

Farmlands Co-operative Society Limited / Te Whenua Tāroa

**Notice seeking clearance to acquire 100% of the shares of
Seales Winslow Limited**

To: registrar@comcom.govt.nz

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Executive summary

Farmlands seeks clearance to acquire Seales Winslow	<p>Farmlands Co-operative Society Limited (or any interconnected body corporate) (Farmlands) is seeking clearance to acquire 100% of the shares of Seales Winslow Limited (Seales Winslow).</p> <p>Both Farmlands and Seales Winslow manufacture and distribute stock feed used by New Zealand farmers, with Seales Winslow focussed on supplying stock feeds for ruminants (cattle and sheep).</p> <p>While the acquisition will combine Farmlands' and Seales Winslow's stock feed businesses under Farmlands' ownership, the acquisition will not substantially lessen competition.</p>
Farmlands will be constrained by the range of supplementary feed types New Zealand farmers use	<p>Primarily, this is because Farmlands will continue to be constrained by the ongoing availability of the various supplementary feed types New Zealand farmers use and substitute between to meet their needs. The supplementary feed types used by New Zealand farmers include straight feed commodities like PKE (Palm Kernel Expeller) and grains, blends, and silage and baleage.</p> <p>The pelletised compound feed that Farmlands and Seales Winslow (and others) manufacture is a relatively small part of the supplementary feed market. Compound feed comprises approximately a quarter of all manufactured supplementary feed sold in New Zealand.</p>
Acquisition falls within concentration indicators	<p>As a result, the acquisition falls within the Commission's concentration indicators, i.e., market shares indicate that this is an acquisition that is unlikely to substantially lessen competition.</p> <p>Indeed, the reason why Farmlands is buying Seales Winslow is to:</p> <ul style="list-style-type: none"> • provide Farmlands with manufacturing capacity in the North Island; and • enable Farmlands to better optimise use of its plant capacity, leading to improved capacity utilisation and increased efficiency.
Farmlands believes the acquisition will enhance competition	<p>Both will improve Farmlands' feeds' competitiveness relative to the large range of substitutes that farmers choose between. Therefore, far from reducing competition, the acquisition will increase Farmlands' ability to effectively compete with the range of supplementary feed types available in New Zealand.</p> <p>In saying this, Farmlands acknowledges that the overlap from the acquisition arises because both Farmlands and Seales Winslow supply pelletised compound feed suitable for ruminants.</p>
Other compound feed suppliers have excess capacity and will constrain Farmlands	<p>However – even putting aside the material constraint imposed by suppliers of other feed types – Farmlands and Seales Winslow are not the only suppliers of compound feed for ruminants. There are multiple suppliers in each of the North Island and the South Island, all of which have material excess capacity and could, therefore, quickly expand should a market opportunity arise.</p> <p>Simply put, the presence of other compound feed manufacturers with excess capacity will, by themselves, sufficiently constrain Farmlands.</p>

Farmers can exert countervailing power by increasing their self-supply of feed

Of course, compound feed, like all other supplementary feed is, by its very nature, a supplement. It is not essential. The main source of feed for livestock is crops and pasture grown by farmers.

It follows that farmers have the ability to constrain feed suppliers simply by increasing their own supply of feed. This ability is a structural feature of the market that will continue to act as a strong constraint for Farmlands and all other suppliers of supplementary feed. The Commission can take additional comfort that the acquisition will not lessen competition from this feature of the market.

For all these reasons, the acquisition will not give Farmlands, acting unilaterally, the ability to raise prices or decrease quality.

No prospect of coordinated effects

Nor will the acquisition allow market participants to coordinate their behaviour to the detriment of customers. The diffuse nature of the supplemental feed options and feed suppliers in this market means the Commission can be satisfied that it is not a market that is prone to coordinated effects.

Finally, while Farmlands operates as both a manufacturer and distributor of stock feed and a retailer of agricultural supplies, the acquisition would not give Farmlands the ability (much less the incentive) to foreclose any of its competitors.

No prospect of vertical effects

- First, the sheer range of supplementary feed options available and the prevalence of direct supply models means there is no plausible way in which the acquisition would enable Farmlands to foreclose other supplementary feed suppliers.
- Second, the range of agricultural supplies sold by Farmlands' retail competitors – of which compound feed is only one – and the fact that the vast majority of Seales Winslow's sales are direct to farmers, means there is no plausible way in which the acquisition would enable Farmlands to foreclose its retail competitors.

Farmlands requests the Commission grants clearance

In summary, Farmlands submits that the Commission can be satisfied that the acquisition would not be likely to substantially lessen competition in any market.

Farmlands, therefore, requests that the Commission grant clearance for the acquisition.

The parties and the clearance sought

Farmlands: the applicant for clearance

1. Farmlands is a co-operative with over 80,000 shareholders across New Zealand. It is a diversified business focused on the agricultural sector, with 82 retail stores nationwide. Extensive information regarding Farmlands can be found [here](#). However, most relevant to the proposed transaction, Farmlands (through its NRM division):

- 1.1 manufactures bulk and bagged feed from feed mills nationwide, catering for dairy cows, calves, horses, poultry, pigs and more;
- 1.2 imports/distributes other supplementary feed; and
- 1.3 looks to combine the expertise of its own team of animal nutritionists with international research partners, to provide a complete service for customers.

2. Farmlands contact details are:

Tanya Houghton
Chief Executive Officer
Farmlands Co-operative Society Limited

535 Wairakei Road
Christchurch

[CONFIDENTIAL]

3. Farmlands requests that the Commission sends all correspondence regarding this application to:

David Blacktop
A&B Competition Lawyers

david@abcompetitionlawyers.nz

+64 21 366 284

Seales Winslow: the company being acquired

4. Seales Winslow is a New Zealand registered company owned 100% by Ballance Agri-Nutrients Limited (a New Zealand farmer-owned co-operative). Seales Winslow manufactures compound feed at sites located in Morrinsville, Whanganui, and Ashburton. Further information regarding Seales Winslow can be found at: [SealesWinslow | Home](#).

5. Seales Winslow's contact details are:

Matt Skilton
Chief Financial Officer
Ballance Agri-Nutrients Limited

[CONFIDENTIAL]

6. Seales Winslow requests that the Commission sends all correspondence regarding this application to:

Troy Pilkington / Emily Lyons
Russell McVeagh

troy.pilkington@russellmcveagh.com / emily.lyons@russellmcveagh.com

+64 9 367 8108 / +64 9 367 8083

The transaction and the clearance sought

7. Farmlands (or any interconnected body corporate) seeks clearance to acquire 100% of the shares of Seales Winslow.
8. The parties entered a Sale and Purchase Agreement (SPA) on 13 October 2023.¹ The SPA provides that Farmlands will acquire Seales Winslow for [CONFIDENTIAL]. The SPA is conditional on, among other things, the Commission granting clearance for the acquisition.

Why Farmlands is acquiring Seales Winslow

9. The efficient production of compound feed depends to a significant extent on the optimal utilisation of plant. Currently, Farmlands' capacity utilisation is [CONFIDENTIAL]; Seales Winslow's is [CONFIDENTIAL], or approximately [CONFIDENTIAL] in peak spring season.
10. The acquisition will give Farmlands manufacturing capacity in the North Island (which it does not have) and allow Farmlands to consolidate production over time and, in doing so, improve the cost competitiveness of the feed it produces relative to the various substitutes available to farmers (discussed in detail below).

Why Balance is selling Seales Winslow

11. Balance will provide this context to the Commission separately.

What would happen absent the acquisition

12. The status quo is likely to prevail absent the acquisition. From its perspective, Farmlands would continue to compete, although less efficiently than in the factual without having realised the operational synergies available as a merged entity. In that case, in the counterfactual, each of the less efficient Farmlands and Seales Winslow entities will be producing higher cost feed with a reduced ability to position their products competitively relative to the various alternatives available.
13. In addition, in the North Island, Farmlands would be relatively constrained from a strategic perspective given that it relies on toll processing arrangements (with Seales Winslow) to produce compound feed for its North Island customers and so will have less flexibility in terms of its ability to expand production in response to competitive conditions.

¹ Provided as Attachment A.

Relevant markets are North Island and South Island markets for off-farm supplementary livestock feed

14. Each of Farmlands and Seales Winslow manufactures and distributes pelletised compound stock feed to New Zealand farmers (directly and through retail channels) in competition with each other and other suppliers of stock feed.
15. For the reasons explained below, the relevant markets in which Farmlands and Seales Winslow compete are the North Island and South Island markets for the production and distribution of off-farm supplementary livestock feed.² These markets:
 - 15.1 include all types of supplementary feed (i.e., grains, PKE (palm kernel expeller), blends, compound feed, silage/baleage produced off-farm and other supplements); and
 - 15.2 could be further separated into wholesale and retail levels, although Farmlands does not believe that is necessary for the purposes of this application as it would not change the competition analysis.

Types of supplementary feed used in New Zealand

16. Farmers use supplementary feed produced off-farm to boost production by providing additional nutrition (energy and protein) to farm animals over and above that available on-farm from pasture and foraging crops (such as fodder beet, kale, rape, turnips, and swedes). Off-farm supplementary feed accounts for approximately 20% of the total feed consumed by dairy cattle.³
17. There is a range of different types of supplementary feed sold in New Zealand. Ultimately, farmers aim to increase productivity by more than the cost of the supplementary feed. The different types of feed available all have relative strengths and reflect a different balance of nutritional value and cost. In practice, farmers have varying views about the relative merits of different feed types at different price points.
18. Farmlands and Seales Winslow both produce and supply pelletised compound feed. Compound feed can be fed to all types of farm animals including dairy cattle, beef cattle, sheep, pigs, and poultry. That said, due to concerns associated with BSE (or “mad cow disease”), compound feed for ruminants cannot include any animal proteins (e.g., blood and bone). In contrast, feed for monogastric animals (pigs and poultry) can (but does not need to) include animal proteins.
19. The other types of off-farm supplementary feed used in New Zealand are:⁴
 - 19.1 *Grains*: There are a range of domestically produced grains including maize, barley, wheat and oats fed to farm animals in New Zealand in raw form.
 - 19.2 *Straights*: There are a range of predominantly imported straight feed commodities fed to farm animals in a raw form, including tapioca, soya bean meal, soy hulls, canola meal, cottonseed, brewers’ grain and, most significantly, PKE (Palm Kernel Extract). PKE is a dry, gritty meal widely used by New Zealand farmers. It is a by-product of the palm oil industry in Southeast Asia and is imported into New Zealand (primarily from Indonesia and Malaysia)

² For completeness, the parties also acquire raw materials (e.g., maize, wheat and barley) for use in their compound feed. However, given these inputs are globally traded commodities, and are used in many applications in New Zealand other than compound stock feed, the acquisition could not be said to substantially lessen competition in these markets. Therefore, this market is not addressed further in this application.

³ See: [Feed Consumed by NZ Dairy Cows \(mpi.govt.nz\)](https://www.mpi.govt.nz/feeds/consumption/), page 3.

⁴ There are a range of websites that provide a great deal of information regarding supplementary feed in New Zealand, for example: [Supplementary feed - DairyNZ](https://www.dairyNZ.co.nz/feeds/supplementary-feed/); [Feed Consumed by NZ Dairy Cows \(mpi.govt.nz\)](https://www.mpi.govt.nz/feeds/consumption/). We also provide for reference as Attachment B a confidential internal Farmlands document entitled Supplementary Feed Options

with total sales in New Zealand of around \$700 million per year.⁵ By itself, PKE makes up 44% by volume of supplementary feed sales in New Zealand.

- 19.3 *Blends (Standard and Complex)*: Blended feed is essentially a mix of ingredients (say, for example PKE and molasses) produced in a raw (non-pelletised) form. Blended feed can be produced in standard form using default levels of various ingredients or in a complex form which may be targeted to the particular soil characteristics of a particular farm and may also include specialised additives, such as lime, salt, magnesium, trace minerals, yeasts and bypass fats. Blends can and are imported into New Zealand from Australia. In total, blends make up 14% by volume of supplementary feed sales in New Zealand.
- 19.4 *Other supplements*: There are other supplements fed to farm animals in New Zealand, including proliq, molasses, and waste manufacturing products like biscuits, chips, waste vegetables and fruit. Farmlands does not have any reliable estimates of other supplement sales in New Zealand.
- 19.5 *Silage / Baleage*: Many farmers grow grass on their own land for the purpose of harvesting as silage and baleage for use as supplementary feed for their own animals or otherwise for sale to other farmers. Farmlands estimates that over 1 million tonnes of silage and baleage are produced each year in New Zealand although that is both used on-farm and sold off farm.
20. Compound feed – such as the parties produce – is simply a mixture of various concentrated feed ingredients produced in pelletised form. The particular recipe for any compound feed can vary but generally includes products like those described above (e.g., grains, brans, protein meals/cakes, chunnies, agro-industrial by-products, minerals and vitamins).⁶
21. Compound feed makes up 25% by volume of all supplementary feed sales in New Zealand, (i.e., including poultry and pig compound feed) or approximately 10% when pig and poultry compound feed is excluded.
22. Farmlands’ view of the breakdown of sales by feed types in New Zealand is as set out below. This table is partial as it excludes other supplements (as Farmlands does not have reliable estimates of those sales) and silage/baleage (as Farmlands does not have a reliable way of determining what percentage of the over 1 million tonnes of silage and baleage produced in New Zealand is sold off-farm).

Table 1: Supplementary feed types – production and share (all livestock types)

Feed type	North Island		South Island		New Zealand	
	Quantity (T)	%	Quantity (T)	%	Quantity (T)	%
Grains (domestic)	203,258	7%	578,945	34%	782,203	17%
PKE	1,376,157	49%	597,592	35%	1,973,749	44%
Blends (mechanically mixed)	514,000	18%	140,500	8%	654,500	14%
Compound feed	734,269	26%	390,794	23%	1,125,062	25%
TOTAL	2,827,684		1,707,831		4,535,514	

⁵ Calculated as 2 million tonnes per year @ \$350/MT average over recent year.

⁶ Farmlands compound feed products are described in detail at: [Dairy - NRM - Feed To Succeed](#). Seales Winslow’s compound feed products are described in detail at: [All-Nutritional-Products | SealesWinslow](#).

23. The table includes feed for all livestock types for compound feed. Compound feed sold for ruminants accounts for 241,021 tonnes of the 1,125,062 tonnes of compound feed sold in New Zealand (137,618 tonnes in the North Island and 103,603 tonnes in the South Island). As a result, compound feed is only approximately 10% of all supplementary feed used for ruminants.

Market includes all types of supplementary feed

24. Given this context, Farmlands submits that the relevant markets include all types of supplementary feed. This approach is consistent with the Commission’s approach when clearing Agri-Feeds to acquire Independent Molasses in 1998.⁷ That decision involved the merger of two molasses suppliers. Molasses was used as a supplementary feed for livestock. The Commission concluded:

Staff enquiries have revealed that for on-farm use, molasses can be substituted by a range of animal feed products. In the event of a small, but nonsignificant increase in price (say 5%), we believe that farmers could readily switch to other supplementary feed products. These might include grass-based feeds, such as hay or silage; grains, including maize, barley or oats; and other supplementary feed or dietary products as appropriate, such as animal lick products and liquid feed supplements.⁸

25. On that basis the Commission concluded that there was a North Island market for the storage and distribution of supplementary livestock feed.⁹
26. Farmlands acknowledges that the Commission made the Agri-Feeds decision some time ago. However, while the sophistication and efficacy of supplementary feed has continued to improve since 1998, the essence of the Commission’s reasoning in Agri-Feeds remains apposite in today’s market.
27. That is, from a farmer’s perspective, all types of supplementary feed remain substitutable for each other as a matter of fact and commercial commonsense. To illustrate, a farmer could order compound feed for his or her silo, and then once that is empty order a blended product and put that product in the same silo. That is, the farmer does not have to do anything to switch between compound feed and other feed types.
28. Of course, each type of supplementary feed has different attributes and individual farmers may have different preferences across the range of options. However, these different preferences are not such as to mean that different types of feed fall into different markets.
29. This is reflected in the purchasing decisions of farmers who, in Farmlands’ experience, choose a range of feed types or combinations of feed types in all trading conditions. Ultimately, the objective of the farmer is to use supplementary feed in a way that best improves overall net yields. In short, farmers are looking for the best “bang for their buck” and will actively substitute different feed types to achieve this.
30. Indeed, pricing data shows that in the last three years as prices have risen generally in an inflationary environment the premium achieved for compound feed over and above the price of blended feed has significantly reduced.¹⁰ This suggests that farmers can and do substitute compound feed for blends as prices rise.
31. For these reasons, Farmlands believes that the correct market definition includes all supplementary feed types. There is a real risk that if a narrower market were adopted (even as a starting point) the

⁷ Decision 328 *Agri-Feeds / Independent Molasses* .

⁸ Decision 328 at [33] (footnotes omitted).

⁹ Decision 328 at [42].

¹⁰ Average prices (\$/tonne) for Compound feed/Blended feed in the past 3 years:

- 2021: [FARMLANDS CONFIDENTIAL]
- 2022: [FARMLANDS CONFIDENTIAL]
- 2023: [FARMLANDS CONFIDENTIAL]

resulting competition analysis would not fully and appropriately reflect the competitive constraint provided by all feed types.¹¹

There are separate North Island and South Island markets

32. Supplementary feed is transported throughout the North Island and the South Island respectively.
33. However, with the exception of modest quantities of bagged feed, supplementary feed produced in the North Island is not shipped to the South Island and vice versa. Therefore, Farmlands considers it remains appropriate to define separate markets for the manufacture and supply of supplementary feed in each of the North Island and South Island.

There are no separate customer markets

34. As described above, Farmlands acknowledges that there are different feed requirements for ruminants (i.e., cows and sheep) as compared with monogastric animals (pigs and poultry). However, Farmlands does not consider that these differences require defining separate customer markets given the differences relate only to compound feed and blends.
35. The difference arises due to concerns associated with BSE (or “mad cow disease”). To limit any risk of contamination, feed for ruminants cannot include any animal proteins (e.g., blood and bone). In contrast, feed for monogastric animals can (but does not need to) include animal proteins.
36. As a result, a ruminant farmer cannot use feed containing animal protein. Similarly, a mill that produces feed for monogastric animals containing animal proteins cannot produce feed for ruminants.
37. However, a farmer with monogastric animals can use feed from a mill producing feed for ruminants – albeit feed that may be of a lower nutritional value for those monogastric animals (due to the lack animal proteins).
38. The reason why it is not necessary to define separate customer markets is because this issue only relates to compound feed and blends where a degree of manufacture is necessary. Grains and PKE, by their nature do not include animal proteins and can be and are, used by farmers of all livestock types.

There is no need to define separate functional markets

39. Farmlands and Seales Winslow sell directly to farmers and indirectly through intermediaries, including, in Farmlands’ case, via its own network of rural supplies stores.
40. While there is a retail and wholesale aspect to the markets, the competition effects and analysis are largely the same. Moreover, as explained at paragraphs 75 to 81 below, the acquisition will not lead to any vertical or conglomerate effects. Therefore, Farmlands has not drawn a distinction between the markets in this clearance application.

¹¹ *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) at [34]-[39] and [157]-[159]

Why the acquisition will not substantially lessen competition

Summary

41. The acquisition will not substantially lessen competition because:
- 41.1 on any realistic view of the market, the acquisition falls within the Commission's concentration indicators, illustrating the large range of supplementary feed options and suppliers Farmers can and do substitute between;
 - 41.2 even assuming away the constraint provided by all types of supplemental stock feed, Farmlands would be constrained by other existing manufacturers of pelletised compound feed in both the North Island and South Island, each of whom has material excess capacity and could ramp up production quickly should a commercial opportunity arise;
 - 41.3 supplemental feed is by its nature a supplement – the main source of feed for livestock is crops and pasture grown by farmers – which means that farmers can exercise countervailing power by increasing their own supply of feed;
 - 41.4 to the extent there was thought to be a difference in competitive intensity between the North Island and the South Island, any retailer or farmer with a presence in each Island could exercise countervailing power against the merged firm;
 - 41.5 the diffuse nature of supplemental feed options and feed suppliers in this market means it is not one that is prone to coordinated effects; and
 - 41.6 the acquisition does not materially change the level or extent of vertical integration in the market and would not give Farmlands the ability or the incentive to foreclose either its supplementary feed or retail competitors.
42. Each of these points is explained below.

Aggregation is within the Commission's concentration indicators

43. Each of Farmlands and Seales Winslow produce compound feed. As shown in Table 1, compound feed comprises only 26% of the North Island supplemental feed sales (by volume) and 23% of the South Island supplemental feed sales (by volume). Compound feed comprises an even smaller percentage of sales of supplementary feed for ruminants (~10%).
44. The acquisition would not, therefore, trigger the Commission's concentration indicators in this market.
45. Even within the compound feed segment of the market, the merged firm would have a market share of only **[CONFIDENTIAL]** in the North Island and **[CONFIDENTIAL]** in the South Island. Other producers of compound feed include:
- 45.1 in the North Island, Tegel (**[CONFIDENTIAL]**), Inghams (**[CONFIDENTIAL]**), Mainfeeds (**[CONFIDENTIAL]**), and CopRice (**[CONFIDENTIAL]**), with a tail of producers accounting for the balance; and
 - 45.2 in the South Island, Tegel (**[CONFIDENTIAL]**) and Mainfeeds (**[CONFIDENTIAL]**), with a significant tail of producers accounting for nearly **[CONFIDENTIAL]** of the market.
46. Therefore, even in this segment, the acquisition would not trigger the Commission's concentration indicators.

47. The only scenario in which the acquisition could be said to trigger the concentration indicators is if aggregation was assessed based on a market for compound feed for ruminants.
48. However, if that very narrow (and Farmlands says incorrect) view of the market was taken, the acquisition still results in only a relatively modest [CONFIDENTIAL] market share aggregation (based on current sales¹²) in the North Island (giving Farmlands a post-acquisition share of [CONFIDENTIAL]). The acquisition would result in a larger market share aggregation in the South Island as it would combine Farmlands' [CONFIDENTIAL] share with Seales Winslow's [CONFIDENTIAL] share.¹³
49. Moreover, as explained further below, given the significant excess capacity in the market, on a capacity share basis, Farmlands' post-acquisition capacity share would be lower than its sales share: [CONFIDENTIAL] in the North Island (where there would be no capacity aggregation as Farmlands does not have North Island manufacturing capacity) and [CONFIDENTIAL] in the South Island.
50. In any event, in Farmlands' view, these shares are significantly overstated given they exclude all other feed types that farmers substitute between. Indeed, Farmlands estimates that approximately 85% of dairy farmers who buy bulk feed for ruminants do not use any compound feed products.
51. As shown in Table 1, PKE and grains by themselves account for over 50% of supply across the market. This suggests that the combined firm's share of sales to ruminant farmers would be in the range of [CONFIDENTIAL] to [CONFIDENTIAL] at the most and inside the Commission concentration indicators.
52. For all these reasons, on any of these views of the market, the acquisition will fall within the Commission's concentration indicators, i.e., it is an acquisition that is unlikely to substantially lessen competition.

Farmlands would continue to be constrained by strong competitors, none of whom face barriers to expansion

53. What this low level of market share aggregation indicates is that Farmlands is and would continue to be constrained by suppliers of other feed types, as well as other suppliers of compound feed.

Numerous suppliers of feed types

54. As shown in Table 1 above, there are a range of options for farmers seeking supplementary feed. In addition to the compound feed manufacturers listed below, major suppliers of grain/straight feed and blends include:
- 54.1 Viterra;
 - 54.2 AgriFeeds/Wilmar;
 - 54.3 ADM;
 - 54.4 Swaps Stockfeeds;
 - 54.5 GrainCorp;
 - 54.6 PGG Grain and Seed;
 - 54.7 Nutrinza;

¹² Noting that Farmlands does not have any manufacturing capacity in the North Island and contracts Seales Winslow to toll manufacture its North Island requirements.

¹³ These market share estimates are shown in Attachment C and are likely an overestimate as they exclude non NZFMA (Feed Manufacturer Association) production.

- 54.8 EnerPro;
- 54.9 Castlegate James;
- 54.10 Oil Seed Products (OSP); and
- 54.11 Winton Stockfeeds.
55. There is nothing to prevent any of these suppliers expanding their sales should a market opportunity arise to do so. This is particularly the case given the ability of suppliers to import blended products into New Zealand from Australia and other countries.
56. Given that farmers have a range of alternative supplementary feed options, price is a critical factor in competition. A farmer will only use a specific supplementary feed solution to the extent that it is expected to generate the best “bang for buck” in terms of a productivity benefits relative to cost.
- Numerous suppliers of compound feed for ruminants who have capacity to expand***
57. Farmlands acknowledges that the core overlap between Farmlands and Seales Winslow is in the production and distribution of pelletised compound feed suitable for ruminants. However, even assuming away the other constraints in this segment, Farmlands would be constrained by several existing producers of compound feed who compete effectively with the merged entity.
58. While price is an important part of competition between compound feed producers, service and innovation also play a significant role in this market.
- 58.1 *Innovation:* Manufacturers of compound feed are constantly reviewing and refining the formulation and ingredients of their products to meet the needs of farmers as they evolve over time. Those needs include animal health considerations (addressed by delivery of minerals) and well as the constant imperative to reduce production costs through formulation optimisation.
- 58.2 *Service:* It is also critical that product is delivered on-time and that the ordering process is easy. In that regard, any digital tools used need to be user-friendly for farmers.
59. Compound feed manufacturers in the North Island, include:
- 59.1 CopRice, which is the animal food division of Ricegrowers Ltd trading as SunRice, one of the largest rice food companies in the world.¹⁴ CopRice has feedmills in Australia and acquired the Hamilton feedmill from Inghams in 2020. Farmlands estimates that CopRice supplies **[CONFIDENTIAL]** of all North Island pelletised compound feed suitable for ruminants.
- 59.2 Takanini Feeds, which is based in Mangatawhiri in north Waikato. Takanini Feeds manufactures meal and compound pellets for dairy cows, calves and other ruminants, poultry, and pigs as well as horses in all disciplines and levels of work.¹⁵
- 59.3 Sharpes, which is family owned and operated mill in Wairarapa producing meal and pellets for ruminants (as well as monogastric animals under a separate production line). Sharpes’ sales are predominately through the main merchants but Sharpes also makes some direct sales.

¹⁴ See <https://www.coprice.com.au/>

¹⁵ See <https://www.takaninifeeds.co.nz/>

- 59.4 Grainhub, which started in 2018 under the current entity and is based in Tuakau. Grainhub supplies compound pellets suitable for ruminants, alongside their grain storage and processing facility.
60. In the South Island, compound feed manufacturers include:
- 60.1 Advanced Feeds, which is privately owned and based in Methven. Advanced Feeds runs both a pellet and blend line for ruminant animal feeds, producing under both their own brand and contract manufacturing, working with parties like the Dairy Business Centre.
- 60.2 Couplands Stockfeeds is privately owned and based in Timaru and produces a wide range of feeds. While Couplands is a separate legal entity to Couplands Bakeries, it does access broll¹⁶ by-products as a key ingredient.
- 60.3 Sgt Dan Stockfoods is privately owned and based in Gore. It is a strong regional producer of ruminant feeds for the lower South Island with sales predominately through merchants but also some direct sales.
61. There is nothing that would prevent any of these suppliers increasing their sales. Indeed, Farmlands understands that few if any feed mills producing compound feed operate at full capacity (either at peak times or on average) and there is significant scope to increase production materially at all feed mills. As Table 2 below shows, Farmlands estimates that total production of compound feed for ruminants by third parties is:
- 61.1 [CONFIDENTIAL] tonne per year in the North Island with total capacity of those third parties being [CONFIDENTIAL] tonne – i.e., over [CONFIDENTIAL] excess capacity with this excess capacity ([CONFIDENTIAL] tonnes) being [CONFIDENTIAL] times Farmlands and Seales Winslow’s combined current sales in the North Island; and
- 61.2 [CONFIDENTIAL] tonne per year in the South Island with total capacity being [CONFIDENTIAL] tonne – i.e., approximately [CONFIDENTIAL] excess capacity with this excess capacity ([CONFIDENTIAL] tonnes) being over [CONFIDENTIAL] of Farmlands and Seales Winslow’s combined current sales in the South Island.

Table 2: Estimated excess capacity for compound feed for ruminants

	Production	Capacity	Spare capacity	Utilisation
North Island (ex-Farmlands and Seales Winslow)				
CopRice				
Takinini Feeds				
Sharpes				
Grainhub				
South Island (ex-Farmlands and Seales Winslow)				

¹⁶ Broll is a by-product of wheat milling.

	Production	Capacity	Spare capacity	Utilisation
Advanced Feeds				
Couplands				
Sgt Dans Stockfoods				

62. There are strong commercial incentives for suppliers to increase utilisation to achieve operating efficiencies and improve the cost competitiveness of the feed produced.
63. In previous clearance decisions, the Commission has concluded that the presence of existing competitors with significant excess capacity would be sufficient, by itself, to constrain a merged firm from being able to unilaterally raise prices and / or reduce the quality of its services.¹⁷
64. Here, the ability and incentive for suppliers to expand sales within the envelope of their excess capacity will pose a significant competitive constraint on Farmlands.

Suppliers of compound feed for monogastric animals could easily expand to produce compound feed for ruminants

65. In addition to expansion by current suppliers of compound feed to ruminants (see Table 2 above), suppliers of compound feed for monogastric animals could quickly and easily expand into supplying compound feed for ruminants should a market opportunity present itself.
66. All that would be required would be a manufacturer to convert to operations that do not include animal proteins to be able to produce feed both for ruminants and monogastric animals. Converting a mill in this manner would require minimal capital expenditure, and only minor operating expenditure (e.g. marketing to promote the new offer). Farmlands understands that this trend is emerging as mills currently producing feed containing animal proteins move towards vegetarian recipes.

Manufacturers of blended feed could easily expand to produce compound feed

67. Finally on expansion, producers of blended feed could expand their facilities to produce compound feed. Indeed, some producers already do this, providing both blends and pellet feeds e.g. Advanced Feeds, Grainhub.
68. Examples of blended feed producers that Farmlands believes would be able to invest in the capacity to produce compound feed include AgriFeeds and Nutrinza.

New entry not relied on by Farmlands

69. Farmlands does not rely on completely new entrants entering the market for the purposes of seeking clearance given the strong existing competition that already exists and will continue to constrain Farmlands.
70. That said, Farmlands believes that there is nothing that would prevent such new entry occurring and such entry would occur were a market opportunity to arise through a (hypothetical) loss of existing competition from the acquisition. Manufacturing blends or compound feed is not difficult. All that a new entrant would require is a recipe, a method of blending or a palletiser (which could be resold in New Zealand or offshore), and space to manufacture. Although a large-scale pellet plant would

¹⁷ See, for example, *Mainland Print Limited / Inkwise Limited* [2019] NZCC 6. See also *Reyrolle Pacific Holdings Limited / VA Tech Reyrolle Pacific Limited* [2002] NZCC 463 at [78] and *Genesis Power Limited / Energy Online Limited* [2002] NZCC 476 at [87], where the Commission has acknowledged that the constraint on a merged firm from unemployed capacity must be considered in the competition assessment.

require material capital investment,¹⁸ two smaller regional feedmills have recently entered the South Island market¹⁹, and Farmlands understand that other projects are in various stages of planning.²⁰

Farmers and wholesale suppliers can exercise countervailing market power

71. As already described above, farmers can substitute a large range of alternative feed types for compound feed.
72. In addition, farmers can and do grow feed for themselves in various forms including planting crops such as maize and fodder beet as well as producing baleage and silage. Farmlands estimates that, for example, farmers of ruminants produce an estimated 80% of feed for their own use on-farm.²¹ This feed can be augmented at feeding with various additives such as magnesium and other minerals and vitamins that mean these options are genuine alternatives to compound feed products that will be available through the merged firm.
73. Moreover, to the extent that there is a difference in competition between the North Island and the South Island, national wholesale customers (and any corporate farm groups with operations in both Islands) would be able to exercise countervailing power via their purchases in the other Island.
74. For example, were competition (hypothetically) lessened in one Island but not the other, then a national customer could constrain the merged firm by leveraging the customer's options in the more competitive market. Where this ability is exercised by a wholesale customer, then that countervailing power will also benefit and protect farmers in the market where competition has been lessened.

Market is not conducive to coordinated effects

75. The merger will not change the features of the market in a way that would make coordinated conduct more likely.
76. The market does not have features that make it prone to coordinated conduct. In particular:
 - 76.1 there are a large range of alternative options and suppliers for customers;
 - 76.2 the products are differentiated;
 - 76.3 the pricing of rivals is not easily observable meaning that it is difficult for competitors to act in ways that promotes coordination; and
 - 76.4 the different sales channels utilised by different parties make coordination difficult.

Farmlands cannot foreclose manufacturing or distribution of supplementary feed

77. While Farmlands operates at both the production / wholesale supply and retail levels of the market, the acquisition will not substantially lessen competition due to vertical effects. Farmlands would have neither the ability nor the incentive to foreclose rival suppliers and manufacturers of supplementary feed or rural retail merchants (such as PGGW and Farm Source).
78. At the manufacturing and supply level, Farmlands' rivals would continue to have access to all other rural retail merchants, as well as retaining the ability to supply direct to farmers. The acquisition will not change either of those features of the market.

¹⁸

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¹⁹ See [Gladfield Stockfeed](#) and [Annandale](#).

²⁰ See <https://agritech-group.nz/>

²¹ See: [Feed Consumed by NZ Dairy Cows \(mpi.govt.nz\)](#), page 3.

79. At the retail level of the market, as described above, competition from other producers and other feed types will mean that Farmlands could not raise the costs of its rivals in a way that would foreclose them.
80. Even in the extremely unlikely event that Farmlands were able to raise its rivals' costs, it would not foreclose PGGW and Farm Source from competing with Farmlands in the rural supplies market. Compound feed constitutes too small a proportion of rural supplies sales to foreclose competition in this market. (By way of illustration, sales of compound feed accounts for only [CONFIDENTIAL]% of Farmlands' merchant sales.)
81. Indeed, Farmlands' incentive would remain to optimise the sale of compound feed through all channels (including competitor rural supplies channels) rather than raise prices, which would simply lead to farmers substituting other feed types.

Summary and conclusion

82. For the reasons explained, the acquisition will not substantially lessen competition in any market (however the markets are defined).
83. Farmlands, therefore, requests that the Commission grant clearance for the acquisition.

Declaration

I, Tanya Houghton, have supervised the preparation of this notice seeking clearance. To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am Chief Executive Officer of Farmlands Co-operative Society Limited, and I am duly authorised to submit this notice.

Tanya Houghton

Date: 7 November 2023

Schedule of confidential information

Confidential information in this application is highlighted to reflect who the information is confidential to.

- Information that is confidential to the parties as against third parties is highlighted in grey (i.e., **[CONFIDENTIAL]**) and is listed below.
- Information that is confidential to Farmlands as against all parties is highlighted in blue (i.e., **[FARMLANDS CONFIDENTIAL]**) and is listed below.
- Information that is confidential to Seales Winslow as against all parties is highlighted in yellow (i.e., **[SEALES WINSLOW CONFIDENTIAL]**) and is listed below.

Information confidential to the parties

The following information has been removed from the public version of the Application because the information is confidential to the parties and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice the commercial position of one or both of the parties (*cf* s 9(2)(b)(i) and (ii) of the Official Information Act).

- The dollar figure in paragraph 8.
- The percentages in paragraph 9.
- The percentages in paragraphs 45, 45.1, 45.2, 48, 49, and 51.
- The percentage in paragraph 59.1.
- The percentages in paragraphs 61.1, and 61.2.
- The percentages in Table 2.
- Attachment A.
- The figures identified in the second and third tables in Attachment C.

The names and/or positions and/or contact details of the individuals listed in the following parts of the Application have been removed from the public version to protect the privacy of individuals relying on s 9(2)(a) of the Official Information Act.

- Paragraph 2.
- Paragraph 5.
- Attachment E.
- Attachment G.

Farmlands' confidential information

The following information has been removed from the public version of the Application because the information is confidential to Farmlands and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice Farmlands' commercial position (*cf* s 9(2)(b)(i) and (ii) of the Official Information Act):

- The price data in footnote 10.

- Footnote 18.
- The percentage in paragraph 80.
- Attachment B.
- The Farmlands data in Attachment D.
- The Farmlands data in Attachment G.
- Attachment H.

Seales Winslow's confidential information

The following information has been removed from the public version of the Application because the information is confidential to Seales Winslow and disclosure would be likely to disclose a trade secret or be likely unreasonably to prejudice Seales Winslow's commercial position (cf s 9(2)(b)(i) and (ii) of the Official Information Act):

- The Seales Winslow data in Attachment D.
- The Seales Winslow data in Attachment G including footnote 24.

Schedule of required information in notice for clearance

Notice para.	Commission request	Response
[1]	Applicant details	See paragraphs [1] to [3] of the Clearance Application.
[2]	Other party details	See paragraphs [4] to [6] of the Clearance Application.
[3.1]	Type of transaction	See paragraph [7] of the Clearance Application.
[3.2]	Merger rationale	See paragraphs [9] to [11] of the Clearance Application.
[3.3]	How merger changes control	See paragraph [7] of the Clearance Application.
[3.4]	Ancillary agreements	N/A
[3.5]	Counterfactual	See paragraphs [12] to [13] of the Clearance Application.
[4]	International notification	N/A
[5.1]	Applicant's view on market definition	See paragraphs [14] to [40] of the Clearance Application.
[5.2]	Each merging party's total sales revenues, volumes, and capacity for the last three financial years.	Attachment D.
[5.3]	Names and contact details of the merging parties' main competitors	Attachment E.
[5.3]	Names of any trade or industry associations which either of the merging parties participate	Attachment F.
[5.4]	Names and contact details of merging parties top 5 customers	Attachment G.
[6]	Why the transaction will not substantially lessen competition	See paragraphs [41] to [Error! Reference source not found.] of the Clearance Application.
[7]	Copies of documents bringing about the merger	Attachment A.
[8]	Internal applicant documents seen by the Board or senior management within the last two years that relate to: <ul style="list-style-type: none"> the transaction; or market conditions. 	Attachment H
[9]	Most recent annual report, audited financial statements and management accounts	Annual report is available at https://www.farmlands.co.nz/Aboutus/AnnualReport . Farmlands does not produce management accounts for its supplementary feed business.

Attachment A: Sale and Purchase Agreement

[CONFIDENTIAL]

Attachment B: Supplementary feed options

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Attachment C: Market share information

Supplementary feed types – production and share (all livestock types) [Table 1 of clearance application]

Feed type	North Island		South Island		New Zealand	
	Quantity (T)	%	Quantity (T)	%	Quantity (T)	%
Grains (domestic)	203,258	7%	578,945	34%	782,203	17%
PKE	1,376,157	49%	597,592	35%	1,973,749	44%
Mechanical blends	514,000	18%	140,500	8%	654,500	14%
Compound feed	734,269	26%	390,794	23%	1,125,062	25%
TOTAL	2,827,684		1,707,831		4,535,514	

- Market shares are estimates based on Farmlands' understanding of yearly averages (incorporating NZFMA and AIMI data).

Volume of compound manufactured [Paragraph 45 of clearance application]

Feed type	North Island		South Island		New Zealand	
	Quantity (T)	%	Quantity (T)	%	Quantity (T)	%
Farmlands	[CONFIDENTIAL] ²²					
Seales Winslow						
Combined						
Tegel						
Inghams						
Mainfeeds						
CopRice						
Advanced Stock Feeds						
Other						
TOTAL						

- Farmlands' management estimates based on yearly averages.

²² Farmlands has no North Island manufacturing capacity.

Sale of compound feed for ruminants [Paragraph 48 of Clearance Application] plus sales of mechanical blends

Feed type	North Island		South Island		New Zealand	
	Quantity (T)	%	Quantity (T)	%	Quantity (T)	%
Compound feed						
Farmlands	[CONFIDENTIAL]					
Seales Winslow						
Combined						
CopRice						
Advanced Stock Feeds						
Other						
Total compound feed	137,618		103,403		241,021	
Mechanical blends²³	514,000		140,500		654,500	

- Farmlands estimates based on NZFMA (Feed Manufacturer Association) production statistics, Farmlands' and Seales Winslow's 2022 sales, and estimates for other suppliers.
- Compound feed production estimates exclude production by non-NZFMA production, which Farmlands estimates at approximately **[CONFIDENTIAL]** tonnes per year.

²³ Of which, Farmlands supplies **[FARMLANDS CONFIDENTIAL]** tonnes (**[FARMLANDS CONFIDENTIAL]**%) (**[FARMLANDS CONFIDENTIAL]**) tonnes in the North Island (**[FARMLANDS CONFIDENTIAL]**%) and **[FARMLANDS CONFIDENTIAL]** tonnes in the South Island (**[FARMLANDS CONFIDENTIAL]**%). Seales Winslow does not supply mechanical blends.

Attachment D: Total sales revenues, volumes, and capacity for the last three financial years

Farmlands (NRM) - excluding Custom Blends and Contract Pack Milk powder:

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Seales Winslow

[SEALES WINSLOW CONFIDENTIAL]

Attachment E: Names and contact details of the merging parties' main competitors

Competitor	Name	Position	Contact details
CopRice/RiceGrowers			
Takinini Feeds			
Grainhub			
Sharpes			
Advanced Feeds			
Couplands Stockfeed			
Sgt Dans Stockfoods			
AgriFeeds/Wilmar			
Swaps			
Nutrinza			
GrainCorp			
ADM			

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Attachment F: Names of any trade or industry associations which either of the merging parties participate

Farmlands

- New Zealand Feed Manufacturers Association www.nzfma.org.nz
- Climate Leaders Coalition
- Sustainable Business Council
- NZ Association of Ruminant Nutritionists

Seales Winslow

- New Zealand Feed Manufacturers Association www.nzfma.org.nz

Attachment G: Names and contact details of merging parties' top customers

Farmlands

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Seales Winslow

[SEALES WINSLOW CONFIDENTIAL]²⁴

²⁴

[SEALES WINSLOW CONFIDENTIAL]

Attachment H: Farmlands' internal documents

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