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COMMERCE COMMISSION

DECISION NO. 316

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

RICHMOND LIMITED

and

LOWE WALKER NZ LIMITED

- The Commission:** Peter Allport
Cathie Harrison
Roger Taylor
- Summary of Proposed Acquisition:** The proposed acquisition by Richmond Limited, or an interconnected body corporate, of the beef and sheep procurement and slaughtering related assets owned and operated by Lowe Walker NZ Limited.
- Determination:** Pursuant to s 66(3)(a) of the Act, the Commission determines to give a clearance for the proposed acquisition.
- Date of Determination:** 11 February 1998

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MEMORANDUM

To: Peter Allport
Cathie Harrison
Roger Taylor

From: Jeff Hamilton
John Preston
Jo Bransgrove

Date: 11 February 1998 (Working Day 8)

Subject: **Commerce Act 1986: Business Acquisition: Richmond Ltd/Lowe Walker NZ Limited**

Working Day 8: 11 February 1998 Working Day 10: 13 February 1998

Confidential material in this report is contained in square brackets.

THE PROPOSED ACQUISITION

1. Clearance has been sought by Richmond Limited (Richmond) to acquire the beef and sheep procurement and slaughtering related assets of Lowe Walker NZ Limited (Lowe Walker), and subsidiary or associated companies, including Hill Country Beef NZ Limited (Hill Country Beef) and Hill Country Lamb Limited (Hill Country Lamb).
2. The major assets which Richmond intends to acquire are:
 - six beef processing facilities in the North Island – one each at Te Aroha, Dargaville, Hastings, Paeroa, Hawera and Awatoto (near Napier);
 - one sheep processing plant at Awatoto, and a further lamb processing plant at Hastings;

- a 10.9% shareholding in Waitotara Meat Company Limited (Waitotara Meat);
 - various brand names;
 - export quota; and
 - a blood processing facility at Hawera.
3. The transaction does not cover the businesses, goodwill, or shares of Lowe Walker. Further, Lowe Walker intends retaining its interest in a fellmongery at Whakatu, rendering plants at Tuakau and Hawera, and a tannery at Hastings.

PROCEDURES

4. The proposed acquisition was registered on 29 January 1998 under s 66 of the Act. In terms of s 66(3) of the Act, the Commission is required to give clearance for the proposal within 10 working days, unless the Commission and the person who gave the notice agree to a time extension. A decision on the notice is due by 13 February 1998.
5. In the notice, the applicant requested confidentiality as to the fact of the proposal. However, the request was later withdrawn following a public announcement of the proposal on 4 February 1998.
6. This report concludes that staff are satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market, and recommends that, in terms of s 66(3)(a) of the Act, the Commission gives clearance for the proposed acquisition.

THE PARTIES

Richmond Limited

7. Richmond is a long established unlisted company with a substantial farmer shareholding. Primary Resources Limited, a wholly owned subsidiary of the New Zealand Meat Producers Board, held a 33.4% interest in the company, and has announced recently the sale of that shareholding to HKM Associates Limited, a company representing Maori pastoral interests.
8. Richmond operates three beef plants - one each at Hastings, Otaki and Te Kauwhata (Waikato) - and two sheep and lamb plants in the Southern Hawkes Bay - Oringi and Takapau. In addition, the company owns a fellmongery, a tannery, and facilities to recover or process animal by-products. Richmond is also engaged in the wholesaling of meat on the domestic market as well as the international marketing of meat products.

Low Walker NZ Limited

9. Low Walker is a holding company for a group of companies controlled by interests associated with the Lowe family. As noted above, Low Walker owns 6 beef processing plants¹, one sheep processing plant, and a further processing plant for lambs. In addition, Low Walker owns 10.9% of the shares in Waitotara Meat, a company which operates sheep meat plants at Wanganui and Tirau (near Rotorua).
10. Business activities which are undertaken by Low Walker, but which lie outside the ambit of this proposal, include tanning, fellmongering, and meat rendering.

BACKGROUND ON THE INDUSTRY

11. Extensive background information on the meat industry is contained in the Commission's Decision No 273 dated 2 February 1995, which related to the collective acquisition and closure of meat processing plants formerly operated by Weddel New Zealand Limited. It is not intended to reproduce that information in this report.

12. Some major developments which have occurred since Decision 273 include:

- the meat industry has continued to be characterised by low levels of profitability and over-capacity;
- the departure of meat processors, including two companies which have gone into liquidation or receivership (Benmore Products Limited and Paramount Export Limited);
- the closure or mothballing of existing processing capacity (eg Affco has mothballed its Waitara beef processing plant and its Taumarunui sheep meat processing plant); and
- the opening of new plants (including Universal Beef Packer's beef processing plant at Te Kuiti), and the commissioning of new plants by existing processors (eg a new sheepmeat plant has been built by Progressive Meats Ltd at Gisborne).

THE RELEVANT MARKETS

Market Definition

13. The business activities in which Richmond and Lowe Walker have a common interest, and which are directly affected by the proposal are:
 - the procurement of beef, sheep and lamb for export slaughter in the North Island;
 - the processing of meat by-products; and
 - the wholesale supply of meat products in New Zealand.

14. In Decision 273, the Commission defined the relevant markets as being:
 - the procurement of sheep and lambs for slaughter and processing in the North Island; and
 - the procurement of beef for slaughter and processing in the North Island.

15. Our enquiries have revealed that the product and function markets described above are still applicable. While we have found that some stock is transported from the South Island to the North Island, the numbers do not appear sufficient to warrant modifying the previous geographic market definition.

16. Accordingly, for the purpose of reviewing the likely impact of the proposed acquisition, we propose to define the markets of primary relevance as outlined in para 14. We also intend to examine the markets for the processing of meat by-products in New Zealand, and the wholesale supply of meat products in New Zealand.

COMPETITION ASSESSMENT

Statutory Considerations

17. Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to decline to give clearance to a proposed acquisition if it is not satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market.

Assessment of the Likely Impact of the Proposed Acquisition on the Markets for Meat By-Products and Meat Wholesaling

18. There are many meat processing plants located throughout New Zealand which are engaged in the rendering and recovery of animal by-products for sale on the domestic and overseas markets. We therefore consider that competition in this market is unlikely to be diminished to any significant extent as a result of the implementation of this proposal, and that several meat companies, including Affco New Zealand Limited (Affco), Primary Producers Co-op Society Ltd and Alliance Group Limited, will continue to provide a competitive constraint on the activities of the combined entity.
19. In relation to the wholesaling of meat, the parties to the acquisition are only minor participants in the market. Further, the combined entity would continue to face vigorous competition from numerous other suppliers, including Affco, Lakeview Farm Fresh Limited, and various regional local abattoir companies.
20. Having regard to the above factors, we conclude that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the meat by-products and meat wholesaling markets.

Assessment of the Likely Impact of the Proposed Acquisition on the Markets for the Procurement of Sheep and Lambs for Slaughter in the North Island

Current Competition

21. Richmond is a major processor of export lamb at its two plants in the Southern Hawkes Bay. In contrast, Lowe Walker is only a minor participant in this market with its participation in the market confined largely to its interest in Hill Country Lamb, the operator of a plant in the Hawkes Bay.
22. There is a large number of other competitors in this market. These include Affco, which is the largest player in the market, and many smaller operators, including Taylor Preston Ltd (Taylor Preston), Waitotara Meat, Frasertown Meat Company Ltd (Frasertown), Progressive Meats Limited (Progressive Meats), and Crusader Meats New Zealand Limited (Crusader Meats).

Market Shares

23. On the basis of 1996/97 figures supplied by the NZ Meat and Wool Board's Economic Service, market shares were estimated as follows:

	% (Approx)
Richmond	[
Lowe Walker	
Affco	
Taylor Preston	
Waitotara Meat	
Others]
	<u>100.0</u>

Notes:

1. Local slaughter throughput is not included in the above figures.
2. The market shares for Lowe Walker include the throughput for Hill Country Lamb, an associated company of Lowe Walker.
3. The figures are calculated on the basis of lamb equivalents with one sheep equal to 1.15 lambs.
4. Others include Progressive Meats, Crusader Meats and Frasertown.

Impact of the Proposed Acquisition on the Lamb/Sheepmeat Market

24. Implementation of the proposal would result in some aggregation in this market with Richmond increasing its market share from around [] to around []. The increase arises largely from the addition of Hill Country's lamb processing plant near Napier. Such a market share falls inside the 40% safe harbour outlined in the Commission's Business Acquisition Guidelines.
25. While Richmond is proposing to acquire around an 11% shareholding interest in Waitotara Meat, we consider that this interest would not lead to Waitotara Meat becoming an associated person in terms of the Act. The reason is that the Pearce family interests would maintain a controlling influence through a shareholding in Waitotara Farmers Holding Company Ltd, the majority shareholder in Waitotara Meat, and a separate shareholding in the name of Mr D R Pearce. As a consequence, we have not aggregated the market share of Waitotara Meat with that of the merged entity.
26. We consider that the combined entity would continue to face competition from Affco, which accounts for around [] of the sheepmeat market as well as many smaller competitors, including Taylor Preston (around []) and Waitotara Meat (about []). Further, if the combined entity were to attempt to exercise undue market power, there is the potential for existing competitors to expand their capacity relatively quickly, including through the introduction of extra shifts, the recommissioning of mothballed plants, or the building of new capacity.

Entry Conditions

27. In Decision 273, the Commission identified various regulatory and other factors relevant to entry into the meat industry. These included plant licensing, export licensing, export quota, finance and exit costs. However, the Commission did not

find that any of these barriers/conditions of entry were onerous and indeed referred to the “significant number of new entrants” which have commenced operations over recent years.

28. We have found that entry barriers continue to be relatively low, and that new entry continues to take place either on a greenfields basis (eg Progressive Meats has established a sheepmeat plant at Gisborne), or the recycling of existing plants.
29. Taking the above factors into account, we consider that the combined entity would continue to be constrained by the threat of market entry.

Conclusion

30. We conclude that the level of actual and potential competition will be sufficient to ensure that the combined entity would be prevented from acquiring or strengthening a dominant position in this market.

Assessment of the Likely Impact of the Proposed Acquisition on the Markets for the Procurement of Beef for Slaughter in the North Island

Current Competition

31. There are some 25 beef processing plants located throughout the North Island. Lowe Walker is the second largest operator in the North Island with 6 plants, which are situated in the Northland, Waikato, Hawkes Bay and Taranaki regions. Richmond has a much smaller presence in this market with its three plants, which are situated in the Hawkes Bay, Horowhenua and Northern Waikato regions.
32. Of the remaining 16 plants located in the North Island, 8 are operated by Affco, the largest beef processor in the North Island, 2 by Pacific Beef Ltd (Pacific Beef), and the balance by operators of single plants.

Market Shares

33. Based on information compiled by the NZ Meat and Wool Board's Economic Service for the 1996/97 year, estimated market shares for beef were as follows:

	% (Approx)
Richmond	[
Lowe Walker	
Affco	
Pacific Beef	
Others]
	<u>100.0</u>

Notes:

1. Local slaughter is not included in these figures.
2. The market shares for Lowe Walker include the throughput for Hill Country Beef, an associated company of Lowe Walker.
3. Others include Greenlea Premier Meats Ltd (Greenlea), Taylor Preston, Universal Beef Packers Ltd (Universal Beef) and Wallford Meats NZ Ltd (Wallford Meats).

Impact of the Proposed Acquisition on the Beef Market

34. The proposal would result in the enlarged Richmond increasing its market share from around [] to about []. However, the applicant considers that the market share of the merged company is likely to be lower as a result of rationalisation and customers switching to other processors. Regardless, the combined market share of the parties to the proposal would fall inside the 40% threshold outlined by the Commission in its Business Acquisition Guidelines.

Constraints by Existing Competition

35. In our view, the combined entity will continue to face effective competition from Affco, which has a market share of about [], and which has plants situated throughout the North Island. In addition, there are a number of other beef processors, including Pacific Beef, Greenlea, Taylor Preston and Wallford Meats, all of whom are likely to provide strong competition to the merged company. All of the companies identified above appear to have ample scope to expand their existing production levels by various methods, including introducing extra shifts, or in some instances, by recommissioning a plant which has been mothballed.

Entry Conditions

36. The entry conditions for beef processing and procurement are the same as those for sheepmeat (see para 27).
37. In our view, there are no substantial impediments to prevent new entry into this market. This is evidenced by the entry of Universal Beef, which last year opened a new beef plant in the King Country.

Conclusion

38. Taking into account the above factors, staff consider that the combined entity is likely to be constrained to a significant extent by the presence of existing competitors as well as by the prospect of new entry. In these circumstances, we do not consider that the proposed acquisition would result in any person acquiring or strengthening a dominant position in this market.

OVERALL CONCLUSION

39. We conclude that for the reasons outlined above, the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any of the affected markets.

RECOMMENDATION

40. We recommend that, pursuant to s 66(3)(a) of the Act, clearance be given to the proposed acquisition.

Investigator

Chief Investigator

Manager

**DETERMINATION TO GRANT NOTICE OF CLEARANCE:
RICHMOND LIMITED/LOWE WALKER NZ LIMITED**

We agree/disagree with the recommendation.

We are satisfied/not satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66(3)(a) of the Commerce Act 1996 (the Act), we hereby give clearance for Richmond Limited, or any interconnected body corporate thereof, to acquire the beef and sheep procurement and slaughtering related assets of Lowe Walker NZ Limited and subsidiary or associated companies, including Hill Country Beef NZ Limited and Hill Country Lamb Ltd.

In terms of s 66(5) of the Act, this clearance shall expire twelve months after the date of this notice. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 29 January 1997.

Dated at Wellington this day of 1998

P C Allport
Acting Chairman

E C A Harrison
Member

R N Taylor
Member

¹ The plant at Paeroa, and another at Awatoto, which is owned by an associated company, Hill Country Beef, are currently closed.

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