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Determination

Farmlands Co-operative Society Limited and Seales Winslow Limited [2024] NZCC 5

The Commission:	Dr Derek Johnston Joseph Liava'a Nathan Strong
Summary of application:	An application from Farmlands Co-operative Society Limited to acquire 100% of the shares of Seales Winslow Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.
Date of determination:	3 April 2024

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Contents

The proposed acquisition

1. On 8 November 2023, the Commerce Commission registered an application (the Application) from Farmlands Co-operative Society Limited (Farmlands) seeking clearance to acquire 100% of the shares of Seales Winslow Limited (Seales Winslow) (the Proposed Acquisition).

Our decision

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

3. Both Farmlands and Seales Winslow manufacture and distribute animal nutrition products for livestock. They are the two main suppliers of bulk and bagged pelletised compound feed for ruminant animals in various regions across New Zealand. Their bulk feed is primarily used to feed dairy cows and their bagged feed is primarily used to feed calves.

4. While the merging parties are both significant suppliers of pelletised compound feed for ruminant animals, they compete with smaller suppliers of pelletised compound feed, as well as other types of supplementary feed for ruminants. These other supplementary feeds include single grains (often called straights) or feed that is a combination of grains (often called blends).

5. The Commission found that, because there are other feeds that are alternatives to pelletised feed, post-merger dairy farmers are likely to have a choice of suppliers, other than the merged entity, when purchasing supplementary feed in bulk or in bags for their dairy cows or their calves. The suppliers of these feeds include manufacturers with pelletised compound feed as well as suppliers with straights and blends. The presence of these competing suppliers is likely to provide a significant constraint on the merged entity such that it is unlikely to be able to significantly increase prices, or lower the quality, of its bulk and bagged feed.

Our framework

6. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisition Guidelines (our guidelines).[1]

7. To clear an application, we must be satisfied that a merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

8. A lessening of competition does not need to be felt across an entire market for a lessening to be substantial. A lessening of competition that adversely affects a

[1] Commerce Commission, Mergers and Acquisitions Guidelines (May 2022).

significant section of a market may be enough to amount to a substantial lessening of competition.[2]

9. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[3]

10. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise prices above the price that would exist in a competitive market (the 'competitive price'),[4] or reduce non-price factors such as quality or service below competitive levels.

The merging parties

Farmlands

11. Farmlands is a farming co-operative with over 70,000 shareholders across New Zealand. It operates a range of agricultural businesses including its NRM division, which is the Farmlands division that focuses on supplying animal nutrition products to customers across New Zealand.

12. Farmlands' range of animal nutrition products includes bulk and bagged pelletised compound feed for livestock.

    12.1 In the South Island, Farmlands supplies its customers with pelletised feed that it manufactures itself at mills in Rolleston and Winton.

    12.2 In the North Island, Farmlands currently uses Seales Winslow as a toll manufacturer to supply it with the pelletised feed it distributes to its customers.

Seales Winslow

13. Seales Winslow is the animal nutrition business of Ballance Agri-Nutrients Limited (Ballance). Ballance is one of the main suppliers of fertiliser in New Zealand. Similar to Farmlands, Seales Winslow manufactures a range of animal nutrition products, including pelletised compound feed, and supplies these to customers across New Zealand. At present, Seales Winslow manufactures its pelletised compound feed at mills located in both the North Island (Morrinsville and Whanganui) and the South Island (Ashburton).

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2 Mergers and Acquisitions Guidelines above n1 at [2.25] and Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd (1982) 64 FLR 238; ATPR 40-315, 43,888.

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

4 Or below competitive levels in a merger between buyers.

Background on the supply of supplementary feed for ruminants

14. Both Farmlands and Seales Winslow manufacture pelletised compound feed, which is a type of supplementary feed that is provided to livestock to supplement the nutrition these animals receive from pasture. The feed that Farmlands and Seales Winslow supply can be used to feed a range of livestock such as dairy cows, calves, horses, poultry, and pigs but the vast majority of their feed is used to feed two types of ruminants, specifically:

    14.1 dairy cows; and

    14.2 calves, being grown to become dairy cows.

15. Included below is some industry background on the supply of supplementary feed for ruminants in New Zealand including:

    15.1 the main types of supplementary feed for ruminants; and

    15.2 supplying supplementary feed for ruminants to customers.

The main types of supplementary feed for ruminants

16. Farmers use supplementary feed produced off-farm to boost production by providing additional nutrition to farm animals over and above that available on-farm from pasture and foraging crops.[5] Farmlands estimates that off farm supplementary feed accounts for approximately 20% of the total feed consumed by dairy cows.[6]

17. In addition to pelletised compound feed, there are several other types of supplementary feed sold in New Zealand. These include:[7]

    17.1 straight or grain feed (called Straights) which is a term used to describe a single type of grain fed to farm animals in raw form. Straights can include domestically produced grains such as maize, barley, wheat and oats as well as imported feed commodities such as tapioca and Palm Kernel Expeller (PKE);[8] and

    17.2 blended feed (called Blends), which is a term used to describe a mixture of Straights. There are standard blends, which is a combination of different Straights in raw form, as well as complex blends which mix Straights with

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5 The merging parties both supply feed produced 'off farm' and so our assessment focuses on such production. However, as the Application notes, many farmers grow grass on their own land (or 'on farm') 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.

6 The Application at [16].

7 The Application also lists a range of other supplements that are fed to farm animals in New Zealand, including liquid stock feed, molasses, and waste manufacturing products like biscuits, chips, waste vegetables and fruit. For the reasons discussed below, the Commission has not considered it necessary to assess these types of supplements as part of its consideration of the Application.

8 The Application at [19.2]. Also see Ministry of Primary Industries - Feed Consumed by NZ Dairy Cows (May 2019) and https://www.dairynz.co.nz/feed/supplements/

additional minerals and processed products such as pelletised compound feed.[9]

18. All industry participants advised that, in order to prevent disease transfer in livestock, ruminants are unable to eat feed containing animal protein. Accordingly, the supplementary feed supplied to ruminants does not contain any animal protein. This contrasts with feed for monogastric livestock, such as chickens and pigs, which can include animal protein. Because of this difference, feed for ruminants tends to be produced in different facilities than feed that contains animal protein.[10] Currently, neither Farmlands nor Seales Winslow produce any feed containing animal protein at any of their mills and we do not consider feed containing animal protein any further in this determination.

19. Mature ruminants can digest in their rumens the different carbohydrates and proteins that are found in both pasture and in the different types of supplementary feed. However, calves are born with an undeveloped rumen and are not able to digest pasture until they have been weaned.[11] Because calves cannot digest pasture, this also limits the type of supplementary feeds that they can digest. Supplementary feeds for calves tend to be Blends that have a high starch content (as starch promotes rumen development) rather that high protein Straights, such as PKE, which are typically only fed to mature dairy cows.[12]

20. The key raw ingredients in Blends and pelletised compound feed are Straights including barley, maize, wheat and soybean. These key ingredients are widely available and so one of the main determinants of the price of a particular supplementary feed is the level of processing that it undergoes.

    20.1 PKE and other Straights undergo very little processing before being supplied to customers and so they tend to be the cheapest form of supplementary feed. Because they are the cheapest, PKE and the other Straights are sold in the highest volumes in New Zealand.[13]

    20.2 Pelletised compound feed undergoes the most processing and so this feed tends to be the most expensive form of supplementary feed. As a result, sales

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9 The Application at [19.3].

10 We understand that switching from production of feed containing animal protein to the production of animal feed for ruminants is not a straightforward process due to regulatory requirements. There are some manufacturers of feed for monogastric animals that do not use animal protein in their product. For these manufacturers, switching feed production to ruminant feed (which cannot contain or be contaminated by animal proteins) is relatively simple. For example, see Commerce Commission interview with [ ](29 November 2023) and Commerce Commission interview with [ ](28 November 2023 and Ministry for Primary Industries https://www.mpi.govt.nz/animals/animal-feed-preventing-disease-transfer/feeding-cattle-sheep-goats-or-deer-and-preventing-disease/

11 Weaning is the process of transferring a calf from a liquid milk diet to a completely 'solid' based diet.

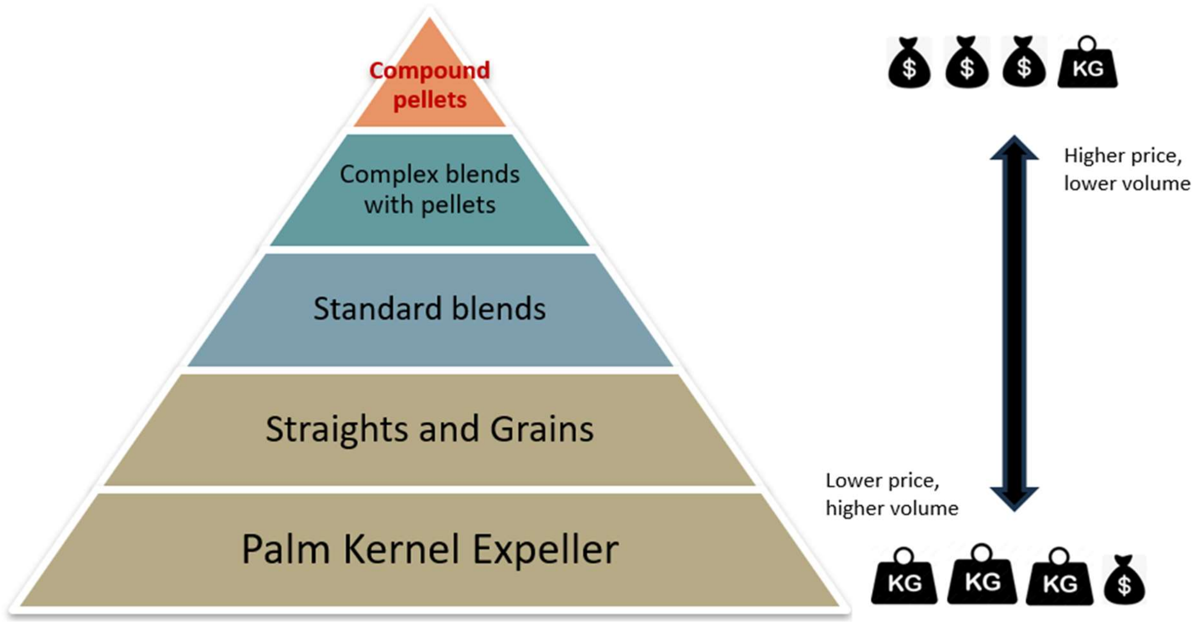
12 For example, see Farmlands' NRM Calf Rearing Guide 2022.

13 For example see The Application; Commerce Commission interview with [ ](26 February 2024); Commerce Commission interview with [ ](1 March 2024); and Commerce Commission interview with [ ](4 March 2024). In addition, see New Zealand Feed Manufacturers Association Annual Statistics.

of pelletised compound feed are small compared to sales of other supplementary feeds with pelletised compound feed often referred to as a "premium product".[14]

21. With different feeds sold in different volumes and at different price points, several industry participants consider there is a food pyramid for supplementary feeds for ruminants with lower priced Straights, sold in the highest volumes at the bottom and higher priced pelletised compound feed, sold in more limited volumes at the top, as per Figure 1 below.[15]

Figure 1 Types of supplementary feed in New Zealand



Source: Commission estimate based on feedback from industry participants

Supplying supplementary feed for ruminants to customers

22. There are two main types of suppliers of supplementary feed for ruminants being those that focus on supplying Straights and Blends and those that manufacture pelletised compound feed.

23. Suppliers of Straights and Blends vary in terms of the specific feed they distribute, the extent to which they have blending facilities and the degree to which they use imported and/or domestically produced ingredients. The main suppliers of Straights and Blends in New Zealand include: ADM New Zealand Limited (ADM); J Swap Contractors Limited (J Swap); Wilmar International Limited (trading as Agrifeeds); Graincorp Feeds Limited (Graincorp); PGG Wrightson Seeds New Zealand Limited

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14 For example, see Commerce Commission interview with [ ](26 February 2024), Commerce Commission interview with [ ](1 March 2024), Commerce Commission interview with [ ](4 March 2024), Commerce Commission interview with [ ](5 March 2024).

15 See Commerce Commission interview with [ ] (28 November 2023); Commerce Commission interview with [ ] (1 March 2024); and Commerce Commission interview with [ ] (4 March 2024).

(PGGW Seeds); Enerpro Feeds Limited (Enerpro); and Aoraki Stockfoods Limited (Aoraki).

24. The main manufacturers of pelletised compound feed, in addition to the merging parties, include:

 24.1 in the North Island, Takanini Feeds Limited (Takanini Feeds); Grainhub Limited (Grainhub); Ricegrowers New Zealand Limited (trading as CopRice for the animal food division); and Sharpes Stock Feeds Limited (Sharpes); and

 24.2 in the South Island, Advanced Feed Limited (Advanced Feed); Sgt Dan Stockfoods Limited (Sgt Dan); and Winton Stock Feed Limited (Winton Stock Feed).

25. Dairy farmers are the main purchasers of supplementary feed for ruminants. Suppliers distribute their feed to dairy farmers through two main channels:

 25.1 by making bulk deliveries of their feed directly to dairy farmers (for example, in 1 tonne, 2 tonne, or 5 tonne loads etc) using a specific type of truck to move the feed. Typically, this bulk feed is used in a mechanical in-shed feeding system.[16] Farmers typically order bulk deliveries of supplementary feed for dairy cows; and

 25.2 selling feed in smaller bags, typically through rural merchant stores (in either 20kg or 25kg bags). Farmers typically purchase bagged supplementary feed for calves because calves do not need the same volume of feed as dairy cows nor do farmers typically use a mechanical feeding system for calves.

Market definition

26. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to, fall within the same market.[17]

27. We define markets in the way that best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market, but which still impose some degree of competitive constraint on the merged entity.

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16 We understand that in the past some mechanical feed systems were set up to use a particular type of feed (and that those set us use pelletised feed could 'clog up' if a Straight or a Blend was used instead) but most modern feed systems are designed to be able to use a range of supplementary feeds. For example, see Commerce Commission interview with [ ](21 February 2024); Commerce Commission interview with [ ](26 February 2024); Commerce Commission interview with [ ] (1 March 2024); and Commerce Commission interview with[ ](4 March 2024).

17 Mergers and Acquisitions Guidelines above n1 at [3.7]-[3.8].

28. In general, the more closely substitutable two products are, the closer the competition and the greater the competitive constraint between the products.

29. Farmlands submits that all types of off-farm supplementary feed should be included in the same market. It submits the relevant markets are:[18]

    29.1 the North Island market for the production and distribution of off-farm supplementary livestock feed; and

    29.2 the South Island market for the production and distribution of off-farm supplementary livestock feed.

30. As per Farmlands' submission, there is some potential substitution between the different supplementary feeds and the different regions within each island. However, we consider it appropriate to assess the bagged supply of supplementary feed separately from bulk supply as well as focusing on regional markets for these two products. In our view, this highlights the existing and potential overlap between the merging parties. Further, if there are no significant competitive issues when considering these more narrowly defined markets, there are unlikely to be competitive issues when considering more broadly defined markets.

31. Accordingly, we have assessed the competitive effects of the Proposed Acquisition in the following markets:

    31.1 regional markets for the manufacturing and wholesaling of bulk supplementary feed for ruminants; and

    31.2 regional markets for the manufacturing and wholesaling of bagged supplementary feed for ruminants.

32. We explain our reasoning for defining markets in this investigation further below including:

    32.1 the extent to which the different types of supplementary feed for ruminants are demand-side substitutes for one another;

    32.2 the extent to which bagged feed is a substitute for bulk feed;

    32.3 the extent to which suppliers in different regions compete with one another; and

    32.4 the extent to which suppliers at different functional levels compete with one another.

[18] The Application at [15].

The different types of supplementary feed for ruminants are substitutes for one another

33. There are a range of different types of supplementary feed for ruminants. We consider that these different types of feed are sufficiently close substitutes to be included in the same product market.

34. As indicated above, while the key raw ingredients in supplementary feed are similar, the level of processing and the equipment involved that is required to produce the different feeds varies. As such, on the supply-side, existing suppliers of Straights and Blends are unlikely to be able to easily switch to manufacturing pelletised compound feed.

35. However, on the demand side, customers can and do switch between the different types of supplementary feeds for ruminants.

36. Various industry participants including suppliers, retailers and nutritionists advised that when dairy farmers are selecting a particular supplementary feed their primary focus is on achieving the appropriate level of nutrition for their animals and the different Straights, Blends and pelletised compound feeds can all provide the required level of nutrition.[19]

37. Consistent with the above, the different suppliers of Straights, Blends and pelletised compound feed advised that they all compete with one another. Nevertheless, there is a degree of differentiation between the different suppliers, which impacts how closely different suppliers compete with one another. We discuss this further in the competition assessment below.

    37.1 Most farmers use a range of different supplementary feeds, so tend not to be limited to a particular type of feed. One of the reasons for this is pasture growth varies at different times of the year and so this can impact on the type and/or volume of supplementary feed that a particular farmer might require.[20]

    37.2 Suppliers of Straights and Blends consider that they compete with pelletised compound feeds suppliers because they are all targeting the same customers,

[19] For example, see Commerce Commission interview with [ ](21 February 2024); Commerce Commission interview with [ ](4 March 2024); Commerce Commission interview with [ ](13 December 2023); and Commerce Commission interview with [ ](14 December 2023).

[20] For example, see Commerce Commission interview with [ ](6 December 2023); Commerce Commission interview with [ ](26 February 2024).

being dairy farmers.[21] This is reflected in some of the marketing campaigns of the different suppliers.[22]

37.3 However, all industry participants advised that pelletised compound feed is positioned slightly differently than other feeds – it is considered to be a "premium" product and is priced accordingly.[23] We received consistent feedback that dairy farmers make a price versus quality trade off when selecting a supplementary feed, with some farmers willing to pay more for the added convenience of a pellet while others are not.[24] As such, while in the same product market, pelletised compound feed suppliers tend to compete more closely with other pelletised compound feed suppliers than with suppliers of Straight and Blends.

Bagged supplementary feed for ruminants is not a close substitute for feed supplied in bulk

38. We consider it is appropriate to assess the supply of bagged supplementary feed for ruminants separately from the supply of bulk supplementary feed for ruminants.[25]

39. Suppliers of supplementary feed for ruminants distribute their feed to farmers either by delivering the feed in bulk directly to farmers or supplying the feed in small bags which farmers purchase though rural merchant stores.

39.1 The vast majority of feed delivered in bulk is for dairy cows, with demand and supply relatively consistent throughout the year.

39.2 The vast majority of feed supplied in bags is for calves, with demand and supply concentrated around the calving season between July and October.

40. On the demand side, various industry participants advised the farmers have a strong preference to purchasing feed for calves in bags because this is the most convenient and efficient way to get the desired feed to individual calves. For example, in contrast to dairy cows, the volume that each calf might eat per day is relatively low and there is degree of hand feeding with calves as they are weaned off milk. Because

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21 For examples, see Commerce Commission interview with [ ](1 March 2024); Commerce Commission interview with [ ](26 February 2024); and Commerce Commission interview with[ ](4 March 2024).

22 For example, see Commerce Commission interview with [ ](28 November 2023); and Joint submission from Farmlands and Seales Winslow in response to the Commerce Commission's Statement of Issues (21 February 2024).

23 For example, see Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with[ ](1 March 2024); Commerce Commission interview with[ ](26 February 2024); and Commerce Commission interview with [ ](5 December 2023).

24 For example, see Commerce Commission interview with [ ](13 December 2023); Commerce Commission interview with [ ](4 March 2024); and Commerce Commission interview with [ ](26 February 2024).

25 In this respect, bag supply refers to feed supplied in either 20kg or 25kg bags.

of this, farmers like the convenience of a bag that can be carried to the calf. [26] As a result, the vast majority of feed for calves is purchased in bagged form.[27]

41. On the supply side, all of the suppliers of bagged feed for ruminants also supply feed in bulk, so it is easy for these suppliers to switch production between the two formats.[28] Nevertheless, there are several differences in competitive conditions for the supply of bagged feed compared to feed in bulk. For example:

    41.1 there are fewer suppliers for bagged feed compared to bulk feed. Because bagged feed is predominately purchased for calves, many high protein Straights, such as PKE, that are not able to be fed to calves tend not to be supplied in small bags.[29] To this extent, some suppliers choose not to supply any of their bulk feed in small bags; and

    41.2 the demand for bagged feed is seasonal with demand peaking in the spring calving season. Several suppliers advised that, because of this, they face some capacity constraints which impacts their ability to compete with other suppliers during the calving season. Further, they are not incentivised to expand their total production capabilities because any expansion would be underutilised for most of the year. [30]

42. Accordingly, because some suppliers do not supply supplementary feed for ruminants in small bags, and the ones that do face some capacity constraints, we consider it is appropriate to assess the supply of bagged supplementary feed for ruminants separately from the supply of bulk supplementary feed for ruminants.

Suppliers in different regions of New Zealand tend not to compete with one another

43. We consider it is appropriate to assess separate regional markets for the supply of:

    43.1 bulk supplementary feed for ruminants; and

    43.2 bagged supplementary feed for ruminants.

44. Industry participants consistently advised that, because supplementary feed is relatively heavy, it is expensive to transport relative to its production costs. This is the same whether the feed is supplied in bulk or in bags. We understand, therefore,

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26 For example, see Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with [ ](5 December 2023); and Commerce Commission interview with [ ](13 December 2023).

27 See New Zealand Feed Manufacturers Association Annual Statistics.

28 For example, see Commerce Commission interview with [ ](1 December 2023); Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with [ ](29 November 2023).

29 For example, see Commerce Commission interview with [ ](19 December 2023); Commerce Commission interview with [ ] (4 December 2023).

30 For example, see Commerce Commission interview with [ ] (19 December 2023); Commerce Commission interview with [ ](1 December 2023); Commerce Commission interview with [ ](29 November 2023); and Commerce Commission interview with [ ](28 November 2023).

that customers tend to be located within 150-200km of the respective mill where the feed is produced.[31] For that same reason, mills tend to be located in the main dairy regions of New Zealand namely Waikato / Bay of Plenty, Taranaki / Manawatu, Canterbury and Otago / Southland.

45. As the customer and the supplier are typically located within the same region (for 'in region' supply) we consider it is appropriate to assess regional markets for the two relevant products. We consider a regional approach is appropriate because a customer in one region may not be able to viably switch to a supplier in a different region in response to a small, but significant, non-transitory increase in price.[32] We do not consider it necessary to precisely define the relevant geographic boundaries of each region. However, there are likely to be at least four regions in each of the two main Islands of New Zealand as listed in Table 1 below.

Table 1: Relevant geographic markets in New Zealand

Island	Regional market
North Island	Northland / Auckland
	Waikato / Bay of Plenty
	Hawkes Bay / East Coast
	Taranaki / Manawatu
South Island	Nelson / Tasman
	West Coast
	Canterbury
	Otago / Southland

Source: Feedback from industry participants

46. Nevertheless, we are aware that some suppliers use depots to supply customers in regions outside of the one in which their mill is located (for 'out of region' supply).[33] Further, the vast majority of bagged feed is distributed to farmers via rural merchant stores. These stores tend to stock bagged feed sourced from multiple regions and negotiate terms of supply with suppliers at a multi-regional level.[34] To this extent, we are aware that there is more 'out of region' supply of bagged feed than there is for bulk supply. We discuss the implications of this further in the competition assessment below.

31 For example, see Commerce Commission interview with [ ](29 November 2023); Commerce Commission interview with [ ] (13 December 2023); Commerce Commission interview with [ ](29 November 2023); and Commerce Commission interview with [ ](4 December 2023).

32 Mergers and Acquisitions Guidelines above n1 at [3.28-3.34].

33 For example, see Commerce Commission interview with[ ](19 December 2023); Commerce Commission interview with [ ](5 March 2024)

34 For example, see Commerce Commission interview with [ ](5 December 2023); Commerce Commission interview with [ ](6 December 2023); Commerce Commission interview with [ ](28 November 2023).

Manufacturing and wholesaling form part of the same functional level

47. For each relevant market, we consider the manufacturing and wholesaling level is the most appropriate functional level to assess the Proposed Acquisition.

48. Farmlands manufactures feed at its mills in Rolleston (Canterbury) and Winton (Otago/Southland) and Seales Winslow manufactures feed at its mills in Morrinsville (Waikato/Bay of Plenty), Whanganui (Taranaki / Manawatu) and Ashburton (Canterbury).

49. However, in some instances, suppliers utilise toll manufacturing arrangements which enable them to wholesale feed they do not currently manufacture themselves. In most instances, such toll arrangements enable the supplier to wholesale both bulk and bagged feed in regions where they do not have a mill.[35] For example, Farmlands does not have a manufacturing plant in the North Island and so the feed it supplies to its customers in the North Island is manufactured under a toll manufacturing arrangement by Seales Winslow. [36] In the past, Farmlands has used other manufacturers under the same type of toll manufacturing arrangement.[37] Accordingly, there is overlap between the merging parties at both the manufacturing and wholesaling levels.[38]

With and without scenarios

50. Assessing whether a substantial lessening of competition is likely requires us to:

    50.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and

    50.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.[39]

51. With the acquisition, Farmlands would own Seales Winslow and continue to operate feed mills as a vertically integrated feed supplier. However, the one main difference to the current situation is that Farmlands would no longer be a wholesaler in the North Island. Rather, it would now own and operate feed mills in North Island in addition to the mills it owns currently and the Seales Winslow Ashburton mill in the South Island.[40]

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35 Such arrangements are typically most relevant when it is the wholesaler, rather than the physical manufacturer, that is determining the final price charged to the customer, which is the current situation between Farmlands and Seales Winslow.

36 To this extent, in our competition assessment we have included volumes produced under toll manufacturing arrangement under the relevant wholesaler rather than the relevant manufacturer.

37 The Application at [13].

38 Although it may be possible to assess the manufacturing level separately from the wholesaling level, we have not considered it necessary in this instance as it does not have an impact on our analysis.

39 Mergers and Acquisitions Guidelines above n1 at [2.29].

40 The Application at [10].

52. Without the acquisition, we consider the status quo would likely continue with Farmlands continuing to be both a manufacturer and a wholesaler of supplementary feed and Seales Winslow continuing to compete as an independent entity to Farmlands.[41]

52.1 [ ].[42]

52.2 [ ].[43]

Competition assessment - supplementary feed for ruminants

53. Our competition assessment focused on whether the Proposed Acquisition could have the likely effect of substantially lessening competition in a relevant market due to unilateral effects.[44]

54. Unilateral effects may occur when a firm acquires a current or potential competitor that would otherwise provide a competitive constraint. The Proposed Acquisition would likely have the effect of substantially lessening competition if, by removing the existing competition between Farmlands and Seales Winslow, the merged entity would be able to, by itself, profitably raise the price to customers, or reduce the quality, of either bulk or bagged supplementary feed for ruminants in any regional market in New Zealand.

Farmlands' submission on unilateral effects

55. Farmlands submitted that the Proposed Acquisition would not be likely to substantially lessen competition in any relevant market due to unilateral effects because:[45]

55.1 the aggregation in both the North Island and South Island in the supply of supplementary livestock feed is minimal;

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41 The Application at [12]-[13]

42 Application Appendix H [ ]

43 Commerce Commission interview with Seales Winslow [ ].

44 ` The Commission also considered the potential for vertical effects, given that Farmlands is a vertically integrated manufacturer, wholesaler and retailer. However, the Proposed Acquisition is unlikely to have the effect of substantially lessening competition due to vertical effects because vertical integration already exists and there appears to be no existing or potential suppliers and/or customers that would be reliant on access to Farmlands' rural merchant stores and/or its supplementary feed.

45 The Application at [41].

55.2 in all types of supplementary feed, Farmlands would be constrained by strong competitors and there are minimal barriers to these competitors expanding; and

55.3 farmers and wholesale suppliers can exercise countervailing market power because:[46]

55.3.1 farmers have an ability to substitute away from pelletised compound feed to a large range of alternative feed types including planting their own crops; and

55.3.2 national wholesale suppliers are able to leverage purchases in one region with those in another (to the extent that there is a difference in competition in one region compared to another region).

Unilateral effects in regional markets for the bulk supply of supplementary feed for ruminants

56. For the reasons set out below, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition due to unilateral effects in the different regional markets for the bulk supply of supplementary feed for ruminants.

57. In each region where there is relevant overlap between the merging parties in the supply of bulk supplementary feed, there are likely to be alternative suppliers to the merged entity. These alternatives include bulk suppliers of pelletised compound feed and bulk suppliers of Straights and Blends, with Straights and Blends suppliers, in particular, having the ability to expand relatively easily. When considered together, these suppliers would likely provide sufficient constraint on the merged entity such that a substantial lessening of competition is unlikely.

58. In this section, we summarise the constraint on the merged entity in the bulk supply of supplementary feed for ruminants from:

58.1 existing pellet manufacturers in the different regional markets; and

58.2 suppliers of Straights and Blends in the different regional markets.

59. The **Attachment** also includes a summary of the overlap between the merging parties and the alternatives to the merged entity in each relevant market.

Constraint from existing pellet manufacturers – all regional bulk supply markets

60. Farmlands and Seales Winslow only supply pelletised compound feed and they are the two largest manufacturers and wholesalers of bulk pelletised compound feed.[47] Farmlands and Seales Winslow each have an existing presence in all regional bulk markets with the most significant overlap occurring in the regions where each has a

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46 The Application at [71]-[74].

47 The Application. Both supply a 'meal' which is a Blend that contains pellets.

mill. Accordingly, the Proposed Acquisition would remove the existing competition between them.

61. However, other existing manufacturers of pelletised compound feed would impose a constraint on the merged entity in each relevant region market.

62. In North Island regional bulk markets, the main existing manufacturers of pelletised compound feed include:

62.1 Ringrose Stockfoods Limited (Ringrose), which has a mill in Hikurangi and primarily services the Northland / Auckland region;

62.2 Coprice, which has a mill in Hamilton and primarily services bulk customers in the Waikato / Bay of Plenty region;

62.3 Takanini Feed, which has a mill in Mangatāwhiri and primarily services bulk customers in the Waikato / Bay of Plenty region;

62.4 Grainhub, which has a pelletising mill in Tuakau. Grainhub also have blending facilities and services bulk customers in both the Waikato / Bay of Plenty and Taranaki / Manawatu regions; and

62.5 Sharpes, which has a mill in Carterton and primarily services bulk customers in the Hawkes Bay/East Coast region.

63. In South Island regional markets, the main existing manufacturers of pelletised compound feed include:[48]

63.1 Sgt Dan, which has a feed mill in Gore and primarily services bulk customers in the Otago / Southland region.

63.2 Winton Stock Feed, which has a feed mill in Winton and primarily services bulk customers in the Otago / Southland region.

63.3 Advanced Feed, which has a feed mill in Methven and primarily services bulk customers in the Canterbury region.

64. However, the constraint from each of the bulk pelletised compound feed suppliers listed above is not uniform. Rather, their presence in each region varies and some of these suppliers indicated that they are capacity constrained to some extent and that

48 We are aware of some other existing manufacturers of pelletised compound feed such as Gladfield Malt Limited, which has a small mill in Canterbury.
[
].

they are unlikely to be incentivised to expand to supply customers in nearby or adjacent regions.[49]

65. Accordingly, the Commission considers that, by itself, the constraint from existing bulk suppliers of pelletised compound feed is unlikely to be sufficient to constrain the merged entity in each regional market.

Constraint from suppliers of Straights and Blends– all regional bulk supply markets

66. Bulk suppliers of pelletised compound feed compete with bulk suppliers of Straights and Blends. As indicated above, the vast majority of bulk supplementary feed in all regional bulk supply markets is Straights and Blends supply. Straights and Blends suppliers include:

    66.1 ADM;

    66.2 J Swap;

    66.3 Agrifeeds;

    66.4 PGGW Seeds;

    66.5 Enerpro; and

    66.6 Graincorp.

67. Accordingly, the Commission considers that, in addition to the constraint from existing bulk suppliers of pelletised compound feed, the merged entity would be constrained by the existing bulk suppliers of Straights and Blends. There appear to be limited constraints on bulk suppliers of Straights and Blends expanding, with some of the raw ingredients being imported. Further, several industry participants noted that the quality of Blends has been increasing and this has resulted in an increase in demand for Blends because customers consider they can get the same quality of feed as in a compound pellet but at a lower price point.[50]

Unilateral effects in regional markets for the bagged supply of supplementary feed for ruminants

68. For the reasons set out below, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition

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49 For example, see Commerce Commission interview with [ ](29 November 2023); Commerce Commission interview with[ ](29 November 2023); Commerce Commission interview with [ ] (4 December 2023); Commerce Commission interview with [ ](1 December 2023); Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with [ ](15 January 2024).

50 For example, see Commerce Commission interview with [ ](1 March 2024); Commerce Commission interview with [ ](4 March 2024); Commerce Commission interview with [ ](4 March 2024).

due to unilateral effects in the different regional markets for the bagged supply of supplementary feed for ruminants.

69. In each region where there is relevant overlap between the merging parties in the supply of bagged supplementary feed, there are likely to be alternative suppliers to the merged entity. While some suppliers face some capacity constraints during the calving season, when combined, these alternative suppliers would likely provide sufficient constraint on the merged entity and include bagged suppliers of pelletised compound feed and bagged suppliers with Blends that are typically called calf meal.

70. In this section, we summarise the constraint on the merged entity in the bagged supply of supplementary feed for ruminants from:

70.1 existing pellet manufacturers in the different regional markets; and

70.2 suppliers of calf meal in the different regional markets.

71. The **Attachment** also includes a summary of the overlap between the merging parties and the alternatives to the merged entity in each relevant market. In addition, it includes some market shares estimates for each regional bagged supply market. However, these estimates do not include all existing suppliers and, as such, they tend to overstate the presence of the merging parties in each region.

Constraint from existing pelletised compound feed manufacturers - all regional bagged markets

72. Similar to bulk supply, Farmlands and Seales Winslow each have an existing presence in all regional bagged markets with the most significant overlap occurring in the regions where each has a mill, notably in:

72.1 Canterbury, where Farmlands and Seales Winslow each have a compound pellet mill; and

72.2 the Waikato / Bay of Plenty and Taranaki / Manawatu regions, where Seales Winslow has mills and Farmlands currently wholesales bagged feed that is produced at these mills.

73. Accordingly, the Proposed Acquisition would remove the existing competition between Farmlands and Seales Winslow in each regional bagged market.

74. However, existing manufacturers of bagged pelletised compound feed would impose a constraint on the merged entity in each relevant region market.

74.1 In North Island regional bagged markets, the existing manufacturers of pelletised compound feed include: Ringrose, primarily in the Northland / Auckland region; CopRice, primarily in the Waikato / Bay of Plenty region; Takanini Feed, primarily in the Waikato / Bay of Plenty region; Grainhub, in the Waikato / Bay of Plenty and Taranaki / Manawatu regions; and Sharpes primarily in the Taranaki / Manawatu region.

74.2 In South Island regional bagged markets, the existing manufacturers of pelletised compound feed include: Sgt Dan, primarily in the Otago / Southland region; Winton Stock Feed, primarily in the Otago / Southland region; Advanced Feed, primarily in the Canterbury region. There are also some smaller suppliers such as Gladfield Malt Limited (Gladfield), which primarily supplies bagged feed in the Canterbury region.

75. The constraint from each of the bagged pelletised compound feed suppliers listed above is not uniform. Rather, their presence in each region varies although, compared to bulk supply, there are more examples of 'out of region' supply occurring with bagged product being transported further distances from mills than bulk product.

76. Nevertheless, some of manufacturers of bagged pelletised compound feed indicated that they are capacity constrained, particularly in the calving season. This constraint limits their ability to expand bagged production when the product is most in demand.

77. Most manufacturers undertake some form of forward bagged production to cater for the increase in demand during the calving season. However, because the calving season is relatively short, manufacturers advised that the demand for bagged product in the calving season is not sufficient for them to invest in increasing their total production capabilities.[51]

77.1 The total volume of bagged product, because it is primarily for calves, is relatively low in comparison to the volumes of bulk product feed to dairy cows.

77.2 If it difficult to justify investing in increasing total production capacity just for just one season of the year because this would likely result in significant underutilisation for the remainder of the year.

78. Accordingly, the Commission considers that, by itself, the constraint from existing bagged suppliers of pelletised compound feed is unlikely to be sufficient to constrain the merged entity in each regional bagged market.

Constraint from suppliers of calf meal - all regional bagged supply markets

79. Other than bagged compound pellets, the main other supplementary feed in bags for ruminants is a Blend known as calf meal. Industry participants advised that bagged calf meal is an alternative to bagged pelletised compound feed and so the merged entity is likely to face constraint from existing competitors supplying bagged calf

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51 For example, see Commerce Commission interview with [ ](29 November 2023); Commerce Commission interview with [ ](29 November 2023); Commerce Commission interview with [ ](4 December 2023); Commerce Commission interview with [ ](1 December 2023); Commerce Commission interview with [ ](28 November 2023); Commerce Commission interview with [ ](15 January 2024).

meal in each relevant regional bagged market. These existing manufacturers of bagged calf meal include:

79.1 in North Island regional bagged markets, Agrifeeds, primarily in the Waikato / Bay of Plenty and Taranaki / Manawatu regions; and PGGW Seeds, primarily in the Waikato / Bay of Plenty and Taranaki / Manawatu regions;

79.2 in South Island regional bagged markets, Agrifeeds, with a presence in multiple regions; Enerpro, with a presence in multiple regions; and Aoraki, primarily in Canterbury.

80. Accordingly, the Commission considers that, in addition to the constraint from existing bagged suppliers of pelletised compound feed, the merged entity would be constrained by the existing bagged suppliers of other supplementary feed for ruminants, notably feed bagged for supply to calves.

81. We also note that this constraint relates to the supply in standard 20kg/25kg bags. Such bags are typically purchased though a rural merchant store. However, we understand that it is common for a farmer to order a large number of bags at the same time (say 20 or 50). Some bulk suppliers offer this type of customer a one tonne ‘bag’ of compound pellets or calf meal and not all these suppliers are listed above as bagged suppliers.[52] To this extent, there is some cross over between bulk deliveries and bagged deliveries and some large volume bagged customers may have more supply options than some other bagged customers.

Overall conclusion

82. For the reasons outlined above, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

[52] For example, see Joint submission from Farmlands and Seales Winslow in response to the Commerce Commission’s Statement of Issues (21 February 2024); Commerce Commission interview with [ ](4 March 2024), Commerce Commission interview with [ ] (4 March 2024); and Commerce Commission interview with [ ](14 March 2024).

Determination on notice of clearance

83. Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to Farmlands Co-operative Society Limited to acquire 100% of Seales Winslow Limited.

Dated this 3rd day of April 2024

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Dr Derek Johnston
Division Chair

Attachment: suppliers of supplementary feed for ruminants in each region

A1. The following tables list the main suppliers in each regional market and the existing alternatives to the merged entity. Only the main suppliers are listed in each table and so the tables do not include all existing/potential suppliers in each region.

A1.1 Table A1 - suppliers of bulk supplementary feed for ruminants.

A1.2 Table A2 - suppliers of bagged supplementary feed for ruminants.

A2. In addition, Table A3 includes some market share estimates for bagged supply in the different regional markets although these estimates do not include all existing suppliers and, as such, they tend to overstate the presence of the merging parties in each region.

Table A1: suppliers of bulk supplementary feed for ruminants

Region	Overlap between merging parties	Alternatives to the merged entity
Northland / Auckland	• No current overlap because Seales Winslow has not recently sent bulk deliveries into this region.	• Competing suppliers include an 'in region' supplier (Ringrose) and several 'out of region' suppliers such as Grainhub and Agrifeeds.
Waikato / Bay of Plenty	• Some overlap as Seales Winslow has its Morrinsville mill and Farmlands distributes bulk feed that is toll manufactured at the Seales Winslow Morrinsville mill.	• Competing suppliers with a significant presence include: ○ pellet manufacturers such as Takanini Feed, Grainhub and CopRice; and ○ Straight and Blends suppliers such as ADM, Agrifeeds, J Swap, Graincorp and PGGW Seeds.
Hawkes Bay / East Coast	• De minimis overlap because there appears to be limited demand and the supply comes from mills located 'out of the region'.	• Competing 'out of region' suppliers such as Shapes and Grainhub.
Taranaki / Manawatu	• Significant overlap as Seales Winslow has its Whanganui mill and Farmlands distributes bulk feed that is toll manufactured at the Seales Winslow Whanganui mill.	• Competing suppliers with an existing presence include: ○ pellet manufacturers such as Grainhub and CopRice; and ○ Straight and Blends suppliers such as ADM, Agrifeeds, J Swap, Graincorp and PGGW Seeds.
Nelson / Tasman	• Some overlap although the supply comes from mills located 'out of the region'.	• Competing 'out of region' suppliers such as ADM, Agrifeeds and Enerpro.
West Coast	• Similar to the Nelson / Tasman region, there is some overlap with supply coming from mills located 'out of the region'.	• Competing 'out of regions' suppliers such as Advanced Feed, Enerpro, Agrifeeds and ADM.
Canterbury	• Significant overlap because	• Competing suppliers with an existing

Region	Overlap between merging parties	Alternatives to the merged entity
	Canterbury is the only region where there is direct manufacturing overlap between Farmlands and Seales Winslow.	presence include: ○ pellet manufacturers such as Advanced Feed and Gladfield; and ○ Straight and Blends suppliers such as ADM, Agrifeeds, Enerpro, and Aoraki.
Otago / Southland	• Some relevant overlap with Farmlands Winton mill and Seales Winslow bringing in 'out of region' feed from its Ashburton mill.	• Competing suppliers include ○ Pellet manufacturers such as Sgt Dans and Winton Stock Feed; and ○ Straight and Blends suppliers such as ADM, Graincorp, Agrifeeds and Enerpro.

Source: Industry participants. Only key suppliers listed so table does not include all existing/potential suppliers.

Table A2: List of suppliers of bagged supplementary feed for ruminants

Region	Overlap between merging parties	Alternatives to the merged entity
Northland / Auckland	• Some overlap because bagged product is being sent into this region.	• Competing suppliers include an ‘in region’ supplier (Ringrose) and several ‘out of region’ suppliers such as Takanini Feed, Grainhub and CopRice.
Waikato / Bay of Plenty	• Significant overlap as Seales Winslow has its Morrinsville mill and Farmlands distributes bagged feed that is toll manufactured at the Seales Winslow Morrinsville mill.	• Competing suppliers with a significant presence include: ○ pellet manufacturers such as Takanini Feed, Grainhub and CopRice; and ○ Blends suppliers such as Agrifeeds and PGGW Seeds.
Hawkes Bay / East Coast	• Limited overlap because there appears to be limited demand and the supply comes from mills located ‘out of the region’.	• Competing ‘out of region’ suppliers such as Shapes and Grainhub.
Taranaki / Manawatu	• Significant overlap as Seales Winslow has its Whanganui mill and Farmlands distributes bagged feed that is toll manufactured at the Seales Winslow Whanganui mill.	• Competing suppliers with an existing presence include: ○ pellet manufacturers such as Sharpes, Takanini Feed, Grainhub and CopRice; and ○ Blends suppliers such as Agrifeeds and PGGW Seeds.
Nelson / Tasman	• De minimis overlap although the supply comes from mills located ‘out of the region’.	• Competing ‘out of region’ Blend suppliers such as Agrifeeds and Enerpro.
West Coast	• Similar to the Nelson / Tasman region, there is some de minimis overlap with supply coming from mills located ‘out of the region’	• Competing ‘out of region’ suppliers such as Advanced Feed, Enerpro, and Agrifeeds.
Canterbury	• Significant overlap because Canterbury is the only region where there is direct manufacturing overlap between Farmlands and Seales Winslow.	• Competing suppliers with an existing presence include: ○ pellet manufacturers such as Advanced Feed and Gladfield; and ○ Blends suppliers such as Agrifeeds, Enerpro, and Aoraki.
Otago / Southland	• Some relevant overlap with Farmlands Winton mill and Seales Winslow bringing in ‘out of region’ feed from its Ashburton mill.	• Competing suppliers include: ○ Pellet manufacturers such as Sgt Dans and Winton Stock Feed as well as some ‘out of region’ supply from Advanced Feed); and ○ Blends suppliers such as Agrifeeds and Enerpro.

Source: Industry participants. Only key suppliers listed so table does not include all existing/potential suppliers.

Table A3: Market share estimates for bagged supply in the different regional markets

Supplier	Total (tonnes)	Share
Northland/ Auckland		
Farmlands	[……	
Seales Winslow		
Merged Entity		
CopRice		
Grainhub		
Sharpes		
Takanini		
PGG Seeds		
Ringrose		
Total	**]**	**100%**
Waikato / Bay of Plenty		
Farmlands	[……	
Seales Winslow		
Merged Entity		
CopRice		
Grainhub		
Sharpes		
Takanini		
PGG Seeds		
Total	**]**	**100%**
Hawkes Bay / East Coast		
Farmlands	[……	
Seales Winslow		
Merged Entity		
CopRice		
Grainhub		
Sharpes		
Takanini		
PGG Seeds		
Total	**]**	**100%**
Taranaki / Manawatu		
Farmlands	[……	
Seales Winslow		
Merged Entity		
CopRice		
Grainhub		
Sharpes		
Takanini		
PGG Seeds		
Total	**]**	**100%**

Supplier	Total (tonnes)	Share
Nelson / Tasman		
Farmlands	[……	
Seales Winslow		
Merged Entity		
CopRice		
Enerpro		
PGG Seeds		
Total	**]**	**100%**
West Coast		
Farmlands	[……	
Seales Winslow		
Merged Entity		
Enerpro		
PGG Seeds		
Total	**]**	**100%**
Canterbury		
Farmlands	[……	
Seales Winslow		
Merged Entity		
Advanced Feed		
CopRice		
Enerpro		
PGG Seeds		
Aoraki		
Gladfield		
Total	**]**	**100%**
Otago / Southland		
Farmlands	[……	
Seales Winslow		
Merged Entity		
Advanced Feed		
CopRice		
Sgt Dans		
Enerpro		
PGG Seeds		
Total	**]**	**100%**

Source: Industry participants, Commission estimates. Only key suppliers listed so table does not include all existing/potential suppliers.