

21 April 2004

COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

Date: 21 April 2004

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

NORWOOD DISTRIBUTORS LIMITED - TRACTORS

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

TO BE COMPLETED BY ALL APPLICANTS

1. What is the business acquisition for which **clearance** is sought?

For the acquisition of the New Zealand business of CNH Australia Pty Limited with respect to the importing, purchasing, marketing, distribution, selling and supporting "Case IH" branded agricultural equipment and spare parts in New Zealand.

- 1.1 Identify **what** is to be acquired and **who** is to acquire it.

What is to be acquired is the CNH Australia Pty Limited New Zealand business of importing, purchasing, marketing, distribution, selling and supporting Case IH branded agricultural equipment and spare parts. This business is to be acquired by C B Norwood Distributors Limited.

- 1.2 Attach a copy of any contract or agreement relating to the proposed acquisition.

Contractual documentation is not yet complete.

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1.3 Any notice of clearance will be given only in terms of the above description and, accordingly, will cover only:

- the acquisition of the shares/assets specified under this paragraph of the notice

No shares have been acquired. In addition to the Case IH business being purchased wholegoods owned by CNH Australia Pty Limited currently in New Zealand will also be purchased together with some promotional assets, eg signage, office equipment and C B Norwood Distributors Limited will also take over some liabilities such as vehicle leases.

- the acquisition of those shares/assets by the person identified in this paragraph as the person who proposes to make the acquisition.

The Acquirer is C B Norwood Distributors Limited.

The Person Giving Notice

2. Who is the person giving this notice?

2.1 State name (including both the name of the company and the name/position of the individual responsible for the notice), postal address, telephone and facsimile numbers.

Acquirer: Bob Fitchett, General Manager, C B Norwood Distributors Limited. 888 Tremaine Avenue (PO Box 1265), Palmerston North, Phone: 06 356 4920 Facsimile: 06 356 4939

Agent for Acquirer: Roger Kennedy, Lawyer, Cooper Rapley, 240 Broadway Avenue, (PO Box 1945) Palmerston North Phone: 06 358 6123 Facsimile: 06 356 4345 E-Mail: rkennedy@cooper-rapley.co.nz

2.2 Section 66(1) provides that "A person who proposes to acquire assets of a business or shares may give ... notice ..." If a notice is given by an agent (eg a solicitor) on behalf of the acquirer then you must also give contact details of the acquirer.

Confidentiality

3. Do you wish to request a confidentiality order for:

No order of confidentiality is currently required. If specific confidential commercially sensitive information is provided to the Commission then the Acquirer reserves the right to make a request for a confidentiality order.

- 3.1 The fact of the proposed acquisition?
 - 3.1.1. If so, for how long?
 - 3.1.2. Why?
- 3.2 Specific information contained in or attached to the notice?
 - 3.2.1. If so, for how long?
 - 3.2.2. Why?
- 3.3 The Commission has power to make an order prohibiting the publication or communication of any information or documents received by it for **up to 20 working days after determination of the matter**. See s100 for details.
- 3.4 See also the Official Information Act 1982, and the Commission's brochure on confidentiality.
- 3.5 It would be helpful if you could frame the request in terms of the Official Information Act's criteria for withholding information and provide supporting reasons/information.
- 3.6 On one copy of the notice submitted to the Commission please indicate clearly (eg by underlining or highlighting in a way that photocopies legibly) the **specific information** for which confidentiality is sought. The Commission will not grant "blanket orders" over the entire contents of all or part of the notice simply on the basis that it contains some specific confidential information.

Details of the Participants

4. Who are the participants (ie the parties involved)?
 - 4.1 For the purposes of this notice the term "participant" means:
 - the person who proposes to acquire assets or shares ("the acquirer");
C B Norwood Distributors Limited is the acquirer.
 - where assets of a business are being acquired, the owner of the business;

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The vendor of the business is CNH Australia Pty Limited.

- where shares are being acquired, the company in which shares are to be acquired (“the target company”);

No shares are being acquired.

- any person who owns over 10% of the shares in the target company.

No shares are being acquired.

and will continue to do so after the acquisition.

- 4.2 Give name, postal address, name of contact person(s) and telephone and facsimile numbers of each participant.

Contact Persons for the acquirer are those specified in paragraph 2.1.

Contact details for CNH Australia Pty Limited are:-

**Mr. F. Anglin
CNH Australia Pty Limited
31 – 67 Kurrajong Avenue
ST MARYS NSW 2760
Tel: 0061 2 9673 7777
Fax: 0061 2 9833 1441**

5. Who is interconnected to or associated with each participant?

- 5.1 Acquirer group/associates:

- 5.1.1. If the acquirer is a member of a group of interconnected bodies corporate, identify all members of the group.

C B Norwood Distributors Limited is a 100% subsidiary of Stevens KMS Investments Limited. Stevens KMS Investments Limited is a 100% subsidiary of Stevens KMS Limited. Stevens KMS Limited is a 100% subsidiary of Wahn Investments Limited. Wahn Investments Limited is a 100% subsidiary of Interpacific Holdings Limited of Bermuda.

Companies Office search details of the abovementioned New Zealand Companies are attached as Annexure A. (Interpacific Holdings Limited is not a New Zealand Company)

The shareholders of Interpacific Holdings Limited are understood to be Zuellig family interests with its main focus

being in the global distribution, warehousing, and manufacturing of Pharmaceutical products.

- 5.1.2. Identify all companies in which the acquirer or its interconnected bodies corporate own 10% or more of the shares.

See above.

- 5.1.3. Identify any company which owns over 10% of the shares in the acquirer or any company of which the acquirer is a subsidiary.

See above.

- 5.1.4. Identify all interconnected bodies corporate of any company identified under 5.1.3 and all companies in which it, or its interconnected bodies corporate, own over 10% of the shares.

See above.

5.2 Target company group/associates

- 5.2.1. Identify all subsidiaries of the target company and all companies in which the target company or any subsidiary owns 10% or more of the shares.

CNH Australia Pty Limited is a 100% owned subsidiary with its ultimate parent company being:-

NH Global N.V.

Global Management Office

100 South Saunders Road

Lake Forest, IL 60045 USA

Companies Office search of CNH Australia Pty Limited is attached as Annexure B.

- 5.2.2. If any company owns over 10% of the shares in the “target company”, and will continue to do so **after** the proposed acquisition, then identify all of the interconnected bodies corporate of that company **and** all companies in which it or its interconnected bodies corporate own over 10% of the shares.

- 5.3 For the purposes of questions 5.1.1 - 5.1.4, and 5.2.2, any entity other than a company should be regarded as if it were a company - with the appropriate modifications. For example, an unincorporated joint venture which is owned 50/50 by two persons is regarded as a company with each person holding 50% of the shares.

- 5.4 The terms “interconnected” and “associated” are defined in ss2(7) and 47(3) of the Act. This paragraph of the Notice aims to identify persons interconnected/associated with the participants by way of ownership connections. Paragraphs 7 and 8 are aimed at identifying other associates by way of “cross directorships” and “arrangements” between persons in the relevant markets.
- 5.5 When answering these questions, bear in mind that the Commission is only seeking information that is relevant to the proposal. The Commission does not require exhaustive details of the persons interconnected to, or associated with, the acquirer or target unless those interconnections or associations are relevant to the Commission’s consideration of the competition implications of the proposal.

Example

The acquirer is a member of a group of companies. The parent company of the group has three direct subsidiaries - A, B, and C. Each of those subsidiaries has a number of subsidiaries involved in a particular market or related markets. (For example A is the holding company for a number of subsidiaries each of which owns a retail outlet). The acquisition involves assets of businesses involved in the same markets as C. It is sufficient to ‘identify all interconnected bodies corporate’ of the acquirer (para 5.1.1) as being: the ‘ultimate parent’; ‘A and its subsidiaries’; ‘B and its subsidiaries’; ‘C’, ‘relevant operating subsidiaries of “C” ’; and other ‘subsidiaries of C’.

6. Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

Apart from as disclosed in paragraph 5, neither the person giving this notice nor the agent are aware of any beneficial interest between the Acquirer Group and the CNH Australia Pty Limited Group.

- 6.1 If yes, please identify the number, description and amount.
- 6.2 See s2(7) for definition of interconnected bodies corporate.
7. Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

None known.

Example

Beneficial interests other than shares; common directorships; formal or informal contracts, arrangements or undertakings relating, for example, to prices, terms, and conditions of sale, territorial allocations, product or service distribution/production, or use of technology.

8. Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

No.

8.1 Please provide details of:

- directors' names;

Heinz Walther-McDonnell, Flat 3, 8 Stanley Village Road, Stanley, Hong Kong.

Alistair Peter Wright, 19A The Albany, 1 Albany Road, Central Hong Kong.

- the other companies;

See Annexure A

- the markets involved.

New Zealand is the only market involved.

9. What are the business activities of each participant?

The business activity of CNH Australia Pty Limited is the management of the distribution of CNH Global products in Australia and New Zealand. The "New Holland" and "Case IH" brands of agricultural tractors and equipment imported into Australia are sold, by CNH Australia Limited, to the Australian end user by distribution through two separate networks of independent dealers, keeping the two brands apart.

This company also has the management responsibility to their ultimate parent for the "New Holland" product that has successfully been distributed through C B Norwood Distributors Limited for many years. CNH Australia Limited also imports, markets, and distributes the "Case IH" branded product into New Zealand direct to independent regional dealers.

The business activities of C B Norwood Distributors Limited is the importing, marketing, distribution, selling and supporting of branded agricultural tractors and equipment and spare parts sold through a dealer network of company owned branches and independent Dealers. Currently the principal product is the New Holland brand with the Kubota and to a lesser extent the Ferrari tractor brands and a wide range of other agricultural attachments imported from different suppliers. These products are mostly sold through the New Holland franchised retail outlets. C B Norwood Distributors Limited has in recent years increased its range of agricultural equipment products by successfully sourcing and introducing new brands in competition to other established product in the New Zealand market place.

The parent Companies of CNH Australia Pty Limited are involved in the manufacturing, marketing, distribution, selling and supporting the Case IH brand and the New Holland brand of agricultural tractors, equipment and spare parts internationally.

The parent Companies of C B Norwood Distributors Limited are primarily involved in the warehousing and distribution of branded pharmaceutical products with some regional manufacturing.

- 9.1 Please include a **summary** of **all** the business activities of each participant **including all interconnected bodies corporate thereof and any other business identified in question 5.** (Note the comments on relevancy in paragraph 5 above. It is sufficient to refer in general terms to activities in which there will be no aggregation.)

Company	Business Activity
C B Norwood Distributors Limited	Importing, marketing, distribution, selling and supporting branded agricultural equipment and spare parts.
Stevens KMS Investments Limited	Holding company operating a group treasury function for the NZ subsidiaries.
Stevens KMS Limited	Holding Company
Wahn Investments Limited	Holding company
Interpacific Holdings Limited	Holding company (Ultimate Parent)
CNH Australia Pty Limited	-Importing, marketing, distribution, selling, supporting CNH (Mainly "Case IH" and "New Holland") brands of

	<p>agricultural and industrial tractors, equipment and spare parts into Australia.</p> <p>-Regional Management of CNH brands activity and performance in Australia and New Zealand.</p> <p>-Importing, marketing, distributing, selling, supporting and distribution of the “Case IH” branded product into New Zealand.</p>
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10. What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

Background

Since the invention of farm machinery there were mergers and acquisitions for the joining together of ideas to develop and improve farm productivity. During the later 1900’s the global farm machinery market became a saturated market. A saturated market becomes an increasingly competitive market. This in turn required manufacturers to reduce production which meant the closing of factories and the merger of different branded products. The tractor brands of Ferguson, Ford, David Brown, Nuffield, Leyland and International Harvester were well known in the 1950’s but are no longer manufactured today. They have all been absorbed into other brands over the years. This process of diminishing competition continues.

During 1998/1999 the international operations of New Holland (previously Fiat and Ford) and Case (previously Case and International Harvester) were merged internationally to form CNH Global NV. That merger was scrutinised by jurisdictions in the USA and UK.

The requirements from those jurisdictions of the merger was the divestment of certain factories.

In order to maintain the separate brands of “New Holland” and “Case IH” products they were then forced to manufacture both brands in their remaining factories.

Because of the merger requirements in the United Kingdom the “Case IH” (formerly the International Harvester) factory in the United Kingdom was sold. Product from that factory (purchased by a competitor, Landini of Italy) was re-branded McCormick (a brand name drawn from the history of the International Harvester brand) and is sold internationally under that label. That label is represented in New Zealand by Power Farming (Wholesale) Limited, who, by distributing McCormick with the Landini brand as well as

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Iseki, Renault and Daedong are one of the top three distributors of tractors and farm equipment in New Zealand.

Within New Zealand the Landini owned brands of Landini and McCormick are imported by the same distributor, Power Farming (Wholesale) Limited, and distributed through a common dealer network.

The old Case IH product remains in the marketplace as a McCormick.

The new Case IH variants are now being built in the same CNH factories as New Holland. This is in effect a new and improved entrant to the market place since its introduction to New Zealand in 2002. This will result in increasing competition.

Until 2002, as an interim measure, CNH continued to sell the old UK "Case IH" tractor models in New Zealand after purchasing them from "McCormick" the new owners of the previous Case IH UK factory. They have been competing in New Zealand with the same tractor re-branded as "McCormick" until early 2003.

From 2002 both the "New Holland" and the "Case IH" product are now manufactured in the same factories.

Prior to the global merger the brands had their own separate subsidiary distribution companies in Australia. Subsequently those two distributors were merged to form the current CNH Australia Pty Limited. The "Case IH" brand had been distributed in New Zealand by the Australian Case subsidiary company and has for the last few years been distributed in New Zealand by the merged CNH Australia Pty Limited direct to independent NZ dealers. In New Zealand the "New Holland" product range has been successfully distributed through C B Norwood Distributors Limited for many years prior to the merging of the "Case IH" and "New Holland" worldwide businesses. CNH Australia Pty Limited do not want to be directly involved in the New Zealand market and as for other worldwide operations, now wish to provide distribution for its products through one local distribution outlet. The business to be divested is the importing, marketing, distribution, selling and supporting of "Case IH" branded agricultural tractors, equipment and spare parts in New Zealand.

This Acquisition Proposal.

The reasons for this proposal and intentions in respect of the acquired or merged business are:-

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(a) CNH manufacture all New Holland and Case IH products in its worldwide manufacturing operations.

They have common distribution for their agricultural products in Australia and most other parts of the world including UK, USA and Europe.

In reviewing New Zealand distribution, CNH believe while maintaining separate brands and separate dealer networks it is beneficial for them to work with one distribution company. This will also provide significant benefits to their New Holland and Case IH customer base in New Zealand.

(b) One distribution outlet will provide significant benefits to supporting Case IH dealers with improved product support through improved Spare Parts supply and technical service from a NZ based supplier. This will directly benefit the NZ customer in supporting the product they currently own or future new product.

(c) Spare parts for servicing “Case IH” product has been supplied through the CNH Australia Pty Limited warehouse in NSW. To improve the supply to “Case IH” customers, spare parts will now be readily available through the Palmerston North warehouse of C B Norwood Distributors Limited. This will give existing owners an alternative choice of supply of common parts between Case IH and McCormick dealers.

(d) To enable CNH Australia Pty Limited to concentrate resources in an endeavour to improve its performance in the Australian market while retaining a supervisory function over the performance of the agricultural products marketed in New Zealand.

The New Holland product is currently the major source of business for C B Norwood Distributors Limited who will continue to be the largest customer of CNH Australia Pty Limited.

It is a requirement of CNH Global NV that the “New Holland” and “Case IH” brands will continue to be marketed as distinct brands. The New Zealand franchised dealer networks will accordingly remain separate and that at an end user level there will remain competition between these two brands.

With CNH Australia Pty Limited continuing to monitor the marketing strategies of C B Norwood Distributors Limited the continued separation of regional dealerships is assured.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Explanatory note

See s3(1) for definition of market. Note that markets are characterised by the products involved (ie goods or service), the functional level (eg manufacturing, wholesaling or retailing), the geographical area and, in some cases, the relevant timeframe. These concepts are elaborated in the Commission's "Practice Note 4".

Horizontal Aggregation

11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

Yes.

- 11.1 Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 - 5.1.4), **and**

- the business to which the assets relate, **or**
- the 'target company' (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)

are both engaged?

The head New Zealand distributor for both "New Holland" and "Case IH" branded agricultural products will be the same party.

- 11.2 Please identify for each market:

- 11.2.1. the product(s), functional level, geographical area and (where relevant) timeframe;

The market is New Zealand wide distribution of agricultural tractors, equipment and spare parts.

- 11.2.2. the specific parties involved;

The specific parties involved are C B Norwood Distributors Limited and CNH Australia Pty Limited.

- 11.2.3. the relationship of those parties to the acquirer or the target company as the case may be.

Not applicable.

Differentiated Product Markets

Explanatory Note

In differentiated products markets, the products of firms are by definition not perfect substitutes for each other. The substitutability between products will vary depending upon differences in their various characteristics, which may include their physical specifications, brand image, associated services and location of sale. Buyers will choose between products on the basis of these characteristics as well as price. In simple terms, differentiated products can be thought of as being arranged in a "chain of substitutes", where those in adjacent positions in the chain tend to be close substitutes, and those positioned further apart are less close substitutes.

12. Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).

Differentiated

13. For differentiated product markets:

- 13.1 Please indicate the principle characteristics of products that cause them to be differentiated one from another.

**Brand, Country of Manufacture, Component brands used in the manufacture. Eg. Iveco, Perkins or Cummins engines.
The large range of different model options with wide specification variations for different applications.
Variations include size and brand of engines, tyres, transmissions, cabs, controls, electronic function, hydraulics.**

- 13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?

All brands have models and options that have close performance characteristics.

- 13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? – which are more distant substitutes?

All brands compete in all market segments of customer type and/or horsepower group.

- 13.4 Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

The large number and variety of brands available through approximately 150 local dealers nationwide involved in selling agricultural equipment/tractors provides a high level of competition at the retail level.

The majority of retail transactions also involve trade in values negotiated with local dealers with no influence from the distributor. All retail customers check out competitors. Even checking with neighbouring dealers of the same brands.

The Commission would be assisted in its analysis of the effects of the proposed transaction in a differentiated product market by evidence on product substitutability derived from marketing or consumer surveys, comparative product analyses and evidence of the effect of relative price changes on the demand for different products.

Vertical Integration

Explanatory Note

Economic arrangements between businesses in a supplier-customer relationship are termed 'vertical'. Vertical links are links that exist between firms operating at different functional levels (eg manufacturing, wholesaling or retailing). Vertical links may take the form of long-term supply contracts, customer and territorial restraints, tying arrangements, exclusive dealing etc.

Where the supplier of a product or service acquires control of a customer or a potential customer for the product or service, or where the customer for a product or service acquires control of a supplier or potential supplier of that product or service, "vertical integration" is said to take place.

Usually vertical integration involves a firm integrating forward to the next, or backward to the previous, functional level. However, it could involve acquisition or control of any upstream or downstream market participant.

14. Will the proposal result in vertical integration between firms involved at different functional levels?

No.

14.1 Are the “acquirer” (or any interconnected or associated company as identified in questions 5.1.1 -5.1.4) and:

- the business to which the assets relate, **or**
- the ‘target company’ (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2) engaged at different functional levels of the same product market(s)?

14.2 Please identify for each market:

14.2.1. product(s), functional level(s), geographic area(s) and (where relevant) timeframes;

14.2.2. the specific parties involved;

14.2.3. the relationship of those persons to the ‘acquirer’ or ‘the target company’ as the case may be.

14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.

15. In respect of each market identified in questions 11 and/or 14 identify briefly:

15.1 all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,

15.1.1. the outcome of the notification (eg cleared, authorised, declined, withdrawn)

15.1.2. whether the proposed acquisition has occurred.

15.2 any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.

See question 4.1 above for definition of participant. Please cite Commission references where possible.

PLEASE ANSWER QUESTIONS 16 - 26 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

16. In the market or markets, who are the suppliers of competing products, including imports?

Listed below are the New Zealand distributors of the brands listed below:

<u>Distributor</u>	<u>Brand</u>
C B Norwood Distributors Limited,NZ	New Holland Kubota Ferrari
CNH Australia Pty Limited, Australia	Case IH
John Deere Limited, Australia	John Deere
Power Farming (Wholesale) Limited,NZ	McCormick Landini Renault Iseki Daedong
Dan Cosgrove Limited, NZ	Same Lamborghini
LandPower Holdings Limited,NZ	JCB Deutz
Agco Australia Limited,Australia	Massey Ferguson Fendt
Valtra Tractors (A & NZ) Limited,NZ	Valtra
Doug McFarlane Limited,NZ	Carraro

- 16.1 Please identify the owners of those suppliers (including ultimate owner/s).
See Annexure C

16.2 What are their estimated market shares, both in terms of productive capacity and of sales?

- give the total size of the domestic market;

For the 12 Months ended 31 December 2003 the New Zealand Tractor Market totalled [] new units.

This is obtained by the members (listed above) of the “Tractor and Machinery Association” (TAMA) reporting their respective monthly unit sales to TAMA. TAMA then advises members of the comparative and total volumes.

- identify at least the four leading suppliers;

See Annexure C

- include participants to the proposal;

See C B Norwood Distributors Limited and CNH Australasia Pty Limited – see Annexure C

- identify imports clearly (including the country of origin and the importers); - **All distributors import goods, there are no tractors manufactured in New Zealand – see Annexure C.**

- identify source(s) of estimates; and

**TAMA Tractor and Machinery Association
c/- Geoff Armstrong
62 Norton Park Ave
Lower Hutt
Phone: 04) 567 7839**

- note that competing goods may not be confined to identical or branded goods.

Rank	Supplier	Country of Origin	Owner(s) of supplier	Estimated % of productive capacity	Estimated % of market sales
1			SEE ANNEXURE C		

Sources of Estimates:

16.3 Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

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TAMA Collation of data supplied by member tractor importers of monthly sales. The % ages on the above table relates to the Actual 12 Months ended December 2003.

- 16.4 Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

Attached worksheet shows the 1999 to 2003 years actual unit numbers and market shares.

Other Considerations

- 16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

There are no known tractor brands of significance not already represented in the New Zealand market.

- 16.6 Estimate the productive capacity that such near entrants potentially could bring to the market.

The market is a distributorship with no production in the New Zealand market.

- 16.7 Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?

There are no domestic manufacturers of tractors. All branded product for the New Zealand branded agricultural tractor market is imported. Because all tractor product is imported the domestic price of imports does change with the New Zealand dollar exchange rate.

- 16.8 To what extent is the product exported?

An insignificant amount of branded new agricultural tractor equipment is exported from New Zealand.

- 16.9 Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

Case IH has always been independent of other market participants. Pricing behaviour is related to the customer's changeover price (ie. Net of Trade-in). Most sales are decided on the negotiated price between the end user and the local regional dealer. The New Zealand industry for agricultural equipment is very competitive. From 1998/1999 when CNH was formed internationally as mentioned above the English factory of "Case IH" was sold to a competitor and re-branded McCormick. Since 2001 McCormick has been sold in New Zealand through Power Farming (Wholesale) Limited as importer/distributor, During 2001-2002 "Case IH" imported the same product (but branded "Case IH") purchased from the McCormick factory. This has obviously increased pricing competition for the same product. Since 2002 "Case IH" and "New Holland" are produced by the same CNH factories and are distributed internationally by the same international distributor organisation. Case IH's market share has been dramatically dropping since entry into the market of the McCormick brand.

Since 1999 and the CNH Global NV merger, major competitors have pursued an aggressive policy to take advantage of the various changes in distributors and the confusion and manufacturing difficulties resulting from the "New Holland" and "Case IH" merger.

The market has been very competitive for many years and following this proposed acquisition will remain very competitive. There are currently eight participants in the market with more than [] market share and four participants have a market share of [] or more. Following the acquisition there will be seven participants in the market having a market share of more than [] and three participants having a market share of more than [].

Conditions of Expansion

17. The following listing gives different types of market conditions that may effect the ability of existing firms to expand:

- *Frontier entry conditions*

eg tariffs, quarantine requirements, international freight costs.

There is no significant frontier entry issue.

- *Legislative/regulatory conditions*

eg meat licensing, Resource Management Act requirements, health and safety standards.

There is no significant issue.

- *Industrial/business*

eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.

The major market participants, C B Norwood Distributors Limited, CNH Australia Limited, John Deere Limited, Power Farming (Wholesale) Limited, and Agco Australia Limited, Landpower Holdings Limited, and Dan Cosgrove Limited all have extensive nationwide dealership networks. All distributors through the promotional activities of trade periodicals, A & P shows, agricultural field days and on farm canvassing by local franchised dealer sales staff have significant exposure to the end user market.

- *Other*

eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

All agricultural tractors sold in New Zealand are imported from an overseas manufacturing source.

With the current products there is little ability to reduce price unless there is a reduction from the manufacturer. "New Holland" and "Case IH" now have the same manufacturer. The market for agricultural equipment is a shrinking market, prices are very competitive and service levels are high.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

None of the above conditions would create a barrier to competitor expansion.

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

See Annexure D attached.

18. Please name any business which already supplies the market – including overseas firms - which you consider could increase supply of the product concerned in the geographic market by any of the following means:

All current importers have the capacity in the short term to increase supply by ordering additional volumes to meet demand.

- diverting production into the market (eg from exports)

There are no New Zealand manufacturers. However, it is easy for overseas manufacturers to divert more product to New Zealand if sales in larger markets decrease.

- increasing utilisation of existing capacity

All overseas manufacturers may be able to increase manufacturing capacity. The size of the New Zealand market would have little influence on their manufacturing capacity.

- expansion of existing capacity.

New Zealand distributors do not control manufacturing capacity.

Specify in each case which of the above three points applies.

Diverting production to the New Zealand market could possibly occur from time to time.

19. Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

Supply would likely be increased to the New Zealand market if large international markets go into decline and the New Zealand market was buoyant.

20. How long would you expect it to take for supply to increase in each case?

The time it takes for supply to increase is the time it takes to deliver product from the factory, approximately four to eight weeks.

21. In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?

Dealers are able to terminate dealership arrangements on a short three month notice and change to other suppliers. When New Holland and Case IH merged internationally this became quite prevalent in the United

Kingdom with many former Case IH distributors changing to the McCormick brand.

22. Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

Competitors could approach the existing dealers to switch. Also, concerted marketing with possible pricing action, particularly during the settle down period, by competitors is likely.

Coordinated Market Power

Explanatory Note

A merger or acquisition can result in a substantial lessening of competition in the market where it enhances 'coordination effects', such that the remaining firms are more easily able to form and maintain collusive arrangements (whether tacit or explicit) through which market power can be exerted. The market characteristics that may facilitate or impede coordination effects are listed in the Commission's Practice Note 4.

23. Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.

The two brands will continue to be maintained as separate independent dealer networks. This is a requirement by CNH Australia Limited for the acquisition to proceed. Collusion between competitors is no more or less likely to occur as a consequence of this proposed acquisition.

24. Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

As the market is very competitive it is unlikely that the various local regional franchised dealers would agree to coordinated behaviour. Nationally there are approximately 150 retail dealer outlets all involved in selling agricultural equipment.

25. Indicate whether the markets identified in paragraph 9 above show any evidence of price coordination, price matching or price following by market participants.

The Acquirer does not believe there is any evidence of price coordination, there is some evidence of price matching or similar pricing and price following by market participants. This is regarded as normal commercial

behaviour because if pricing remains for a prolonged period of time out of alignment with competitors then this will likely affect in short order the ability to sell products.

26. Please state the reasons why, in your opinion, the transaction will not increase the risk of coordinated behaviour in the relevant market(s).

Coordinated behaviour in the market is unlikely because:

- **The product is sourced from overseas manufacturers who compete on all world markets.**
- **The overseas markets are highly competitive between manufacturers.**
- **The New Zealand market is highly competitive with approximately 150 retail dealer outlets.**
- **There is a high product knowledge by end user customers to ensure competitiveness remains.**
- **Overseas pricing is a major determinant in New Zealand pricing.**
- **The New Zealand dollar exchange rate is a major determinant in pricing.**
- **The highly competitive nature of each retail dealership would maintain competition.**
- **The conduct of existing competitors is sufficient to ensure that competition would not be substantially lessened.**

NOTE: If you believe that the constraint imposed by the conduct of existing competitors would be sufficient to ensure that competition would not be substantially lessened in any market, you may choose not to answer any further questions at this stage. However, the Commission may require written answers to any further questions it considers necessary to ask (see s68(1)). Otherwise, applicants should answer the further questions below.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Because the Acquirer, C B Norwood Distributors Limited, believes the constraint imposed by the conduct of existing competitors would be sufficient to ensure that competition is not substantially lessened. It has chosen not to answer further questions at this stage.

PLEASE ANSWER QUESTIONS 27-41 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14

Conditions of Entry

27. The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

- *Frontier entry conditions*
eg tariffs, quarantine requirements, international freight costs.
- *Legislative/regulatory conditions*
eg entry licensing, Resource Management Act requirements, health and safety standards.
- *Industrial/business conditions*
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- *Other conditions*
eg responses to expansion by major firms.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

Explanatory Note

'New entry' differs from 'near entry' in that substantial new investment, often involving significant sunk costs, in both tangible and intangible assets, and over a longer time scale, is typically required.

28. Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:

- investing in new production facilities to produce the product;
- overseas companies diverting production to New Zealand;

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- domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment)

Specify for each named business which of the above three might apply.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

Likelihood, Sufficiency and Timeliness of Entry

30. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?
31. Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?
32. Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?
33. What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie *de novo* entry?
34. How long would you expect it to take for *de novo* entry to occur?
35. In your opinion, to what extent would the possibility of *de novo* entry constrain the merged entity?

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

36. Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?
37. Who owns them?
38. In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?
39. Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?

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40. Who owns them (where appropriate)? Please list as follows:

Relevant market	Acquirer	Owner(s) of the acquirer
1.		
2.		
Etc.		

41. In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

FURTHER INFORMATION

- 42. Attached as Annexure E is the CB Norwood Distribution Limited dealer distribution list and contacts.
- 43. Attached as Annexure F is the Case IH New Zealand dealer distribution list and contacts.

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THIS NOTICE is given by **Robert Fitchett, General Manager, C B Norwood Distributors Limited**

C B Norwood Distributors Limited hereby confirms that:

- * all information specified by the Commission has been supplied;
- * all information known to the applicant/s which is relevant to the consideration of this application/notice has been supplied;
- * all information supplied is correct as at the date of this application/notice.

C B Norwood Distributors Limited undertake/s to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated 21 April 2004.

Signed by C B Norwood Distributors Limited:

R Fitchett – General Manager

I am a officer of the company and am duly authorised to make this application/notice.]

Please Note

- this declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.
- the wording in this declaration may not be varied by the applicant.
- if this declaration is not completed, the Commission may decline to register the notice/application.
- registration may be effected on receipt of a facsimile copy of a completed application or notice together with the confirmation of deposit of the appropriate fee to the Commission's account. The original documentation

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- must be forwarded to the Registrar, Business Acquisitions & Authorisations, Wellington, within 3 working days of registration. For account details, contact the Accountant (04) 498 0926 or the Manager, Corporate Services (04) 498 0921.

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ANNEXURE A (clause 5.1.1)

Acquirer Group Company Searches

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ANNEXURE B (clause 5.2.1)

CNH Australia Pty Limited Company Search

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ANNEXURE C

Competitor Details, Ownership, Brands, Country of Origin and Sales.

Rank	Supplier - Tractor Brands	Country of Origin	Owner(s) of supplier	Actual % of market sales: Calendar Year				
				1999	2000	2001	2002	2003
1	John Deere Limited, Australia - John Deere	Germany, USA.	Ultimate Parent: Deere & Company, Delaware, USA	[]	[]	[]	[]	[]
2	C B Norwood Distributors Limited	Tractor factories in Italy, Turkey, France, UK, USA. Japan, USA. Italy	Stevens KMS Investments Limited (see Section 5.1.1) NZ	[]	[]	[]	[]	[]
	- New Holland							[]
	- Kubota - Ferrari							[] []
3	Power Farming (Wholesale) Limited - McCormick - Landini - Renault - Iseki - Daedong	UK. Italy France Japan Korea	G J & L Maber, NZ	[]	[]	[]	[]	[]
4	CNH Australia Pty Limited -Case-IH.	As for New Holland above	Ultimate Parent: CNH Global N V, USA	[]	[]	[]	[]	[]
5	Agco Australia Limited - Massey Ferguson - Fendt	UK, USA, France Germany	Ultimate Parent: AGCO Corporation, Georgia, USA	Distributed by Power Farming (Wholesale) Limited		[]	[]	[]
6	Dan Cosgrove Limited		Dan Cosgrove, NZ	Distributed by Power Farming (Wholesale) Limited		[]	[]	[]

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	- Same - Lamborghini	Italy Italy						
7	Landpower Holdings Limited - JCB. - Deutz Fahr,	 Germany	H Whyte, NZ	[]	[]	[]	[]	[]
8	Valtra Tractors (A & NZ) Pty Limited, Australia - Valtra	 Sweden	Valtra Inc., Sweden	New Entrant to the market 2001		[]	[]	[]
9	Motor Holdings (Machinery) Limited	 China		[]				
Total Tractor Market				[]	[]	[]	[]	[]

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ANNEXURE D (clause 17)

Market Analysis for Past 5 Years

DRAFT

Over 40hp Competitive Share Trends 1994-2003 New Zealand

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	YTD February 2004
New Holland	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Agco	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Case	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Dan Cosgrove	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
John Deere	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Land Power	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Power Farming	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
Others	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
	99.00%	99.90%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

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ANNEXURE E

**NEW HOLLAND - NEW ZEALAND
DEALER CONTACT DETAILS AS AT 20 APRIL 2004**

Name	Locality	Postal Address 1	Postal Address 2	Dealer Principal	Phone No.	Fax No.	Email Address
Dave Boyt Machinery Services Ltd	Dargaville		23 Normanby Street	Dave Boyt, Joe Lenseen	(09) 439 5266	(09) 439 3267	boytdarg@xtra.co.nz
Dave Boyt Machinery Services Ltd	Kaikohe	P O Box 628	56 Broadway	Dave Boyt, Joe Lenseen	(09) 405 2269	(09) 405 2269	
Dave Boyt Machinery Services Ltd	Whangarei	P O Box 87	22 Rewa Rewa Road	Dave Boyt, Joe Lenseen	(09) 438 4719	(09) 438 5936	sales@daveboyt.co.nz
Dave Boyt Machinery Services Ltd	Wellsford		343 Rodney Street	Dave Boyt, Joe Lenseen	(09) 423 8864	(09) 423 8866	
Norwood Farm Machinery Centre	Pukekohe	P O Box 104	8 Massey Avenue		(09) 238 7189	(09) 238 3799	
Central Motors (2001) Ltd	Ngatea	P O Box 22	60 Orchard Road	Mark Browne	(07) 867 7524	(07) 867 7526	cenmtr@wave.co.nz
Chown's Ag Centre	Huntly		Spiers Road	Dave Chown	(07) 828 6456	(07) 828 6458	sales@chowns.co.nz
Norwood Farm Machinery Centre	Te Awamutu	P O Box 175	859 Ohaupo Road	Haydn Megaffin	(07) 872 0232	(07) 871 8191	megaffinh@norwood.co.nz
Murray Wilcox Ltd	Matamata	P O Box 101	62 Firth Street	Murray Wilcox	(07) 888 7139	(07) 888 8669	mwilcoxltd@xtra.co.nz
Giltrap Farm Machinery	Otorohanga	P O Box 104	1 Progress Drive	Andrew Giltrap	(07) 873 8860	(07) 873 7449	andrew@giltrapfm.co.nz
R & R Tractors (Te Puke)	Te Puke	P O Box 582	Cnr Main & Quarry Roads	Robin Murray	(07) 573 9107	(07) 573 6915	sales@rr-tractors.co.nz
JMV Limited Tractors & Machinery	Rotorua	P O Box 10 130	22-24 Fairy Springs Road	Theo van den Broek	(07) 347 7249	(07) 348 2582	jmvlttd@clear.net.nz
Norwood Farm Machinery Centre	New Plymouth	P O Box 4042	146 Gill Street	Peter Naus	(06) 757 5582	(06) 758 0608	nausp@norwood.co.nz
Norwood Farm Machinery Centre	Hawera	P O Box 337	145 Glover Road	Craig Wilson	(06) 278 6159	(06) 278 6341	wilsonc@norwood.co.nz
Norwood Farm Machinery Centre	Hastings	P O Box 767	503 Karamu Road North	Peter Larking	(06) 876 7034	(06) 876 3210	larkingp@norwood.co.nz

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Norwood Farm Machinery Centre	Palmerston North	P O Box 1744	886 Tremaine Avenue	Dave Rowell	(06) 351 2799	(06) 351 2798	rowelld@norwood.co.nz
Norwood Farm Machinery Centre	Masterton	P O Box 578	4 Chapel Street	Mark Sanger	(06) 377 2184	(06) 377 0970	sangerm@norwood.co.nz
NS Rogers	Riwaka		408 Main Road, R D 3	Jeff Rogers	(03) 528 9212	(03) 528 6804	ns.rogers@mta.net.nz
Williams Service Centre (1990) Ltd	Blenheim	P O Box 648	12 Nelson Street	Graeme Morgan	(03) 578 1021	(03) 578 0580	wsc@paradise.net.nz
Westland Farmers	Westport	P O Box 94	Henley Street	Angus Hewetson	(03) 788 8050	(03) 789 5194	
Norwood Farm Machinery Centre	Christchurch	P O Box 11 050	726 Main South Road, Templeton	Ian Massicks	(03) 349 5089	(03) 349 5093	massicksi@norwood.co.nz
Doyleston Engineering Works Ltd	Doyleston	P O Box 4	Queen Street	Kevin Burt	(03) 324 3940	(03) 324 3940	dewl@xtra.co.nz
Gluyas Motors Ltd	Ashburton	P O Box 144	Kermode Street	Peter Gluyas	(03) 308 5049	(03) 308 5046	gluyasford@ashburton.co.nz
Johnson Gluyas Tractors Ltd	Washdyke	P O Box 2042	252 Hilton Highway	Chris Johnson	(03) 688 1133	(06) 688 2382	chris@johnson-gluyas.co.nz
Robb's Garage Ltd	Roxburgh		119 Scotland Street	Colin Robb	(03) 446 8129	(03) 446 8251	robbs.roxburgh@xtra.co.nz
Norwood Farm Machinery Centre	Mosgiel	P O Box 82	Cnr McGlashan St & Gladstone Rd	Tony Mobbs	(03) 489 7754	(03) 489 4554	mobbst@norwood.co.nz
Southland Tractors Ltd	Gore	P O Box 361	Cnr Ordsal & Avon Streets	Grant Price	(03) 208 8333	(03) 208 8332	hbreen@slandtractors.co.nz
Southland Tractors Ltd	Invercargill	P O Box 1274	853 North Road	Grant Price	(03) 235 8741	(03) 232 8713	slandtractors@xtra.co.nz

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ANNEXURE F

CASE IH - NEW ZEALAND DEALER CONTACT DETAILS AS AT 12 MARCH 2004

Name	Locality	Postal Address 1	Postal Address 2	Dealer Principal	Phone No.	Fax No.	Email Address
Kaitaia Tractors	Kaitaia	P O Box 35	Kaitaia	Clarence Foster	(09) 408 0670	(09) 408 2949	kaitaia.tractors@xtra.co.nz
Roger Gill Motors	Pukekohe	P O Box 288	Pukekohe				
Roger Gill Motors	Huntly	P O Box 288	Huntly	Phillip Gill	(07) 828 8021	(07) 828 8023	rgm1@xtra.co.nz
Whyteline	Paeroa	P O Box 254	Paeroa	John Whyte	(06) 862 8783	(06) 862 8782	whyteline@xtra.co.nz
Piako Motors	Morrinsville	P O Box 318	Morrinsville	Darrell Russell	(07) 889 7055	(07) 889 0024	darrell@piakogroup.co.nz
Ross Todd Motors	Cambridge	P O Box 507	Cambridge	Martyn Todd	(07) 827 7159	(07) 827 7157	martyn@rosstoddmotors.co.nz
Littlejohn Machinery Ltd	Whakatane	P O Box 59	Whakatane	Dick Littlejohn	(07) 308 5299	(07) 308 5298	r.littlejohn@clear.net.nz
Piako Motors	Rotorua	P O Box 318	Rotorua				
McCannics	Gisborne	P O Box 765	Gisborne	Robbie McCann	(06) 869 0170	(06) 869 0171	maccannics@xtra.co.nz
Agricultural Machinery	Hawera	P O Box 385	Hawera	John Hermann	(06) 278 5119	(06) 278 5673	amt@dbz.co.nz
Stevenson & Taylor	Waipukurau	P O Box 238	Waipukurau	Bill Donnithorne	(06) 858 9164	(06) 8589145	snt@xtra.co.nz
Transag	Palmerston Nth	P O Box 215	Palmerston Nth	Merv Avery	(06) 354 7164	(06) 354 1992	Admin.Lyn@Transag.co.nz
Tulloch Farm Machines	Masterton	P O Box 200	Masterton	John Tulloch	(06) 370 0390	(06) 370 0391	j.tulloch@tulloch.co.nz
Brian Miller Truck & Tractor	Nelson	P O Box 3070	Richmond, Nelson	Brian Miller	(03) 544 5723	(03) 544 5140	bmt@ihug.co.nz

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Cochranes of Canterbury	Leeston	P O Box 12	Leeston	Bruce Cocbrane	(03) 324 3791	(03) 324 3215	cml@dbs.co.nz
Ashburton Implement Services	Ashburton	P O Box 127	Ashburton	Geoff Wall	(03) 308 7059	(03) 308 9723	geoff.wall@ais.net.nz
Redline Tractors	Timaru	P O Box 2053	Washdyke	Len Higginis	(03) 688 9880	(03) 688 2756	admin@redline.co.nz
Mclaren Machinery	Mosgiel	P O Box 318	Mosgiel	John Stumbles	(03) 489 7080	(03) 489 7084	mml@dbs.co.nz
Ganders of Southland	Invercagill	P O Box 5034	Waikiwi, Invercargill	Colin Clay	(03) 215 9039	(03) 215 8053	colin@claygroup.co.nz