

Determination

DLF Seeds A/S and PGG Wrightson Seeds Holdings Limited [2019] NZCC 1

The Commission:	Sue Begg Dr Jill Walker Elisabeth Welson
Summary of application:	An application from DLF Seeds A/S seeking clearance to acquire DLF Seeds A/S or its nominee to acquire 100% of the shares of PGG Wrightson Seeds Holdings Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance for the proposed acquisition.
Date of determination:	13 February 2019

Confidential material in this report has been removed. Its location in the document is denoted by [].

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The proposed acquisition

1. On 2 October 2018, the Commerce Commission (the Commission) registered an application (the Application) under section 66(1) of the Commerce Act 1986 (the Act) from DLF Seeds A/S (DLF) or its nominee to acquire 100% of the shares of PGG Wrightson Seeds Holdings Limited (PGW Seeds) (the Proposed Acquisition).
2. The Proposed Acquisition would result in the acquisition of the New Zealand market leader in forage seeds and turf seeds by a global player with a smaller presence in New Zealand.

Rationale for the acquisition

3. DLF submitted that it is the market leader within the turf seed and forage seed industries in the northern hemisphere, while PGW Seeds has a similar position in the southern hemisphere.¹ DLF submitted that the combination of these two businesses will:
 - 3.1 allow the combination of two global market leading genetic resources, increasing breeding diversity and further investment in R&D, including in new biotechnology methods;
 - 3.2 have a unique global supply chain, with a comprehensive distribution platform in the seed and grain industry across the globe;
 - 3.3 enable information and knowledge sharing, best practices and business development (including operations, tactics and strategy); and
 - 3.4 result in increased seed production and exports from New Zealand, including utilisation of counter-season production opportunities in the southern hemisphere to speed up potential shortages within DLF's network in the northern hemisphere.

Our decision

4. The Commission gives clearance to the Proposed Acquisition as it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

Our framework

5. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.²

The substantial lessening of competition test

6. As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.

¹ DLF Seeds Merger Clearance Application.

² Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).

7. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).³
8. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the “competitive price”),⁴ or reduce non-price factors such as quality or service below competitive levels.

When a lessening of competition is substantial

9. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁵ Some courts have used the word “material” to describe a lessening of competition that is substantial.⁶
10. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

When a substantial lessening of competition is likely

11. A substantial lessening of competition is “likely” if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.⁷

The clearance test

12. We must clear an acquisition if we are satisfied that the acquisition would not be likely to substantially lessen competition in any market.⁸ If we are not satisfied – including if we are left in doubt – we must decline to clear the acquisition.

Key parties

DLF

13. DLF is a Danish company owned by a cooperative of Danish grass-seed farmers, dealing in forage and amenity seeds, and other crops. It operates either directly or through its subsidiaries in 20 countries around the globe.

³ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁴ Or below competitive levels in a merger between buyers.

⁵ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

⁶ *Woolworths & Ors v Commerce Commission* (HC) above n5 at [129].

⁷ *Woolworths & Ors v Commerce Commission* (HC) above n5 at [111].

⁸ Commerce Act 1986 Section 66(3)(a).

14. DLF began operations in New Zealand in 2004 and operates from two leased premises - an office based in Christchurch and a breeding station at Yaldhurst. DLF NZ employs 12 fulltime staff as well as two skilled temporary staff during the harvest season at its Yaldhurst breeding station.
15. DLF's revenue in New Zealand for 2017 was []. This was comprised of [] for forage seeds and [] for turf seeds.⁹

PGW Seeds

16. PGW Seeds is a New Zealand company formed in 1990. It is wholly owned by PGG Wrightson Limited (PGG Wrightson) (NZX:PGW). 46.58% of PGG Wrightson's shares are owned by Agria (Singapore) Pte Limited.
17. PGW Seeds is one of the largest proprietary seed companies in the southern hemisphere, servicing New Zealand and global markets. The PGW Seeds business focuses on Australasian and South American seed growing and producing, and it has a strong presence in New Zealand, Australia, Argentina, Uruguay and Brazil.
18. PGW Seeds' 2017 audited revenue in New Zealand was [].
19. This was comprised of [] for forage seeds, and [] for turf seeds. We understand that grain trading and exports are the two major streams of revenue that make up the difference between forage and turf revenue, and total revenue.

Other parties

New Zealand Agriseeds Limited (Agriseeds)

20. Founded in 1987 Agriseeds is part of the Royal Barenbrug Group, a Dutch company which describes itself as "the largest privately owned seed company in the world". The Royal Barenbrug Group encompasses companies in New Zealand and Australia, South Africa, Europe and North and South America.
21. Agriseeds is the second largest supplier of forage seeds in New Zealand after PGW Seeds. Agriseeds employs approximately 60 staff. It is active in endophyte research and development (through its partnerships with DairyNZ, Lincoln University, AgResearch, Massey University, PG+ and DairyBio Australia) and owns novel endophytes for its ryegrass cultivars, including NEA2 which it has commercialised in its own cultivars, and which it licenses to Cropmark. It also licenses the AR37 endophyte from PGW Seeds.

Cropmark Seeds Limited (Cropmark)

22. Cropmark is a New Zealand owned seed company based in Canterbury that was incorporated in 1999. It is a smaller player in forage seeds in comparison to PGW Seeds and Agriseeds. Cropmark is active in endophyte research and development

⁹ DLF Seeds Merger Clearance Application.

and has commercialised the endophyte U2 in a fescue/ryegrass hybrid variety [].

Seed Force Limited (Seed Force)

23. Seed Force is a New Zealand based seed producer. Established in 2006, it is in partnership with RAGT, a large European seed producer []. Seed Force carries out some seed development and trials in New Zealand.

AgResearch Limited (AgResearch)

24. AgResearch is a Crown Research Institute that has the objectives of underpinning the sustainability and profitability of New Zealand's pastoral sector, establishing a range of biotechnologies and systems and exporting those where appropriate. AgResearch and PGW Seeds are involved in joint ventures for research and development including endophytes, through Grasslanz Technology Ltd. AgResearch owns the AR1 (which it licenses to all suppliers in the market) and AR37 (which is licenced to PGW Seeds and Agriseeds) endophytes.

New Zealand Plant Breeding and Research Association (NZPBRA)

25. The NZPBRA is the industry association representing all the major seed producers in New Zealand. Established in 1991, the NZPBRA promotes plant breeding and research through seed trials and provides the industry with guidance on the consistency of data and technical standards.

Industry background

26. DLF and PGW Seeds primarily overlap in the development and wholesale supply of a number of varieties of forage seeds and turf seeds.

Forage seeds

27. Forage seeds are used by farmers to grow forage crops – crops eaten by animals directly as pasture or cut for fodder. Desirable traits in these seeds are the nutrition of the plant for the grazing animal, disease resistance and the ability to grow in a range of climates and growing conditions.
28. The relevant types of forage seeds for the assessment of the Proposed Acquisition are ryegrass, tall fescue, clover, cocksfoot, brassicas and fodder beet.

Turf seeds

29. Turf seeds are used to grow grass for purposes ranging from golf courses and sporting fields to lawns for commercial and private use.
30. Turf seeds comprise ryegrass or fescue, or a mixture of the two varieties. Seed produced for turf has been developed for its own characteristics (such as colour, robustness, shade tolerance) and cannot be used as animal feed. However, forage seeds (in particular ryegrass and fescue varieties) may sometimes be used for turf applications.

31. Professional turf used in, for example, sports stadia and golf courses requires higher specifications than for domestic lawns.

Seed breeding and development

32. Seeds (both forage and turf) are bred to improve desirable traits.
33. Breeding involves identifying and testing seeds with these desirable traits, and cross-breeding different seed varieties with each other. It takes a number of generations for a new variety to stabilise and become a 'fixed line'. The breeder can then start testing it to determine whether the variety has the characteristics that would make it commercially viable. This process takes an additional number of generations.
34. The results of cross-breeding are essentially random and there is no guarantee of success. A cross-bred variety may express desirable traits of its parents, but it may also express undesirable traits or have no particular advantages as compared to its parent varieties. Therefore, the more cross-breeds a plant breeder is able to carry out and test, the higher its chances of producing a successful variety with particularly desirable traits.
35. Once a breeder has established a fixed line from cross-breeding varieties, the breeder begins the process of identifying promising varieties produced as a result of that cross-breeding. These can then be recycled back for future cross-breeding while simultaneously continuing to be developed for potential commercial release. This means that before a variety is released commercially, a breeding company is already likely to be using the variety as a parental line and may have a head-start of several years on other breeding companies in the use of that material.

Endophytes

36. One of the most notable advancements in forage seeds in the last couple of decades is the commercial identification of endophytes and the production and supply of ryegrass and tall fescue incorporating endophytes.
37. An endophyte is a fungus which grows in a symbiotic relationship with the grass, protecting it from certain pests (notably, the argentine stem weevil). However, some endophytes also have adverse effects on animal health (such as lameness, tremors or reducing weight). As such, endophytes are often seen as 'compromises' in that they offer better pest protection but may introduce some risks from an animal health perspective.

Proprietary and non-proprietary seeds

38. Proprietary seeds are the product of a seed producer's research and development programme which no one else has the right to multiply (without the relevant licence). However, once intellectual property protection under the Plant Variety Rights Act 1987 lapses, they become non-proprietary seeds, and anyone is able to multiply them.

39. DLF submitted that in New Zealand non-proprietary seed sales make up a significant percentage of the overall sales of forage seeds. DLF submitted that information it has obtained from a Pasture Renewal Workshop in 2016 suggests that non-proprietary forage seeds could total over one third of total forage seed sales by volume.¹⁰
40. Due to proprietary seeds resulting in plants with significantly better nutritional value, and better disease resistance, for many customers of proprietary seeds, non-proprietary seeds are not a feasible option.

Market definition

41. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
42. We define markets in the way that best isolates the key competition issues that arise from an acquisition.¹¹ In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services which fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.
43. We are of the view that it is appropriate to consider the competitive effects of the Proposed Acquisition in separate national markets for the production or importation and wholesale supply of the following forage seeds:
- 43.1 ryegrass seeds;
 - 43.2 tall fescue seeds;
 - 43.3 clover seeds;
 - 43.4 brassica/fodder beet seeds; and
 - 43.5 cocksfoot seeds
44. We have also considered the competitive effects of the Proposed Acquisition on national markets for both the wholesale and retail supply of turf seeds.

Relevant product market – forage seeds

45. We consider that each of the forage seed varieties comprise a separate product market. We have considered the extent to which a general broad forage seed market may exist in New Zealand. Industry participants confirmed that there is little, if any, demand-side or supply-side substitutability between the various forage seed

¹⁰ DLF Seeds Merger Clearance Application.

¹¹ *Mergers and Acquisitions Guidelines* above n2 at [3.10-3.12].

varieties. Therefore, we consider it appropriate to assess narrow markets for forage seeds. This is consistent with the Commission's approach to market definition in Decision 556.¹²

46. We also note that DLF and PGW Seeds are both active in wholesale supply of forage seeds in New Zealand. We have therefore considered wholesale functional markets for forage seeds.

Ryegrass seeds

47. Ryegrass varies from the most persistent (perennial ryegrass) to the least persistent (annual ryegrass) and can be broadly categorised by how long they live or persist:¹³
- Annual – less than one year;
 - Italian – 1-2 years;
 - Hybrid – 2-5 years;
 - Perennial – 5 years.
48. Hybrid ryegrasses are bred from perennial ryegrass and Italian ryegrass to combine the best features of both parent species, depending on the climate, rotation and farming system requirements. Some hybrid cultivars may contain the same endophyte as used for perennial ryegrass. Hybrid ryegrasses are commonly sown in late summer/autumn to provide increased winter/early spring production.
49. DLF submitted that a single product dimension encompassing the different varieties of ryegrass (ie perennial, Italian, hybrid and annual) is appropriate. However, DLF considers that tall fescue is also substitutable with these ryegrasses and forms part of the same product dimension.¹⁴
50. PGW Seeds submitted that although tall fescue and each type of ryegrass have different characteristics, at the stage of planning pastures and rotations, tall fescue and ryegrass perform a similar function and present as an overlapping continuum based on longevity. PGW Seeds notes that a key trade-off along the continuum of pasture longevity is between persistence and quality (including how quickly the seed will establish) and that tall fescue is the most persistent, but is slower to establish at low soil temperatures, than ryegrasses.¹⁵
51. However, our view, which is generally supported by other market participants¹⁶, is that the evidence supports a standalone ryegrass market. Tall fescue is materially slower to establish compared to ryegrass and sells in far lower volumes than

¹² Commerce Commission decision in the merger between Pyne Gould Guinness Limited and Wrightson Limited (Decision No. 556 of 31 August 2005).

¹³ <https://www.dairynz.co.nz/feed/pasture-renewal/select-pasture-species/ryegrass/>. Accessed on 5 February 2019.

¹⁴ DLF Seeds Merger Clearance Application at [75.1].

¹⁵ PGW Seeds' Response to the Commerce Commission's Letter of Issues at [5].

¹⁶ Commerce Commission interview with Seed Force (24 October 2018); Commerce Commission interview with Cropmark (24 October 2018); Commerce Commission interview with Agriseeds (24 October 2018).

ryegrass. Further, from a supply-side substitution perspective we note that although endophyte technology is used in the production of both ryegrass and tall fescue seeds, the endophytes used for ryegrass and tall fescue cannot be used interchangeably.

52. For the purposes of the competition assessment, we have therefore defined a separate product market for ryegrass. We have focused on the perennial ryegrass segment, which is by far the largest and most valuable ryegrass segment.
53. However, the precise definition of the boundaries of the ryegrass market does not have a material impact on our assessment of the competitive effects of the Proposed Acquisition.

Tall fescue seeds

54. Tall fescue is a tall, erect perennial grass with seed-heads up to 1.5m tall. It is mainly found in lowland pasture and waste areas. Tall fescue is tolerant of wet soils, yet it also withstands drought and warm conditions well. We understand that it is currently a relatively minor pasture species in New Zealand as it contains toxic endophyte strains which could distress grazing animals.¹⁷
55. As set out above, we are of the view that tall fescue is a separate product market from ryegrass. This view is generally supported by the lack of supply-side substitution between ryegrass and tall fescue due to the different endophyte technology used to produce ryegrass and tall fescue seeds respectively. Further, we also note that there appears to be a weak degree of demand-side substitution between tall fescue and ryegrass because tall fescue is materially slower to establish in comparison to ryegrass.
56. For purposes of the competition assessment we have therefore defined a product market for tall fescue seeds.

Brassica/fodder beet seeds

57. Brassica crops and fodder beet are used as a supplementary feed for animals during times when grass growth is less than required. In respect of brassica seed, the four main varieties used as winter feed crops in New Zealand are turnip, swede, rape and kale. Fodder beet is used mainly as a high yielding winter feed crop in cooler climates.
58. DLF submitted that the decision to use a brassica and ultimately which type of brassica or fodder beet, depends on a number of factors, including the time period in which the feed is needed, the type of stock to be fed, climatic conditions, soil conditions, farmer preference, etc.¹⁸
59. We considered whether it would be appropriate to disaggregate the brassica product market into distinct brassica varieties. We understand that there are

¹⁷ <http://pastureinfo.massey.ac.nz/grasspages/gtallfescue.html>. Accessed on 5 February 2019.

¹⁸ DLF Seeds Merger Clearance Application at [73.4].

differences between rapes, turnips, kales and swedes with regards to the suitability of grazing animals on particular brassica varieties. For instance, a sheep farmer may prefer a swede to a kale, whereas a farmer with cattle would likely be able to use either a kale or swede. Climatic conditions and other considerations such as the length to maturity may also influence decision-making by farmers on the choice of a brassica variety for use as a supplementary winter feed crop.

60. However, evidence from market participants suggests that there may be a degree of demand-side substitutability between brassica varieties, as farmers frequently switch between brassicas depending on availability and animal nutritional requirements. It is unclear whether the brassica varieties are sufficiently close substitutes that they constitute a single relevant product market.
61. In Decision No. 556¹⁹ the Commission acknowledged that there are varying degrees of substitutability between the different brassica varieties. However, the Commission was of the view that the degree of substitutability between the different varieties of brassica was such that it was not appropriate to define separate product markets for each distinct brassica varieties.
62. We received no evidence during our investigation that would suggest the market dynamics for brassicas have changed materially since the Commission's previous investigation. As it does not impact the competition analysis, we have adopted the same approach as the previous decision and have not disaggregated the market into distinct brassica varieties.
63. Further, DLF is of the view that although fodder beet is not a brassica, it has emerged as an alternative winter feed crop to traditional brassica winter crops such as swedes, turnips and kale. It is therefore of the view that it is appropriate to define a combined market for brassicas and fodder beet.²⁰
64. We note that Seed Force stated that although fodder beet can be used as a substitute for a sub-set of brassicas such as kale and swede, not all brassicas can be substituted by fodder beet as a winter feed crop. Seed Force also submitted that fodder beet is more expensive than brassicas.²¹
65. Cropmark suggested that the demand for brassicas and fodder beet tends to move in opposite directions, ie when the demand for fodder beet increases, the demand for brassicas usually decrease at the same time. However, it is unclear whether the extent of any potential demand-side substitutability between fodder beet and brassicas would make them close substitutes.
66. Further, Cropmark is of the view that it is relatively easy for suppliers to import fodder beet, which suggests that there is potentially also scope for supply-side

¹⁹ Commerce Commission decision in the merger between Pyne Gould Guinness Limited and Wrightson Limited (Decision No. 556 of 31 August 2005).

²⁰ DLF Seeds Merger Clearance Application at [75.1].

²¹ Commerce Commission interview with Seed Force (24 October 2018).

substitution between brassicas and fodder beet at the distribution level of the supply chain.²²

67. Given the evidence on supply-side substitutability between brassicas and fodder beet at the distribution level of the supply chain we have considered a combined market for the production or importation of brassicas and fodder beet for purposes of assessing the competitive effects of the Proposed Acquisition.
68. However, the precise definition of the market will not have any material impact on our competitive assessment of the Proposed Acquisition.

Clover seeds

69. Clovers are different both in appearance and function from ryegrass. Clover, particularly white clover, is used extensively in New Zealand to affix nitrogen to the soil. Clover is also high in protein and a relatively easy way to provide grazing animals with such nutrients.
70. DLF submitted that whilst some technological advancements are being made in white clover through the breeding and development of better cultivars, technological development in this area is less pronounced than in ryegrass. The main advancements in white clover are generally around better seed persistence, increased stolon density and leaf size.²³
71. In Decision No. 556 the Commission was of the view that there was a large degree of supply-side substitutability between red and white clover as a supplier could readily and costlessly switch between the supply of such seeds given a small incentive to do so.²⁴ The Commission was therefore of the view that it was appropriate to consider a combined clover market for the purposes of its analysis, consisting of both red and white varieties. We received no evidence during our investigation that would suggest that the market dynamics have changed materially since the Commission's previous investigation.
72. We are therefore of the view that it is still appropriate to consider a combined market for the supply of red and white clover seeds, where the market includes locally produced and imported seeds. However, we note that even if separate markets are defined for white and red clover seeds this would not have any material impact on our competitive assessment of the Proposed Acquisition.

Cocksfoot seeds

73. Cocksfoot seed is also used for forage. DLF submitted that cocksfoot has the ability to persist and be productive in dry, moderately fertile, light and free-draining soils. As an endophyte-free pasture, it can be a good summer pasture for the grazing of

²² Commerce Commission interview with Cropmark (24 October 2018).

²³ DLF Seeds Merger Clearance Application at [117].

²⁴ Commerce Commission decision in the merger between Pyne Gould Guinness Limited and Wrightson Limited (Decision No. 556 of 31 August 2005).

sheep, cattle and dry stock. We understand that cocksfoot has traditionally been used predominantly in hill country for sheep and beef grazing. It is an option in areas where ryegrass persistence is unachievable.²⁵

74. The evidence suggests that cocksfoot exhibits better drought tolerance and improved tolerance to acidic soils, compared with perennial ryegrass and tall fescue. We are therefore of the view that there is limited scope for demand-side substitution between cocksfoot, ryegrass and tall fescue.
75. Seed Force indicated that there is no scope for supply-side substitution between cocksfoot and ryegrass varieties. Specifically, Seed Force stated that if the production and multiplication of cocksfoot are increased a prerequisite is that it should be planted in fields and areas that have been free of ryegrass and tall fescue seeds for many years.²⁶ The ability of suppliers to switch between the production of cocksfoot and other forage seed varieties is therefore limited.
76. We are therefore of the view that it is appropriate to consider a separate market for the wholesale supply of cocksfoot seeds which includes locally produced and imported seeds.

Relevant product market - turf seeds

77. Turf comprises perennial ryegrass or fescue, or a mix of the two. DLF submitted that ryegrass and fescue are interchangeable in the market, as well as being sold as a mix.²⁷ Turf seeds can be supplied to commercial and household customers due to their use in growing grass for purposes ranging from sporting fields to lawns for commercial and private use.
78. We understand that forage seed produced for animals can in some cases be used for turf applications and suppliers of forage seeds may be able to expand into turf. However, seed produced for turf applications is not generally substitutable with the equivalent seed produced for animals, as turf is sold with special characteristics, including, for example, disease resistance. We therefore consider it appropriate for the purposes of assessing the Proposed Acquisition to define a separate product market for turf seeds.
79. We considered whether it would be appropriate to define separate product markets for each variety of turf seeds. We understand that end-users generally differentiate between turf seeds in the following way²⁸:
 - 79.1 premium turf seeds – seed blends mainly used for applications that require a high quality and durable turf covering, such as golf courses, sports fields and racecourses;

²⁵ DLF Seeds Merger Clearance Application at [118].

²⁶ Commerce Commission interview with Seed Force (24 October 2018).

²⁷ DLF Seeds Merger Clearance Application at [141].

²⁸ Commerce Commission interview with Farmlands (24 October 2018).

- 79.2 commercial turf seeds – seed blends mainly used by city councils in large scale landscaping projects where the use of premium quality turf seed blends is not required; and
- 79.3 retail boxes – seed blends mainly used by customers for small scale applications, such as lawn cultivation and maintenance.
80. However, we understand that the base turf seed product is the same across all applications, except that professional turf used in sports stadia etc requires a higher quality specification (specifically, it cannot contain any “contaminants” such as weeds) than that for domestic lawns. The seed production process controls the quality. DLF submitted (and we agree) that rather than requiring new or specialised equipment for a supplier to switch between producing premium turf and box trade market seeds, it only requires more intensive use of existing equipment by suppliers for additional cleaning and washing requirements.²⁹ This implies a large degree of supply-side substitutability in the production of turf seeds for different customer segments.
81. Therefore, we are of the view that for purposes of assessing the Proposed Acquisition it is appropriate to consider a market for the supply of all turf seeds that includes locally produced and imported seeds. We note that the precise definition of the turf seed product market does not have a material impact on our competitive assessment of the Proposed Acquisition.
82. DLF and PGW Seeds are both active in wholesale and retail sales of turf seeds in New Zealand. We have therefore considered both wholesale and retail functional markets. We note that the extent of DLF’s activities in retail sales of turf seeds are limited.

Relevant geographic dimension – forage and turf seeds

83. Most of New Zealand’s seed production takes place in the Canterbury region, with the remainder produced in the southern parts of the lower North Island. Seed is mostly transported by road from the South to the North Island using trucks with containers, after the seeds have been wrapped and packed.
84. We understand that because seeds can be packed in a way that eliminates wasted freight space, grass seeds can be easily transported between regions domestically (and even imported) at relatively low cost compared to the retail value of the seed. This enables all New Zealand’s seed companies to operate nationally.
85. Further, we also understand that while certain regional locations may tend to favour certain varieties more than others, all seed types are available, and purchased, in all regions of New Zealand. Furthermore, drought or other conditions can change the preferences of a region in a particular season. Seed suppliers do not set different

²⁹ DLF Seeds Merger Clearance Application at [144].

prices for seed varieties in different regions. PGW Seeds also submitted that seed companies in many cases deal with a single national retailer buyer, rather than selling by individual branch or region.³⁰

86. We also considered whether it would be appropriate to define regional markets based on the comparative characteristics and degree of substitutability between ryegrass cultivars inoculated with different novel endophytes.
87. However, the Dairy NZ FVI³¹ shows that there is regional substitution between ryegrass cultivars inoculated with different types of novel endophytes. For instance, [
-] This suggests that it would not be appropriate to define separate regional markets based on the comparative characteristics between ryegrasses inoculated with different types of novel endophytes.
88. We are therefore of the view that it is appropriate to consider separate national markets for the:
- wholesaling of each type of forage seeds;
 - wholesaling of turf seeds; and
 - retailing of turf seeds.
89. Nevertheless, even if regional markets were adopted, it would not have any material impact on our competitive assessment of the Proposed Acquisition.

With and without scenarios

90. To assess whether an acquisition is likely to substantially lessen competition in a market, we compare the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).³²

With the acquisition

91. With the acquisition, PGW Seeds would become a wholly owned subsidiary of DLF.

Without the acquisition

92. The Commission considers that in the absence of the proposed merger, PGW Seeds would be likely either to continue to own and operate PGW Seeds or to sell it

³⁰ PGW Seeds' Response to the Commerce Commission's Letter of Issues at [11].

³¹ Dairy NZ Forage Value Index Handbook (February 2019).

³² *Mergers and Acquisitions Guidelines* above n2 at [2.29].

[] to an independent third party. In either scenario, PGW Seeds would continue to operate as an independent competitor in the relevant markets in New Zealand.

How the acquisition could substantially lessen competition

93. An acquisition can substantially lessen competition if it increases the potential for the merged entity to be able to unilaterally raise prices,³³ or reduces the competitive pressure to innovate. Where two suppliers compete in the same market and the constraint from other competitors is limited, an acquisition could remove a competitor that would otherwise provide a significant competitive constraint, allowing the merged entity to profitably raise prices or slow the pace of innovation.
94. Our assessment focussed on the effect of the acquisition on the ryegrass seed market, where we considered the potential competition concerns were greatest due to the parties' endophyte activities. We considered whether the Proposed Acquisition would:
- 94.1 enable the merged entity to increase the price of ryegrass seeds now or in the future; and/or
- 94.2 reduce competitive pressure to innovate, slowing the pace of development of new endophytes and new endophytic ryegrass varieties, leading to a reduction in the quality and breadth of endophytes and endophytic ryegrass varieties that would otherwise be available in the future.
95. Although ryegrass was the focus of our investigation we also considered the effects of the Proposed Acquisition on:
- 95.1 the other relevant forage seed markets; and
- 95.2 the relevant turf seed markets.
96. We also considered whether the Proposed Acquisition would increase the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour to collectively exercise market power such that prices increase and/or quality and innovation reduces in any of the relevant markets.
97. We discuss these considerations below in the following order:
- 97.1 unilateral effects in forage grasses other than ryegrass;
- 97.2 unilateral effects in ryegrass seed;
- 97.3 unilateral effects in turf; and

³³ For simplicity, when we refer to concerns that the acquisition may result in an increase in price, this also includes the possibility that the impact of the acquisition is a reduction in quality or some combination of a price and quality effect – that is, an increase in quality-adjusted prices.

97.4 co-ordinated effects in forage seed markets.

Competition analysis – unilateral effects in forage grasses other than ryegrass

98. We considered the effects of the Proposed Acquisition on the other relevant forage seed markets. No industry concerns were expressed (with the exception of brassicas/fodder beets) in relation to the merger in these markets.
99. The market dynamics in these markets were considerably different to those of the ryegrass market, and we have briefly summarised our findings in these markets below. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of these forage seed markets.

Tall fescue

100. Tall fescue has a very limited presence in New Zealand. However, although the proposed acquisition would give rise to higher aggregation in tall fescue than other markets, we consider that the merged entity would continue to be constrained by Seed Force and would also face constraint from outside the market. Our inquiries identified that some market participants switch between tall fescue and some types of ryegrasses.
101. We also understand that the use of non-proprietary seed plays a larger role in the tall fescue market than in the ryegrass market. It appears that the use of non-proprietary tall fescue is more prevalent than the use of non-proprietary varieties of other forage seeds, and some customers could bypass the merged entity's cultivars and use non-proprietary seed.

Clover

102. The Proposed Acquisition would result in a small increase in market concentration in clover. PGW Seeds is the market leader but DLF has a small market share. Alternative domestic suppliers including Agriseeds, Cropmark, Seed Force and Germinal would continue to constrain the merged entity in this market.
103. Furthermore, not all clover cultivars are produced locally, with imported varieties accounting for over 10% of the market. We consider that the presence of imports is likely to result in low barriers to entry for new clover suppliers.

Cocksfoot

104. The Proposed Acquisition would result in a minor increase in market concentration in cocksfoot. PGW Seeds and Agriseeds are the market leaders, with DLF, Seed Force and Cropmark having small shares. Therefore, the merged entity is likely to be constrained by existing competition.
105. Further, imported varieties account for approximately 20% of the market, and DLF imports all of its cocksfoot seed. The ready availability and competitiveness of

imports results in low barriers to entry for new players and is likely to constrain the merged entity.

Brassica/Fodder Beet

106. The Proposed Acquisition would result in a minor increase in market concentration in a combined brassica/fodder beet market where PGW Seeds is the clear market leader and DLF has a small share.
107. [] However, DLF does not supply any brassicas and so there would be no change in competition in the market under the Proposed Acquisition.
108. The increase in market concentration is greater if fodder beet is considered a separate market. However, 100% of fodder beet seed is imported into New Zealand (including by the merger parties) from multiple independent overseas producers, and it is relatively new as a commercial product in New Zealand. To this extent, barriers to entry do not appear to be significant and therefore we are satisfied there is not likely to be a substantial lessening of competition in this market.

Competition analysis – unilateral effects in ryegrass seed

109. As noted above, DLF and PGW Seeds are both involved in the production and wholesale supply of ryegrass seed. This market was the focus of our investigation due to concerns raised by industry participants, and DLF and PGW Seeds' activities in relation to endophytes which potentially made them closer future competitors in ryegrass than in other markets.
110. For the reasons below, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national market for the wholesale production and supply of ryegrass due to unilateral effects.

Market concentration

111. The ryegrass market is characterised by the presence of two major players (PGW Seeds and Agriseeds), and a number of smaller players including DLF.
112. Table 1 below identifies the ryegrass market shares of the main players based on sales volumes:

Table 1: Shares (%) of combined ryegrass seed sales (tonnes), 2013 to 2017

	2017		2016		2015		2014		2013	
	Vol	Share	Vol	Share	Vol	Share	Vol	Share	Vol	Share
PGW Seeds	[
DLF										
Merged Firm										
Agriseeds										
Cropmark										
Seed Force										
Other]
Total	[]	100	[]	100	[]	100	[]	100	[]	100

Source: NZPBRA

113. The table demonstrates that PGW Seeds is the [] in ryegrass and that DLF currently has a small share of the ryegrass market.
114. On the basis of these shares, the Proposed Acquisition results in a small increase in market concentration, with Agriseeds remaining as a large competitor and a number of other smaller players remaining as small competitors.

Closeness of competition

115. We considered the closeness of competition between the parties as well as the extent to which rival suppliers would continue to place a competitive constraint on the merged entity after the acquisition.
116. PGW Seed's closest competitor is Agriseeds, with DLF having a much smaller presence in the market. However, unlike the other smaller players, DLF owns its own novel endophytes. PGW Seeds (through its joint venture with AgResearch) and Agriseeds are the only other suppliers which own endophytes capable of inoculation into perennial ryegrass cultivars (although, Cropmark owns a novel endophyte that can be inoculated into a hybrid fescue/ryegrass).
117. We assessed whether DLF owning endophytes, made it a particularly close competitor of PGW Seeds. However, it does not appear that DLF is currently a close competitor of PGW Seeds in this regard.
118. DLF owns its own novel endophytes (Happe and Edge) but does not licence these to any other parties. The presence of these endophytes in the market is limited to DLF cultivars (which have a small market share as illustrated above in Table 1). However, since the commercialisation of these endophytes,
[]

119. We have outlined some of the []

119.1

119.2

119.3

119.4

119.5

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120.

[
[

]³⁶

]³⁵

121. Therefore, although the Proposed Acquisition removes an independent owner of novel endophytes, it does not appear that these endophytes and cultivars in which they have been inoculated are currently exerting any significant competitive pressure on PGW Seeds.

122. Our investigation did not reveal any evidence that PGW Seeds has responded to DLF’s introduction of new novel endophytes into the market in any way and does not appear to treat DLF differently to any of the other smaller players in the market.

123. In addition,
[
]

124. For these reasons, it does not appear that DLF, through owning its own novel endophytes, is a particularly current close competitor of PGW Seeds, such that their amalgamation would be likely to substantially lessen competition. Agriseeds appears to be a much closer competitor which would continue to constrain the merged entity.

³⁴ []
³⁵ []
³⁶ []

Potential competition from DLF

Endophyte research and development

125. We also considered whether DLF is a particularly important competitor because of its research and development of novel endophytes. However,
[]

125.1 []

125.2 []

126. DLF’s current endophyte program is
[]

127. DLF has spent [] of its total global research and development budget in the past three years on endophyte research and development. This amount has [] In 2017/18 DLF [] on endophyte research and development globally. In comparison we note that []³⁷
[]³⁸

128. Further, DLF’s two proprietary novel endophytes, Happe and Edge are the results of acquisitions by DLF of Advanta and Cebeco Seeds Group respectively and were not originally found and characterised by DLF (although they were further developed for New Zealand conditions by DLF). []

129. We consider that,
[]
[]³⁹
[]

³⁷ []

³⁸ []

³⁹ Commerce Commission interview with DLF (19 December 2018).

Potential competition from DLF's current endophytes

130. In the Commission's market inquiries, several industry participants expressed the concern that DLF would be a stronger competitor in the future with its own endophytes and high performing cultivars.

131. As noted above, DLF has []
 DLF has a high performing cultivar in the 2018 Dairy NZ FVI - the '24 Seven Edge' cultivar which is inoculated with the Edge endophyte.
 []

132. [] Further, our investigation did not uncover any compelling reasons why, []:

132.1 DLF would be likely to capture significant market share in future years;

132.2 DLF's endophytes would necessarily or be likely to gain broad acceptance, or

132.3 that it would be likely to generate a significant amount of competitive tension.

133. We also note that AR37 (currently only licenced to PGW Seeds (through its joint venture with AgResearch) and Agriseeds, is due to come off-patent in 2027, when it will be available to all parties. Further, the ongoing research and development programmes of other smaller players may also introduce new novel endophytes to the market over the coming years.

Potential entry and expansion

134. For completeness, we also assessed whether existing competitors would expand their sales and/or new competitors may constrain the merged entity.

135. DLF submitted that barriers to entry and expansion were low. DLF identified potential new entrants and noted the Commission's findings in Decision 556 in 2005 that there were low barriers to entry into the supply of ryegrass seed.

136. Similarly, PGW Seeds submitted that new entry, and expansion by existing suppliers, could readily constrain the merged entity following the Proposed Acquisition. PGW Seeds suggested that a new entrant could partner initially with an existing seed retailer, establish a presence in products that can be brought to market quickly, in a matter of months (e.g. fodder beet, which is largely imported already, and annual

ryegrasses), and follow with a commercial perennial ryegrass inoculated with AR1 (which it submitted could be on the market within three years).⁴⁰

137. However, most other market participants identified that it takes a long period of time to bring a new seed variety to market. The period of investment before any costs can be recovered by producing cultivars on a commercial scale may be as long as a decade, if licensing an endophyte from another player. However, the time required to identify and commercialise a new novel endophyte is even longer and can take up to 15 years with no certainty of success.⁴¹
138. The Commission understands that while imported seed is prevalent in newly popular seed varieties (e.g. fodder beet), it is rare in large, established markets like ryegrass, where there are locally developed seed options. Seed that is not specifically developed for New Zealand climatic and environmental conditions and disease profiles is not an effective constraint. One supplier,
[

]

]
139. Our current view is based on the information before us and can be distinguished from that in Decision 556, due to the fact that market conditions have changed since 2005. For example, AR37 was yet to be established in the market at that time.
140. Further, although there has been new entry, such as that of Seed Force, we note that Seed Force:

140.1 []; and

140.2 entered in 2005 and
[

].
141. Therefore, based on the information provided by market participants, we did not consider that entry, or the threat of new entry in itself would be likely constrain the merged entity.

Countervailing buyer power

142. A merged entity's ability to increase prices profitably may be constrained by the ability of certain customers to exert substantial influence on negotiations – that is, the countervailing power of buyers.⁴² Countervailing power is more than a customer's ability to switch from buying products from the merged entity to buying products from a competitor; and a customer's size and importance is not sufficient in

⁴⁰ PGW Seeds' Response to the Letter of Issues at [22].

⁴¹ Commerce Commission interview with Cropmark (24 October 2018); Commerce Commission interview with Seed Force (24 October 2018).

⁴² *Mergers and Acquisitions Guidelines* above n2 at [3.113].

itself to amount to countervailing power. Countervailing power exists when a customer possesses a special ability to substantially influence the price the merged entity charges (for example, an ability to switch to self-supply or sponsor new entry).⁴³

143. DLF submitted that the countervailing power of seed retailers is material,⁴⁴ with the success of a seed depending on the loyalty the retailer enjoys with the ultimate customer, the farmer. DLF submitted that the significance of the retailers as customers of the seed companies (given the volumes they purchase), their ability to switch and the importance to the retailers of their relationship with farmers mean retailers have both the ability and incentive to command competitive terms from seed companies.
144. PGW Seeds submitted that customers have the ability and incentive to stand up for the interests of their farmer-customers, with whom they have important relationships of trust (and in the case of some retailers, which are owned by farmers). Seed retailers tend to switch supplier readily if they are not satisfied with their terms and could quickly begin to bypass existing seed companies with a deal with a new entrant that introduced seed products progressively.⁴⁵
145. However, based on our market inquiries, we do not consider that customers are able to exercise countervailing power in a manner that would significantly constrain the exercise of market power by a ryegrass seed supplier. In particular, customers would not be able to credibly threaten to bypass ryegrass seed suppliers (through the sponsorship of new entry) in the event of a price rise and are more likely to pass on the price rise to their customers.

Other issues

146. In the course of our investigation, industry participants raised other issues which were unrelated to the Proposed Acquisition, but which they submitted would be exacerbated by the Proposed Acquisition.

AgResearch and PGW Seeds' joint venture

147. Many industry participants raised concerns about AgResearch and PGW Seed's joint venture in relation to endophyte research and development. Industry participants were concerned that this afforded PGW Seeds a competitive advantage with which other suppliers could not compete.
148. We have considered the effects that arise as a result of the Proposed Acquisition. PGW Seeds' arrangements with AgResearch exist irrespective of the Proposed Acquisition. As outlined above, DLF is not providing notable competitive tension in the supply of ryegrass, nor is there evidence to suggest that it would be likely to do so in the future. Therefore, any existing competitive advantages that PGW Seeds has

⁴³ For examples of the types of characteristics that may give rise to countervailing power see *Mergers and Acquisitions Guidelines* above n2 at [3.115].

⁴⁴ DLF Response to the Commerce Commission's Letter of Issues.

⁴⁵ PGW Seeds' Response to the Letter of Issues, at [1.4].

as a result of its arrangements with AgResearch do not appear to be augmented by the Proposed Acquisition.

Industry bodies

149. Some industry participants also suggested that PGW Seeds, through its various relationships, currently has the ability to influence industry bodies (in particular the New Zealand Plant Breeding and Research Association Inc) in an anticompetitive manner and that the proposed merger may increase the merged firm's ability to do so in the future.
150. The Commission considered whether the Proposed Acquisition would alter PGW Seeds' influence in industry bodies and technical committees.
151. However, based on information and documents provided, we do not consider that the Proposed Acquisition would materially increase the merged entity's influence in industry bodies above PGW Seeds' current influence.

Conclusion on unilateral effects – ryegrass

152. Accordingly, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national market for the wholesale production and supply of ryegrass, as a result of unilateral effects, because:
- 152.1 the Proposed Acquisition would result in only a small increase in market concentration;
- 152.2 although customers have limited countervailing power and the constraint from the threat of entry and expansion is low, post-acquisition, the merged entity would continue to be constrained by Agriseeds, and a number of other smaller players would remain and impose some competitive constraint;
- 152.3 DLF, despite owning its own endophytes, is not an especially close competitor of PGW Seeds []; and
- 152.4 there is no evidence that DLF is likely to be a stronger competitor over the coming years, such that its amalgamation with PGW Seeds would have a significant effect on future competition.

Competition analysis – unilateral effects in turf

153. We have also considered the effects of the Proposed Acquisition on the relevant turf seed markets. DLF and PGW Seeds are the only two producers of turf seed in New Zealand. We note that no market participants raised concerns in relation to turf seeds.

154. We do not consider that the Proposed Acquisition would be likely to raise competition concerns in the supply of turf seed. We have outlined the factors informing this conclusion below.
- 154.1 We understand that imports are prevalent in the market and will continue to constrain the merged firm. We were not able to ascertain the percentage of the market that is supplied by imports due to the fractured nature of the market (with multiple importers, retailers, distribution channels and customer types). However, we note that DLF and PGW Seeds customers commonly also import turf seeds from other parties, and considered that they were readily able to increase, or threaten to increase, imported amounts in order to constrain the actions of the merged firm. Even small wholesale customers are readily able to import seed in order to bypass local suppliers. This would make it difficult for the merged firm to exercise market power.
- 154.2 Barriers to entry and expansion appear to be low. Both proprietary and non-proprietary cultivars are common in the market, as well as the use of forage grasses that were designed for turf applications. A new local producer could readily begin producing non-proprietary turf.
- 154.3 Competitors of DLF and PGW Seeds in the supply of forage seeds (including suppliers that have been active in turf seeds in the past) noted that the turf market is too small and attracts too low margins, to make it worth producing turf locally, when imports are easy and of high quality.
155. For these reasons, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the wholesale and/or retail markets for the supply of turf seed as a result of the unilateral exercise of market power by the merged firm.

Competition analysis – coordinated effects in forage seed markets

156. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power such that quality reduces and/or prices increase across the market.
157. Unlike a substantial lessening of competition arising from a merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way. Such behaviour need not be unlawful and includes tacit collusion such as accommodating price responses or parallel conduct.
158. In carrying out our assessment, we have applied the two-stage framework set out in our Mergers and Acquisitions Guidelines.⁴⁶
- 158.1 We first considered the features of the ryegrass and other forage seed markets that affect the extent to which it is vulnerable to coordination.⁴⁷

⁴⁶ *Mergers and Acquisitions Guidelines* above n2 at [3.86].

158.2 We then asked whether the acquisition is likely to change conditions in the forage seed markets so that coordination is more likely, more complete, or more sustainable.

To what extent are the relevant markets vulnerable to coordination?

159. A range of market features are commonly accepted as making a market more vulnerable to coordination. That is, these are market features that make it more likely that firms would be able to successfully coordinate their behaviour to increase their profits. Not all need to be present for a market to be vulnerable to coordination. Nor does the existence of some or all of these features inevitably mean that firms would engage in coordinated behaviour.⁴⁸
160. We consider that the forage markets have features that make them vulnerable to coordination, although they also have other features that make coordination less likely.
161. Features that make the markets vulnerable to coordination are:
- 161.1 There is a degree of symmetry of size between the two main players. The supply of forage seeds is dominated by PGW Seeds and Agriseeds, with a small tail of much smaller suppliers.
- 161.2 Seeds within a particular product market are not highly differentiated. We note that PGW Seeds submitted that the products are highly differentiated, and price is set by individual cultivar and reflects innovation.⁴⁹ However, while prices and performance may vary, PGW Seeds and Agriseeds both have cultivars inoculated with AR37 and AR1 endophytes and both have various cultivars with similar ratings in the Dairy NZ FVI.
- 161.3 There are relatively high barriers to entry, which limits the ability for new entry to act as a destabilising presence.
- 161.4 Suppliers publish price lists resulting in a high degree of retail price transparency.
- 161.5 There are interactions between competitors, including through various industry fora.
162. Features that make coordination in forage markets more difficult are:
- 162.1 Demand is variable and difficult to predict, in particular, because it responds to climate and weather changes. With long production lag times, suppliers make different demand predictions and will likely face different shortfalls and surpluses year to year.

⁴⁷ We have not considered coordinated effects in relation to turf seeds as Agriseeds does not supply turf seeds.

⁴⁸ *Mergers and Acquisitions Guidelines* above n2 at [3.89-3.90].

⁴⁹ PGW Seeds' response to the Letter of Issues.

162.2 There is limited transparency of supplied volumes.

162.3 The markets are characterised by innovation and new varieties, which can disrupt coordination.

Would the acquisition make coordination more likely, complete, or sustainable?

163. Where an acquisition materially enhances the prospects for any form of coordination between businesses, the result is likely to be a substantial lessening of competition. This could happen if the Proposed Acquisition is likely to change conditions in any forage seed markets so that coordination is more likely, more complete, or more sustainable.⁵⁰
164. We consider that compared to the likely conditions absent the acquisition, the acquisition is not likely to materially change conditions in the forage seed markets so that coordination is more likely, more complete or more sustainable.
165. The supply of forage seeds is currently dominated by PGW Seeds and Agriseeds, with a small tail of much smaller suppliers. This structure is not materially affected by the Proposed Acquisition. The main difference is that, post-acquisition, the merged entity and Agriseeds would be the two world leaders in forage seeds and the two largest players in New Zealand (whereas PGW Seeds is currently the largest player in New Zealand but not one of the two global leaders).
166. However, as discussed above, DLF is not a significant competitor in most forage seed markets in New Zealand and there is no evidence that it is acting as destabilising presence such that it is, or would be able to, disrupt coordination between PGW Seeds and Agriseeds.

Conclusion on coordinated effects

167. Although we consider that there are some factors which may make the relevant markets vulnerable to coordination, we are nonetheless satisfied that the acquisition is unlikely to result in a material increase in the risk of coordination. In particular, the removal of DLF (as independent from PGW Seeds) is not likely to substantially alter the market conditions and make coordination more likely.
168. Accordingly, we are 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 due to coordinated effects.

Overall conclusion

169. We are therefore 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.

⁵⁰ *Mergers and Acquisitions Guidelines* above n2 at [3.86.2].

Determination on notice of clearance

170. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
171. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to DLF Seeds A/S or its nominee to acquire 100% of the shares of PGG Wrightson Seeds Holdings Limited.

Dated this 13th day of February 2019

Sue Begg
Deputy Chair