

**PUBLIC**

**PROVET NZ PTY LTD**

**Commerce Act 1986: Business Acquisition  
Section 66: Notice Seeking Clearance**

**29 March 2005**

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**29 March 2005**

**The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON**

**RE: Provet NZ Pty Ltd Proposed Acquisition of National Veterinary Supplies Ltd**

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

**Part I: Transaction Details**

**1 The Business Acquisition For Which Clearance Is Sought**

- 1.1 Provet NZ Pty Ltd ("Provet") is seeking clearance for the purchase of the business and the assets of National Veterinary Supplies Ltd ("NVS").
- 1.2 A Sale and Purchase Agreement has been entered into subject to the clearance hereby sought being obtained. A copy of the agreement is attached as Appendix I.

**2 The Person Giving Notice**

- 2.1 This notice is given by:

Provet NZ Pty Ltd  
6 Nandina Avenue  
East Tamaki  
Auckland  
New Zealand

Attention: Nigel Nichols  
Phone: 0061 427 407 380  
Fax: 0061 7 3267 8583  
Email: nnichols@provet.net.au

- 2.2 Please send all correspondence in the first instance to:

Crighton Anderson Corporate Finance  
Level 8, 180 Manchester Street  
PO Box 13 804  
Christchurch 8001

Attention: Fiona Mules

### 3 Confidentiality

- 3.1** Provet requests a confidentiality order for the fact of the proposed acquisition.
- 3.1.1** Confidentiality is sought until 4 April 2005, the date upon which Provet and NVS have agreed to communicate to the market their respective intentions with regard to the proposed acquisition.
- 3.1.2** Provet and NVS had agreed to keep the fact of the acquisition confidential until such time as the Sale and Purchase Agreement became unconditional, i.e. until such time as a Commerce Commission clearance was obtained. However, the parties recognise that the Commerce Commission ("the Commission") has obligations to disclose certain information to the market in order to complete its investigations and issue a determination on the matter, and hence they have agreed to communicate their intentions to the market on 4 April 2005.
- The parties seek to minimise, to the greatest extent possible, the time period over which the fact of the proposed acquisition is in the public domain prior to a Commerce Commission clearance being obtained.
- NVS has positioned itself in the market as a New Zealand family-owned operation. Should the intention to sell to an Australian-owned conglomerate come to light prior to the agreed communication strategy being put into effect, this could cause NVS to lose a significant amount of goodwill with clients. In an incredibly competitive market, the disclosure could therefore detrimentally affect the value of the acquisition to Provet.
- 3.2** Provet requests a confidentiality order for specific information contained in and attached to this notice. These items are marked by square brackets [ ] in this version of the notice.
- 3.2.1** Confidentiality is sought indefinitely or until such time that Provet advises the Commission that it can publicise those details.
- 3.2.2** Much of the market information contained in this notice is the property of a third party, who provides this information as a commercial service. Public release of the information could commercially disadvantage that third party. This notice also contains detailed financial and market share information which is commercially sensitive to both Provet and NVS. Release of this information would cause significant commercial disadvantage to both of these parties.

### 4 Details Of The Participants

- 4.1** The Acquirer is Provet NZ Pty Ltd, a company incorporated in Queensland, Australia (ACN 099 854 699) on 8 March 2002. The company was registered in New Zealand as an overseas branch under Company No. 1202342 on 18 April 2002.

Provet NZ Pty Ltd  
6 Nandina Avenue  
East Tamaki  
Auckland  
New Zealand

Attention: Nigel Nichols

Phone: 0061 427 407 380  
Fax: 0061 7 3267 8583  
Email: nnichols@provet.net.au

- 4.2** The Target is National Veterinary Supplies Ltd. The company was registered on 16 June 1959 under Company No. 140364 as Northern Veterinary Supplies Ltd. The company changed its name to National Veterinary Supplies Ltd on 3 November 2000. The contact person is:

Mr Craig Reid  
Managing Director  
National Veterinary Supplies Ltd  
21 Edmund Street  
St Heliers  
Auckland  
New Zealand

Phone: 0064 27 473 3287  
Email: craigreid@xtra.co.nz

## **5 Interconnected Or Associated Parties**

- 5.1** Provet is a wholly owned subsidiary of Provet Pty Ltd (ACN 092 593 774), an Australian company, which in turn is wholly owned by Provet Holdings Ltd, which is also an Australian company. Provet Holdings Ltd is a widely held company and the majority shareholders are veterinarians based in Australia. The directors of Provet Holdings Ltd are GA McGilvray, RLE Menrath, VH Menrath, WA Nichols, NB Nichols, RRR Pascoe, AC Thelander and JK MacLachlan. All of the directors, other than JK MacLachlan, are resident in either Queensland or New South Wales in Australia. JK MacLachlan is resident in New Zealand.

Other associates of Provet are:

**5.1.1** Provet Queensland Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

**5.1.2** Provet VMS Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

**5.1.3** Provet NSW Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

**5.1.4** Provet IT Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

**5.1.5** Provet Riverina Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

**5.1.6** Provet Allhank Pty Ltd

An Australian-based subsidiary of Provet Holdings Ltd that does not operate in New Zealand.

- 5.2** NVS is a family-owned and operated company. The shareholders of NVS are CW Reid, MA Reid, JD Reid and C Reid. The company directors are CW Reid, JD Reid, MA Reid and VJ Reid.

Other associates of NVS are:

**5.2.1 Northern Veterinary Supplies Ltd**

This company, registered in New Zealand on 16 January 2001, is a shell company set up to retain ownership of the company name previously used as a trading name by NVS.

## **6 Existing Beneficial Interests**

**6.1** There are no known beneficial interests existing between the participants.

## **7 Links Between Participants**

**7.1** There are no known links, either formal or informal, between the participants or their associated parties and any of their competitors in any of their markets.

## **8 Common Directorships**

**8.1** One of the directors of Provet, JK MacLachlan, is a director, shareholder and CEO of the Franklin Vet Services Group of veterinary practices, which is a client of NVS. JK MacLachlan relinquishes all links with Franklin Vet Services Group on 1 April 2005.

## **9 Business Activities Of The Participants**

**9.1** Provet and NVS are wholesalers in the animal health and nutrition markets, and supply products solely to registered veterinary practices. In Australia, the Provet Group of companies also operate as wholesalers in the animal health and nutrition markets, and supply products to registered veterinary practices.

**9.2** NVS also manufactures six products. The most significant product, Pentobarb, was developed by NVS and NVS is the sole supplier. The company supplies this product to other wholesalers (although not Provet) and to their own customers. The other products manufactured by NVS are electrolytes, lubricants and a Selenium drench.

## **10 Reasons For The Proposal and Intentions In Respect Of The Acquired Business**

**10.1** Provet wishes to expand its New Zealand operations to achieve economies of scale, particularly in the areas of product cost (currently other wholesalers in the market receive lower prices from manufacturers than Provet due to volume) and efficiency of logistics (combining supply chains).

**10.2** There are a number of changes to the application of the Agricultural Compounds and Veterinary Medicines (1997) Act ("the ACVM Act") currently being implemented that are likely to significantly affect this industry. Historically, Prescription Animal Remedies ("PARs") have been both prescribed and dispensed by veterinarians. The Agricultural Compounds and Veterinary Medicines Group of the New Zealand Food Safety Authority (who are responsible for administering the Act) has introduced changes to the standards under this Act to allow non-veterinarians to register as Approved Traders of PAR products. This will allow the separation of prescribing and dispensing activities analogous to human medicine doctors and pharmacists. It is understood that there are at least eight new organisations intending to register as Approved Traders in order to dispense PARs. These include rural supply retailers and pet shop suppliers. Provet considers that this increased competition will become a

serious threat to its long term viability unless it can build scale quickly. Combined with the decrease in margins in recent years, continued viability in the veterinary wholesale market can only be assured by increasing internal efficiencies through economies of scale.

- 10.3** Provet intends to take over the entirety of the business currently operated by NVS, including all contracts and distribution channels. There will be a small amount of consolidation in the administrative function. The merged entity will operate under one brand - Provet. Provet expects that the major competitive benefit resulting from the acquisition will be the ability for greater coordination of stock, thus enabling higher service levels to be provided to veterinarians.
- 10.4** Provet has undertaken to maintain all the existing manufacture and supply commitments of NVS.

## Part II: Identification Of Markets Affected

### 11 Horizontal Aggregation Of Markets

1. Provet and NVS both operate full supply operations for registered veterinarian practices. This includes the sale of over 7,600 products used either directly by veterinarians, or which veterinarians retail to their customers. This acquisition will result in a horizontal aggregation in the market to supply registered veterinarian practices. The effect of this aggregation differs across various segments of the market.
2. For the purpose of our analysis, the following market segmentation is useful:
  - ▼ Animal Health Products;
  - ▼ Pet Nutrition;
  - ▼ Animal Related Merchandise; and
  - ▼ Veterinary Practice Disposable Items.
3. These markets are further defined in the discussion below. Table 1 shows the estimated market sizes, including the estimated market shares of both Provet and NVS by revenue and the overall veterinarian market share.

**Table 1. Estimated Market Sizes (NZ\$M)**

	Animal Health Products	Pet Nutrition	Animal Related Merchandise	Veterinarian Practice Disposable Items
Provet	[ ]	[ ]	[ ]	[ ]
NVS	[ ]	[ ]	[ ]	[ ]
Other Veterinarian Suppliers	[ ]	[ ]	[ ]	[ ]
Total Veterinarian Market	[ ]	[ ]	[ ]	[ ]
Total Non-Veterinarian Market	[ ]	[ ]	Not available	[ ]
Total Market	[ ]	220.4	Not available	[ ]
Merged Entity Total Market Share	[ ]	[ ]	Estimated at [ ]	[ ]

**Sources: Scott Economics Ltd Animal Health Audit.**

**Total Pet Food Market data provided by AC Nielson.**

**Confidential sales information provided by Provet and NVS.**

4. The functional level, geographical area and timeframe are common to all of these markets. The definition of the customers and products for each market is more difficult and is discussed in more detail in the following sections.
5. Provet and NVS both operate as wholesalers of products that are retailed by veterinarians and used by veterinarians in their practices. NVS also operates to a very limited extent as a manufacturer but, as Provet currently does not, there is no horizontal aggregation of this function.
6. Provet currently operates predominantly in the North of the North Island, whereas NVS operates nationwide. However, given that Provet began planning its move into the South Island in October 2004 with the search for appropriate warehouse facilities and with a view to being fully operational in the



South Island market by 1 July 2005, the relevant geographical dimension to consider for all markets is New Zealand wide.

7. All of these markets operate continuously over time.

#### 11.1 Animal Health Products Market

8. The Animal Health Products market comprises Prescription Animal Remedies (“PARs”) and Over The Counter (“OTC”) products. OTC products are sold by veterinarians, rural supply retailers and pet shops. PARs are currently only sold by registered veterinarians.
9. Overall, veterinarians have about a [ ] share of the Animal Health Products market, but this differs markedly by product line. However, the changes to the standards under the ACVM Act currently being implemented will allow non-veterinarian Approved Traders to fill prescriptions from veterinarians. It is not clear at this stage the level of market share that these Approved Traders may secure.
10. Given these changes, and in the case of both PARs and OTC products, the market should be defined as the total sales of the relevant product line, whether it be to veterinarian or non-veterinarian traders, because there are virtually no barriers to customers switching supply channels. If we consider the SSNIP test, a small but significant price increase could not be sustained by a hypothetical monopolist supplier unless both the veterinarian and non-veterinarian sales channels were affected.
11. As the Animal Health Products market consists of a significant number of products, it is necessary to identify and consider separate markets for particular product lines or products depending upon their overall share of the Animal Health Products market, as well as Provet and NVS’s respective market shares of those significant product lines or products. This section identifies the markets for specific Animal Health product lines or products upon which the acquisition could possibly have the effect of substantially lessening competition. The following discussion will show that there is little likelihood of such an effect occurring.
12. The most comprehensive information available on the Animal Health Products market is contained in Scott Economics Ltd’s Quarterly Sales Audit of Animal Health Products<sup>1</sup>. This survey disaggregates the market into 24 product lines. The majority of the large manufacturing companies contribute sales data to this survey. This data is confidential to participating companies [ ] Those manufacturers who do not contribute to the survey account for approximately 11% of the market. Data for this remaining proportion of the market has been estimated using information provided by the New Zealand Veterinary Association and Provet’s own accounting information.
13. Provet tracks its sales by individual product, but also groups products into Therapeutic Index (TI) classifications by supplier. A mapping between TI classifications and the categorisations used in the Animal Health Product audit is used to analyse and reconcile quantities. Some assumptions have been made by Provet as to the appropriateness of its allocation of TI classifications. This mapping and analysis can be supplied in spreadsheet form if required.
14. An equivalent breakdown by product line or product of the annual sales of other wholesalers is not available, so for the purpose of our analysis this has been estimated using the same proportions of total sales as Provet. While this initially appears to be a gross assumption, we believe it is reasonable to assume that other wholesalers’ sales are likely to follow a similar pattern to Provet.

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<sup>1</sup> We have used information pertaining to the twelve month period ending December 2004.

15. In addition to other wholesalers, key competition to Provet and NVS comes from manufacturers who maintain direct supply channels to veterinary practices. Unfortunately, it has not been possible to obtain information regarding the level of direct sales by manufacturers in the Animal Health Products market. This has meant that it is not possible to accurately estimate post acquisition three firm sales concentration ratios ("CR3") if we assume that the third entrant into the ratio following the merger of Provet and NVS is a manufacturer supplying direct (which is a reasonable assumption given that there is only one other significant wholesaler operating in the market currently, SVS Veterinary Supplies Ltd ("SVS"), and they will clearly occupy the second spot).
16. However, our market experience suggests that the highest market share of any manufacturer supplying direct in the Animal Health Products market currently, excluding the anthelmintics and intramammary product lines (in which both Provet and NVS have low market shares), is likely to be around [ ]. Thus, a pre-acquisition CR3 of less than [ ] (allowing conservatively for a [ ] market share for the largest manufacturer supplying direct) will provide assurance that the expected post acquisition CR3 is less than [ ].
17. Based on the available information, we have determined it appropriate to undertake our analysis on the basis of the following three categories:
- ▼ **Product lines where the merged entity would have less than [ ] market share**

Product lines for which Provet, NVS and SVS are not the dominant suppliers. Post acquisition, the merged entity would still have a relatively low market share across each product line. Therefore, no market power is being created through the proposed acquisition.

Table 2 lists these product lines.
  - ▼ **Product lines where the merged entity has over [ ] market share, but the expected CR3 is less than [ ]**

Product lines for which Provet, NVS and SVS are the three major suppliers, but where it is unlikely that the safe harbour guidelines would be breached by the proposed acquisition. The merged entity's market shares are predicted to be between [ ] and [ ] for the various product lines and the pre-acquisition CR3s are between [ ] and [ ]. With no manufacturer likely to have significantly more than [ ] market share through direct supply, the post acquisition CR3s are not likely to exceed the [ ] safe harbour guideline.

Table 3 lists these product lines.
  - ▼ **Product lines where the proposed acquisition may breach safe harbour guidelines**

Product lines for which the pre acquisition CR3s are close to or have exceeded the safe harbour guidelines, so in turn the post acquisition CR3s may breach the safe harbour guidelines.

Table 4 lists these product lines.

**Table 2. Product Lines Where Merged Entity < [ ] Market Share (NZ\$000's)**

Product Line	Provet Sales	NVS Sales*	Merged Entity Sales*	Total Market Sales	Merged Entity Market Share*
Anthelmintics	[ ]	[ ]	[ ]	[ ]	[ ]
Antibacterials - Intrauterine	[ ]	[ ]	[ ]	[ ]	[ ]
Antibacterials - Parenteral	[ ]	[ ]	[ ]	[ ]	[ ]
Anti-Bloat Preparations	[ ]	[ ]	[ ]	[ ]	[ ]
Anti-Diarrhoeals	[ ]	[ ]	[ ]	[ ]	[ ]
Coccidiostats	[ ]	[ ]	[ ]	[ ]	[ ]
Equipment	[ ]	[ ]	[ ]	[ ]	[ ]
Feed Additives	[ ]	[ ]	[ ]	[ ]	[ ]
Intramammary Preparations	[ ]	[ ]	[ ]	[ ]	[ ]
Metabolics	[ ]	[ ]	[ ]	[ ]	[ ]
Minerals	[ ]	[ ]	[ ]	[ ]	[ ]
Nutritional Premixes	[ ]	[ ]	[ ]	[ ]	[ ]
Shed Hygiene	[ ]	[ ]	[ ]	[ ]	[ ]
Vitamins	[ ]	[ ]	[ ]	[ ]	[ ]
Water Soluble Medications	[ ]	[ ]	[ ]	[ ]	[ ]

\* Estimated by extrapolating Provet's product sales proportions.

**Table 3. Product Lines Where Merged Entity > [ ] Market Share, Expected Post Acquisition CR3 < [ ] (NZ\$000's)**

Product Line	Provet Sales	NVS Sales*	Merged Entity Sales*	Total Market Sales	Merged Entity Market Share*	Pre-Acq CR3*
Ectoparasiticides	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Hormones	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Vaccines	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

\* Estimated by extrapolating Provet's product sales proportions.

**Table 4. Product Lines Where Merged Entity > [ ] Market Share, Expected Post Acquisition CR3 > [ ] (NZ\$000's)**

Product Line	Provet Sales	NVS Sales*	Merged Entity Sales*	Total Market Sales	Merged Entity Market Share*	Pre-Acq CR3*
Anaesthetics	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Antibacterial - Topical and Oral	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Analgesics	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Other	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

\* Estimated by extrapolating Provet's product sales proportions.

18. In addition to the above analysis, we have attempted to identify any specific products within the first two (“safe”) categories that have limited alternate distribution channels. The only such product identified is Pentobarb. This is a euthanasia drug developed and manufactured by NVS. NVS currently supplies this product to other wholesalers (although not Provet) and to their own customers. There is no horizontal aggregation with regard to this product so it is not analysed any further.
19. As we have concluded that no market power is being created through the proposed acquisition in the markets for the product lines contained within the first two categories, they will not be analysed any further. However, the product lines contained within the third category are discussed in greater depth below.
- ▼ Anaesthetics are used by veterinarians in practice for surgery and are not sold directly to their clients.
  - ▼ The veterinary wholesaling proportion of the Antibacterial (Topical and Oral) product line consists primarily of oral antibiotics for companion animals and are prescribed for specific treatments after consultation.
  - ▼ The Analgesic product line consists primarily of a specific range of drugs known as Non Steroidal Anti-Inflammatory Drugs (“NSAIDs”). These are prescribed for specific treatments after consultation.
  - ▼ The fourth product line that may breach safe harbour guidelines is “Other”. This “catch-all” product line incorporates an extremely wide range of products, each with relatively small sales volume. Given that the products contained within this product line do not warrant separate identification by the market, we believe it is unlikely that there are any products that would be material to the analysis at hand and the determination of a substantial lessening of competition in the market. Hence, this product line is not analysed any further.
20. Unfortunately, we have been unable to obtain market share information for any level of disaggregation lower than product line. However, we have obtained more general information on the products that constitute the anaesthetics, antibacterial and analgesic product lines. The product data is presented in Tables 5-7, and the potential for direct supply competition from manufacturers and any other potential constraints that may be levied on the merged entity in order to prevent the exertion of market power, are discussed further in the sections below.

### **Anaesthetics**

21. Table 5 below lists the products within the Anaesthetics product line that are supplied by Provet.

**Table 5. Anaesthetics Supplied by Provet**

<b>ANAESTHETICS</b>	<b>Manufacturer</b>	<b>Direct Supply Option</b>	<b>Manufacturer Recommended 'Sell to Vet' Price</b>	<b>Substitute Readily Available</b>
ALFAXAN CD RTU DOG & CAT 10ml	Jurox	Yes	Yes	No
AQUAFOL 100ml	Parnell	No	Yes	Yes
AQUAFOL 20ml	Parnell	No	Yes	Yes
BOMACAINE INJ 500mlX12 BULK/P	Bomac	Yes	Yes	Yes
BOMATHAL 5gm	Bomac	Yes	Yes	Yes
BUCAINE INJ 20ml	Bomac	Yes	Yes	Yes
HALOTHANE BP 250ml	Merial	Yes	Yes	Yes
HALOTHANE-VCA 250ml	Phoenix Pharm	Yes	Yes	Yes
INTRAVAL 0.5g INJ 5's (Thio)	Health Support	Yes	No	Yes
ISOFLURANE 250ml	Health Support	Yes	No	Yes
ISOFLURANE 250ml (MERIAL)	Merial	Yes	Yes	Yes
KETAMINE 100mg 20ml PARNELL	Parnell	No	Yes	Yes
KETAMINE INJ 10% 20ml PHOENIX	Phoenix Pharm	Yes	Yes	Yes
KETAMINE INJ 10% 50ml PHOENIX	Phoenix Pharm	Yes	Yes	Yes
LOCAL VAXIPACK 200ml	Virbac	Yes	Yes	Yes
LOCAL VAXIPACK 500ml	Virbac	Yes	Yes	Yes
LOPAINE 2% INJ 100ml (PLASTIC)	Ethical Agents	Yes	Yes	Yes
LOPAINE 2% INJ 100ml(GLASS)	Ethical Agents	Yes	Yes	Yes
LOPAINE 2% INJ 200ml (PLASTIC)	Ethical Agents	Yes	Yes	Yes
LOPAINE 2% INJ 500ml (PLASTIC)	Ethical Agents	Yes	Yes	Yes
MEPIVACAINE 2% 10ml 12's	Phoenix Pharm	Yes	Yes	Yes
MEPIVACAINE 2% 100ml	Phoenix Pharm	Yes	Yes	Yes
NOPAINE 2% PLASTIC VAXPK 200ml	Phoenix Pharm	Yes	Yes	Yes
NOPAINE 2% PLASTIC VAXPK 500ml	Phoenix Pharm.	Yes	Yes	Yes
NOPAINE 2% PLASTIC VIAL 100ml	Phoenix Pharm	Yes	Yes	Yes
PROPOFOL 200mg in 20ml 10's	Phoenix Pharm	Yes	Yes	Yes
THIAZINE - 20 INJ 50ml	Virbac	Yes	Yes	Yes
THIAZINE - 50 INJ 50ml	Virbac	Yes	Yes	Yes
XYLOCAINE JELLY 2% 15ml	Health Support	Yes	No	Yes
ZOLETIL-100 500mg	Virbac	Yes	Yes	No

**Source: Provet Product List.**

22. As demonstrated in Table 5, the vast majority of manufacturers also supply direct to veterinarians. This would suggest that veterinarians could easily bypass wholesalers if any attempt was made to raise prices or reduce output or quality. Parnell is the only manufacturer that does not currently supply any products directly to veterinarians. This has been a recent policy change for the company (June 2004) and could easily be reversed should an attempt be made by wholesalers to exert market power.

23. The majority of manufacturers provide “sell to vet” recommended prices. This pricing is transparent to all veterinarians, so there is no real possibility of increasing prices above that level without losing a significant amount of business.
24. The Commerce Commission Decision No. 496<sup>2</sup> made note that animal pharmaceuticals within a product line may not have complete substitutability. In some situations, the active ingredient would be the key defining aspect of a product. Table 5 shows that the significant majority of the products supplied by Provet have a readily available substitute. Those that do not are all supplied by manufacturers who have a direct supply option.
25. Further to the above arguments, our market investigation has determined that there are no particularly dominant products operating within this product line that necessitate further individual analysis.

#### **Antibacterials (Topical and Oral)**

26. As previously mentioned, the Antibacterial product line consists primarily of oral antibiotics for companion animals. Table 6 below lists the products within this product line that are supplied by Provet.

**Table 6. Antibacterials Supplied by Provet**

<b>ANTIBACTERIALS</b>	<b>Manufacturer</b>	<b>Direct Supply Option</b>	<b>Manufacturer Recommended 'Sell to Vet' Price</b>	<b>Substitute Readily Available</b>
AMOXICILLIN 400mg 500's	Ethical Agents	Yes	Yes	Yes
ANTIROBE AQUADROPS 20ml	Pfizer	Yes	Yes	Yes
ANTIROBE CAPS 150mg 150's	Pfizer	Yes	Yes	Yes
ANTIROBE CAPS 25mg 150's	Pfizer	Yes	Yes	Yes
ANTIROBE CAPS 75mg 150's	Pfizer	Yes	Yes	Yes
BAYTRIL 15mg TABS 150's	Bayer	Yes	Yes	Yes
BAYTRIL 2.5% INJ 50ml	Bayer	Yes	Yes	Yes
BAYTRIL 50mg TAB 100's	Bayer	Yes	Yes	Yes
BAYTRIL TABS 150mg 50's	Bayer	Yes	Yes	Yes
CEPHALEXIN TABS 200mg X 100's	Ethical Agents	Yes	Yes	Yes
CEPHALEXIN TABS 600mg X 100's	Ethical Agents	Yes	Yes	Yes
CLAVULOX DISPENCING PACK	Pfizer	Yes	Yes	Yes
CLAVULOX DROPS 15ml	Pfizer	Yes	Yes	Yes
CLAVULOX MULTI PACK	Pfizer	Yes	Yes	Yes
CLAVULOX TABS 250mg 250's	Pfizer	Yes	Yes	Yes
CLAVULOX TABS 500mg 100's	Pfizer	Yes	Yes	Yes
CLAVULOX TABS 50mg 100's	Pfizer	Yes	Yes	Yes
DELTA ALBAPLEX TABS 500's	Ethical Agents	Yes	Yes	No
DELTAMOX TABS 200mg 500's	Ethical Agents	Yes	Yes	Yes
DIMETRASOL PWD (EMTRYL) 200g	Phoenix Pharm	Yes	Yes	No

<sup>2</sup> Pfizer Laboratories Ltd and Pharmacia Ltd, 3 April 2003.

DOXYCYCLINE PWD 5% 100g	Phoenix Pharm Dist.	Yes	Yes	Yes
KEFVET TABS 500mg 100's	Elanco	Yes	Yes	Yes
MARBOCYL BOLUS 50mg TABS 48	Ethical Agents	Yes	Yes	No
MOXYLAN AQUEOUS DROPS 15ml	Jurox	Yes	Yes	No
MOXYLAN TABS 200mg 500's	Jurox	Yes	Yes	Yes
MOXYLAN TABS 50mg 500's	Jurox	Yes	Yes	Yes
NEOBIOTIC P PUMP 120ml	Pfizer	Yes	Yes	No
NEOMIX CONCENTRATE 500g	Pfizer	Yes	Yes	No
NOROCLAV 250mg 100's + 25 ENV	Norbrook*	Yes	Yes	Yes
NOROCLAV 50mg 100's + 25 ENV	Norbrook*	Yes	Yes	Yes
RILEXINE 300mg 252's PALATABLE	Virbac	Yes	Yes	Yes
RILEXINE 600mg 100's PALATABLE	Virbac	Yes	Yes	Yes
RILEXINE 600mg 300's PALATABLE	Virbac	Yes	Yes	Yes
RILEXINE 75mg 256's PALATABLE	Virbac	Yes	Yes	Yes
RILEXINE TABS 75mg 256's	Virbac	Yes	Yes	Yes
STOMADHEX C100 CAT CARD	Ethical Agents	Yes	Yes	No
STOMORGYL 10 TABS 50's	Merial	Yes	Yes	Yes
STOMORGYL 2 TABS 50's	Merial	Yes	Yes	Yes
STOMORGYL 20 TABS 50's	Merial	Yes	Yes	Yes
SULPHADIAZINE BP 500g	Dominion Chemicals	Yes	No	No
SULPHATRIM 80mg TABS 500's	Ethical Agents	Yes	Yes	Yes
TERASOL POWDER 500g	Phoenix Pharm Dist.	Yes	Yes	Yes
TETRAVET 100 POWDER 200gm	Bomac	Yes	Yes	Yes
TETRAVET 100 POWDER 2kg	Bomac	Yes	Yes	Yes
TRIBACTRAL 80 x 500	Jurox	Yes	Yes	Yes
TRICHOZOLE TAB 200mg 100's	Pharmacy Wholesalers	Yes	No	No
TRICHOZOLE TAB 400mg 100's	Pharmacy Wholesalers	Yes	No	No
VETAMOX 625mg TABLETS 100's	Ethical Agents	Yes	Yes	Yes
VIBRAVET - 100mg TABS 150's	Pfizer	Yes	Yes	No
VIBRAVET - 50mg TABS 150's	Pfizer	Yes	Yes	No
VIBRAVET-100 PASTE 2.5gm 20's	Pfizer	Yes	Yes	No

\* Norbrook does not specifically supply Noroclav direct to veterinarians, but does have existing direct supply channels for other products that it manufactures.

Source: Provet Product List.

27. As demonstrated in the above table, all of the manufacturers supplying these products to Provet have direct supply channels to veterinarians and provide "sell to vet" recommended prices that are transparent to all veterinarians. Again, there is no real possibility of wholesalers increasing prices above that level without losing a significant amount of business.

28. Table 6 also indicates that the majority of these products have a readily available substitute. Those that do not are all supplied by manufacturers with direct supply options.
29. Further to the above arguments, our market investigation has determined that there are no particularly dominant products operating within this product line that necessitate further individual analysis.

### Analgesics

30. As previously mentioned, the Analgesic product line consists primarily of a specific range of drugs known as Non Steroidal Anti-Inflammatory Drugs (“NSAIDs”). Table 7 below lists the products within this product line that are supplied by Provet.

**Table 7. Analgesics Supplied by Provet**

ANALGESICS	Manufacturer	Direct Supply Option	Manufacturer Recommended 'Sell to Vet' Price	Substitute Readily Available	Estimated Share of Total Market
Metacam	Boehringer Ingelheim	No	Yes	Yes	[ ]
Rimadyl	Pfizer	Yes	Yes	Yes	[ ]
Hyonate	Bayer	Yes	Yes	Yes	[ ]
Equipalzone	Bomac	Yes	Yes	Yes	[ ]
Tolfedine	Ethical Agents	Yes	Yes	Yes	[ ]
Ketofen	Merial	Yes	Yes	Yes	[ ]
Fluixin	Norbrook	Yes	Yes	Yes	[ ]
Norocarp	Norbrook	Yes	Yes	Yes	[ ]
Flunix	Parnell	Yes	Yes	Yes	[ ]
Key Inj	Parnell	Yes	Yes	Yes	[ ]
Butin	Parnell	Yes	Yes	Yes	[ ]
Cualgesic	Phoenix Pharm	Yes	Yes	Yes	[ ]
Pentosan Vet	Phoenix Pharm	Yes	Yes	Yes	[ ]
Cartophen Vet	Therapeutix	No	No	Yes	[ ]
Pentarthron	Virbac	Yes	Yes	Yes	[ ]

**Source: Provet Product List.**

31. Table 7 show that the vast majority of the manufacturers supplying these products to Provet have direct supply channels to veterinarians and provide “sell to vet” recommended prices that are transparent to all veterinarians. As with the other product lines, there is no real possibility of wholesalers increasing prices above that level without losing a significant amount of business.
32. The entire Analgesic product line (i.e. including those not supplied by Provet) is made up of some 58 products, most of which have very low sales volumes. However, of particular note are the two products Metacam and Rimadyl which together account for [ ] of the total product line sales. These are original research products for managing arthritis in dogs, manufactured by Boehringer Ingelhiem and Pfizer respectively and until recently were the principal products available for this purpose.



33. Pfizer currently distributes its products directly to veterinarians, but Boehringer Ingelheim supplies exclusively through wholesalers. It is estimated that in the market for products for this purpose, the merged entity would have a [ ] market share and SVS would have the majority of the remainder, so the safe harbour guidelines would likely be breached.
34. Recently however, a generic product (Norocarp) has been introduced to the market. While currently this has a very small market share (around [ ]) it is expected that this product will increase its presence significantly based on the experience in Australia. In the Australian market, where Pfizer and Boehringer Ingelheim held similar market positions to New Zealand, Norocarp grew [ ] in 2004 to approximately [ ] of the total market and continues to take market share. It is expected that there will be further generic brands introduced to the New Zealand market in the near future.
35. Also, there are a number of new original research products due to be launched into the Australian and New Zealand markets that will actively compete with the Pfizer and Boehringer Ingelheim brands on a technical level. Meril is to launch one of these in Australia at the end of March and they have indicated the New Zealand launch will follow early in April.
36. Consequently, product substitutability is emerging for the historically dominant products in this product line. Substitutes are readily available for the remainder of the products in the analgesics product line.

## 11.2 Pet Nutrition Market

37. The Pet Nutrition market is the market for manufactured pet foods. In New Zealand 96% of all cat meals and 85% of all dog meals are manufactured pet foods with annual total market revenue in excess of \$220 million. This market is dominated by supermarkets, although the combined veterinarian and pet shop market share has risen from 7.7% in 2000 to 24.0% in 2004.
38. Manufactured pet foods are sold by veterinarians, pet shops, supermarkets and directly by manufacturers/importers.
39. Provet and NVS sell only scientifically formulated, premium pet foods to veterinarians. These have all undergone the internationally recognised feeding trials of the Association of American Feed Control Officials ("AAFCO"). Other, non premium pet foods may also have undergone these trials. Premium pet foods are purported to produce a healthier coat, smaller faecal volume and improved breath, as compared to the results from consumption of non-premium pet foods. Other suggested health benefits are related to the value of antioxidants, vitamins and minerals. Premium pet food manufacturers predominantly market their products to veterinarians and pet shops – they supply only minimal quantities direct to supermarkets.
40. There are eight predominant brands that constitute the New Zealand premium pet food market (all of these are imported):
  - ▼ Eukanuba
  - ▼ Iams
  - ▼ Hill's Science Diet & Prescription Diet
  - ▼ ProPlan
  - ▼ Royal Canin
  - ▼ Nutro

- ▼ Nutrience
  - ▼ Pedigree/Whiskas Advance
41. These premium pet foods are directly substitutable with each other for the majority of pets. While some pets develop preferences for particular brands and many pets suffer minor stomach upsets upon changing diets, there are no major barriers to substitution for the majority of purchasers.
42. The best of the “medium quality” pet food lines, which are available from supermarkets, are partial substitutes for the premium pet food lines as a significant number of pet owners switch between the premium and medium quality pet foods based on the price differential. Principal examples of the medium quality pet food lines are:
- ▼ Purina One
  - ▼ Supercoat
43. Market shares of the wholesalers and key premium pet food manufacturers are presented in Table 8 below, together with an overall view of the pet food market.

**Table 8. Pet Food Market Shares**

	Revenue (NZ\$M)	Veterinarian Market Shares	Premium Lines Market Shares	Total Market Shares
Provet	[ ]	[ ]	[ ]	[ ]
NVS	[ ]	[ ]	[ ]	[ ]
Subtotal: Merged Entity Total	[ ]	[ ]	[ ]	[ ]
Other Veterinary Wholesalers	[ ]	[ ]	[ ]	[ ]
Masterpet	[ ]	[ ]	[ ]	[ ]
Other Direct Suppliers	[ ]	[ ]	[ ]	[ ]
Subtotal: Veterinarian Market	[ ]	100.0%	[ ]	[ ]
Masterpet	[ ]		[ ]	[ ]
Other Direct Suppliers	[ ]		[ ]	[ ]
Subtotal: Pet Shop Market	[ ]		[ ]	[ ]
Subtotal: Premium Lines Market	52.9		100.0%	24.0%
Non Premium Lines	167.5			76.0%
Total Pet Food Market	220.4			100.0%

Source: Total Pet Food Market data provided by AC Nielson as at 10 August 2004.

44. Unfortunately, information for previous years is not available, although there is a dated analysis (2000) of the pet food market on the New Zealand Pet Food Manufacturers Association website ([www.petfoodnz.co.nz](http://www.petfoodnz.co.nz)), which indicates that the total pet food market in 2000 was \$192.3M and the pet shop/veterinarian share of that market was 7.7% (approximately \$14M). This indicates strong growth in this market over the last four years. Unfortunately, no discussion is provided with regard to the level of competition in the market over this period.
45. Table 9 shows the merged entity's market share of the premium pet food market and the post acquisition CR3. If the market is defined as solely the veterinarian pet food market then the merged entity may exceed the safe harbour guidelines as the CR3 is greater than [ ] and the merged entity

market share is over [ ]. However, if the market is defined to include all the sales channels for the premium pet food lines, and therefore incorporates pet shops, the merged entity is well within the safe harbour guidelines. Consequently, the definition of the market is critical to this analysis.

**Table 9. Market Shares and Concentration Ratios by Market Subset**

	Veterinarian Market	Premium Lines Market	Total Market
Merged Entity	[ ]	[ ]	[ ]
SVS	[ ]	[ ]	[ ]
Masterpet	[ ]	[ ]	[ ]
Post Acquisition 3 Firm Sales Concentration Ratio	[ ]	[ ]	

46. Provet and NVS both sell only to registered veterinarians, not to pet shops, so it could be argued that the market definition should only include the market for the supply of premium pet foods to registered veterinarians. However, this narrow definition of the market fails the SSNIP test in that a hypothetical monopolist supplier would not be able to sustain a small but significant price increase. If this was attempted, veterinarians would have to increase their selling price and customers would likely react by purchasing the same product from pet shops, effectively forcing veterinarians out of the market.
47. There are eight predominant brands in the premium pet food market and the majority of those brands are positioned within a relatively narrow price range. Table 10 and Table 11 show the annual cost of feeding a typical dog and a typical cat on a selection of premium pet foods. This information was provided by the Consumers' Institute of New Zealand. As demonstrated in the tables, competition in this market is robust and any attempts to raise prices are unlikely to be effective.

**Table 10. Annual Costs of Feeding a Dog on Selected Premium Pet Foods**

Product	Annual Cost (NZ\$)*	% of Average Annual Cost
Royal Canin Medium Adult Maintenance	1,080	115%
Hill's Science Diet Canine Adult	980	104%
Nutro Choice Adult Maintenance	960	102%
Nutrience Biscuits Adult Original	950	101%
Pedigree Advance Adult Biscuits	910	97%
Eukanuba Adult Maintenance Biscuits	900	96%
Proplan Adult Chicken & Rice	800	85%

\* Based on feeding a 20kg dog approximately 1200 kilocalories per day.

Source: Consumer Online Report – The Truth about Cats and Dogs, 3 September 2002. Reproduced with the permission of the Consumers' Institute of New Zealand.

**Table 11. Annual Costs of Feeding a Cat on Selected Premium Pet Foods**

<b>Product</b>	<b>Annual Cost (NZ\$)*</b>	<b>% of Average</b>
Eukanuba Adult Biscuits	420	130%
Royal Canin Fit 32 Biscuits	330	102%
Proplan Purina Adult	320	99%
Whiskas Advance Adult Biscuits	310	96%
Iams Adult Biscuits	310	96%
Hill's Science Diet Feline Adult	310	96%
Nutrience Adult Biscuit Original	290	90%
Nutro Max Adult Maintenance	290	90%

\* Based on feeding a 5kg cat approximately 300 kilocalories per day.

Source: Consumer Online Report - The Truth about Cats and Dogs, 3 September 2002. Reproduced with the permission of the Consumers' Institute of New Zealand.

48. Given that the narrowly defined market for the supply of premium pet foods to registered veterinarians fails the SSNIP test, we suggest that a more reasonable definition of the market is the total market for premium pet foods. While a hypothetical monopolist supplier attempting a small but significant price increase would face some competition from the medium quality lines sold through supermarkets, there is insufficient market evidence to suggest that this competition would be of a sufficient level to result in the premium pet foods market failing the SSNIP test.
49. Using this wider market definition of premium pet foods, the merged entity would have a [ ] market share and the post acquisition CR3 would be [ ], comprising:
- ▼ Masterpet – [ ]
  - ▼ Merged entity – [ ]
  - ▼ SVS – [ ]
50. As previously mentioned, the level of competition in this market is strong. All of the manufacturers maintain direct distribution channels to enable direct competition with wholesalers. These direct distribution channels are already in effect and represent a serious threat to wholesalers.
51. The ability to become an effective competitor in a very short period of time is demonstrated by the following example. In 2001, Pet Product Distributors, a wholesaling subsidiary of Pet Elite (an importer of Hill's pet food) who was supplying Hill's products exclusively to pet shops at the time, decided to enter the veterinarian supply market. The company established links to the veterinarian practices and was operating in direct competition with existing veterinary wholesalers within a period of four weeks. Pet Product Distributors continues to operate in the veterinary wholesaling market today.
52. In summary, the proposed acquisition will not breach safe harbour guidelines for the premium pet food market and the extent of market power will be tightly constrained by manufacturers and other potential competitors operating in related markets. Therefore, the proposed acquisition will not result in a substantial lessening of competition in this market and no further analysis of this market is required.

### **11.3 Animal Related Merchandise**

53. Veterinary practices supply a range of pet and animal related merchandise. These items are also sold through pet shops and supermarkets. NVS sells only a minimal amount of products in this category so there is little horizontal aggregation in this market. Therefore, the proposed acquisition will not result in a substantial lessening of competition in this market and no further analysis of this market is required.

### **11.4 Veterinarian Practice Disposable Items**

54. The merged entity will have a market share of approximately [ ] of the veterinarian practice disposable items market. The majority of disposable items used by veterinarians (such as gloves and syringes) are common to human medicine also and are therefore available from human medical wholesalers, in addition to veterinarian wholesalers. The few items that are highly specialised (such as large animal pregnancy testing gloves) are low cost, low volume items. There are currently eight wholesalers servicing this market and ten manufacturers or importers supplying directly to veterinarians. With the number of alternate suppliers available, we believe that the proposed acquisition will not result in a substantial lessening of competition in this market and therefore no further analysis of this market is required.

## **12 Differentiated Product Market Identification**

55. Two of the markets identified in section 11 could be defined as providing differentiated products. These are:

### **12.1 Animal Health Products**

56. Animal Health manufacturers of original research products differentiate their products on both technical and efficacy grounds. For example, Schering Plough introduced a new product, Cepravin, into the highly competitive dairy cow intramammary market. The point of differentiation was that this product had a longer duration of action than comparable products. Cepravin now has a [ ] share of the market. Another example is injectable antibiotics, which are differentiated by efficacy against particular bacteria and duration of action. Some veterinarians will choose the "name brand" rather than a generic product to support this research into new products.

57. Manufacturers of generic animal health products differentiate their products mainly by pack size, packaging and delivery system. Product strength and formulations tend to be similar across products.

58. The only drug relevant to the proposed acquisition that is differentiated to the point where substitutes are limited is the drug Pentobarb. This is a euthanasia drug developed and manufactured by NVS. As discussed earlier, this drug has not been made available to Provet previously so there is no horizontal aggregation with regard to this product.

### **12.2 Pet Nutrition**

59. Premium pet foods are differentiated from lower quality pet foods by their scientific formulation for optimal nutrition. Within the premium pet food market, product differentiation is attempted by differing formulations for an animal's age, together with additives for specific health issues, i.e. calcium for teeth and bones, additives for joint health, etc. However, this differentiation appears to be common across brands such that the majority of consumers could easily switch to a competing brand and receive the same product benefits.

### **13 Differentiated Product Market Analysis**

60. Within the product markets identified as being subject to the horizontal aggregation of Provet and NVS, there is no differentiation that would prevent significant switching to a substitute should there be a price incentive to do so.

### **14 Vertical Integration Identification**

61. Provet and NVS both operate at the same functional level i.e. the companies are both wholesalers to registered veterinarians. Therefore, the proposed acquisition will not result in any vertical integration. NVS also manufactures two products, but this manufacturing function is a very small proportion of its overall business operation and is more opportunistic than a part of a defined market strategy.

### **15 Recent Acquisitions By The Parties To This Acquisition**

62. Neither Provet nor NVS have made any acquisitions of business assets or shares in the last three years.

## Part III: Constraints On Market Power By Existing Competition - Animal Health Products Market

63. As we have discussed in section 11, we do not believe that the proposed acquisition will breach safe harbour guidelines in three of the four markets in which Provet and NVS operate – these being the Pet Nutrition, Animal Related Merchandise and Veterinary Practice Disposable Items markets.
64. Within the Animal Health Products market, there are three product lines identified that may breach safe harbour guidelines and which need to be further analysed in order to determine whether or not the proposed acquisition would result in a substantial lessening of competition in the markets for those product lines. The relevant product lines are Anaesthetics, Antibacterials and Analgesics.

### 16 Existing Competitors

65. Currently competition in the markets for the abovementioned product lines comes from wholesalers, who supply a wide range of products sourced from numerous manufacturers, and manufacturers, who supply their own product ranges direct to veterinarians.
66. The wholesalers currently operating in the Animal Health Products market are:
- ▼ Provet
  - ▼ NVS
  - ▼ SVS Veterinary Supplies Ltd (“SVS”)
  - ▼ Southern Medical Products Ltd
  - ▼ Pharmacy Wholesalers Ltd
67. The manufacturers currently supplying the Animal Health Products market are:
- ▼ Bayer NZ Ltd
  - ▼ Boehringer Ingelheim NZ Ltd
  - ▼ Bomac Laboratories Ltd
  - ▼ Dominion Chemicals Ltd
  - ▼ Elanco Animal Health Ltd
  - ▼ Ethical Agents Ltd
  - ▼ Jurox NZ Ltd
  - ▼ Merial NZ Ltd
  - ▼ Norbrook NZ Ltd
  - ▼ Pfizer Animal Health Group
  - ▼ Phoenix Pharm Ltd
  - ▼ Schering-Plough Animal Health Ltd
  - ▼ Virbac Laboratories NZ Ltd

68. Provet, NVS and SVS comprise the significant majority of the wholesale market, however competition in supply remains strong from manufacturers on the majority of products supplied.
69. Unfortunately, we are unable to obtain market share information for each of the competitors listed above with regard to the product lines under consideration. However, more general market share information is presented in Table 12.

**Table 12. Market Share for Anaesthetics, Antibacterial and Analgesics Product Lines (NZ\$000's)**

Product Line	Estimated Merged Entity Sales	Total Market Sales	Estimated Market Share	% Direct Sales	Estimated Pre-Acq CR3
Anaesthetics	[ ]	[ ]	[ ]	[ ]	[ ]
Antibacterial – Topical and Oral	[ ]	[ ]	[ ]	[ ]	[ ]
Analgesics	[ ]	[ ]	[ ]	[ ]	[ ]

70. As noted earlier in this document, the above information is extracted from Scott Economics Ltd's Quarterly Sales Audit of Animal Health Products. Further to this information, we have formed estimates for the remaining 11% of the market who do not respond to the audit. These estimates are based on information provided by the New Zealand Veterinary Association and Provet's own accounting information.
71. Provet tracks its sales by individual product, but also groups products into Therapeutic Index (TI) classifications by supplier. A mapping between TI classifications and the categorisations used in the Animal Health Product audit is used to analyse and reconcile quantities. Some assumptions have been made by Provet as to the appropriateness of its allocation of TI classifications. This mapping and analysis can be supplied in spreadsheet form if required.
72. An equivalent breakdown by product line or product of the annual sales of other wholesalers is not available, so for the purpose of our analysis this has been estimated using the same proportions of total sales as Provet. While this initially appears to be a gross assumption, we believe it is reasonable to assume that other wholesalers' sales are likely to follow a similar pattern to Provet.
73. Other relevant points to note with regard to the specific information requested by the Commerce Commission to be presented in this section of the application are as follows:
- ▼ Unfortunately, we are unable to obtain information for previous years.
  - ▼ All wholesalers and manufacturers currently operating in the market would have the ability to increase supply using existing direct sales channels in response to an attempt by an incumbent supplier to raise prices or reduce output or quality.
  - ▼ We would not expect an increase in supply to have any effective capacity constraints for the wholesalers or manufacturers currently operating in the market.
  - ▼ Imports are freely substitutable for locally manufactured goods in the market, to such an extent that it is difficult to delineate the degree to which demand is met by imports or domestic production.
  - ▼ Both Bomac and Ancare manufacture and export products. Bomac's product range includes antibiotics (injectable and oral), electrolytes, vitamins, minerals, anthelmintics, anaesthetics



and intramammary products, and Ancare's product range includes anthelmintics and ectoparasiticides.

- ▼ [ ] Its pricing behaviour is no better or worse than other participants in the market, [ ]
- Innovation by wholesalers in the industry is currently being directed towards customer service, mainly through the evolving use of information technology for ordering and other product queries. [ ]

## **17 Identifications Of Conditions Of Expansion**

- 74. Post acquisition there will be one other major wholesaler supplying the Animal Health Products market, SVS. Veterinarians do not tend to have an exclusive relationship with one wholesaler, but rather will maintain relationships with all to ensure the best price and to maximise availability. When an item is required urgently, there is certain value to the veterinarian in having multiple sources of supply available to counter the risk of a product being out of stock. Hence, it would be very easy for SVS to expand its supply in the event of the merged entity attempting to raise prices because the necessary relationships with the veterinarians are already in existence.
- 75. Also supplying the market are the manufacturers who already often sell direct to veterinarians. While manufacturers find it convenient to use wholesalers to aggregate demand, most have existing direct channels of supply that could increase in volume should there be any attempt by wholesalers to raise prices or reduce output or quality.
- 76. These two sources of expansion from existing competitors would face no barriers from frontier entry conditions, legislative or regulatory conditions. SVS would face no industrial or business constraints on expansion. Manufacturers may face some business issues in expanding their direct sales channels as they would need greater ability to handle smaller orders, but this is unlikely to be a significant issue for them.
- 77. One manufacturer, Parnell, made a policy decision last year to market exclusively through wholesalers. This manufacturer could reverse this internal decision and re-introduce direct supply with very minimal effort.

## **18 Businesses That Currently Supply The Market**

- 78. The businesses that currently supply the Animal Health Products market were identified in question 16.
- 79. Of the existing competitors, SVS has the ability to increase supply through the use of existing capacity, whereas manufacturers would likely need to expand their distribution arrangements to cope with increased order volumes of smaller size.

## **19 Conditions Of Expansion That Would Influence The Decision To Increase Supply**

- 80. The time, cost and effort required for manufacturers to expand their logistics arrangements would be the key conditions of expansion that would likely affect their decision to increase direct supply. SVS could increase supply freely without any conditions of expansion influencing its decision to do so.

## **20 Time Required To Increase Supply**

81. SVS could increase supply immediately. Some manufacturers would be able to increase direct supply immediately, whereas others would need to establish relationships and enhance their logistics arrangements prior to doing so. The example previously discussed of Pet Product Distributors entering the veterinarian supply market showed that such arrangements can be implemented from scratch in as little as four weeks.

## **21 Extent Of Competitive Response Of Existing Competitors**

82. The expected competitive response from existing competitors to any attempt by the merged entity to raise prices or reduce output or quality would be very strong and would severely constrain the ability of the merged entity to exert any market power.

## **22 Overall Extent Of Constraint On Merged Entity**

83. The merged entity would have virtually no ability to exert market power given the level of existing competition in the market and other such characteristics of the market as transparent pricing and non-exclusive supply arrangements.

## **23 Potential For Coordinated Market Power**

84. The acquisition would have the effect of reducing the number of major wholesalers in the market from three to two. While SVS would be unable to form a collusive arrangement with another market participant (given the small number of major wholesalers in the market), SVS and the merged entity may have the ability to exert coordinated market power. However, we believe this potential issue to be balanced by the presence of the manufacturers' direct supply channels and other potential competitors operating in related markets.

## **24 Monitoring And Enforcement Of Coordinated Market Power**

85. Veterinarians do not generally purchase exclusively from any one wholesaler, but rather maintain accounts with a number of wholesalers and manufacturers to ensure that they are able to secure the lowest price and to ensure quick supply of the required items.
86. The fact that veterinarians see the recommended price lists from manufacturers and can compare the prices of competing wholesalers allows for easy identification of any attempt to exert coordinated market power.

## **25 Existing Market Coordination**

87. Manufacturers provide recommended "sell to vet" prices to wholesalers and this is largely adhered to by the market participants due to its transparency and the highly competitive nature of the market.

## **26 Overall Assessment Of Risk Of Coordinated Market Power**

88. We believe that the risk of coordinated behaviour in the post acquisition market is low due to the competitive constraints of the market, i.e. transparent pricing, direct supply from manufacturers and the non-exclusive nature of the supply relationship between veterinarians and wholesalers.

## **Part IV: Constraints On Market Power by Potential Competition – Animal Health Products Market**

89. This section considers the potential entry of a new competitor into the market.

### **27 Conditions Of Market Entry**

90. Frontier entry conditions would not be a barrier to entry in this market. All but two products (with very small sales volumes) supplied by Provet are sourced locally and therefore there are no tariffs, quarantine requirements or international freight costs applicable.

91. Legislative and regulatory conditions are unlikely to be a barrier to entry. In fact, the current changes to the ACVM Act are likely to result in a number of new entrants to the market. There are at least eight parties who have shown initial interest in becoming registered suppliers of prescription animal pharmaceuticals. These suppliers include major rural supply retailers and pet shop suppliers. Of the product lines under consideration in this analysis, the changes to the ACVM Act would not affect anaesthetics, as the veterinarian is the end customer, but prescriptions for both antibacterials and analgesics could be filled by these new suppliers, thus affecting the veterinarians' share of the market and ultimately, the veterinarians' suppliers.

92. The major barrier to entry in this market for a new entrant is the need to establish logistics arrangements to enable next day delivery of a large range of products to veterinarians. This generally requires a significant investment in warehousing and information systems. Provet has been through this process recently and can verify that it does involve significant cost. However, their entry into the market also demonstrates that it is feasible. Provet's experience suggests that significant market penetration takes 18 months to 2 years to achieve, but that the competitive pressure is felt in the market immediately.

### **28 Potential Market Entrants**

93. Likely new entrants to the Animal Health Products market who could either directly or indirectly affect the merged entity's market share include:

- ▼ Human pharmaceutical manufacturers who wish to supply direct to the market;
- ▼ Human pharmaceutical wholesalers;
- ▼ Wholesalers currently supplying other products to registered veterinary practices, such as Pet Nutrition;
- ▼ Australian veterinary wholesalers;
- ▼ Rural supply companies; and
- ▼ Pet shop suppliers.

94. Masterpet has already been seen to leverage its significant presence in the wholesaling market for Pet Nutrition into the Animal Health Products market in Australia [ ] Similarly, Provet is aware of at least one Australian veterinary wholesaler that is assessing an entry into the New Zealand market as part of its expansion strategy.

## **29 Relevant Conditions Of Entry By Potential Market Entrants**

95. As already discussed, potential competitors who do not currently supply to the Animal Health Products market would need to establish relationships with the veterinarians, and the manufacturers if applicable, and put in place logistics arrangements to allow for direct supply, if they were to compete effectively.
96. Rural supply retailers and pet shop suppliers may enter the market freely under the changes to the standards of the ACVM Act.

## **30 Timeliness Of Market Entry**

97. Again, using the Pet Product Distributors example as a benchmark, we could expect a new competitor to establish direct links with the market in as short a time period as four weeks.
98. At this stage, it is unclear exactly how rural supply companies and pet shop suppliers will operate in this market. A full dispensing operation would take a reasonable amount of time to set up, but these organisations will already have the majority of the logistics arrangements in place for their other products.

## **31 Pre-Acquisition Likelihood Of Market Entry**

99. For new entrants to the market, other than those with existing market relationships and direct supply channels, significant market penetration takes some time to achieve, so profitability would have to be a medium term goal.

## **32 Effect Of Threat Of Entry**

100. The example of Pet Product Distributors' entry into the veterinarian supply market has sent a strong message to the market. Pet Product Distributors has not ceased supply to the veterinarian market. The expectation of wholesalers is that attempts to raise prices or otherwise detrimentally affect their clients will result in competitors initiating supply to veterinarians and likely remaining in the market as direct competitors for the long term.

## **33 Relevant Conditions Of Entry For De Novo Entry**

101. The key condition of entry for de novo entrants is the expenditure in setting up logistics arrangements. This is a significant investment that will take some time to recover. For a new wholesaler, significant market share will take at least 18 months to 2 years to achieve.

## **34 Timeliness Of De Novo Entry**

102. A de novo entrant may require a number of months to set up the appropriate infrastructure and logistics arrangements to effectively compete in the market.

## **35 Overall Assessment Of Threat Of De Novo Entry**

103. While the threat of de novo wholesaler entry is not high, the real competitive threats are from new manufacturers, rural supply retailers and pet shop suppliers. These participants represent a significant threat to those currently supplying the veterinarian market.

## **Part V: Other Potential Constraints – Animal Health Products Market**

104. Constraints by suppliers and acquirers have been discussed at length earlier in this document.

# Declaration

THIS NOTICE is given by

Provet NZ Pty Ltd  
6 Nandina Avenue  
East Tamaki  
Auckland  
New Zealand

Provet NZ Pty Ltd hereby confirms that:

- ▼ All information specified by the Commission has been supplied;
- ▼ All information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
- ▼ All information supplied is correct as at the date of this application/notice.

Provet NZ Pty Ltd undertakes to advise the Commission immediately of any material change in circumstance relating to this application/notice.

Dated this 24th day of March 2005

Signed by Provet NZ Pty Ltd:



Nigel Nichols

Director

I am a director of the company and am duly authorised to make this application/notice

**Appendix I**  
**Sale and Purchase Agreement**