

Farmlands / Seales Winslow

Joint submission in response to Commerce Commission Statement of Issues

1. Farmlands Co-operative Society Limited (**Farmlands**) and Ballance Agri-Nutrients Limited (**Ballance**) (together, the **Parties**) make this joint submission in response to the Commerce Commission's (**Commission**) Statement of Issues regarding Farmlands' application for clearance to acquire Seales Winslow Limited (**Seales Winslow**).¹
2. In doing so, the Parties acknowledge that the Commission's investigation is ongoing and the Statement of Issues sets out all potential competition issues the Commission is continuing to consider. The Parties make this submission to assist the Commission as it further develops and tests its own thinking.²
3. This submission is structured as follows:
 - 3.1 Section A offers some observations on the Commission's statutory task and summarises why the acquisition would not substantially lessen competition;
 - 3.2 Section B explains how the Statement of Issues materially underestimates the substitutability of all supplementary feeds for ruminants, and why the constraint from supplementary feeds would be sufficient in itself to prevent any likely loss of competition;
 - 3.3 Section C explains why, even if the market were incorrectly defined to exclude other supplementary feeds, it would be wrong to define regional markets rather than island wide markets for compound feed;
 - 3.4 Section D explains why the acquisition would not enable Farmlands to increase prices above, or decrease quality below, competitive levels (i.e., why the acquisition would cause no unilateral effects) even if the market were incorrectly defined as regional compound feed markets; and
 - 3.5 Section E explains why there is no plausible scenario in which the acquisition could be said to enable Farmlands to foreclose rival manufacturers (i.e., cause vertical effects in the manufacturing market).

A. The Commission's statutory task and why the acquisition would not substantially lessen competition

4. Before summarising the reasons why the Commission can be satisfied that the acquisition would not be likely to substantially lessen competition, the Parties make two observations with the aim of assisting the Commission in its statutory task.

¹ Confidential information in this submission is highlighted. Further information identifying the party to which highlighted information is confidential and the basis for the Parties' confidentiality claims is included in the **Schedule of confidential information**.

² Given the Parties agree with the Commission that the impact of the acquisition should be assessed against a status quo counterfactual (Statement of Issues at [53]), and that the acquisition would not be likely to substantially lessen competition due to coordinated effects or by enabling Farmlands to foreclose its rural supplies competitors, the Parties have not addressed those conclusions further in this submission. If there is any further information the Commission needs, the Parties will be happy to provide that.

- 4.1 The first is that it is important not to overlook the requirement for the Commission to make its competition assessments on the balance of probabilities.³ In most, if not all, clearance investigations, the Commission will be faced with conflicting or inconsistent evidence from which it will need to make decisions. Caution is required to ensure that applicants are not required to meet a higher standard through a requirement that all evidence or theories are consistent with granting clearance.⁴ The Commission's role is to weigh competing information and assess theories of harm against the practical evidence available, accepting that some competing information may not be reconcilable.
- 4.2 The second is that while the Statement of Issues canvasses a range of issues of detail, the primary question is and should be the substitutability of different types of supplementary feed for ruminants. If the Parties are correct that all types of supplementary feed are highly substitutable for pelletized compound feed, then there is no real chance that the acquisition would substantially lessen competition and all other issues fall away. Only if the Parties are wrong on that question, do the other more subsidiary issues become important. Put another way, this is not a case where the Commission should start with narrow markets before expanding its horizons. Such an approach would be inefficient.
5. With those observations in mind the Parties' submissions can be summarised in the following three points.

Constraint from supplementary feeds will be sufficient in itself to constrain Farmlands

6. Most importantly, the Statement of Issues materially underestimates the substitutability of all types of supplementary feed for ruminants for pelletized compound feed. There is compelling evidence that ruminant farmers can and actively do substitute between all types of supplementary feed, with pelletized compound feed being just one of these.
7. The Statement of Issues errs by not including all these substitutes within the same product market, and by materially understating (essentially overlooking) the constraint they would impose on Farmlands regardless of whether they are inside or outside the market. However, regardless of how the market is defined, the evidence demonstrates that continued competition from other supplementary feeds would be sufficient, in themselves, to constrain Farmlands.

The Statement of Issues underestimates the constraints from other manufacturers of pelletized compound feed

8. However, even if the constraint from other supplementary feeds is disregarded (incorrectly), the Statement of Issues underestimates the constraints from other manufacturers of pelletized compound feed.
9. Based on the Statement of Issues at [72], the regions where the Parties apprehend that the Commission's unilateral competition concerns arise are in the supply of:
- 9.1 bagged calf feed (but not bulk dairy) in the Waikato/Bay of Plenty, Taranaki/Manawatu, and Northland;⁵ and

³ *Commerce Commission v Woolworths* [2008] NZCA 276 (**The Warehouse**) at [99].

⁴ It is in this context, that the term "doubt" can become problematic and lead decision makers to error. The use of the term "doubt" in the clearance context does not elevate the onus on an applicant for clearance to a standard of beyond reasonable doubt as used in the criminal context. Rather, as the Court of Appeal has emphasised, in the clearance context, "doubt" simply means an applicant failing to discharge the burden of satisfying the Commission that no substantial lessening of competition is likely on the balance of probabilities. *The Warehouse* at [191].

⁵ The Statement of Issues at [72.2] refers to there being little overlap in bulk feed supply in the Waikato/Bay of Plenty and Taranaki/Manawatu. While [72.4] does not make this distinction in Northland, the Parties infer that the same would apply given Farmlands lack of its own manufacturing facility.

- 9.2 bulk dairy feed and bagged calf feed in Canterbury, the West Coast, and Nelson/Tasman (pelletized compound feed in the Upper South Island).⁶
10. There is nothing to stop other compound feed manufacturers from increasing sales across these regions simply, quickly, and profitably. There is no reason to believe these suppliers face materially different distribution costs to the Parties, and they have no material capacity constraints that would prevent them expanding – including at peak times.
11. Suppliers’ ability to expand will be sufficient to constrain Farmlands. However, in addition:
- 11.1 Manufacturers of pelletized compound feed for monogastric animals could easily switch to producing pelletized compound feed for ruminants.⁷ The cost of this switch is particularly low for manufacturers who already produce pelletized compound feed without animal proteins.
- 11.2 Farmers could exercise countervailing power, particularly in the North Island by redirecting their purchases of supplementary feed for dairy cows (who consume 8 to 10 times the amount that calves do) in response to any increase in the price of compound pelletized feed for calves, and potentially other products, away from Farmlands to other suppliers. The loss of whole-of-life sales of supplementary feed for dairy cows could have significant, long-term implications for Farmlands, making this a powerful constraint.
- 11.3 Rural merchants can, and do, exercise countervailing power by switching purchase volumes between suppliers, including providing opportunities for smaller competitors to grow by awarding them “home brand” contracts for bagged feed products.

No plausible scenario in which Farmlands could foreclose other manufacturers

12. Finally, there is no risk of vertical effects from the acquisition. The presence of other retailers and the ability of other suppliers to use distribution networks to deliver product direct to farm means the merged entity will have no ability to foreclose other manufacturers from the retail level.

B. The Statement of Issues underestimates the substitutability of other types of supplementary feed for ruminants

13. The Statement of Issues materially underestimates the substitutability of all types of supplementary feed.
14. Simply put, the evidence on the substitutability of supplementary feeds cannot be described as “mixed” as the Statement of Issues does.⁸ To the contrary, the overwhelming weight of the evidence shows that ruminant farmers can and actively do substitute between all types of supplementary feed. The countervailing points highlighted in the Statement of Issues do not, in any way, support an alternative conclusion.
15. Of course, viewing all supplementary feeds as substitutable is not a novel or convenient (for the Parties) conclusion. Indeed, Farmlands based its market definition on its market experience which is consistent with the Island-wide supplementary feed markets defined by the Commission in Decision 328 *Agri-Feeds / Independent Molasses*. There is no evidence to suggest that the level of substitutability between different types of supplementary feeds has decreased since Decision 328. In fact, quite the reverse has occurred with the continued evolution of supplementary feed types, including PKE, new blend technology, and modern in-shed feeding systems.

⁶ The Statement of Issues at [72.1] outlines that there would be no material aggregation in the Hawkes Bay/East Coast and Otago/Southland regions.

⁷ For the purposes of this submission, the Parties proceed on the basis that the relevant product market does not include compound pelletized feed for monogastric animals.

⁸ Statement of Issues at [33] and [60.4].

16. Indeed, better positioning itself to compete with these other supplementary feeds is a key driver for Farmlands to make the acquisition. Farmers' increasing use of other types of supplementary feed has made it more difficult for Farmlands and Seales Winslow to cover their costs of producing pelletized compound feed, which is more expensive to produce than the alternatives.⁹ This dynamic has resulted in a substantial recent write-down in the value of Seales Winslow of \$9.7 million¹⁰ and Farmlands seeking cost synergies to improve the competitiveness of its pelletized compound feed relative to other types of supplementary feed.¹¹

The legal framework for defining markets requires a single product market for all supplementary feed for ruminants

17. The Parties acknowledge that what ultimately matters is that the statutory test is correctly applied and that all constraints are properly considered and given their correct weight. However, for the reasons explained below, the Parties submit that the correct approach in this case is for the Commission to continue to define a supplementary feed market comprising all types of supplementary feed.
18. Section 3(1A) of the Commerce Act 1986 defines a market as “a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them”.
19. Of relevance to the application, in *Brambles New Zealand Ltd v Commerce Commission* the High Court made the following observations about how section 3(1A) should be applied to define markets:¹²
- 19.1 While market definition is an instrumental concept that helps to identify relevant competition issues, the statutory definition of a market and its focus on substitutability as a matter of fact and commercial common sense cannot be overlooked.¹³ Put another way, a market cannot be defined to “best isolate the key competition issues” the Commission believes exist if that market definition does not accord with the statutory definition.
- 19.2 A focus on substitutability as a matter of fact and commercial common sense involves:
- 19.2.1 Prioritising consideration of the purpose of the products in question when considering whether they are in the same market. If products are technically substitutable and the evidence suggests they are being used for the same purpose, they fall in the same market.¹⁴
- 19.2.2 This can be the case even if the products are differentiated, as long as they fall within the same “price-product-service-package overall”.¹⁵
- 19.2.3 On the demand side, individual customers may have a variety of different preferences for different products. However, if there is considerable use of those different products for the same purpose, they may still fall within the same market when assessed through the lens of commercial common sense.¹⁶

⁹ According to Farmlands, blends cost [CONFIDENTIAL] per tonne to manufacture, compared with [CONFIDENTIAL] per tonne for pelletized compound feed.

¹⁰ See: <https://ballance.co.nz/medias/Ballance-2020-Annual-Report-Final.pdf?context=bWFzdGVyfHJvb3R8NTMyMTY4MHxhcHBsaWNhdGlvbi9wZGZ8aDYxL2gyZi9oMDAvOTE5NzIxNzIxNTM5MC5wZGZ8YVYkZDFiNGM3ZGU2NDU1Y2Y0OGZhMjE1MWZmM2ZiMzc3NDAYTc2ZmJhYjY4MTViZGY1ZDI2MDRmYWZkYTEyZA>, page 66.

¹¹ Farmlands' clearance application at [10] and [12].

¹² *Brambles New Zealand Limited v Commerce Commission* 2003 TCLR 868 (HC), HC AK CIV2115-03 (24 October 2003).

¹³ Cf Statement of Issues at [23].

¹⁴ *Brambles* at [132].

¹⁵ *Brambles* at [130].

¹⁶ *Brambles* at [132].

20. Given the requirement to consider out of market constraints as part of any competition assessment – and the ability to assert that they are being considered – it can be tempting to exclude products that are substitutable as a matter of fact and commercial common sense from the market to “better isolate the key competition issues”. However, doing so would be an error and creates a risk that the competition analysis is misdirected. This is because a market definition that excludes relevant substitutable products risks overlooking, or at least underestimating, relevant constraints since they will be analysed through a lens of having already been ruled out as substitutes in the initial market definition exercise.

Strong evidence that ruminant farmers can and actively do substitute between all types of supplementary feed

21. Based on the Statement of Issues, there are five points that do not seem in dispute, all of which strongly support a conclusion that all supplementary feed types are substitutable as a matter of fact and commercial common sense.
- 21.1 First, it does not seem in dispute that pelletized compound feed is just one of the many options available to ruminant farmers, who can and often do elect to use alternatives. Nor is it in dispute that all supplementary feed types provide the nutrients dairy cows and calves need.¹⁷ Indeed, as mentioned in Farmlands' clearance application, Farmlands estimates that 85% of dairy farmers who buy bulk feed for ruminants do not use any pelletized compound feed products.¹⁸ Put another way, all supplementary feed is directed to the same end, and the majority of dairy farmers do not choose to use pelletized compound feed products at all.
- 21.2 Second, the Statement of Issues acknowledges that pelletised compound feed suppliers are actively competing to convince farmers to switch away from other supplementary feeds.¹⁹ This is strongly indicative of the products being substitutes.
- 21.3 Third, the Statement of Issues refers to other suppliers of pelletized compound feed having lost sales to other types of feed when they have increased the relative price of pelletized compound feed.²⁰ This information is consistent with information Farmlands provided in the clearance application that the relative price of pelletized compound feed has reduced [CONFIDENTIAL] from a [CONFIDENTIAL]% premium to blends in 2021 to a [CONFIDENTIAL]% premium in 2023²¹ with volumes of sales of pelletized compound feed declining in favour of blends concurrently. This information is also consistent with evidence that Seales Winslow has provided the Commission, including that [CONFIDENTIAL], has observed to Seales Winslow that compound pellets make up approximately 10% of [CONFIDENTIAL] deliveries, but that this proportion has decreased over the last ten years (demonstrating farmers switching away from compound feed to other forms of supplementary feed).
- 21.4 Fourth, the Statement of Issues acknowledges that sales of pelletized compound feed have decreased as PKE has become increasingly popular, while the Parties also observe a similar trend in a switch from pelletized compound feed to blends. Indeed, it is highly significant that most of the recent sales growth in the sector has been in blends and straight feeds, while pelletized compound feed sales have been in decline. This trend appears to accelerate when farmers are facing increasing cost pressures or lower milk prices, including in 2023.²² It demonstrates that farmers can and do switch between pelletized compound feed and other types of supplementary feed in light of the market conditions and relative price differences between those options, for both dairy cows and calves alike. These trends are strongly suggestive of switching between pelletized compound feed and other types of

¹⁷ Statement of Issues at [33.1] and [79].

¹⁸ Farmlands' clearance application at [50].

¹⁹ Statement of Issues at [33.4].

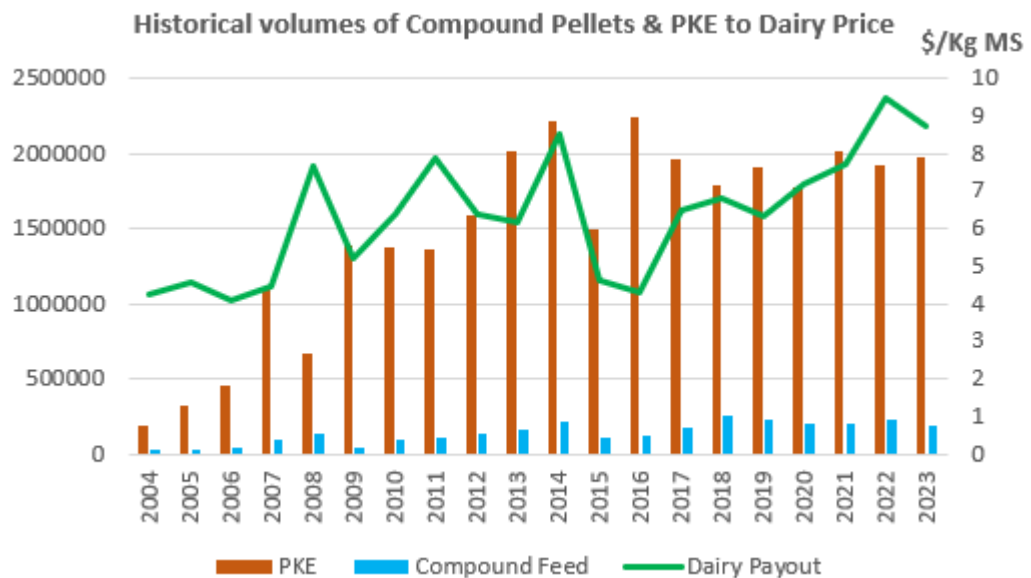
²⁰ Statement of Issues at [33.3].

²¹ Paragraph [30] of the clearance application.

²² See the financial information Farmlands provided to the Commission on 20 December 2023.

supplementary feed. This is reflected in data that Ballance has previously provided to the Commission (as reproduced in Figure 1 below).

Figure 1



22. It is difficult to see how it can be concluded that compound pelletized feed falls in its own product market in light of this evidence of farmer behaviour.

Other factors identified by the Commission do not support a compound feed only market

23. The possible countervailing reasons for defining a narrow market listed in the Statement of Issues at [32] do not support a narrow market.

Supplementary feed types are not complements

24. First, the fact farmers buy multiple types of supplementary feed shows the ability to substitute feed types, not that various types of supplementary feed are complements. Two products will increase in demand at the same time if they are complements. The evidence shows that supplementary feed types are substitutable as recognized in the Statement of Issues when acknowledging that:

- 24.1 pelletized compound feed suppliers are actively seeking to win volume off other supplementary feed suppliers;
- 24.2 pelletized compound feed suppliers have lost sales to other types of feed when relative prices increase; and
- 24.3 sales of pelletized compound feed having decreased as PKE and blends have become increasingly popular.²³

Relative prices at a point in time says nothing about whether products are in the same market – what matters is what happens to demand and supply as relative prices change

²³ In addition, Farmlands understands that at any given time, most farmers will run either pellets or blends in-shed, and most farmers who use both will be switching between the two. Few farmers use a combination of pellets and blends at exactly the same time.

25. Second, the fact that pelletized compound feed is sold at a higher price point than other types of supplementary feed does not show it is in a different market.
26. As stated in *Brambles*, it is inappropriate to focus solely on price, and the whole “price-product-service package” must be considered.²⁴ Similarly, the Commission has itself stated, “[s]imilar products may have different attributes causing a price differential, and yet still be close enough in attributes to be a substitute product”.²⁵
27. What matters is whether there is substitutability as a matter of “fact and commercial common sense”. The evidence demonstrates all types of supplementary feed are directed towards meeting the same nutritional requirements objective, albeit with different combinations of price-product-service. Differences in relative prices simply reflect compound feed is a higher value product which also costs more to produce, and therefore commands a higher price. In any event, as discussed above, this price differential has been decreasing in recent years and pelletized compound feed suppliers have lost sales to other types of feed when relative prices have increased.

Statements about closeness of competition is not reliable evidence that compound feed and other types of supplementary feed are not substitutes

28. Third, while the Parties cannot verify the circumstances in which suppliers of pelletized compound feed have said they look to other suppliers of pelletized compound feed as close competitors, if they did say that it is not surprising and is unlikely to reveal much, if anything, about the economic substitutability of different types of supplementary feed.
29. Obviously, compound feeds produced by other manufacturers are the most similar. However, that does not address the statutory test of whether different types of supplementary feed are substitutable for one another as a matter of fact and commercial common sense.²⁶ Seeking to identify the firms that have the most similar commercial profiles is a flawed starting point for answering the question of whether products are substitutable.
30. What the evidence reveals is that compound feed suppliers:
- 30.1 lose sales to suppliers of other types of supplementary feed; and
- 30.2 actively try to switch customers away from other types of supplementary feeds.
31. This evidence is strongly indicative that compound feed manufacturers do compete against suppliers of other types of supplementary feed, which are substitutable for one another.²⁷
32. In this respect, the Statement of Issues overstates the closeness of competition between Farmlands and Seales Winslow in the context of the broader market. Of course, the Parties do not dispute that they compete with each other, have well established brands, supply a full range of pelletized compound feed and sell their products throughout New Zealand. However, the conclusion that the Parties are each other’s closest competitors is, in reality, a function of the Statement of Issues excluding the constraint from suppliers of other supplementary feed types. By excluding most of the market, the competition between Farmlands and Seales Winslow is magnified beyond its true level.
33. Indeed, the Farmlands document cited in Footnote 49 of the Statement of Issues to show the closeness of competition does not, in fact, appear to say anything about the closeness of competition between Farmlands and Seales Winslow. What it does note as a risk of the transaction is Seales Winslow’s lack of blending capacity: “Trends suggest blends will command larger market share in

²⁴ *Brambles* at [130].

²⁵ NZCC Decision No. 574 *Fonterra Co-Operative Group Limited Kapiti Fine Foods Limited / United Milk Limited* (23 February 2006) at [93].

²⁶ It is a tautology to suggest that, in a differentiated product market, the firms that produce the same product are close competitors.

²⁷ Statement of Issues at [33.3] and [33.4].

future i.e. in shed feeding systems and relative price competitiveness". This is entirely consistent with the Parties argument that what is driving competition is competition between different feed types.

34. The Statement of Issues records the view that the closeness of competition between Farmlands and Seales Winslow does not appear to be impacted by the presence of a manufacturing plant. No evidence is given to support this conclusion, and it appears inconsistent with the market share information provided by the Commission in the Statement of Issues at [72.1] to [72.4] and discussed above.

Strong preferences held by some farmers do not support a narrow market

35. Fourth, the fact some farmers may have an apparent strong preference for purchasing pelletized compound feed is, again, not surprising, but says little about substitutability or market definition.
36. Differing preferences – and strengths of preferences – are a feature of all markets. This was acknowledged by the High Court in *Brambles* who commented that within any market, there will be a variety of individual preferences for different products and the fact that such preferences exist does not justify the existence of separate markets.²⁸ This is even more true where there is nothing but a person's own preferences availing themselves of the competitive alternatives that objectively exist. Put another way, it is not the role of market definition or competition policy more generally to save consumers from their own subjective preferences.

Obstacles to switching feed types are overstated

37. In saying this the Parties acknowledge that the Statement of Issues refers to some farmers having feeding systems that can only operate with pelletized feed rather than blends. The Statement of Issues expresses concern about the potential costs any such farmers could face to switch to other types of feed.
38. As an initial point, to the extent this is an issue, it only relates to substitutability between compound feed and blends for dairy cows. It does not apply to other supplementary feeds or feeds for calves. That is, a feeding system does not constrain a farmer's ability to use all these other feeds instead of compound feed.
39. In any event, as far as the Parties are aware, there are unlikely to be many, if any, ruminant farmers whose feeding systems cannot support the use of both compound feeds and blends. There are two parts to this.
- 39.1 First, most modern in-shed feed systems on dairy farms are based on coreless auger systems designed to run either pellets or blends (and may in fact operate better for blends than pellets). Recent years have seen a trend towards these in-shed feed systems, which is continuing as older systems are due for renewal, or where dairy farms are looking for increased efficiency.
- 39.2 Second, the Parties acknowledge that some farmers still use older feed systems that were developed prior to blends becoming a popular type of feed. These farmers may consider they are unable to use other feeds in these systems because they do not perform as well with other supplementary feed types as compound pelletized feeds.
40. However, in reality, there are very simple, low-cost options available to these farmers to enable them to use other feeds. Indeed, all it may require is a simple upgrade of auger lines or installation of silo vibration equipment to help move feed around a silo to clear the final quantities of blended meals or knocking to prevent bridging. This could cost in the order of \$5,000 depending on the farm. Another

²⁸ *Brambles* at [132].

straight-forward option would be to purchase blends formulated with cobby material included (e.g., soy hull pellets), which aids flow.

41. Farmers could of course continue to use other supplementary feed types and could also choose to invest in changing the silos on their farms to silos capable of accepting a truck and trailer unit of feed. Farmlands estimates that this might cost \$23,000 to \$25,000. However, for the reasons explained above, such steps are not necessary.
42. Simply put, these relatively few old systems that exist can be adapted at minimal costs to accept other supplementary feed types. It follows from this that, even if there were such farmers who were beholden to using compound feed, it would be very difficult for Farmlands to price discriminate against any of these customers. Not only would identifying the farmers with these older systems be a manual, labour intensive process involving on-farm discussions or cold-calling farmers to identify the types of feeding systems they have (which farmers would have no incentive to facilitate), but any such farmer could implement a low cost adaption, or switch to another supplier to defeat any such price discrimination.²⁹

Multiple substitutes exist for calf feed and there is no basis to define a separate market

43. The Parties do not agree with the suggestion in the Statement of Issues that there is a separate market for feed for calves on the basis that:³⁰
 - 43.1 suppliers use different distribution methods for bulk feed for dairy cows and calves;
 - 43.2 there are some differences in the demand for feed for dairy cows and calves relating to:
 - 43.2.1 nutritional requirements, with the Commission's primary concern appearing to be that because PKE is not appropriate for young calves, fewer options may be available for calf feed; and
 - 43.2.2 the ability of suppliers to meet seasonal peaks in demand for calf feed.
44. These features do not support a separate market for calves, although the Parties accept that they may be market features that the Commission would wish to consider as part of its competition analysis. Nevertheless, the Parties make the following observations:
 - 44.1 while feed for calves is primarily distributed in bags, only approximately 25% is distributed through the retail store channel with most delivered direct-to-farm in tonne-loads. As such, there is minimal difference in the distribution method; and
 - 44.2 the Courts in New Zealand have outlined that supply-side substitutability is a necessary factor to consider in defining relevant markets.³¹ Any producer of ruminant compound feed can readily also produce calf compound feed (and vice versa), with the only different production process being that calf product is predominantly bagged. No feed mill faces material costs or constraints in bagging product. Indeed, as the Commission set out in the Statement of Issues, "all suppliers of pelletised compound feed for ruminants appear to produce both calf feed and dairy feed".³² Therefore, applying the approach of the New Zealand Courts, the two are necessarily part of the same market; and
 - 44.3 the question of whether suppliers of compound calf feed could expand is a question that is properly addressed as part of the competition section.

²⁹ [CONFIDENTIAL]

³⁰ Statement of Issues at [40] and [41]. The concerns in the Statement of Issues about the range of the options available to farmers to feed calves in light of the limitations of PKE is addressed in paragraph [21]] above.

³¹ *Commerce Commission v Air New Zealand Limited* HC Auckland CIV-2008-404-8352 (24 August 2011).

³² Statement of Issues at [40.1].

45. As to the question of demand-side substitutability of different feed types, the Parties accept that PKE is not suitable for calves below a certain age. However, that does not (and cannot) mean the market should be defined to exclude all other supplementary feed types. Such an approach is not logical and would overlook the evidence on the trends in sales volumes and pricing data which show farmers switching away from pelletized compound feed for calves to other types of supplementary feed.
- 45.1 According to data that Farmlands provided to the Commission on 7 December 2023, annual sales of blends for calves have doubled to tripled from approximately 10,000 tonnes (representing approximately 8% of total sales of supplementary feed for calves) in 2018, to between 25,000 and 30,000 tonnes (representing approximately 20-24% of total sales of supplementary feed for calves. Meanwhile, data from the NZ Feed Manufacturers Association indicates that sales of pelletized compound feed by its members have declined over the same period from approximately 78,000 tonnes (representing approximately 62% of total sales of supplementary feed for calves) to approximately 73,000 tonnes (representing approximately 58% of total sales of supplementary feed for calves).
- 45.2 This trend is no coincidence. As shown by the information Farmlands provided to the Commission on 7 December 2023, Agrifeeds, PGGW Grain and Seed, Aoraki Stockfoods and Enerpo all market their blends, and Farmlands markets its compound pellets, as having similar nutritional benefits for calves.
- 45.3 There is no difference in the pricing trends in blends and pellets for dairy cows and calves. The price differentials are similar, ranging from \$50 to \$150 per tonne, and have both been reducing.
- 45.4 How rural merchants sell bagged calf feed options also demonstrates the substitutability between blended and compound options. For example, **[CONFIDENTIAL]**.
46. These market outcomes are inconsistent with the suggestion that there are meaningfully fewer substitutes available for feed for calves than for dairy cows.

Competition from supplementary feeds will be sufficient to constrain Farmlands

47. For the reasons explained above, the Parties believe that the evidence detailed above strongly supports the Commission finding a single supplementary feeds market.
48. However, even if a narrow market definition is adopted (the Parties say wrongly), the evidence on substitutability and constraint above is directly in contrast to the Statement of Issues' description of other types of supplementary feed as merely being "likely to provide *some* constraint on the merged entity"³³ (emphasis added). Simply put, this statement is not supportable on the evidence of substitution and given compound feed comprises only ~10% of sales of supplementary feed for ruminants.
49. Rather, the Parties submit that what the evidence shows – and what the Commission can be satisfied about – is that other types of supplementary feed are likely to provide a *sufficient* constraint on Farmlands. That is, by themselves, other supplementary feed types will constrain Farmlands. There is no reason to believe they will not.

C. Using regional markets overstates the impact of the acquisition on competition

50. While the Statement of Issues proposes regional markets to assess competitive effects, the Parties remain of the view that the appropriate markets are Island-wide.
51. In particular, while the Statement of Issues states that the "evidence indicates that, irrespective of whether the pelletised compound feed is bagged or bulk, the maximum distance [of transport] is

³³ Statement of Issues at [79].

around 200km from the mill",³⁴ that statement is not in fact consistent with the evidence. Demonstrating this:

51.1 Ballance has already provided the Commission with its [CONFIDENTIAL].³⁵

Figure 2: [CONFIDENTIAL]

[CONFIDENTIAL]

- 51.2 Sharpes' only mill is located in the Wairarapa but it distributes pelletized compound feed from this mill throughout the North Island; and
- 51.3 CopRice's only mill is located in the Waikato but it distributes pelletized compound feed throughout the North Island.
- 51.4 Methven based Advanced Feed markets that it delivers its products across the entirety of the South Island: "Methven Advanced Feed dispatches blends and pellets across the South Island and it is not unusual to dispatch to Golden Bay, Omakau and Hari Hari in the same morning as Mayfield, Dorie and Rangitata"³⁶ (with Methven more than 550km away from Golden Bay, approximately 400km away from Omakau, and more than 300km away from Hari Hari).
52. This is particularly so for bagged feed. The evidence is that bagged feed is transported from manufacturing sites across both Islands. For example, Farmlands supplies bagged pelletized compound feed throughout the entirety of the North Island from one main distribution centre in Hamilton. Similarly, Seales Winslow supplies bagged calf feed on a nationwide basis, including offering consistent Island-wide pricing in each of the North and South Islands.

³⁴ Statement of Issues at [45.2].

³⁵ [CONFIDENTIAL]

³⁶ (Winter 2020). Real Farmer. Advanced Feed with honest quality & service values. Retrieved from: https://www.ruralco.co.nz/Portals/0/PDFs/Real_Farmer/Real%20Farmer_WINTER20_64pgMag.pdf.

53. More generally, even if the Commission is correct that the economic distance to transport bulk dairy feed is 200km, then there is likely to be a strong chain of substitution across the country, which would tend to widen the geographic scope of the market beyond the rigid regional boundaries suggested in the Statement of Issues. The maps in **Attachment A** demonstrate the material overlap between the different regions identified in the Statement of Issues.
54. Furthermore, if the Commission were to adopt narrow geographic markets, then it should define separate manufacturing and wholesale and distribution markets. This is important because the Statement of Issues refers to barriers to entry to manufacturing being high.³⁷ However, the only region in which there is any manufacturing overlap is Canterbury, meaning any barriers to entry and expansion relate solely to a provider's ability to transport product into a region to replace any competition lost because of the acquisition.
55. These transport services are provided competitively, and there is no reason to believe that the Parties have any special transport advantages over other providers to regions remote from their own manufacturing facilities. It follows that there seems to be nothing to prevent other providers from expanding to replace any competition lost at the wholesale level in these regions.
56. Put in market definition terms, suppliers in other regions could easily, profitably, quickly (certainly within one year) switch to supplying regions outside where they have a manufacturing presence. They are supply side substitutes which should be considered in the same market.
57. Northland is an illustrative example of farmers obtaining feed from out-of-region. The Parties are aware of only one compound feed mill located in Northland, operated by RingRose Stockfoods. If markets were only regional, it would follow that RingRose Stockfoods would supply the vast majority of farmers in Northland. However, farmers in Northland instead acquire feed for both dairy cows and calves alike from manufacturers located throughout the North Island **[CONFIDENTIAL]**.

D. The acquisition will not substantially lessen competition through unilateral effects even if other supplementary feeds are excluded

58. As described above, based on the Statement of Issues at [72], the Parties apprehend that the Commission's unilateral competition concerns arise in relation to the supply of:
- 58.1 bagged calf feed in the Waikato/Bay of Plenty, Taranaki/Manawatu, and Northland; and
- 58.2 bulk dairy feed and bagged calf feed in Canterbury, the West Coast, and Nelson/Tasman.
59. The acquisition would not substantially lessen competition through unilateral effects in any of these markets (or more generally) even excluding (wrongly) the strong constraint from other supplementary feeds. In this respect, the Statement of Issues:
- 59.1 overstates the barriers to other pelletized compound feed manufacturers expanding supply in regions where they are underrepresented – this applies particularly to Northland, West Coast, and Nelson/Tasman where the Parties only have a wholesale position;
- 59.2 overstates barriers to other pelletized compound feed manufacturers increasing their production in advance of the peak calving season to meet peak demand;
- 59.3 overstates the barriers to other compound feed manufacturers supplying ruminant feed;
- 59.4 understates farmers' countervailing power over Farmlands, including through farmers' ability to redirect their purchases of supplementary feed for dairy cows in response to any increase

³⁷

Statement of Issues at [60.3].

in the price of compound pelletized feed for calves, and potentially other products, away from Farmlands to other suppliers; and

- 59.5 understates rural merchants' countervailing power over compound feed suppliers by switching purchase volumes between suppliers, including providing opportunities for smaller competitors to grow by awarding them "home brand" contracts for bagged feed products.

60. The Parties address each in turn below.

Other manufacturers of pelletized compound feed are and will continue to be readily able to supply farmers in other regions

61. As already described above, contrary to the suggestion in the Statement of Issues, the Parties have no special advantage in serving regions with no in-region manufacturer.

62. What matters to the ability to supply these regions is having a means to distribute pellets. Manufacturers do not – and do not need to – distribute pellets themselves. Most manufacturers, (including the Parties), already service a range of regions through the use of freight and 3PL providers, with there being a range of third-party providers that actively market themselves as stockfeed freight providers, including:

62.1 Whiteline Transport;³⁸

62.2 Orion Group (which "operates a nationwide network");³⁹

62.3 Sanfords Rural Carriers;⁴⁰

62.4 Amuri Transport;⁴¹ and

62.5 many others.

63. In addition, some stock feed providers (such as J. Swap) own and operate their own stock feed delivery trucks. For J. Swap this includes a "modern transport fleet of bulk tippers along with augers, blowers, bottom dumpers and heavy haulage".⁴² There is nothing to prevent those stock feed providers from expanding their stock feed delivery operations and offering those services for other stock feed manufacturers. In fact, J. Swap's website states "We move our own aggregate, stockfeed and plant and are happy to move yours as well".⁴³

64. Farmlands estimates that, depending on the location, this typically costs [CONFIDENTIAL] in additional freight per tonne to serve more distant locations (which is approximately [CONFIDENTIAL]% to [CONFIDENTIAL]% of the delivered price of bulk feed and [CONFIDENTIAL]% to [CONFIDENTIAL]% for bagged feeds).

65. The Parties are not aware of any difficulties or scale disadvantages other manufacturers face in accessing the necessary logistic services to distribute to regions where they do not have a mill. It is already common for manufacturers to supply feed to farmers outside of the geographical region in which their manufacturing capacity is based, both directly and through retailers. Doing so provides manufacturers with a contribution towards their fixed costs.

³⁸ See: <https://www.whitelinetransport.co.nz/>.

³⁹ See: <https://oriongroup.kiwi/>.

⁴⁰ See: <https://www.sanfordsruralcarriers.co.nz/sandfordtransport>.

⁴¹ See: <https://amuritransport.co.nz/services/>.

⁴² See: <https://jswap.co.nz/transport/>.

⁴³ See: <https://jswap.co.nz/transport/>.

There are low barriers to other manufacturers of pelletized compound feed increasing their production in advance of the peak calving season to meet peak demand

66. The Statement of Issues raises concern about the ability of other existing manufacturers of pelletised compound feed to constrain the merged entity due to apparent capacity constraints at peak times for some manufacturers. It also questions those manufacturers' ability and incentive to expand their production at different times of the year.⁴⁴
67. **[CONFIDENTIAL]**
68. The Parties do not believe other producers of pelletized compound feed are capacity constrained, but Farmlands understands that other manufacturers can readily increase their capacity with no or little investment. In particular:
- 68.1 Farmlands understands that most mills do not operate 24/7. This means that capacity could be increased by simply increasing hours of operation. **[CONFIDENTIAL]**
- 68.2 **[CONFIDENTIAL]**
- 68.3 It is incorrect that pellets have a short shelf life. If kept in cool and dry conditions, pellets have a shelf life of up to six months. In addition, some importers offer pellets that are capable of being stored for much longer periods. This means that pellets can be produced in advance of peaks in demand, which are predictable due to their seasonal nature.
- 68.4 Any pellets produced in advance of peaks in demand can be stored at little to no cost. Farmlands understands that most freight and 3PL providers will provide this storage service for free if they are also providing the cartage. Otherwise, Farmlands understands that the typical cost for storage by a 3PL provider is a mere \$3 per tonne per week (or less than 1% of the price of calf feed), depending on the location.
69. Farmlands is confident that such a strategy would be viable, as Farmlands itself already builds its stocks of bagged feed in advance of calving season (about **[CONFIDENTIAL]**) and makes-to-stock on some standard bulk pellets as well. Farmlands further understands that most manufacturers of compound pelletised feed do this to some extent already. **[CONFIDENTIAL]**
70. A further option available to manufacturers and farmers would be to increase the proportion of supplementary feed for dairy cows constituted of other types of supplementary feed during the peak calving season, to enable a greater proportion of the manufacturing capacity for pelletized compound feed to be directed towards producing calf feed.⁴⁵

The barriers for suppliers of pelletized compound feed for monogastric animals to switch to feed for ruminants that is free of animal protein are low

71. The Statement of Issues questions the likelihood, extent and timeliness of new entry in pelletized compound feed.⁴⁶
72. Although the Statement of Issues does not expressly consider the constraint provided by suppliers of pelletized compound feed for monogastric animals in this market, the Commission does acknowledge in its consideration of market definition that some of those manufacturers already produce feed that does not contain animal proteins, and could readily switch to supplying pelletized compound feed for ruminants. For those manufacturers, switching feed production to ruminant feed would be relatively

⁴⁴ Statement of Issues at [73].

⁴⁵ For completeness, the Commission's list of existing ruminant compound feed manufacturers in New Zealand should also include: Denver Stock Feeds in the Taranaki and Manawatu region; Weston Milling in Canterbury; and Ringrose Stockfoods Ltd in Northland.

⁴⁶ Statement of Issues at [83] – [86].

simple.⁴⁷ By way of example, the following feed mills could readily become significant producers of ruminant compound feed within a short period of time:

72.1 MainFeeds' Wiri feed mill is described as "one of the most modern feed mills in Australasia."⁴⁸ Notably until MainFeeds' acquisition of that Wiri feed mill in 2013 it was a ruminant feed mill and it could readily be switched back to producing ruminant compound feed if its owner (MainFeeds, a division of Mainland Poultry) identified any market opportunity to do so (for example, in response to any putative increase in price above competitive levels by Farmlands).

72.2 **[CONFIDENTIAL]**

73. The Parties agree that those manufacturers would face low costs to start producing compound pelletized feed suitable for ruminants. In particular, this would involve no real capital investment and a reformulation of the feed recipe. The real possibility of this happening will operate to constrain the merged entity post-acquisition.

74. The manufacturers who could make such a switch are only likely to increase in number. Farmlands' clearance application at [66] refers to an emerging trend of mills producing feed for monogastric animals moving to vegetarian recipes. Farmlands understands that, as the cost of meat and bone meal (the source of the animal protein) has increased, the animal protein content in pelletized compound feed for monogastric animal has reduced to an average of approximately 2%. Some manufacturers have been considering removing that animal content altogether.⁴⁹ If that occurs, those manufacturers would also be able to start producing pelletized compound feed for ruminants even more readily and at low cost.

75. The Statement of Issues also refers to some additional unspecified regulatory barriers to manufacturers starting to produce compound pelletized feed for ruminants that is free of animal protein.⁵⁰ Farmlands understands that these are likely to be the need for a Ruminant Control Programme and the development and implementation of flushing protocols when changing from manufacturing products containing animal proteins to ruminant feed. In relation to these regulatory conditions, the Parties submit that they can readily be met by the manufacturers of pelletised compound feed for monogastric animals that are most likely to switch to ruminants:

75.1 The most likely manufacturers of compound pelletized feed for monogastric animals that may start supplying pellets for ruminants are those who have already made the switch to vegetarian recipes. This would remove the need for a Ruminant Control Programme. In relation to manufacturers that have already made the switch to vegetarian recipes, the Parties understand that of the total ~27 active feed mills in New Zealand, 21 mills would be in the category of being able to switch feed production to ruminant feed (i.e. feed without animal protein) in a "relatively simple" manner (to use the Commission's wording), and only six mills would have to undergo the transition to manufacture feed without animal protein.

75.2 For the remainder, the transition to manufacturing without animal protein would not be difficult or costly. Flushing protocols are not uncommon. For example, Farmlands itself already implements a flushing protocol when switching between production for ruminants and other animal species (a full plant clean down could be done in four hours (plus testing)).

Barriers to new entry in the production of compound stock feed are surmountable

⁴⁷ Statement of Issues at [36.3].

⁴⁸ See: <https://www.mainfeeds.co.nz/about/about-us>

⁴⁹ **[CONFIDENTIAL]**

⁵⁰ Statement of Issues at [36.2].

76. Even setting aside feed mills that already produce pelletized compound feed for monogastric animals, the Parties do not consider there to be any material barriers to de novo entry of a pelletized compound feed mill on a smaller scale. [CONFIDENTIAL].⁵¹

The merged entity will be constrained by farmers' ability to exercise countervailing power in response to a price increase and the ability of retailers to sponsor new entry

77. Farmers will also be able to exercise countervailing power to constrain Farmlands in response to a price increase. This is whether or not farmers choosing to decrease their purchases of pelletized compound feed by self-supplying silage and baleage is characterized as an exercise of countervailing power. In response to a price increase by Farmlands, farmers could switch, or credibly threaten to switch, to other suppliers for their purchases of:
- 77.1 bulk feed for dairy cows (if product markets are defined narrowly). This could have significant adverse implications for the merged entity if, by increasing the price of pelletized compound feed for dairy cows, it ends up losing sales for bulk feed for dairy cows (potentially for all types of supplementary feed) over the whole of the life of a farmer's herd. Sales volumes for supplementary feed for dairy cows are significantly greater than volumes for calves, and the merged entity would continue to require whole-of-life purchases for dairy cows in order for its production of pelletized compound feed to remain viable; or
- 77.2 other products more generally (if the product market is defined broadly), including feed as well as other products Farmlands supplies to its customers.
78. In addition, in response to a price increase farmers could:
- 78.1 Use "mobile feed processors" to self-supply supplementary feed. Mobile feed processors manufacture calf and other on-farm feed using on-farm grain as the base ingredient.⁵² This is particularly prevalent in Canterbury, where Seales Winslow estimates that the majority of larger dairy units have such on-site facilities to crush their own grain on-site to be used for in-shed feeding [CONFIDENTIAL]
- 78.2 Invest in fertiliser to supplement pasture growth.

The merged entity will be constrained by rural merchants' ability to exercise countervailing power in response to a price increase and the ability of retailers to sponsor new entry

79. [CONFIDENTIAL] Accordingly, it is possible for other retail stores to sponsor new entry and promote competition.⁵³ For example:
- 79.1 In August 2023 RuralCo launched its own supplementary feed range called "Boost", being a range that includes both blend and compound products.⁵⁴ [CONFIDENTIAL]
- 79.2 [CONFIDENTIAL]
- 79.2.1 [CONFIDENTIAL];
- 79.2.2 [CONFIDENTIAL]; and
- 79.2.3 [CONFIDENTIAL]

⁵¹ [CONFIDENTIAL]

⁵² For example, Feed Mix is a mobile feed processor operating in the Canterbury region which specialises "in turning grain into a palatable feed which is suitable for feeding in your dairy shed or mixing into calf meal". See: <https://feedmix.co.nz/index.html>.

⁵³ [CONFIDENTIAL]

⁵⁴ (2 August 2023). Dairy herd health gets a boost. RuralCo. Retrieved from: <https://www.ruralco.co.nz/About-Us/Latest-Ruralco-News/Latest-News/ArticleID/449/Dairy-herd-health-gets-a-BOOST>.

- 79.3 PGG Wrightson have recently added products produced by Advanced Feeds, GrainCorp and ADM to their standard range for ruminant feeds, **[CONFIDENTIAL]**

Conclusion on unilateral effects

80. For these reasons, even if the constraint from supplementary feed was ignored or underestimated, Farmlands would continue to be subject to strong constraints that would prevent any substantial lessening of competition from unilateral effects.

E. The proposed acquisition will not substantially lessen competition through vertical effects

81. The Parties agree with the Commission that the acquisition will provide Farmlands no ability (let alone the incentive) to foreclose other merchants.⁵⁵
82. However, the Parties disagree that there is any plausible scenario in which the acquisition would give Farmlands the ability and the incentive to foreclose its manufacturing rivals by refusing to stock other manufacturers' bagged pelletized compound feed in Farmlands stores. There are three reasons for this.
- 82.1 First, the manufacturer foreclosure theory of harm would require Farmlands to have market power at the retail level. It does not. This is reflected in the Commission's conclusion that Farmlands could not foreclose other retailers and the fact that there are no geographical areas where this is the case.⁵⁶ A map showing the locations of Farmland, PGG Wrightson and Farm Source stores is included as **Attachment B**. This map shows that there is at least one alternative retailer located close to every Farmlands store. The presence of either or both PGG Wrightson and Farm Source in every retail market would mean that Farmlands has no ability to foreclose other manufacturers of feed from the retail level.
- 82.2 Second, the widespread practice of manufacturers delivering direct to farm (engaging the services of freight or 3PL providers) means that manufacturers of bagged pelletized compound feed already have a direct route to market and could bypass any attempt by Farmlands to use its retail stores to foreclose them.
- 82.3 Third, and perhaps reflecting the first two points, Farmlands is a vertically integrated industry participant with a presence at the retail level today. Farmlands stocks pelletized compound feed manufactured by its rivals today. The acquisition does not change Farmlands' retail footprint (or create vertical integration) and so there is no reason to believe that it would be able to, or want to, exercise an upstream foreclosure strategy when it does not today.
83. Without any ability to foreclose other manufacturers of bagged pelletized compound feed at the retail level, it is difficult to see how the merged entity would have any incentive to refuse to stock those other manufacturers' products at Farmlands stores. Doing so would risk losing sales of bagged pelletized compound feed made through Farmlands' retail stores to other retailers or the manufacturers themselves. In this regard, it is worth observing that foreclosing other manufacturers from Farmlands stores would be a particularly risky strategy. It would risk also diverting sales of other products to competing retailers if other products are purchased at the same time as the feed.

F. Conclusion

84. For the reasons explained in this submission, the Commission can be satisfied that the proposed acquisition will not substantially lessen competition in any markets.

⁵⁵ Statement of Issues at [96].

⁵⁶ This appears to have been implicitly accepted by the Commission in its dismissal of the ability of the merged entity to foreclose other retailers at [96].

85. The strong evidence supporting the substitutability of other types of supplementary feed for pelletized compound feed for dairy cows and calves alike should, by itself, provide a sufficient basis to clear the proposed acquisition, if given proper weight.
86. However, even if the Commission is not satisfied on that point alone, the merged entity will also be subject to an abundance of other constraints. These include the constraint provided by other manufacturers of pelletized compound feed for ruminants across regional boundaries, the threat of expansion by other manufacturers of pelletized compound feed for ruminants (supported by the low cost of expanding capacity), the threat of entry by manufacturers of pelletized compound feed for monogastric animals, the countervailing power of farmers and the ability of retailers to sponsor new entry.
87. Collectively, these constraints (along with the substitutability of other types of supplementary feed), mean that the proposed acquisition cannot plausibly substantially lessen competition on the basis of unilateral effects.
88. Similarly, there is no credible way for the merged entity to foreclose other manufacturers of pelletized compound feed from the retail level, given the widespread presence of other retail stores who can stock their products and their ability to bypass any foreclosure strategy by delivering direct to farm.
89. Ultimately, the Commission should be left in no doubt about its ability to clear the proposed acquisition.

Attachment A: Map of compound feedmills and delivery radius

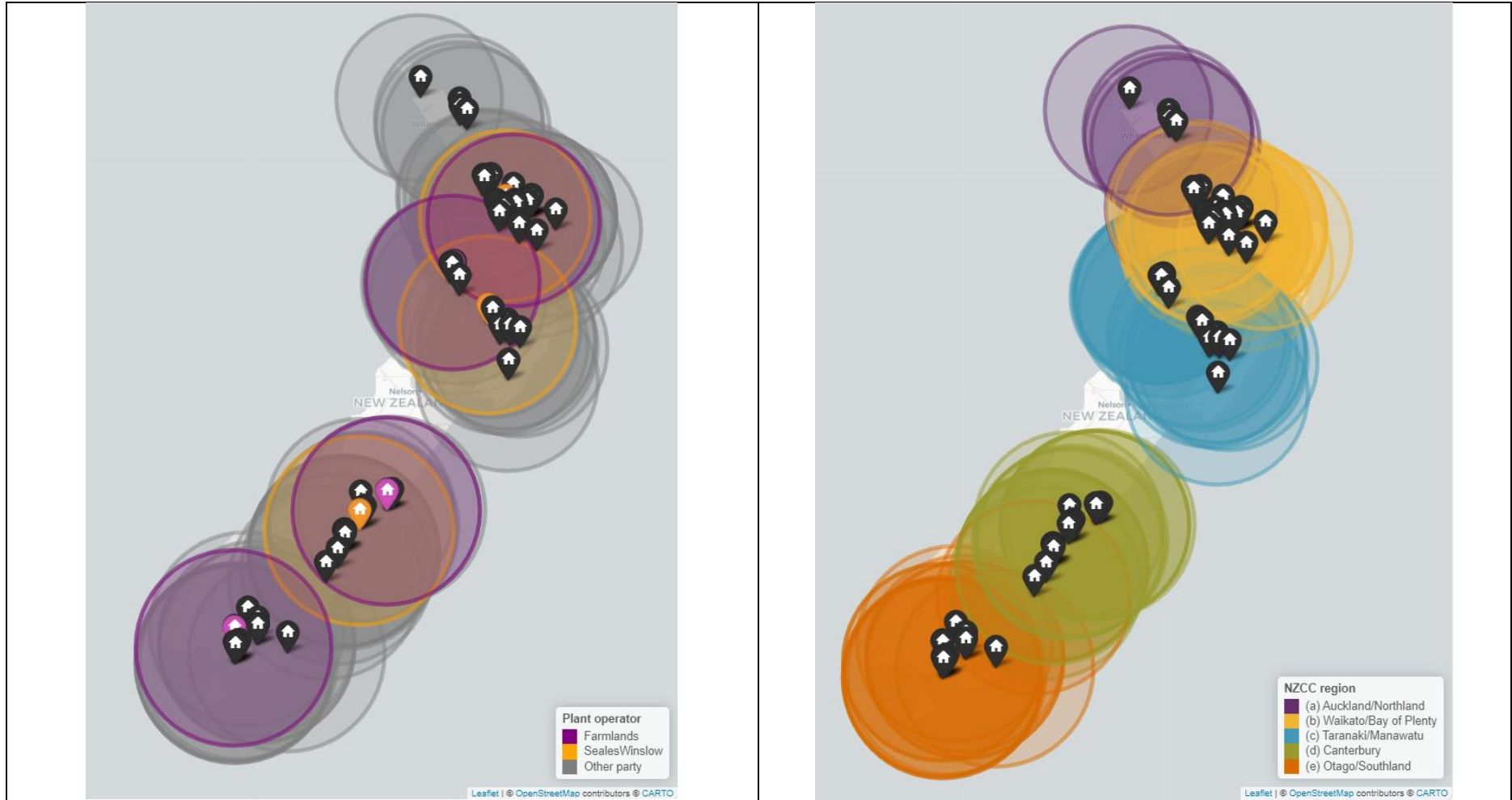
The maps below show 200km circles around each compound feedmill in New Zealand. The left map shows 200km circles coloured by manufacturer. The right map shows the 200km circles coloured according to the regions identified in the Statement of Issues. These maps demonstrate the overlap between the regions identified in the Statement of Issues.

Public version



The maps below include all blending facilities and compound feedmills. These maps demonstrate that the overlap between different regions in New Zealand is more pronounced when these facilities are included.

Public version

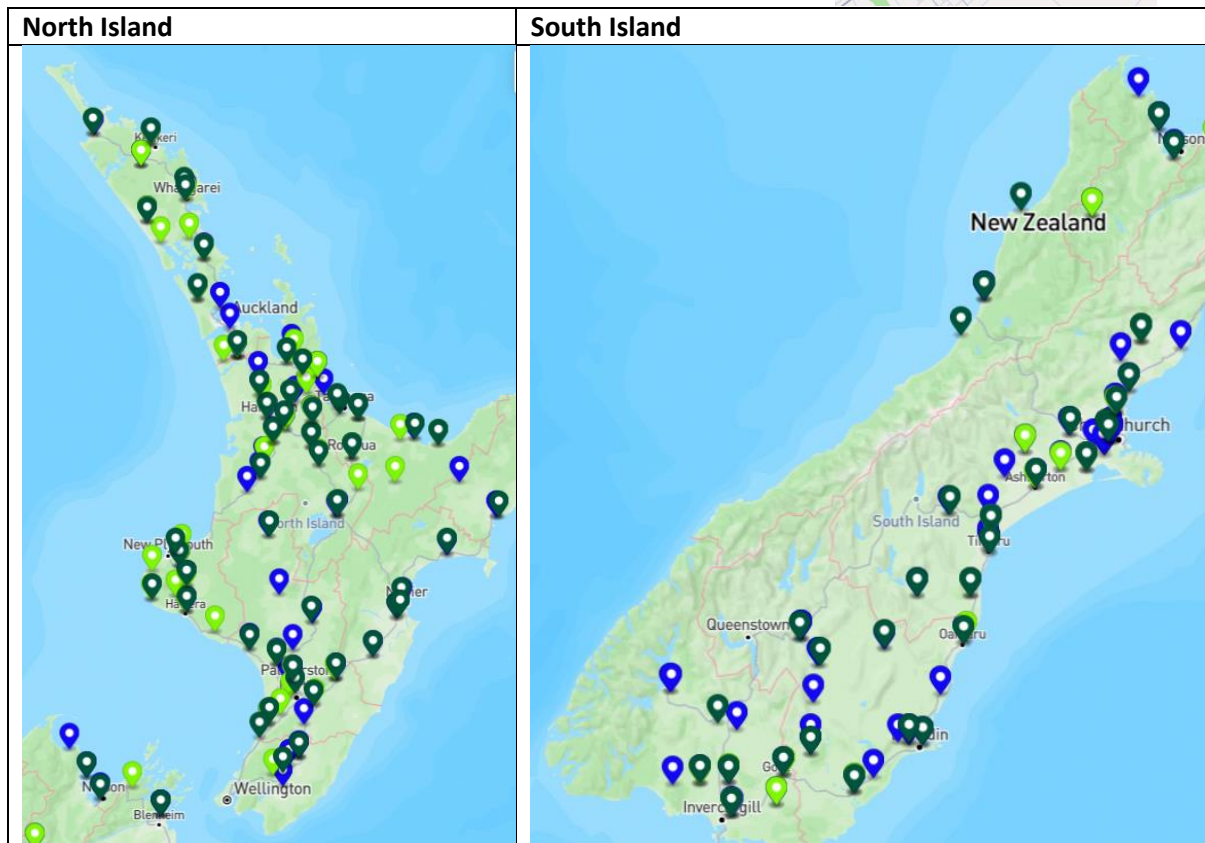


Attachment B: Map of retail outlets

The maps below show the main national rural merchant stores for Farmlands (dark green), PGG Wrightson (blue) and Farm Source (light green). Farmlands has 81 retail stores; PGG Wrightson has 85 rural supplies stores, and a further 18 Fruitedfed horticulture stores; Farm Source has 65 retail stores in the main dairy areas.

3.3 kilometres is the average distance from a Farmlands retail store to the nearest PGG Wrightson or Farm Source store. The nearest is right next door (in Kurow), and the most distant is from Westport, where it is 61 kilometres to PGG Wrightson Murchison. In addition to these stores, there are regional rural retailers and feed stores in most areas e.g., Rural Co, Tasman Ag.

Please note that in the maps below, anywhere there are multiple stores in one town, only the Farmlands icon shows.



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 that was shared with counsel subject to confidentiality undertakings is highlighted in red (i.e. **[CONFIDENTIAL]**).

Information confidential to the Parties

The following information has been removed from the public version of the submission 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).

- Paragraph [45.4]: **[CONFIDENTIAL]**
- Paragraph [68.2]: **[CONFIDENTIAL]**

Farmlands' confidential information

The following information has been removed from the public version of the submission 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):

- Paragraph [16], footnote 9: **[CONFIDENTIAL]**
- Paragraph [21.3]: **[CONFIDENTIAL]**
- Paragraph [64]: **[CONFIDENTIAL]**
- Paragraph 69: **[CONFIDENTIAL]**

Seales Winslow's confidential information

The following information has been removed from the public version of the submission 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):

- Paragraph [21.3]: **[CONFIDENTIAL]**
- Paragraph [42], footnote 30: **[CONFIDENTIAL]**
- Paragraph [51.1], footnote 36 and Figure 2: **[CONFIDENTIAL]**
- Paragraph [57]: **[CONFIDENTIAL]**

- Paragraph [68.1]: **[CONFIDENTIAL]**
- Paragraph [69]: **[CONFIDENTIAL]**
- Paragraph [72.2]: **[CONFIDENTIAL]**
- Paragraph [74], footnote 49: **[CONFIDENTIAL]**
- Paragraph [78.1]: **[CONFIDENTIAL]**
- Paragraphs [79], [79.1], [79.2] and [79.3]: **[CONFIDENTIAL]**