proposed acquisition are:

    - companion animals (eg dogs and cats);
    - cattle and sheep;
    - pigs (swine); and
    - horses (equine).

25. The key animal health product categories of relevance to the proposed merger are biologicals and pharmaceuticals.

26. Biologicals are the products that trigger an immune response in animals against viral and bacterial diseases in animals. They include vaccines that are used to prevent future infection or to reduce the clinical signs associated with infection or to reduce shedding (contagiousness) by an infected animal.

27. Pharmaceuticals encompass a wide range of products, notably parasiticides that contain a variety of active substances to prevent or treat many animal diseases and disorders.

28. Parasiticides are the most commonly used animal health remedy in New Zealand and can broadly be categorised into three major groups:

    - ectoparasiticides, which are used for the treatment of external parasites such as flies and lice;
    - endoparasiticides, which are used for the treatment of internal parasites such as worms; and
    - endectocides, which are used for the treatment of both external and internal parasites.

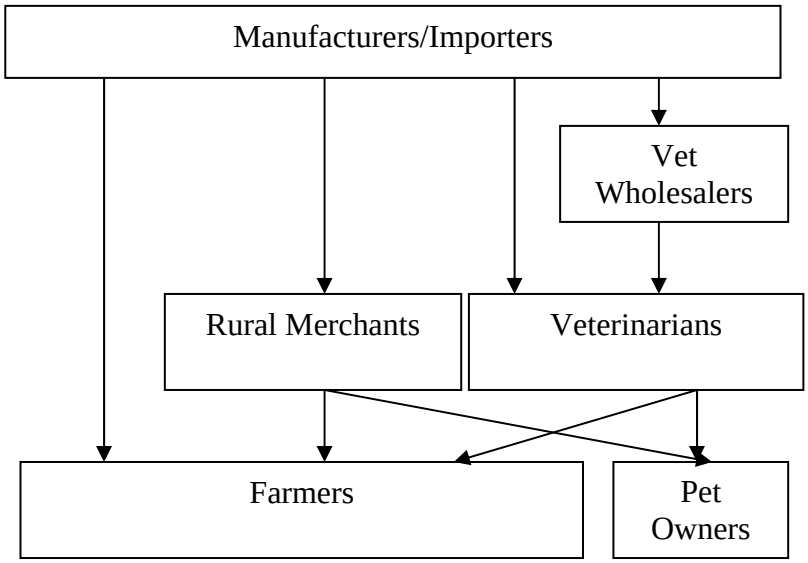
Industry Structure

29. The manufacture and supply of animal health products involves a number of phases, incorporating in broad terms research and development (R&D), product testing and regulatory approval, manufacture of the products themselves and distribution to customers.

30. Distribution can occur through several channels. The majority of products are supplied to rural merchant stores and veterinarians, who then supply the end-customers, typically farmers and pet owners. Veterinarians also access products from wholesalers. Alternatively, some manufacturers, such as Ravensdown, supply direct to farmers.

31. A general outline of the structure of the animal health industry is provided in Diagram 1.

Diagram 1: Industry Structure



Manufacture/Supply

32. New or novel animal health products are launched on the market following extensive R&D, which may take 10 years or more to complete. These products and their formulations are protected by patent rights. Once the patent granted to the original developer expires, generic products can then be developed. Generic products are essentially imitations of an off-patent product. Such products are an important feature of the animal health industry in New Zealand, particularly in respect of parasiticides, as most of the available formulations and active substances are now off-patent.

33. Before either novel or generic animal health products can be sold in New Zealand, they must be registered with the NZFSA and/or approved by ERMA. Depending on the nature of the product this may be a relatively straightforward process, particularly in the case of an established product for which there is available information to support the claims.

34. However, for a novel product it may involve a lengthier process, which could include the need for evidence from New Zealand-based trial work to support the product's claims and thereby significantly increasing the timeframe for the registration process. Industry participants advised the Commission that the development and introduction of novel products is lengthy and relatively rare. Accordingly, the Commission has focused its investigation on those products that are currently supplied in New Zealand, or those products supplied in other countries that have the potential to be distributed in New Zealand, particularly if a manufacturer is given an incentive to do so.

35. Once approval has been given by the relevant authorities, the supplier has a range of manufacturing and distribution options which can be used either individually or in combination. These include:

    - producing from a local manufacturing plant;
    - manufacturing the products overseas and importing the finished product;

- importing the active substances and entering into a contract manufacturing arrangement with an existing manufacturer in New Zealand, such as Argenta; and
- entering into a supply and distribution arrangement with a local company.

Distribution

36. The distribution of animal health products in New Zealand is currently effected through the following channels:
    - veterinary wholesalers, such as Provet NZ Pty Limited and Southern Veterinary Supplies Limited;
    - rural merchant stores, such as PGG Wrightson Limited, Farmlands Trading Society Limited, and Combined Rural Traders Co-operative; and
    - veterinary clinics and practices, of which there are many operations of various sizes and that either purchase directly from a supplier or through a veterinary wholesaler.
37. The mode of distribution depends on the nature of the product, and in some instances, is influenced by the sales policy of the supplier. Prescription animal remedies (PARs), such as vaccines, can only be sold by registered veterinarians. Parasiticides are non-prescription OTC products and, as such, can be sold by veterinarians, wholesalers or the various rural merchant stores. In New Zealand, approximately one half of parasiticide sales are made through the veterinary channel and the balance is made through rural supply stores.
38. Apart from Merial and Pfizer who sell their animal health products exclusively through veterinary wholesalers or veterinary clinics, most suppliers sell their OTC products through the veterinary channel as well as rural supply stores.

PREVIOUS COMMISSION DECISIONS AND RELEVANT ACQUISITIONS

Decision 621: Schering-Plough / Organon SB (The Schering-Plough Decision)

39. In October 2007, the Commission gave clearance for Schering-Plough to acquire all of the shares in Organon SB. This acquisition involved aggregation of market share in respect of parasiticides for sheep and cattle and certain animal vaccines.
40. Many of the products considered in that Decision are still part of Schering-Plough's current product portfolio. Of note, the acquisition resulted in the divestment of a specific vaccine for sheep. This was in order to alleviate competition concerns arising from high aggregation as well as the barriers to new entry, which were considered to be problematic.

Merial / Ancare (non notified)

41. Also in October 2007, Merial acquired certain assets of Ancare New Zealand Limited. This acquisition involved aggregation primarily in relation to products for the treatment of internal and external parasites in or on livestock animals. Merial chose not to seek prior clearance for this acquisition as it considered there were a number of other existing manufacturers competing with Merial and Ancare New Zealand Limited at that time.

MARKET DEFINITION

42. The Applicant submitted that the proposed acquisition might give rise to competition concerns in respect of the following types of animal health products:

- treatments for parasites in livestock animals, such as sheep and cattle;
- vaccines for sheep, cattle, swine and horses; and
- vaccines for companion animals, such as cats and dogs.

Product Market

Treatments for Parasites

43. It is difficult to delineate the precise boundaries of the products in question. However, industry participants advised that there are a number of properties, on both the demand and supply sides of the market that differentiate the various types of parasiticides. These include:

- their manufacturing, registration and patenting processes;
- patented or off-patented (generic) technology;
- the different active ingredients and their different combinations;
- their durations and efficacy;
- the method of application;
- the type of parasite targeted; and
- pricing characteristics.

44. Industry participants advised the Commission that most ectoparasiticides, endoparasiticides, and endectocides are manufactured in a similar way. For example, [ ] advised that, essentially, all the relevant ingredients are dispensed into a stainless steel tank before being stirred together, extracted and packed. This applies to all the various types of parasiticides and a simple clean-down of manufacturing equipment will allow a manufacturer to switch between producing an ectoparasiticide, an endoparasiticide or an endectocide.

45. However, there are reasons why supply-side switching of this nature will not be so straightforward. In particular, some active ingredients and formulations will be on patent, and re-formulating or manufacturing products cost-effectively can be difficult. Also, products must be registered and tested for their specific intended use.

46. Industry participants advised the Commission that there are a large number of products available, including generics, with varying efficacy and pricing characteristics.

47. End users may themselves be able to combine products in order to approximate the efficacy/price characteristics of others. A farmer using a triple-active drench for cattle could potentially get similar results, in terms of the percentage of parasites killed, by applying a double-active drench together with a single active drench, or using three single-active drenches. However, the farmer will typically pay a price-premium for the convenience of using a multiple-active drench, as applying several products as described will be more time consuming.

Treatments for internal parasites

48. Endoparasiticides treat internal parasites, such as worms, that live and breed inside the host animal. Each particular endoparasiticide is differentiated by factors including the active substance and the type of worm being treated.

49. All the various endoparasiticide products have active substances from one of three "action families". These families have been used in the industry for the past 20 years and include:

- macrocylic lactones, which include active substances such as abamectin, ivermectin and moxidectin;
- levamisoles, which include the active substance levamisole; and
- benzimidazoles, which include active substances such as oxfendazole and albendazole.

50. Products with active substances from different action families can be used to treat the same types of worms and are generally substitutable for one another. In addition, there are a number of products that have combinations of two or all three of the action families, as a means of overcoming worm resistance to a particular action family.

51. Industry participants advised that endoparasiticide products often have broad coverage, in that they target a number of different parasites (worm species). However, some products treat only one or two species of worm and may offer a higher level of individual protection against those particular species. Nonetheless, worm species that are treated by narrow spectrum products can also often be treated by broad spectrum products.

Product differentiation

52. The Commission is of the view that, for the various internal parasiticide products, there are a number of options in terms of efficacy and price, such that a chain of substitution exists. While products at one end of the spectrum (in terms of efficacy and price) would not be close substitutes for those at the other end, at each point within the chain however, there does exist a close enough substitute such that if the price of a particular product were to increase, a farmer would be able to switch to the nearest point within the chain without difficulty.

53. [ ] suggested that Fort Dodge's Cydectin product and more generally moxidectin based products might be sufficiently different to warrant being considered as a distinct product market.
[
]. However, Pfizer submitted that Cydectin accounts for [ ] of the sheep market, and only [ ] of the cattle market. This suggests that there are other products available to industry parties for the treatment of internal parasites.

54. Further, many industry participants advised the Commission that, because of problems with parasites developing resistance to various active ingredients over time, it is common practice to change product from time to time. This practice promotes a high degree of switching between the various brands and suppliers of endoparasiticides.

Endectocides

55. As noted above, endectocides treat both internal and external parasites. The Commission understands that endectocides tend to be more effective against

internal parasites and often treat some (but not all) external parasites. Industry participants emphasised the ability of endectocides to treat lice, which are particularly prevalent in sheep in New Zealand. [ ] advised that the primary purpose of endectocides in New Zealand is for the treatment of internal parasites.

56. [ ] further advised that although endectocides tend to be more expensive than many endoparasiticides, they have fewer problems with resistance, and have a higher level of efficacy than many endoparasiticides.

57. Industry participants advised that many endectocides are marketed towards the treatment of internal parasites and exert a significant competitive constraint on endoparasiticides.

58. Therefore, the Commission is of the view that it is appropriate to include both endoparasiticides and endectocides in the product market for the treatment of internal parasites.

Animal Type

59. Internal parasites are prevalent in both sheep and cattle and the same families of active substances are used to treat both types of animals. However, industry participants advised that there are significant differences in the application method for the two types of animals. Sheep, being of a more manageable size than cattle, more often receive the product orally. Cattle on the other hand, have hides that are more easily penetrable than sheep and thus are more conducive to pour-on products or injection. The dose rates and concentrations of products required for each animal are significantly different and are labelled and packaged specifically for the different animals. Furthermore, there are very few endoparasiticide products that are registered for use in both sheep and cattle.

60. Accordingly, the Commission considers that, as it has in the past, it is appropriate to delineate the internal parasiticide market based on animal species, with sheep and cattle being the major recipients of these products.

<u>Conclusions on Internal Paracitides</u>

61. Accordingly, the Commission's view is that, for the purposes of assessing the proposed acquisition, the competitive effects in the factual scenario are best analysed with a product market for the:

- treatments for cattle for internal parasites, including both cattle endoparasiticides and cattle endectocides; and
- treatments for sheep for internal parasites, including both sheep endoparasiticides and sheep endectocides.

Treatments for External Parasites

62. The Commission has found similar product differentiation in respect of the treatments for external parasites, or ectoparasiticides, as it has found in treatments for internal parasites.

63. The two main external parasites in New Zealand are flies and lice. The demand for external treatments is significantly less than the demand for internal treatments, primarily because New Zealand's relatively cold and damp climate means that flies are not a prominent problem. Nevertheless, lice and to a lesser extent flies can create significant animal welfare issues for both cattle and sheep.

64. Flies tend to be more of an issue for sheep, as they are attracted to dirty, wet wool. There are a number of fly-only treatments specifically marketed for the use on sheep (and not cattle) in New Zealand. The Commission understands that this is not the case in other countries, where flies are a more significant problem for cattle. In New Zealand, there are ectoparasiticides which are lice-only and combination fly/lice products for sheep. The same ectoparasiticides are available for cattle.

65. The Commission considers that combination fly/lice products compete with single parasite products, creating a chain of substitution between fly-only and lice-only products. If combination fly/lice treatments were to be defined as a separate product market, then a hypothetical monopolist of combination treatments, when imposing a SSNIP, would likely face substitution to fly-only and lice-only treatments, such that these three groups of products would in fact be in the same market.

66. While there are some products that are marketed as endectocides, as noted above, the Commission understands they are primarily targeted at the treatment of internal parasites. As such, there is likely to be limited substitution between endectocides and ectoparasiticides.

67. As with internal treatments, the Commission considers that it is appropriate to delineate the external parasiticides based on animal species.

68. Accordingly, the Commission considers that, for the purposes of assessing the proposed acquisition, competitive effects in the factual scenario are best analysed with a product market for:

- treatments for cattle for external parasites; and
- treatments for sheep for external parasites.

69. There is no aggregation in either of these two markets. Therefore, the Commission will not consider these markets any further.

Vaccines

70. Both Pfizer and Fort Dodge supply a number of different vaccines for a range of different animals. In relation to vaccines for livestock animals, the Applicant submitted the following proposed markets, namely:

- monovalent mycoplasma hyopneumoniae (M Hyo) vaccines for swine;
- multivalent M Hyo Haemophilus parasuis vaccines for swine;
- Parvovirus vaccines for swine;
- Streptococcus equi (or Strangles) vaccines for horses ; and
- multivalent clostridial vaccines for sheep and cattle.

71. In relation to vaccines for companion animals, the Applicant submitted the following proposed markets, namely:

- multivalent vaccines for cats;
- multivalent vaccines for dogs;
- Bordetella bronchiseptica (B bronchiseptica) or canine cough vaccines for dogs; and
- leptospirosis vaccines for dogs.

72. Vaccines can be distinguished by a number of different factors, including:

- indication of use;
- animal species;
- single or multiple pathogens;
- live or inactivated vaccines; and
- application method.

73. The Commission notes that the development and supply of vaccines is a very complicated and time consuming process. The process involves extensive research, cultivation of the necessary seed stock to produce the vaccine once it has been developed, as well as the actual manufacturing process itself.

74. In this respect, the Commission has concentrated on demand-side considerations when considering the various vaccine products. This is because the purpose of a vaccine is to protect an animal against future disease or illness caused by bacterial, viral or fungal infection. In most cases, each vaccine has a specific use and cannot be substituted on the demand side for/by other vaccines or medicines.[5] Most vaccines target a single animal species.

Vaccines for Livestock Animals

Mycoplasma Hyopneumoniae Vaccines for Swine

75. The Applicant submitted that monovalent M Hyo vaccines for swine are discrete from multivalent M Hyo Haemophilus parasuis vaccines for swine.

76. M Hyo is the bacterium that causes Porcine Enzootic Pneumonia. Porcine Enzootic Pneumonia is a highly contagious disease that can result in chronic coughing, lung lesions and retarded growth rate. Vaccination of young pigs (growing stock) helps to significantly reduce the effect of the disease.

77. M Hyo vaccines for swine have a specific use and cannot be substituted on the demand side for/by other vaccines.

78. In vaccinating against M Hyo, purchasers have a choice between using a monovalent M Hyo vaccine and a multivalent M Hyo vaccine. Both the monovalent and multivalent vaccines contain the same active ingredient, M Hyo; however, the multivalent vaccine provides additional protection against Haemophilus parasuis, a bacterium that is known to cause Glassers disease. The Commission understands that the monovalent and multivalent vaccines have similar efficacy and both vaccines are delivered by injection.

79. The Applicant submitted that, from a demand-side perspective, the monovalent and multivalent vaccines do not appear to be substitutable, due to the multivalent vaccine being more expensive and less convenient to administer, as it is a two shot vaccine. However, the Commission understands that the price difference between the monovalent and multivalent vaccines, in this case, is relatively insignificant. Furthermore, the majority of monovalent M Hyo vaccine sales in New Zealand are also two shot vaccines. For example, Pfizer's one shot monovalent vaccine, Respisure One, has relatively low sales.

[5] Some vaccines are multivalent, which means that they contain two or more different antigens, and are usually capable of protecting against a number of diseases.

80. Accordingly, for the purposes of this analysis, the Commission is of the view that the monovalent M Hyo vaccines and multivalent M Hyo vaccines (which contain Haemophilus parasuis) are part of the same product market being that for M Hyo vaccines for swine.

Parvovirus for Swine

81. The Applicant submitted that there is a discrete market for parvovirus vaccines for swine.

82. Porcine Parvovirus (PPV) is a viral disease in pigs. It is associated with reproductive problems, such as abortion, stillbirths, neonatal deaths, and small litters. Vaccination is the best method to prevent PPV and it is common practice in New Zealand to vaccinate breeding sows.

83. PPV vaccines for swine have a specific use, and cannot be substituted on the demand side for/by other vaccines. PPV vaccines for swine in New Zealand are injectable, inactivated monovalent vaccines and contain the same active ingredient (Porcine Parvovirus).

84. Accordingly, for the purposes of this analysis, the Commission considers that the relevant product market is monovalent Porcine Parvovirus vaccines for swine.

Equine Strangles Vaccine

85. The Applicant submitted that there is a discrete market for Streptococcus equi (S equi) vaccines for horses.

86. S equi vaccines are administered as an aid to prevent the outbreak of strangles in horses. Strangles is a highly infectious and contagious respiratory disease amongst horses which is caused by the S equi bacteria.

87. S equi vaccines have a specific use, and cannot be substituted on the demand side for/by other vaccines. In vaccinating against S equi, purchasers have a choice between using an inactive monovalent injectable vaccine, an inactive multivalent injectable vaccine and a monovalent modified live intra-nasal vaccine. While these vaccines vary according to the mode of protection and application, all are accepted as being effective in the protection from the strangles disease. Industry participants advised the Commission that the difference in administration method is not a major issue. Accordingly, the Commission views the products as being substitutable and therefore likely to be in the same market.

88. Accordingly, for the purposes of this analysis, the Commission considers that the relevant product market is that for S equi vaccines (equine strangles vaccines).

Multivalent Clostridial Vaccines for Cattle and Sheep

89. The Applicant submitted a market for clostridial vaccines for both sheep and cattle due to the popularity in New Zealand of the 5 in 1 clostridial vaccines and the fact that these vaccines are registered and able to be used in both sheep and cattle.

90. Multivalent clostridial vaccines contain antigens to protect against the toxins produced by different species of clostridium bacteria. Clostridial vaccines available in New Zealand differ by the number of clostridial antigens they contain and whether they contain additional minerals/vitamins (like selenium

and vitamin B12) or active ingredients (like a levamisole drench or a leptospirosis vaccine).

91. '5 in 1' clostridial vaccines are popular in New Zealand for both sheep and cattle. They contain five antigens to protect against:

- Tetanus (Clostridium tetani);
- Malignant Oedema (Clostridium septicum);
- Blackleg (Clostrium chauvoei);
- Black Disease (Clostridium novyi); and
- Pulpy kidney (Clostridium perfringens type D).

92. Although there is a degree of differentiation between the various vaccines, particularly in respect of valency, in general, the same types of vaccines can be used in both sheep and cattle. To this extent, the Commission considers that for the purposes of this analysis the relevant product market is likely to be that for multivalent clostridial vaccines for both sheep and cattle.

Companion Animal Vaccines

93. The Applicant submitted that there are separate markets for multivalent vaccines for cats and for multivalent vaccines for dogs.

Multivalent Vaccines for Cats

94. Veterinarian practice has led to a number of vaccines for cats being regularly administered together in New Zealand. Most commonly these include the following three diseases:

- Feline rhinotracheitis virus;
- Feline calicivirus; and
- Feline panleucopenia virus.

95. Multivalent vaccines for cats that protect against these three diseases are commonly referred to as F3 vaccines. These are the most common multivalent vaccines for cats in New Zealand, making up nearly [ ] of doses according to the Applicant.

96. F4 vaccines protect against the same three diseases as F3 vaccines plus feline chlamydial disease. F5 vaccines protect against the same four diseases as F4 vaccines plus feline leukaemia virus.

97. Multivalent vaccines for cats have a specific use and cannot be substituted on the demand side for/by other vaccines, for example, for those vaccines designed for use in other animals or to treat different diseases.

98. Most industry participants were of the view that multivalent vaccines for cats are highly substitutable with one another on the demand side. Accordingly, for the purposes of this analysis, the Commission considers that the relevant product market is that for multivalent vaccines for cats.

Multivalent Vaccines for Dogs

99. In New Zealand, veterinarian practice and local needs have led to a number of vaccines for dogs being regularly administered together. Most commonly these include the following three diseases:

- Canine distemper;
- Canine adenovirus; and
- Canine parvovirus.

100. Multivalent vaccines for dogs which protect against these three diseases are commonly referred to as C3 vaccines. C4 vaccines protect against the same three diseases as C3 vaccines plus canine parainfluenza virus. C4 vaccines are the most common multivalent vaccines for dogs in New Zealand, making up more than [ ] of doses. C3 and C4 vaccines are sometimes sold in combination with other vaccines, such as leptospirosis vaccines.

101. Multivalent vaccines for dogs have a specific use and cannot be substituted on the demand side for/by other vaccines, for example, for those vaccines designed for use in other animals or to treat different diseases.

102. Most industry participants were of the view that multivalent vaccines for dogs were highly substitutable with one another on the demand side

103. Accordingly, for the purposes of this analysis, the Commission considers that the relevant product market is that for multivalent vaccines for dogs.

Canine Cough Vaccines for Dogs

104. The Applicant submitted that there is a discrete market for B bronchiseptica (or canine cough) vaccines for dogs.

105. B bronchiseptica is a type of bacteria that is known to cause Canine Cough (also known as Kennel Cough and Canine Infectious Tracheobronchitis).

106. In vaccinating against Canine Cough, purchasers have a choice between using a standalone vaccine against B bronchiseptica (the principle causative agent) or a vaccine which also protects against other pathogens which may contribute to canine cough.

107. Vaccines can differ by delivery method, either being administered via injection or intra-nasally, and whether the B bronchiseptica strain is live or inactive.

108. The Commission notes that while B bronchiseptica vaccines can differ with regard to administration method, the addition of other canine cough pathogens, and whether the strain is live or inactive, the Commission understands that all B bronchiseptica vaccines provide effective protection against B bronchiseptica. All are registered for this purpose, and that the difference in administration method is not a major issue. The Commission views them as being substitutable and therefore, likely to be in the same market.

109. Accordingly, for the purposes of this analysis, the Commission considers that the relevant product market is that for B bronchiseptica vaccines for dogs (Canine Cough vaccines).

Leptospirosis Vaccines for Dogs

110. The Applicant submitted that there is a discrete market for leptospirosis vaccines for dogs.

111. Leptospirosis is a contagious bacterial disease caused by the leptospira organism. In New Zealand canine leptospirosis is not prevalent; the New Zealand Veterinary Association lists leptospirosis as a non core vaccine for dogs.

112. In vaccinating against leptospirosis, purchasers have a choice between using a standalone monovalent vaccine, a bivalent Leptospirosis-Canine Coronavirus vaccine (which also protects against canine coronavirus, and a combination multivalent vaccine (which includes the core C3 or C4 vaccines).

113. The Commission understands that all leptospirosis vaccines available in New Zealand are injectable[6], contain the same active ingredient (Leptospira interrogans, inactive) and are very similar in terms of efficacy. The multivalent vaccines that protect against leptospirosis also contain core vaccines that are recommended for dogs in New Zealand, and therefore can be viewed as a substitute to monovalent and bivalent vaccines for customers who are at the stage of the vaccination cycle when the core vaccines need to be administered.

114. Accordingly, for the purposes of this analysis, the Commission considers that the product market is that for Leptospirosis vaccines for dogs, which includes:

- monovalent leptospirosis dog vaccines;
- bivalent leoptospirosis dog vaccines; and
- combination multivalent dog vaccines that contain Leptospira interrogans.

Functional Markets

115. Some animal health products are manufactured in New Zealand while other products, particularly vaccines, are typically manufactured overseas and imported into New Zealand. Suppliers then distribute these products to veterinary wholesalers, veterinarians, retail outlets and, where appropriate, directly to end-customers.

116. The Commission concludes that the appropriate functional level for the relevant product markets is the manufacture/import and wholesale supply.

Geographic Markets

117. All manufacturers/importers distribute their products on a national basis. Accordingly, the Commission concludes that the appropriate geographic market for the product markets identified above is national.

Conclusion on Markets

118. Therefore, the Commission considers that the relevant markets for assessing the competition effects of the proposed acquisition are the national markets for the manufacture/import and wholesale supply of:

- treatments for cattle for internal parasites;
- treatments for sheep for internal parasites;
- M Hyo vaccines for swine (the M Hyo Market);
- Porcine Parvovirus vaccines for swine (the Parvovirus market);
- Equine Strangles vaccines (the Equine Strangles Market);
- Multivalent clostridial vaccines for sheep and cattle (the Clostridials Market);
- Multivalent vaccines for cats (the Multivalent Cat Vaccines Market);

[6] The Commission understands that it possible to mix monovalent/bivalent vaccines in the same needle as the dog's core multivalent vaccines so that multiple injections can be avoided.

- Multivalent vaccines for dogs (the Multivalent Dog Vaccines Market);
- Canine Cough vaccines for dogs (the Canine Cough Market); and
- Leptospirosis vaccines for dogs.

COUNTERFACTUAL AND FACTUAL

119. The Applicant advised the Commission that, in accordance with an Agreement and Plan of Merger dated 25 January 2009 between Pfizer and Wyeth, Pfizer proposes to acquire the stock and/or assets of Wyeth in a cash and stock transaction. Once the proposed merger is completed, Wyeth would then remain as a wholly owned subsidiary of Pfizer.

120. Apart from this application, the Commission is also considering a proposed parallel acquisition involving Schering-Plough and Merck which is relevant because these parties are active in many of the same markets as Pfizer and Wyeth.

121. In this respect, the Commission needs to take the proposed Schering-Plough/Merck acquisition into consideration when assessing the relevant factual and counterfactual scenarios of the proposed Pfizer/Wyeth acquisition.

122. In light of the above factors the Commission considers that several factual scenarios could occur, namely:

- Pfizer acquires Wyeth and contemporaneously Schering-Plough acquires Merck; or
- Pfizer acquires Wyeth but Schering-Plough does not acquire Merck.

123. In the counterfactual, the proposed acquisitions may (or may not) go ahead. In this respect, the following situations could occur:

- Pfizer does not acquire Wyeth and Schering-Plough does acquire Merck; or
- Pfizer does not acquire Wyeth but Schering-Plough does not acquire Merck.

124. As a starting point, for the purpose of analysing the proposed acquisition, the Commission proposes to adopt the factual scenario that would give rise to the greatest competition concerns for the Commission, which is if the Pfizer/Wyeth and Schering-Plough/Merck transactions proceed contemporaneously. In this instance, the Commission will compare that factual to the most competitive counterfactual scenario in which neither of the proposed acquisitions goes ahead, which is the essentially the status quo.

125. In this respect, the Commission notes that if there are no significant competition concerns evident by comparing the most problematic factual with the most competitive counterfactual, then it is unlikely that the other likely factual and counterfactual scenario comparisons would give rise to competition concerns.

COMPETITION ANALYSIS

Treatments for Internal Parasiticides

126. Industry participants advised the Commission that the competitive dynamics in the internal parasiticide markets for sheep and cattle are similar. To this extent,

as a starting point, the Commission has considered the affected markets at the same time.

127. Table 2 shows the estimated market share data for the two internal parasiticides markets, which are based on sales revenue provided by industry participants. The Commission found that the estimates provided by the Applicant and from various industry parties were broadly consistent with one another, regardless of the data source.

Table 2: Estimated Market Shares for Treatments for Internal Parasiticides for both Cattle and Sheep for 2008

Supplier	**Internal Parasiticides for Cattle**		**Internal Parasiticides for Sheep**	
	Sales	**Market Share**	**Sales**	**Market Share**
Pfizer	[ ]	[ ]	[ ]	[ ]
Fort Dodge	[ ]	[ ]	[ ]	[ ]
Combined Entity	*[ ]*	*[ ]*	*[ ]*	*[ ]*
Schering-Plough	[ ]	[ ]	[ ]	[ ]
Merck (Merial)	[ ]	[ ]	[ ]	[ ]
Combined Schering-Plough/Merck Entity	*[ ]*	*[ ]*	*[ ]*	*[ ]*
Jurox	[ ]	[ ]	[ ]	[ ]
Ravensdown#	[ ]	[ ]	[ ]	[ ]
Bayer	[ ]	[ ]	[ ]	[ ]
Novartis	[ ]	[ ]	[ ]	[ ]
Others (includes Bomac, Virbac, Norbrook, The Drench Company Limited)	[ ]	[ ]	[ ]	[ ]
Total	**[ ]**	**100%**	**[ ]**	**100%**

Source: Industry participants, Commission estimates. # Ravensdown's products are contract manufactured by Jurox in Australia.

128. In the factual, the combined entity would have market shares in the cattle and sheep markets of [ ]. In both of these markets, the combined Schering-Plough/Merck entity would be the largest competitor.

129. On the whole, the existing competitors are large international companies with established brands and reputations and strong R & D programmes.

130. However, the Commission notes that there is increasing competition from suppliers of 'generic' products particularly as the patents of the technology in the most prominent products in the industry have now expired. As such, the barriers to entry and expansion for many suppliers have decreased and this has facilitated competition in these markets.

131. For example, industry participants noted the entry and expansion of the Ravensdown branded products. Ravensdown commenced supplying its Abamectin products in 2005 and has increased its sales significantly in the

subsequent period. Industry participants commented that it has forced a major downward pressure on prices.

132. Another recent entrant in the industry is The Drench Company Limited, which supplies certain parasiticides to one of the large rural supply stores. All industry participants interviewed by the Commission considered that The Drench Company Limited's entry indicated that products at the low end of the price/efficacy spectrum could be manufactured and supplied relatively easily.

133. Further, the Commission considers that, should the merging entity attempt to raise prices in the factual scenario, all existing suppliers can readily expand given that, once registration is secured, it is relatively straightforward to either import products in their finished form (as suppliers such as Jurox are currently doing), and/or to import the active ingredients and contract manufacture with an existing manufacturer based locally with approved facilities, such as Argenta.

134. The Commission's view is that competition is likely to remain strong in the factual due to the presence of a large number of suppliers who have the ability to expand their operations. In addition, several parties have demonstrated that new entry can be easily effected.

Conclusion on Existing Competition in the Internal Parasiticide Markets

135. Accordingly, the Commission concludes that the proposed acquisition would not have, or not be likely to have, the effect of substantially lessening competition in the national markets for the manufacture/import and wholesale supply of:

- treatments for cattle for internal parasites; and
- treatments for sheep for internal parasites.

Swine Vaccines

Introduction

136. The Commission understands that internationally there are five main manufacturers of swine vaccines: Pfizer; Fort Dodge; Schering-Plough; Boehringer Ingelheim; and Novartis. All these companies have a presence in New Zealand although Pfizer and Fort Dodge are the two major suppliers of swine vaccines and have been for some time.

137. All industry participants advised that, in respect of the swine products, the industry in New Zealand is extremely small which means that the overall demand for such products was low.

138. As the industry is relatively small, there are a relatively small number of purchasers of swine products. There are two main acquirers of all types of swine vaccines:

- Ecopharm Limited (Ecopharm); and
- Pacificvet.

139. These companies essentially act as intermediaries for almost all of New Zealand's piggeries. The entities purchase, distribute and in most cases, physically administer the vaccines to pigs at individual piggeries and provide technical advice.

140. Ecopharm advised that as the industry is relatively small in New Zealand, it has not attracted many suppliers. It advised that one of the main reasons that they

established Ecopharm was [
].

141. Ecopharm estimates that it now purchases approximately [ ] of all the swine products used in New Zealand. These products are predominantly from Pfizer and Boehringer Ingelheim. It has also previously acquired product from Novartis. The remaining products in the industry are purchased by Pacificvet and these products are manufactured by Fort Dodge.

142. In view of the distribution agreement between Fort Dodge and Pacificvet and the close relationship between the companies, the Commission is of the view that Pacificvet, as an entity in its own right, would likely offer minimal competitive constraint, post-acquisition. The Commission has taken this into consideration when assessing the relevant markets below.

143. As noted above, there are two swine markets of relevance to the Commission's assessment of these investigations:

- the M Hyo Market; and
- the Parvovirus Market.

The M Hyo Market

144. There are currently two suppliers of M Hyo vaccines for swine in New Zealand: Pfizer; and Fort Dodge.

145. Table 3 shows the estimated market shares for the M Hyo Market based on the sales information provided by industry participants.

Table 3: Estimated Market Shares for the M Hyo Market for the 2007/08 and 2008/09 years

Supplier	Brands	Sales 07/08	Market Share	Sales 08/09	Market Share
Pfizer	Respisure	[ ]	[ ]	[ ]	[ ]
Fort Dodge	Suvaxyn Respifend MH, MH/HPS	[ ]	[ ]	[ ]	[ ]
Total		**[ ]**	**100%**	**[ ]**	**100%**

Source: Industry participants.

146. Table 3 indicates that, in the factual scenario, the combined entity would be the only supplier of M Hyo vaccines in New Zealand.

147. Industry participants advised that Boehringer Ingelheim has recently registered a monovalent M Hyo vaccine for swine in New Zealand. Such a vaccine would compete with the existing products sold in New Zealand. Boehringer Ingelheim already supplies a number of swine vaccines in New Zealand, [ ] which are purchased by Ecopharm.

148. Boehringer Ingelheim advised that it is keen to expand its existing presence in the swine category in New Zealand. Further, it expects to be supplying its new vaccine into New Zealand [ ].

Conclusions on the M Hyo Market

149. The Commission is of the view that the combined entity would likely be constrained by the presence of a near competitor in this market, Boehringer Ingelheim. Therefore, the Commission considers that the proposed acquisition

will not have, or would not be likely to have, the effect of substantially lessening competition in the M Hyo Market.

The Parvovirus Market

150. There are currently two suppliers of parvovirus vaccine for swine in New Zealand: Pfizer; and Fort Dodge.

151. Table 4 shows the estimated market shares for the Parvovirus Market based on the sales information provided by industry participants.

Table 4: Estimated Market Shares for the Parvovirus Market for the 2007/08 and 2008/09 years

Supplier	Brands	Sales 07/08	Market Share	Sales 08/09	Market Share
Pfizer	Porcine Parvac	[ ]	[ ]	[ ]	[ ]
Fort Dodge	Suvaxyn P	[ ]	[ ]	[ ]	[ ]
Total		**[ ]**	**100%**	**[ ]**	**100%**

Source: Industry participants

152. Table 4 indicates that, in the factual scenario, the combined entity would be the only supplier of the parvovirus for swine in New Zealand.

153. Ecopharm noted that there is limited demand for the parvovirus vaccine because this is only used on breeding sows, which in New Zealand, only total around [ ]. This is reflected in the low value of the market. [
].

154. Ecopharm considers that if Pfizer tried to increase prices / reduce quality post-acquisition, [

].

155. [

].

156. Ecopharm advised that it has facilitated entry previously (for another product) by [

].

157. Accordingly, the Commission is of the view that acquirers in this market, notably Ecopharm, would have a degree of countervailing power through their ability to self supply by sourcing and importing alternative products, using the existing relationships they have with certain suppliers [
]. Further, the potential for this to occur would be increased if an acquirer was given an incentive to do so. In this respect, the Commission notes that [
].

Conclusions on the Parvovirus Market

158. The Commission is of the view that the combined entity would likely be constrained by the threat of new entry into the market. Therefore the Commission considers that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the Parvovirus Market.

The Equine Strangles Market

159. The demand for strangles vaccines in New Zealand has generally been low and has fluctuated as strangles is not a common disease amongst horses in New Zealand. Despite the intermittent nature of the outbreak of strangles, there has been a growing awareness of the disease which has generated some demand for vaccinations as a preventative measure.

160. The Commission understands that internationally there are a limited number of manufacturers and suppliers of these products. These are Pfizer, Fort Dodge, Schering-Plough, Merial and Boehringer Ingelheim. All of these companies have an existing presence in New Zealand, but not all are currently supplying equine vaccines in New Zealand.

161. Currently, Pfizer and Fort Dodge are the only suppliers of strangles vaccines in New Zealand. Pfizer imports and supplies two inactivated injectable products, one of which is a 2 in 1 vaccine that protects horses against strangles and tetanus, while the other protects only against strangles. Fort Dodge has a live intra-nasal vaccine product for strangles. As with the company's swine vaccines, Pacificvet distributes Fort Dodge's equine vaccines in New Zealand.

162. Table 5 shows the estimated market shares for the Equine Strangles Market based on the sales information provided by industry participants.

Table 5: Estimated Market Shares for the Equine Strangles Market in the 2007/08 and 2008/09 Years

Supplier	Brands	Sales 07/08	Market Share	Sales 08/09	Market Share
Pfizer	Equivac S, Equivac 2in1	[ ]	[ ]	[ ]	[ ]
Fort Dodge	Pinnacle I.N.	[ ]	[ ]	[ ]	[ ]
Total		**[ ]**	**100%**	**[ ]**	**100%**

Source: Industry participants

163. Pfizer submitted that sales of strangles vaccines are generally low as occurrences of the disease in horses in this country are uncommon. However, it noted that following an outbreak of strangles in New Zealand in 2008, the company had to boost its supplies of the strangles vaccine by importing additional supplies and conducting a special processing run of the vaccines concerned. Pfizer considers that this unexpected development has had the effect of distorting the market shares.

164. Table 5 indicates that the acquisition would result in the combined Pfizer/Fort Dodge increasing its market share to 100%.

165. While the level of aggregation is [ ], Fort Dodge has been identified as providing an effective competing product. For example, [ ], advised the Commission that while Fort Dodge's and Pfizer's products differ in their mode

of application (intra-nasal compared to injectable), the type of vaccine (live compared to inactivated) and have different dosage requirements (two doses compared to Pfizer's three), they are broadly comparable in terms of effectiveness and results.

166. Given that the proposed acquisition would remove Fort Dodge as a competitor in this market and in view of the lack of alternative sources of supply of equine vaccines likely to be available to Pacificvet, the Commission considers that in this instance existing competition is unlikely to provide any constraint on the combined entity in the factual.

167. However, as noted above there are a limited number of global suppliers of equine vaccines. All of these suppliers have a presence in New Zealand but, until now, only Pfizer and Fort Dodge have chosen to supply their strangles vaccine in New Zealand.

168. The Commission is aware that registration of animal health products may in certain instances involve time delays and may be costly. However, many industry participants advised that, provided an application is fully documented with comprehensive information in support of the claims the process can be relatively straightforward, particularly if the product has a long history of supply in other countries. Many applications are processed in a timely manner and even when delays occur these are unlikely to delay entry beyond the Commission's time frame of two years, especially if an applicant has an incentive to get the product to market. Once the product is registered it can be distributed in New Zealand.

169. Boehringer Ingelheim advised the Commission that, globally, it manufactures and supplies equine vaccines, including a strangles vaccine (Strepvax). [ ] Boehringer Ingelheim informed the Commission that Boehringer Ingelheim originally commenced its business as a supplier of equine vaccines and has had a long history of international interest in horse products.

170. [ ]. The Commission notes that Boehringer Ingelheim is already supplying a number of other equine products in New Zealand.

171. Boehringer Ingelheim has yet to register any equine vaccines with the NZFSA. [ ]

172. As noted above, Boehringer Ingelheim has already been successful in obtaining registration in New Zealand for other products in its international portfolio. The company already has a presence in New Zealand distributing animal heath products with an established sales force which is supplemented by marketing, technical and regulatory support. In light of these factors [ ], the Commission is of the view that Boehringer Ingelheim is likely to act as a constraint (actual or potential) on the combined entity in the factual.

Conclusion on the Equine Strangles Market

173. The Commission considers that while the proposed merger would remove Fort Dodge [ ] as a competitive constraint, there would continue to be scope for another global supplier, such as Boehringer Ingelheim, to import its strangles vaccine and to compete, especially in the event that the combined entity were to raise its prices or reduce its service levels.

174. Accordingly, the Commission concludes that the proposed acquisition will not, or would not be likely to have, the effect of substantially lessening competition in the Equine Strangles Market.

The Clostridials Market

175. There are currently two main suppliers of multivalent clostridial vaccines for sheep and cattle in New Zealand, namely Pfizer and Schering-Plough[7].

176. Bomac also supplies several vaccines, although the Commission notes that these vaccines are manufactured in Australia by Fort Dodge on behalf of Bomac. In addition, Fort Dodge has a number of its products registered in New Zealand but does not presently supply these in New Zealand.

177. Table 6 shows the estimated market shares for the Clostridials Market based on the sales information provided by industry participants.

Table 6: Estimates Market Share for the Clostridials Market for the 07/08 year

Supplier	Brands	Sales 07/08	Market Share
Pfizer	Ultravac, Glanvac	[ ]	[ ]
Schering-Plough	Multine, Covexin	[ ]	[ ]
Bomac	Prolavax	[ ]	[ ]
Total		**[ ]**	**100%**

Source: Industry participants

178. The only actual aggregation to consider from the proposed acquisition involves the arrangement between Bomac and Fort Dodge. The proposed acquisition would see Pfizer replace Fort Dodge as the manufacturer of the Bomac product. However, industry participants advised the Commission that:

- the Bomac product contains an added vitamin, which makes it significantly more expensive than the other products in the market;
- [ ]; and
- [ ].

179. In this respect, the Commission is of the view that Bomac provides a limited competitive constraint at the moment and this is unlikely to change in the immediate future. Therefore, the main competitive dynamic in the market would remain that between Pfizer and Schering-Plough.

180. All industry participants advised that the market was extremely price competitive at the moment and this reflected the fact that clostridial vaccines are one of the few vaccines that can be used on both cattle and sheep.

[7] Referring to the combined Schering-Plough/Merck entity in the factual.

181. Fort Dodge advised that [

] this is consistent with the assessment of the Commission.

Conclusions on Clostridials Market

182. The Commission considers that there is likely to be minimal difference between the factual and the counterfactual scenarios. Therefore, the Commission considers that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the Clostridials Market.

Companion Animals Markets

183. Both Pfizer and Fort Dodge are involved in the importation and supply of vaccines for the prevention of a range of diseases in companion animals. As noted previously, the markets in which aggregation would occur are:

- the multivalent cat vaccines market;
- the multivalent dog vaccines market;
- the Canine Cough market; and
- the leptospirosis vaccines for dogs market.

Multivalent Cat Vaccines and Multivalent Dog Vaccines Markets

184. It is common for veterinarians to administer a number of vaccines for companion animals at the same time to immunise the animal against a range of common diseases. Multivalent cat vaccines are classified according to the type of protection afforded as follows:

- feline herpes virus (rhinotracheitis);
- feline panleucopenia virus;
- feline calcivirus;
- Chlamydophilia felis; and
- feline leukaemia.

185. Similarly, multivalent dog vaccines are administered to immunise against a combination of diseases that often afflict this species. These are often classified as follows:

- canine distemper;
- canine adenovirus;
- canine parvovirus; and
- canine parainfluenza.

186. In addition, sometimes these vaccines are sold in combination with other vaccines such as leptospirosis vaccines.

187. As these markets display similar characteristics in terms of the relevant participants and their relative position in the markets, the Commission will consider them together for the purposes of this analysis.

188. There are currently four suppliers in each of the affected markets. Pfizer is the largest participant accounting for [ ] of the market share. Schering-Plough is the next largest player accounting for around [ ] share. Fort Dodge holds a [ ] share of the markets while Virbac is involved to a more limited extent. All suppliers currently import their multivalent vaccines for cats and dogs from various overseas production facilities.

189. Table 7 shows the estimated market shares for the firms that supply multivalent vaccines for cats and dogs. These shares are based on the sales information provided by industry participants.

Table 7: Estimated Market Shares for the Multivalent Cat Vaccines and Multivalent Dog Vaccines Markets for the 2008/09 year

Supplier	**Brands**	**Multivalent Vaccines for cats**		**Multivalent Vaccines for dogs**	
		Sales Turnover	**Market Share**	**Sales Turnover**	**Market Share**
Pfizer	Felocell, Fevac, Vanguard	[ ]	[ ]	[ ]	[ ]
Fort Dodge	Felo-Guard, Felo-O-Vax Protech, Durumune	[ ]	[ ]	[ ]	[ ]
Combined Entity		*[ ]*	*[ ]*	*[ ]*	*[ ]*
Schering-Plough	Nobivac	[ ]	[ ]	[ ]	[ ]
Virbac	Feligen	[ ]	[ ]	[ ]	[ ]
Total		**[ ]**	**100%**	**[ ]**	**100%**

Source: Industry Participants

190. Table 7 indicates that following the acquisition the combined Pfizer/Fort Dodge would have a market share of approximately [ ] in each market which would place it outside the Commission's safe harbours.

191. The number of market participants in each market would also reduce with Schering-Plough and Virbac being the only other existing suppliers in the factual scenario.

192. Nevertheless, all industry participants advised that the main competitive dynamic in the two markets is between Pfizer and Schering-Plough and has been for some time.

193. In particular, Schering-Plough is likely to remain a vigorous competitor in the factual with strong and well established products. All industry participants interviewed advised that Schering-Plough had a prominent position in each of the cat and dog markets and had shown strong sales growth recently. Further, it has the ability to expand in each of the markets, particularly if the combined entity were to attempt to exercise any market power.

194. In addition, the Commission considers that Virbac is an active market participant. While this company currently holds a [ ] market share it is long-established globally as a supplier of vaccines for companion animals, and its products are regarded as being of equivalent efficacy to that of the major suppliers. For example, several industry parties noted that Virbac has

a significant presence in Australia and there are no barriers preventing Virbac from replicating that performance in New Zealand.

195. [

]

196. [ ] that Virbac's core vaccines are of equivalent quality to that of the incumbent suppliers but that it would be difficult to persuade vets to switch to an alternative product even when faced with a price increase, unless the existing supplier did not have sufficient stocks. In this respect, the Commission notes that, at present, the option of switching to Virbac may not be that attractive to many industry participants such that the constraint offered by Virbac in the factual would not be as strong as that offered by the other existing competitor, Schering-Plough.

197. Nevertheless, the Commission notes that Virbac is recognised internationally as a supplier of core vaccines and already has an active presence in a number of other companion animal and livestock animal markets. [

]

Conclusion on the Multivalent Cat Vaccines Market and the Multivalent Dog Vaccines Market

198. For these reasons, the Commission considers that the combined entity would likely be constrained by Schering-Plough in both the multivalent cat and dog vaccine markets. It is a major supplier in the affected markets with the ability to expand given the incentive. In addition, the Commission considers that Virbac is likely to provide some competitive constraint in the factual [ ].

199. Therefore, the Commission considers that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in either the Multivalent Cat Vaccines Market or the Multivalent Dog Vaccines Market.

The Canine Cough Market

200. Canine cough vaccines are one of the more commonly used products as all dogs are required to have such a vaccine before they are placed in a commercial kennel.

201. Industry participants advised that the market for canine cough vaccines is highly competitive with five existing suppliers: Pfizer; Fort Dodge; Schering-Plough; Virbac; and Boehringer Ingelheim.

202. Table 8 sets out the estimated market shares for the Canine Cough Market based on the sales information provided by industry participants.

Table 8: Estimated Market Shares for the Canine Cough Market for the 2008/09 year

Supplier	Brands	Sales Turnover	Market share
Pfizer	Canvac	[ ]	[ ]
Fort Dodge	Protech BronchiShield	[ ]	[ ]
Combined Entity		*[ ]*	*[ ]*
Schering-Plough	Nobivac	[ ]	[ ]
Virbac	Canigen	[ ]	[ ]
Boehringer Ingelheim	Ontavac	[ ]	[ ]
Total		**[ ]**	**100%**

Source Industry participants

203. Following the proposed acquisition, the combined entity would have a market share of approximately [ ]. However, it would continue to face competition from Schering Plough and Virbac. In addition, Boehringer Ingelheim also has a presence in the market. All these competitors are likely to provide sufficient competitive constraint in the factual.

Conclusion on the Canine Cough Market

204. The Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the Canine Cough market.

Leptospirosis Vaccines for Dogs Market

205. These vaccines include monovalent, bivalent and multivalent vaccines. There are currently three suppliers of leptospirosis vaccines in New Zealand, all of which import their products, namely:

- Pfizer (monovalent);
- Fort Dodge (bivalent and multivalent products); and
- Schering-Plough (monovalent).

206. Table 9 shows the estimated market shares for the leptospirosis vaccines for the dogs market based on the sales information provided by industry participants.

Table 9: Estimated Market Shares for the Leptospirosis Vaccines in Dogs Market for the 2008/09 year

Supplier	Brands	Sales Turnover	Market share
Pfizer	Leptoguard	[ ]	[ ]
Fort Dodge	Protech	[ ]	[ ]
Combined Entity		*[ ]*	*[ ]*
Schering-Plough	Nobivac	[ ]	[ ]
Total		**[ ]**	**100%**

Source Industry participants

207. Table 9 indicates that the acquisition would result in the combined Pfizer/Fort Dodge entity having a market share of approximately [ ]. However, the combined entity would face strong competition from Schering-Plough, which would have approximately [ ] of the market. As with the other companion

animal markets discussed above, Schering-Plough has a strong presence in the industry.

208. [

].

209. [

]

210. Accordingly, the Commission is of the view that [ ] can be considered as a near competitor in this market. [

].

Conclusion on Leptospirosis Vaccines for Dogs Market

211. The Commission considers that the existing competitive constraint provided by Schering-Plough and its scope to expand together with [ ] is likely to be sufficient to constrain the combined entity.

212. Accordingly, the Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the Leptospirosis Vaccines for Dogs Market.

OVERALL CONCLUSION

213. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the following national markets for the manufacture/import and wholesale supply of:

- treatments for cattle for internal parasites;
- treatments for sheep for internal parasites;
- M Hyo vaccines for swine (the M Hyo Market);
- Porcine Parvovirus vaccines for swine (the Parvovirus Market);
- Equine Strangles vaccines (the Equine Strangles Market);
- Multivalent clostridial vaccines for sheep and cattle (the Clostridials Market);
- Multivalent vaccines for cats (the Multivalent Cat Vaccines Market);
- Multivalent vaccines for dogs (the Multivalent Dog Vaccines Market);
- Canine Cough vaccines for dogs (the Canine Cough Market); and
- Leptospirosis vaccines for dogs.

214. The Commission considers that the relevant factual scenario is that where the Schering-Plough /Merck and Pfizer/Wyeth transactions proceed contemporaneously. In this instance, it considers the relevant counterfactual to be the status quo, with none of the firms merged.

215. In most of the relevant markets, the combined entity would be constrained in the by the presence of existing competitors. The majority of these competitors are large, international suppliers with an established presence in New Zealand and would not be constrained in their ability to expand.

216. In several other markets, where there would be a limited number of competitors in the factual scenario, the Commission considers that the threat of potential competition from a manufacturer with an established presence in other markets would act as a constraint on the combined entity.

217. Therefore, the Commission is satisfied that existing and potential competition in all the relevant markets would be likely to constrain the combined entity post-acquisition.

218. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

DETERMINATION ON NOTICE OF CLEARANCE

219. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Pfizer Inc of Wyeth Corporation.

Dated this 20th August 2009

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Dr Mark Berry
Chair
Commerce Commission