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COMMERCE COMMISSION

Decision No. 599

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

GOODMAN FIELDER LIMITED

and

RIVER MILL BAKERIES LIMITED

The Commission:	David Caygill Denese Bates QC Peter JM Taylor
Summary of Application:	An application by Goodman Fielder Limited for clearance for it or any of its interconnected bodies corporate to acquire the assets of River Mill Bakeries Limited.
Determination:	Pursuant to section 66 (3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.
Date of Determination:	15 March 2007

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EXECUTIVE SUMMARY

The Proposal

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 17 January 2007. The notice sought clearance for Goodman Fielder Limited (Goodman Fielder, or, the Applicant), or an interconnected body corporate of Goodman Fielder, to acquire the assets of River Mill Bakeries Limited (River Mill).

Market Definition

2. The Commission has found that the relevant markets for this acquisition are as follows:
   - the upper North Island market for the manufacture and wholesale supply of plant bread;
   - the lower North Island market for the manufacture and wholesale supply of plant bread;
   - the North Island market for the production and wholesale supply of untied industrial bagged flour;
   - the South Island market for the production and wholesale supply of untied industrial bagged flour;
   - the North Island market for the production and wholesale supply of untied retail bagged flour; and
   - the South Island market for the production and wholesale supply of untied retail bagged flour.

Counterfactual

3. The Commission is of the view that the appropriate counterfactual is that [

   ]

Competition analysis

Bread

4. The Commission considers that in both the factual and the counterfactual Goodman Fielder would be constrained by the presence of, and the threat of expansion by existing competitors, in particular George Weston Foods Limited.
5. The Commission also considers that the bread produced by Brumby's, Bakers Delight and independent bakeries would collectively provide some constraint on the wholesale market for plant bread.
6. The Commission notes that there is a difference of opinion as to whether the barriers to entry into the plant bread market are low or high, but for the purposes of this analysis does not consider it necessary to determine this issue. The Commission has analysed the likelihood of entry into the plant bread market and has determined that Goodman Fielder would be constrained by the threat of entry [ ]

Flour

7. As for bread, the Commission considers that in both the factual and the counterfactual Goodman Fielder would be constrained by the presence of, and the threat of expansion by, existing competitors, in particular George Weston Foods Limited.

8. The Commission also considers that imported flour is an important constraint on North Island suppliers of industrial bagged and retail flour.

9. The Commission considers the barriers to entry to the market for the production and wholesale supply of flour are high, in particular the prohibitive cost of setting up a new plant. Accordingly, the Commission considers that it is unlikely that a new entrant would enter to a sufficient extent and within the timeframe required to act as a constraint on Goodman Fielder.

Countervailing power

10. The Commission considers that the supermarket chains have significant countervailing power and would act to constrain the combined entity from exercising market power in the affected markets.

Overall conclusion

11. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in any of the affected markets. The Commission considers that there would be a number of constraints on Goodman Fielder post-acquisition. In particular:

    - existing competitors in both the bread and flour markets who are currently very competitive and who have the capacity to increase production to compete more vigorously post-acquisition;
    - [ ]
    - supermarkets would be able to exercise significant countervailing market power over Goodman Fielder, through the threat of sanctions on Goodman Fielder, facilitating entry or expansion by existing or potential competitors, and their operation of house brand contracts; and
    - with respect to flour, the threat of imports, particularly from Australia.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 17 January 2007. The notice sought clearance for Goodman Fielder Limited (Goodman Fielder, or, the Applicant), or an interconnected body corporate of Goodman Fielder, to acquire the assets of River Mill Bakeries Limited (River Mill).

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 16 March 2007.

3. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.[1]

STATUTORY FRAMEWORK

4. Under s 66 of the Act, the Commission is required to consider whether the proposal will have, or would be likely to have, the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition then it is required to grant clearance to the application. Conversely, if the Commission is not satisfied it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.[2]

5. The substantial lessening of competition test was considered in *Air New Zealand & Qantas* v C*ommerce Commission*, where the Court held:

> We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.[3]

6. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not minimal.[4] Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.

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[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.
[2] Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission (1992) 4 TCLR 713-722.
[3] *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.
[4] See *Fisher & Paykel Limited* v *Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited* v *Commerce Commission* (1996) 3 NZLR 554.

7. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.

8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

ANALYTICAL FRAMEWORK

9. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:

   - with the acquisition in question (the factual); and
   - in the absence of the acquisition (the counterfactual).

10. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:

    - existing competition;
    - potential competition; and
    - other competition factors, such as the countervailing market power of buyers or suppliers.

PARTIES

Goodman Fielder Limited

11. Goodman Fielder is publicly listed in both New Zealand and Australia. Goodman Fielder has its headquarters in Sydney and has manufacturing plants in Australia, New Zealand, Papua New Guinea, Fiji and New Caledonia.

12. Goodman Fielder supplies branded and private label packaged baked goods, spreads, dairy products, smallgoods, sauces, dressings, condiments, convenience foods and various other grocery products to supermarkets and convenience stores, including service stations.

13. Goodman Fielder supplies bulk and packaged edible fats and oils, and produces and supplies flour products to food manufacturers and wholesalers in both branded and unbranded format.

14. Goodman Fielder is also the second largest manufacturer in the domestic New Zealand dairy products market.

15. Goodman Fielder has baking plants in Auckland, Rotorua, Hawkes Bay, Palmerston North, Wellington, Nelson, Christchurch and Dunedin and sells the following brands of bread: Mackenzie, Vogel's, Molenburg, Freya's, Nature's Fresh, Quality Bakers, Golden Bake, Sunny Crust and Country Split.

16. Goodman Fielder has flour mills in Mt Maunganui and Christchurch.

River Mill Bakeries Limited

17. River Mill is an independent, privately-owned bread and ingredients manufacturer based in Huntly. It manufactures bread, small goods, pizza bases, frozen goods and cookies, as well as importing and distributing a variety of food products.

18. River Mill's bread brands are River Mill, Sun Raised and Millstone. It also produces house brands for the Mad Butcher chain and for Export Meats.

19. River Mill owns 99.7% of Canterbury Flour Mills Limited (CFM). The mill is located in Ashburton and produces over [ ] tonnes of flour per week, the majority of which is supplied to River Mill for use in its bakery.

Other relevant parties

George Weston Foods Limited

20. George Weston Foods (NZ) Limited is a wholly owned subsidiary of George Weston Foods Limited (George Weston), a large Australian food manufacturer. In New Zealand, George Weston has a baking division with bakeries in Auckland, Wellington and Christchurch, a milling division with flour mills in Auckland, Wellington and Christchurch supplying both internal requirements and external trade, and a chemical products division.

Yarrows the Bakers Limited

21. Yarrows the Bakers Limited (Yarrows) is a family owned bakery that has been operating out of Taranaki since 1923. It produces a wide range of breads, rolls, croissants and other bakery products. It is a major producer of frozen dough.

Couplands Bakeries

22. Couplands Bakeries (Couplands) is a low cost bread baker currently selling bread and other baked goods through its 21 retail stores situated throughout the South Island. It has approximately [ ]% of the market for sliced bread in the South Island.

Progressive Enterprises Limited

23. Progressive Enterprises Limited (Progressive) is a subsidiary of the Australian company, Woolworths Limited. Progressive operates the Foodtown, Woolworths and Countdown supermarket banner groups, and is the franchise co-ordinator for the FreshChoice and SuperValue banner groups.

24. Progressive markets house branded products under the 'Basic' and 'Signature Range' brands.

Foodstuffs

25. The Foodstuffs organisation consists of three separate, regionally based, retailer-owned co-operative companies and a Federation body, Foodstuffs (NZ) Ltd, which is based in Wellington. The regional co-operatives are Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Ltd and Foodstuffs South Island Limited. The Foodstuffs banner groups are Pak'n Save, New World, Four Square and On the Spot.

26. The Foodstuffs companies market house branded products under the ‘Pams’, ‘Budget’ and ‘Fresh Express’ brands, which are co-ordinated on a national basis by Foodstuffs Own Brands Ltd, an entity jointly owned by the three regional companies.

27. The Commission also received information from the following:

- Brumby’s;
- Bakers Delight;
- Laurie Powell;
- Pandoro Panetteria Limited (Pandoro Panetteria);
- North’s Bun Company Limited (North’s Bun Company);
- Walter Findlay Limited (Walter Findlay);
- Breadcraft (Wai) Limited (Breadcraft);
- Mobil Oil New Zealand Limited (Mobil);
- Shell New Zealand (Shell);
- Chevron New Zealand (Caltex);
- Milligans Food Group Limited (Milligans);
- Sherratt Ingredients;
- Healtheries;
- Ceres Organics;
- Gourmet Grains and Seeds;
- Gilmours Food & Liquor Limited (Gilmours);
- Trents Wholesale Limited;
- Arnott’s New Zealand Limited (Arnott’s);
- Federated Farmers;
- The Grains Council;
- United Wheat Growers; and
- Ashburton District Council.

INDUSTRY BACKGROUND

Bread

28. A wide variety of bread is produced in New Zealand, including packaged bread of various types, such as white, wholemeal, grain and soy, and a large variety of specialty breads.

29. The large, multi-plant industrial bakery operations of Goodman Fielder and George Weston supply packaged bread nationally via their various factories. Large, single plant bakery companies supply bread to more limited geographic areas - River Mill in the North Island, Yarrows primarily in the lower North Island, and Couplands in the South Island.

30. Smaller producers such as Bakers Delight, Brumbys, supermarket in-store bakeries and specialty hot bread shops primarily produce various specialty breads as well as loaves of sandwich bread, which are supplied on site to store customers.

31. Most bread is sold through supermarkets. Their sales amount to approximately [ ]% of packaged bread sales, the remainder being sold through convenience stores, service stations, dairies, butchers, green grocers, or in a bakery's own retail outlet. Supermarkets also retail house brand packaged bread, which is contract baked by the major plant bakeries, but sold under the supermarkets' brand names.

Flour

32. New Zealand flour mills produce around [ ] tonnes of flour annually. Flour milling is carried out by two primary millers, operating mills in both the North and South Islands - Goodman Fielder and George Weston.

33. In addition, in Ashburton there is the mill owned by River Mill, and in Oamaru a mill operated by Milligans Food Group Limited.

34. Flour is also imported, primarily from Australia.

35. Supermarkets retail housebrand packaged flour, which is contract milled by the major millers, but sold under the supermarkets' brand names.

PREVIOUS DECISIONS

Decision 246: Quality Bakers New Zealand Limited/Klissers Farmhouse Bakeries Limited, 23 April 1990

36. Clearance was sought by Quality Bakers New Zealand Limited to acquire all of the issued share capital of Klissers Farmhouse Bakeries Limited. Clearance was granted by the Commission.

37. The Commission considered the relevant market to be that for the manufacture and wholesale distribution of bread, breadrolls, buns and other forms of bread, separated geographically into the upper and lower North Island. The geographic markets were determined based on the distribution patterns of the various plants.

38. In that instance, the Commission included bread from hot bread shops and in-store bakeries in the same market as bread from plant bakeries. The Commission acknowledged that there were significant differences between the product characteristics of 'specialty' and plant breads, but considered there is "a large measure of substitutability" both on the demand and supply side, and therefore concluded that both compete in the same market.

39. The Commission considered that the combined entity would face constraints from the considerable countervailing power of the acquirer supermarket chains and from the presence of competitors.

Decision 289: Goodman Fielder Limited/Defiance Mills Limited, 14 April 1997

40. Clearance was sought by Goodman Fielder to acquire the assets of Defiance Mills Limited. Clearance was declined by the Commission as the proposal would have resulted, or would have been likely to result, in the combined entity acquiring a dominant position in five markets, and acquiring or strengthening a dominant position in two markets. That acquisition was subsequently cleared subject to a divestment by Goodman Fielder.

41. With respect to flour, the Commission considered that the relevant markets were the separate North and South Island markets for:

- the production and acquisition of industrial bulk flour;
- the production and acquisition of industrial bagged flour;
- the production and sale of retail bagged flour; and
- the production and acquisition of premium pastry flour.

42. The Commission considered in respect of the industrial bulk and bagged flour that the competition provided by market participants and potential entrants would not provide sufficient constraint on the combined entity, but that foreign bulk flour imports into the North Island may act as a potential constraint on the combined entity in that market. Further, the Commission concluded that imports from the South into the North Island may also act as a constraint in that market.

43. With respect to bread, the Commission considered the relevant markets to be the separate upper North Island, lower North Island and South Island markets for the production and sale of 'packaged' bread.

44. The Commission considered that 'packaged' bread and 'specialty' bread fell into different markets. The Commission noted it could find no clear-cut evidence to decide the issue, however, the notion that specialty and plant breads form part of a chain of substitutes (such that each adjacent pair along the chain are close substitutes, even though those at the extremities of the chain are not) was raised. For reasons such as differences in pricing, convenience, and marketing channels, the Commission favoured a break in the chain between specialty and plant produced packaged breads, and therefore defined two discrete markets in that case.

45. The geographic dimension of the bread market was said to be influenced by the perishability of bread, and the cost of transporting the product long distances.

46. The Commission considered that in the North Island existing competitors were likely to constrain the combined entity. However, this was not the case in the South Island. The Commission also considered that the countervailing power of the supermarkets was not sufficient to constrain the combined entity in that market.

Decision 532: ABF Overseas Limited/New Zealand Food Industries Limited, 27 August 2004

47. Clearance was sought by ABF Overseas Limited to acquire 100% of the shares in New Zealand Food Industries Limited. Clearance was given by the Commission.

48. The Commission considered the relevant markets to be the separate upper North Island, lower North Island and South Island markets for the manufacture and wholesale supply of "packaged" bread.

49. The Commission considered that given the limited scope for supply-side substitutability, and low demand-side substitutability, there were two separate markets for 'packaged' and 'speciality' bread. Again, the Commission found that the geographic markets were influenced by the perishability of bread, and by the cost of transporting it long distances.

MARKET DEFINITION

50. The Act defines a market as:

> "… a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them."[5]

51. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

Bread

Product and Functional Dimension

52. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market.

53. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.

54. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.

55. As noted earlier, there is a wide variety of bread and bread products produced in New Zealand. These include various types of packaged loaves produced by plant bakeries ('plant bread') and some in-store bakeries, and specialty or novelty lines produced by in-store bakeries and hot bread shops ('specialty breads').

56. In defining the relevant market the Commission considered whether:

- specialty breads and plant breads compete in the same market;
- control label (house-brand) plant breads ought to be excluded from the relevant market(s); and
- a discrete market exits for low-cost bread.

Plant vs specialty breads

57. The Applicant supported the notion of a single bread market, arguing that many of the considerations taken into account by the Commission in defining discrete markets for specialty and plant breads on past occasions no longer hold. It was argued, for instance,

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[5] s 3(1A) of the Commerce Act 1986.

that independent and franchise bakeries have recently emerged as aggressive competitors.

58. In further support of their claim, the Applicant argued that the range of plant breads has increased significantly over time to keep pace with changing consumer preferences, to the extent that there are significant crossovers between what have traditionally been viewed as plant and specialty breads. For example, 'premium' heavy grain breads, such as MacKenzies - traditionally only found in bakery outlets - have recently been introduced to supermarket shelves by plant bakers to cater to the tastes of increasingly health conscious purchasers. The Applicant also cites substantial overlaps across price points between some plant and specialty breads.

59. Finally, the Applicant alluded to the idea that over time there has been a trend towards more frequent consumption of specialty breads, whereas in the past they may have only been purchased for weekend consumption; this has encroached on plant bread sales, which have traditionally been purchased for everyday use (in sandwiches and for toast).

60. In contrast to the Applicant, most industry participants (with the exception of the target, River Mill) canvassed by the Commission were generally of the view that plant bread and specialty breads do not directly compete with one another. Commonly given reasons for this view were:

- **taste and aroma –** plant bread tends to have a 'neutral' taste and smell, whereas specialty breads tend to be flavourful and aromatic;
- **freshness –** plant bread tends to be less perishable (typically due to improvers being added to extend the longevity of the product), whereas specialty breads tend to be for immediate consumption and therefore stale quickly;
- **price –** although there is some overlap between the pricing of plant and specialty breads, in general specialty breads tend to command a significant premium. Plant breads are also typically low-margin, high-volume products, whereas specialty breads are generally high-margin (value-added), low-volume products;
- **occasion of use –** plant breads tends to be purchased for everyday use, so purchase of these tends to be planned in advance. In contrast, specialty breads (although gaining popularity via the increasing penetration of franchise bakeries) still tend to be consumed less frequently than plant bread and are often viewed as "impulse buys"; and
- **distribution –** plant breads tend to be readily available, through more outlets, such as supermarkets, convenience stores, and even green grocers and butchers. Whereas, specialty breads tend to be available only through supermarket in-store bakeries and specialised bakeries. Plant bread therefore tends to be more convenient to access than specialty breads.

61. Certainly, there appears to be a high degree of differentiation between the standard white/brown packaged plant bread, and specialty loaves from hot bread shops. However, plant bakeries do produce a range of loaf types covering wholemeal, grain, and 'heavy' health varieties, which arguably fill in much of the 'gap' between the packaged and specialty loaves.

62. While market research suggests that each type of bread has its strong adherents, it seems plausible to suggest that the various loaf types form a 'chain of substitutes', such that each adjacent pair along the chain are close substitutes, even though those at either end of the chain are not.

63. Most industry participants spoken to by the Commission agreed with the notion of a chain of substitutes, but were unsure where a break in the chain should occur, if one should occur at all.

64. Although agreeing with the notion of a chain of substitutes operating at the retail level, George Weston argued that this was irrelevant to the present case; since the proposed acquisition would give rise to aggregation only at the wholesale level, it is competition at that functional level that ought to inform market definition. Whilst recognising there is a strong relationship between retail and wholesale demand for bread (in particular, wholesale demand is derived from consumers' preferences, buying habits and substitution opportunities at the retail level), George Weston was of the view that the Commission ought to focus its analysis on plant breads because these constitute by far the bulk of bread volumes supplied at the wholesale level.[6]

65. Without conclusively determining the issue, for the purposes of the analysis in the present case the Commission has adopted the conservative approach of defining a discrete market for the manufacture and wholesale supply of plant bread. This is consistent with the views expressed by George Weston. The Commission is of the view that if no competition issues are found under this narrow market definition, there are unlikely to be competition concerns under a broader definition. However, the Commission takes the view that the competitive constraints (to the extent they exist) offered by suppliers of specialty breads ought to be taken into account in the competition analysis of the plant bread market.

House-brand breads

66. Another consideration is whether 'private label' (house-brand) breads, which are toll-manufactured by plant bakers on behalf of supermarkets, compete in the relevant market(s). The Applicant argued that private label breads should be excluded from the calculation of market shares because these "…are made under short term contract-pack arrangements where the quality profile and price are determined by the retailer (i.e. supermarket)".[7] However, the same argument could be made of any customer at the retail level - individual consumers may purchase one brand of bread today, and another tomorrow, with their purchasing decisions swayed by considerations over price and quality. The Commission does not consider the fact that private label breads are produced on "short term contract-pack arrangements" is in itself sufficient to place these products outside the relevant market(s).

67. George Weston argued that private label bread volumes should be counted in the relevant market, because the degree of toll-baking performed by an operator influences the costs, and therefore price, at which they can supply their own proprietary brands. It further argued that one of the keys to a successful plant-baking operation is to maximise economies of scale; efficiencies generated by high throughput allow overheads to be spread over a greater volume of output, thereby assisting the recovery of fixed costs. Securing toll-baking contracts is an effective way to increase throughput and generate efficiencies that can be shared across all brands produced at the plant, including the baker's own proprietary brands. This in turn allows a more competitive product offering to be made. Therefore, contended George Weston, there is a strong link between private label and proprietary plant breads (at least on the supply-side), which warrants these being defined in the same market(s).

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[6] Some independent bakeries, such as Pandoro Panetteria, do wholesale fresh bread to retail outlets. However, the volumes attributable to these operations would be small in the overall scheme.

[7] The Application, p.18.

68. The Commission tends to agree with this argument and therefore considers that private label breads should be included in the definition of the market(s) relevant to the present acquisition.

Low-cost bread market

69. Finally, the Commission considered whether it ought to define a discrete market for 'low-cost' bread. River Mill is a major supplier of low-cost bread, primarily through the route trade. It was the first player to introduce the concept of "sub-one-dollar" bread (ie, its loaves were retailed at $0.99 or lower through convenience stores, butcheries and green grocers). Approximately [ ]% of River Mill sales - both in terms of volume and value - are generated from breads that retail at $1.30 or less. Other suppliers followed this strategy by offering occasional promotions that allowed their products to compete at this price range. In addition, the supermarkets quickly positioned their private label brands to offset the loss of sales to the new low-cost bread.

70. However, some industry participants argued that supply-side considerations would not warrant a separate low-cost bread market. In particular, some argued that low-cost breads and 'regular' breads are produced using exactly the same plant and equipment; it would take very little (a change in packaging, and perhaps dough-mix) to switch between the two. On the apparent scope for supply-side substitution, the Commission concluded that it is unwarranted in the present case to define a discrete market for low-cost bread.

Geographic Dimension

71. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.

72. The Applicant argued for a single North Island market for bread on the basis that Goodman Fielder, George Weston, and River Mill all transport bread throughout the entire North Island.

73. In the past, however, the Commission has typically considered three discrete regional markets for bread:

- the upper North Island (ie Taupo and North);
- the lower North Island (ie South of Taupo);
- and the South Island.

74. The Commission has tended to base this split on the view that the geographic dimension of the market for plant bread is influenced by the perishability of the product and by the cost of transporting over long distances. In particular, past Decisions have stated that:

> Plant-baked bread stays fresh for about 18 hours before it begins to deteriorate. Long delivery trips are, therefore, undesirable because they reduce the shelf life of the delivered bread.[8]

75. However, several industry participants submitted that plant bread can often remain fresh for up to five days before staling (Nature's Fresh was a brand often cited as capitalizing on this selling point). The Applicant argued similarly that incremental

[8] Decision 289, p.19; Decision 532, p.14.

travel time to deliver bread from the plant is minimal when considered in the context of bread's overall shelf life of five plus days.

76. Several supermarket operators considered that they would not have concerns about the freshness of bread transported long distances over the North Island, provided it met their exacting food safety standards. However, all acknowledged that the majority of plant bread is sourced from the most geographically proximate baking plant (this seems more to do with bakers' preferences to exploit freight efficiencies than any demands made by the supermarkets). The supermarkets also informed the Commission that they generally remove plant breads from their store shelves after 24 hours of it being on display, revealing the importance they place on freshness.

77. Generally, most industry participants agreed that the most sensible approach to analysing competition in this case would be to define separate upper and lower North Island markets for plant bread.

78. The two largest plant bakers in New Zealand, Goodman Fielder and George Weston, between them have eight baking plants scattered throughout the North Island. The consensus amongst industry participants was that plant bakeries have organised their operations to roughly match an upper and lower North Island split, in order to take advantage of transport economies. Plant bread is generally viewed as a low-margin product and, as such, the cost of freight becomes important in the decision on how far to transport a loaf. For example, George Weston provided the Commission with analysis to show that, on average, the cost of freight makes up between [ ]% to [ ]% of the price at which it wholesales its bread.[9] In addition, bread was considered by several industry participants to be "freight inefficient", given that it has to be transported in crates. Finally, in order for distribution routes to be viable (ie, for cost recovery to occur), there need to be sufficient customers along that route; the wider the distribution radius, the more customers are required to make that route viable. All these factors taken together explain why Goodman Fielder and George Weston operate so many plants throughout the North Island.

79. Some industry participants cited weather-related delays (especially heavy snow and ice conditions in the central North Island during winter), as well as the possibility of delays due to road works as a reason why it is undesirable to transport bread over long distances. Retailers of plant bread require reliable, daily delivery of bread (especially given the one-day stock rotation policy of some customers); late or missed deliveries can jeopardise valuable customer relationships.[10]

80. Foodstuffs advised the Commission that the upper-lower split of the North Island and the South Island reflects the division of the Foodstuffs co-operative companies in Auckland, Wellington and the South Island.

81. The Applicant has argued that the relevant market must be a North Island one since both it and River Mill supply a wide geographic area. For example, as much as [ ]% of output from Goodman Fielder's Auckland bakery is distributed outside Auckland, although only [ ]% is distributed south of Taupo. Similarly, River Mill distributes

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[9] These costs are based on George Weston's current distribution model, in which it has two baking plants: one in Auckland, and the other in Wellington.

[10] This is an especially important consideration for suppliers since most retailers are not contractually committed to any one particular plant baker. (The obvious exception to this is where supermarkets contract with plant bakers to supply private label breads.)

bread from its Huntly plant all over the North Island, although only [ ]% is distributed south of Taupo.

82. Although there is evidence that some players distribute fairly widely throughout the North Island, it is also true that some of these players find it uneconomic to transport bread over long distances. For example, the Commission understands that Goodman Fielder contracts Walter Findlay to bake and distribute bread in the Gisborne and Hawke's Bay regions, as does George Weston and River Mill; and George Weston contracts Yarrows to bake and distribute bread into much of the lower North Island (ie from Taranaki as far south as Levin). The fact that these national bakers find it more economic to subcontract bread production and delivery in regions where they do not have a plant in close proximity (as opposed to transporting bread long distances) suggests defining smaller regional markets is appropriate.

83. Although it is not possible to define the geographic market boundaries precisely, the Commission is of the view that the North Island can be divided into upper and lower geographic markets. The Commission considers that the comparatively small volumes distributed south of Taupo by northern located plants suggest that a line should be drawn through the North Island at approximately that town.

84. For completeness, all industry participants agreed that transporting bread between the North Island and the South Island would be uneconomic, given the cost of freight (even in the face of a SSNIP), thus ruling out the possibility of a national market for plant bread.

Conclusion on bread markets

85. The Commission considers that the relevant markets for bread are:

- the upper North Island market for the manufacture and wholesale supply of plant bread; and
- the lower North island market for the manufacture and wholesale supply of plant bread.

Flour

Product and Functional Dimension

86. The principal users of flour are bread bakeries, but substantial amounts are also used for making biscuits, cakes, pastry, and pizza bases. Flour is also sold in retail bags through supermarkets and other grocery outlets to consumers.

87. The Applicant states that for the purposes of this application, and while not conceding that they are necessarily appropriate, it adopts the markets found by the Commission in Decision 289. The Applicant then goes on to say that the application will give rise to aggregation in the South Island and North Island industrial bagged flour markets. However, Goodman Fielder and River Mill both currently produce industrial bulk flour and retail bagged flour, in addition to industrial bagged flour.

88. For the purposes of this analysis the Commission has adopted a definition of retail bagged flour as being flour sold in 10kg or smaller bags, and industrial bagged flour as being flour sold in bags of greater than 10kg. The precise classification is not however crucial to the Commission's conclusions as the competition analysis shows there is unlikely to be a substantial lessening of competition in a relevant market irrespective of the way in which retail flour is defined.

89. Most industry participants suggested that industrial bulk, industrial bagged and retail bagged flour are not readily substitutable for one another as they tend to be associated with different production processes and the scale of a customer's operation. For example, silos are required to handle industrial bulk flour. Progressive advised the Commission that it considered the use of silos for its in store bakeries to be uneconomical, given their relatively small scale, due not only to the cost of the silos themselves but also of their ongoing maintenance and cleaning.

90. The Applicant states that a constraint on the industrial bagged flour market is the fact that Goodman Fielder actually installs silos in many customers' premises resulting in them substituting to bulk flour. However, the Commission understands that in the last three years the Applicant has only assisted [ ] out of its several hundred total customers in this way. The Applicant was not aware of anyone who had switched from using bulk to bagged flour.

91. Although the Applicant may assist its customers to switch from industrial bagged to industrial bulk flour by meeting the initial capital cost of a silo, that customer will typically repay this to the Applicant over a period of a few years. When the Applicant maintains ownership of the silo then the customer is required to pay rent for its use. Hence, customers do incur a substantial cost over time (if not immediately) to switch between industrial bagged and bulk flour.

92. With regard to supply-side substitution between industrial bulk and industrial bagged flour, the Commission notes that although the production facilities are largely similar, different machinery is required at the end of the process - a bagging machine for the bagged flour as opposed to equipment for storing and then discharging bulk flour into tankers. The method of distribution is also quite distinct. The Commission understands that bagged flour is stacked into trucks whilst bulk flour is distributed in stainless steel tankers, with the flour being discharged pneumatically into hygienic sealed silos.

Tied vs untied flour

93. A feature of the flour industry is the presence of vertical integration between the main flour millers and the main plant bread bakeries. The uniform practice in the industry is that the main plant bread bakeries source their flour only from the flour miller with whom they are vertically linked. About half of all flour produced is tied in this way, with the rest being sold to non-tied or free users. This begs the question of whether these tied sales are actually contestable and therefore should be included in the market.

94. In Decision 289 the Commission did not distinguish between tied and untied flour. The Commission considered at that time that the ties between mills and bakeries within each of the vertically integrated groups need not be unbreakable and evidence was found to support this. For example, at that time, an 'arms-length' arrangement was described between River Mill and CFM under which the bakery could conceivably seek flour from other suppliers if the tied flour supplier was not competitive. Similarly, at that time, Quality Bakers' individual plants were free to seek price quotations for flour from outside sources.

95. However, it seems unlikely that vertically integrated bakeries would actually obtain flour from outside sources (except in times of shortage). Indeed, the Commission is not aware of any such instance occurring either before or since Decision 289 (other than on occasions when mills have broken down or been damaged due to fire). Further, the practice of allowing vertically linked bakeries to seek quotations for alternate sources of

flour seems more likely to have been a tool to provide mills with the right incentives to keep production costs down.

96. Further support that ties between vertically linked bakeries and mills are strong can be found when examining River Mill's current situation. River Mill's bakery is situated in the North Island whilst its mill is situated in the South Island. Given the high cost of transporting flour between the North and South Islands, as will be discussed shortly, this must put River Mill's bakery at a cost disadvantage in this respect compared to mills located in the North Island or imported flour, yet River Mill's bakery continues to source flour from its own mill.

97. For these reasons, the Commission considers it is appropriate to focus in this instance on un-tied or free flour. As River Mill's bulk flour production is supplied solely to its own bakery, the proposed acquisition will not result in any aggregation with respect to industrial bulk flour.

98. Accordingly, as in its previous Decisions, the Commission considers there to be three product markets for untied flour - industrial bulk, industrial bagged and retail bagged. The acquisition gives rise to aggregation in the markets for untied industrial bagged and untied retail bagged.

Geographic Dimension

99. The Applicant submitted that the relevant geographic markets are those of the North and South Islands respectively. This is consistent with Decision 289.

100. In the South Island flour is milled almost exclusively from South Island wheat, with some of that flour shipped to the North Island. In the North Island flour is milled from small quantities of North Island wheat, and the majority from wheat imported from Australia.

101. Shipping flour between the South Island and North Island is costly. The Applicant estimates that the freight cost per tonne would vary from approximately $[ ] per tonne for 20kg bags to $[ ] per tonne for 5kg bags. The Applicant's average sales value per tonne of flour is approximately $[ ], thus freight costs between the South and North Island would represent between [ ]% and [ ] of this value.

102. The Commission is aware of only two instances where flour is or has been regularly shipped from the South Island to the North Island. Milligans was supplying flour to Gilmours, New Zealand's largest food and liquor distribution group, in the upper North Island. This flour was shipped north together with other goods that Milligans was already transporting to the North Island. [

] The second case is that of River Mill which, as stated above, has its mill located in the South Island but its bakery located in the North Island. [

]

103. The Commission is not aware of any imports of flour to the South Island. [

]

104. Accordingly, the Commission considers there to be two relevant geographic markets – the North Island and the South Island.

Conclusion on Relevant Flour Markets

105. The Commission considers the relevant flour markets to be:

- the production and wholesale supply of untied industrial bagged flour in the North Island;
- the production and wholesale supply of untied industrial bagged flour in the South Island;
- the production and wholesale supply of untied retail bagged flour in the North Island; and
- the production and wholesale supply of untied retail bagged flour in the South Island.

FACTUAL/COUNTERFACTUAL

106. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgement considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (counterfactual).[11] The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

107. In the factual scenario, the Applicant would acquire the business of River Mill, including the business of CFM. [

]

108. The Applicant has informed the Commission that [

]

109. The Applicant has also informed the Commission that [

]

Counterfactual

110. With regard to the counterfactual, River Mill advised the Commission that [

] Shareholder and Managing Director Dennis Johns has advised the Commission that [

]

111. River Mill also believes [

[11] *Air New Zealand & Qantas Airways Ltd* v *Commerce Commission (No.6)*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and KM Vautier, Para 42.

] Mr Johns informed the Commission that [ ]

112. For these reasons, in September 2006 BDO Spicers, on behalf of River Mill, issued an information memorandum to prospective buyers, including Goodman Fielder. [ ]

113. Mr Johns informed the Commission that [ ] Mr Johns is of the view that [ ]

114. [ ]

115. Further, River Mill advised the Commission that [ ] The Commission understands that [ ] River Mill advised that [ ] River Mill has considered [ ] River Mill advised the Commission that [ ]

116. For these reasons River Mill has informed the Commission that [ ]

117. The Commission considers that in the counterfactual scenario, [ ]

118. George Weston has informed the Commission that [ ]

119. For the reasons outlined above, the Commission considers that in the counterfactual scenario [ ]

120. Accordingly, the Commission considers the most likely counterfactual scenario to be that [ ]

COMPETITION ANALYSIS

Plant Bread

Existing competition – upper North Island

121. Existing competition in the upper North Island plant bread market occurs between Goodman Fielder, George Weston and River Mill.

122. Market shares for plant bread in the upper North Island are shown in Table 1 below:

Table 1: Market Shares for Upper North Island Plant Bread Market [12]

	2004		2005		2006		Post-acquisition	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Goodman Fielder	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
River Mill	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined Entity	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**
George Weston	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

123. In the factual scenario, competition will continue to occur between the combined entity and George Weston.

124. In the counterfactual scenario [ ]

125. [

]

126. The Commission understands that George Weston has to date been an aggressive competitor, for example in competing for contracts for house-brand bread and tenders to supply the oil companies. The Commission understands that these contracts have switched between Goodman Fielder and George Weston over the years.

127. Although not part of the same market, the Commission also considers that the bread produced by Brumby's, Bakers Delight and independent bakeries will collectively provide some constraint on the wholesale market for plant bread. Most parties interviewed by the Commission accepted that there is some competition between plant and bakery breads, even if it is simply that if it were not for the availability of those specialty breads, consumers would be buying plant bread in their place. This is particularly so for the sliced tin loaves often sold by bakeries that are purchased for much the same function as plant bread, ie, to make sandwiches or toast.

128. The Commission has received anecdotal evidence that the purchase of bakery bread in place of plant bread has grown over recent years, and is expected to continue to do so. The Commission considers that competition between bakery and plant bread at the retail level, and therefore demand at the retail level, will influence demand for plant bread at the wholesale level.

[12] (1) All sales figures include sales from contract-baked bread, but exclude buns, rolls, etc; (2) River Mill could not provide a precise upper and lower North Island split for bread sales in all years. This split was provided for only one year – 2006. On advice from River Mill that the proportions of total sales attributable to the upper and lower North Island, respectively, had remained relatively stable over time, the proportional split for 2006 was applied to all other years to obtain separate upper North Island and lower North Island market shares.

Existing competition – lower North Island

129. Existing competition in the lower North Island plant bread market occurs between Goodman Fielder, George Weston, River Mill, Yarrows, Walter Findlay and Breadcraft.

Table 2: Market Shares for Lower North Island Plant Bread Market[13]

	2004		2005		2006		Post-acquisition	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Goodman Fielder	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
River Mill	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined Entity	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**
George Weston	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Yarrows	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Walter Findlay	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Breadcraft	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

130. In the factual scenario, competition would continue to occur between the combined entity, George Weston, Yarrows, Walter Findlay and Breadcraft.

131. In the counterfactual scenario [ ]

132. As in the upper North Island, George Weston is an aggressive competitor in the lower North Island. Further, as in the upper North Island, the Commission considers that the bread produced by Brumby's, Bakers Delight and independent bakeries will collectively provide some constraint on the wholesale market for plant bread.

Potential expansion – upper North Island

133. The Commission understands that George Weston has [ ]% spare capacity in its plant bakeries. This capacity could be used post-acquisition to expand production, however George Weston would need to concurrently extend its current distribution network, and the costs of doing this are likely to be at least partially sunk. George Weston would have to be fairly confident that it could sustain such an expansion of supply (ie through a commensurate expansion in demand) before committing. To this extent, the Commission understands that [ ]

134. Accordingly, the Commission considers that post acquisition the merged entity would be constrained by the threat of expansion by George Weston.

[13] See notes in previous footnote. Sales volumes provided by Walter Findlay included both total plant bread and small goods (hamburger buns, rolls, etc.) sales. Walter Findlay informed the Commission that the volume attributable to small goods in each year of the sample was approximately [ ] units. This was then subtracted from total unit sales and multiplied by the average wholesale price for Walter Findlay plant bread (also provided to the Commission by the company) in order to derive gross revenue figures for the relevant years.

Potential expansion – lower North Island

135. As in the upper North Island, George Weston's capacity could be used post-acquisition to expand production.

136. The Commission understands that Yarrows has [ ]% capacity in its bakery. Yarrows has advised the Commission that [

]

137. Walter Findlay contract bakes for George Weston and River Mill, and bakes under a franchise agreement for Goodman Fielder, in the area around Gisborne. It also produces around [ ] loaves per week of its own label low-cost bread. [

]

138. Accordingly, the Commission considers that post acquisition the merged entity would be constrained by the threat of expansion by existing competitors in the lower North Island.

Barriers to entry – upper and lower North Island

139. The likely effectiveness of the threat of new entry in preventing a substantial lessening of competition in a market following an acquisition is determined by the nature and effect of the aggregate barriers to entry into that market. The Commission is of the view that a barrier to entry is best defined as anything that amounts to a cost or disadvantage that a business has to face to enter a market that an established incumbent does not face.

140. There were mixed views amongst parties interviewed by the Commission as to the extent of the barriers to entry into the plant bread market. The arguments on barriers to entry are common to the upper and lower North Island markets.

141. Most felt that the cost of a new bakery would be fairly low, due to the availability of second-hand equipment, in the region of $2-3million. However, the high additional costs of promotion and the essential distribution system were cited by some as barriers to entry.

142. Couplands informed the Commission that in its view a new bread plant would cost around $10million. Couplands considered that it is infeasible to build a plant with second hand equipment, as this equipment is generally in the control of competitors who are reluctant to allow their rivals to purchase even old second-hand equipment. Couplands reported instances where Goodman Fielder has destroyed old equipment rather than resell to rivals.

143. Yarrows was concerned that a completely new entrant would need an innovative product to be successful. However, the supermarkets advised the Commission that they would consider stocking a new product if consumer demand could be shown. Sales and

margin potential, and the ability to distribute to stores were given by the supermarkets as relevant considerations in deciding whether to stock a new product, rather than the need for the product to be innovative.

144. Yarrows was also concerned that Goodman Fielder and George Weston essentially control the supply of ingredients. However the Commission found that Goodman Fielder and George Weston do compete vigorously for new flour business, and already supply flour to competitors in the bread market. Hence, Yarrows' concerns about access to inputs are unlikely to be founded.

145. The ability to achieve the volumes necessary in what is essentially a high-volume, low-margin business was also cited as a barrier, especially in a market dominated by two highly efficient manufacturers who both have spare capacity in their plant bakeries.

146. Some parties informed the Commission that access to supermarket shelf space is a significant barrier to entry. [ ], for example, advised the Commission that [ ]. However, the supermarkets informed the Commission that they would consider stocking a new bread if consumer demand could be shown and its pricing was competitive.

147. [ ][14]

148. Finally, George Weston identified difficulties in breaking into the route trade that the Commission considers may also be barriers to entry. A reasonable scale would be necessary to make entry viable, and a new entrant is faced with the difficulty of convincing a small store owner with an existing supplier relationship and limited shelf space to stock its product. A new entrant would also face sunk costs in setting up the necessary extensive distribution system.

149. The Commission notes that there is a difference of opinion as to whether the barriers to entry into the plant bread market are low or high. For the purposes of this analysis, and in particular due to the conclusions reached on existing competition above and countervailing power below, the Commission considers that it is not necessary to determine this issue conclusively. However, as set out in the following paragraphs, the Commission has considered how *likely* new entry to each market is.

The "LET" Test

150. In order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other manifestation of market power must be:

a. Likely in commercial terms;

b. Sufficient in Extent to cause market participants to react in a significant manner; and

c. Timely, i.e. feasible within two years from the point at which market power is first exercised.

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[14] The Commission also understands that [ ]

Likelihood of entry

151. Some parties, such as Mr Laurie Powell, Chairman of the Baking Association of New Zealand, Mr Malcolm North of both Pandoro Panetteria and North's Bun Company, and Foodstuffs Auckland felt that there was every opportunity for a new entrant to enter, and that this was likely. However, they were not aware of any actual potential new entrants.

152. [ ]

153. Yarrows advised the Commission that [ ]

154. Couplands has informed the Commission that [ ]

155. [ ]

156. The Commission considers that [ ]

157. [ ]

158. Some in-store bakeries and franchise bakeries produce bread that is similar in almost every way to the plant bread - it is a similar shape and comes sliced and in a plastic wrapper. The points of difference are that it is baked to be sold that day, contains no preservatives and tends to retail at a higher price. The Commission questioned whether producers of this bread could enter the plant bread market, particularly if plant bread prices were to rise post-acquisition.

159. Brumby's and Bakers Delight both informed the Commission that [ ]

160. Foodstuffs Wellington felt that [ ] However, Foodstuffs Auckland felt that [ ]

161. The Commission considers that it is unlikely that these bakeries could enter the plant bread market to the extent necessary to be a sufficient constraint as a new entrant to that market.[15] The large Goodman Fielder and George Weston plants bake at [ ] loaves an hour; independent and in-store bakeries might bake up to [ ] an hour.

Extent of Entry

162. The Commission considers that for entry, or the threat of entry, to provide a competitive constraint on Goodman Fielder in the factual scenario, the entry would need to be of significant scale. Specifically, the Commission considers that entry would need to be into the entire upper or lower North Island markets, and not just into a particular geographic region.

Timeliness of Entry

163. Industry participants informed the Commission that it would take around 12 to 18 months to set up as a plant baker. This is within the two year timeframe the Commission adopts for assessing entry.

Conclusion on new entry

164. Accordingly, the Commission considers that [

]

George Weston's argument re bread

165. When interviewed by the Commission, George Weston advised that it was concerned that post-acquisition Goodman Fielder would be significantly stronger in the route trade, as well as being highly represented in supermarkets. George Weston was concerned that post-acquisition there would be a loss of tension between the route trade, (which George Weston viewed as the main constraint on supermarkets), and supermarkets, which could result in the latter increasing their prices to consumers.

166. Accordingly, George Weston asked that the Commission consider aggregation post-acquisition in the route trade.

167. The Commission considers the retail market for plant bread to be wider than simply the route trade, and George Weston did not argue that the market should be so restricted. Indeed the strong competition between supermarkets and the route trade is in itself indicative of the fact that they should be considered to be in the same market. The Commission considers that it is inappropriate for it to define a relevant market and then look at the impact of the acquisition on an individual sector of that market, ie, the route trade, alone.

168. In any event, the Commission does not consider that aggregation in the route trade will result in supermarkets raising their bread prices. George Weston, in defining the route trade, does not include service stations. The Commission considers that service stations, as large sellers of bread, also act as a constraint on supermarkets, as do other players in the route trade.

169. The Commission also considers that George Weston's argument does not take into consideration the competitive constraint that Foodstuffs and Progressive exert on each other. The Commission considers that both Foodstuffs and Progressive have individual

[15] However, as set out above, the Commission does consider that these bakeries provide a constraint on the plant bread market already.

incentives to keep the wholesale price of bread down in order to maximise their own margins.

170. Accordingly, the Commission does not consider that the acquisition will result in a loss of competitive tension between the route trade and supermarkets, which will lead to increased prices for consumers.

Industrial Bagged Flour

Existing competition – North Island

171. Existing competition in the North Island market for industrial bagged flour occurs between Goodman Fielder, George Weston and CFM.[16] Strong competition in terms of wholesale supply also exists from imported flour.

Table 3: Market shares for the production and wholesale supply of un-tied industrial bagged flour (above 10kg) in the North Island[17]

	2005		2006		Factual		Counterfactual	
Company	Volume	Value	Volume	Value	Volume	Value	Volume	Value
GF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
River Mill	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined entity	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**	**[ ]%**	**[ ]%**
GWF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Milligans	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Imports	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

172. Goodman Fielder has advised the Commission that [ ] In the factual scenario, competition in the North Island would be between Goodman Fielder, George Weston and imported flour.

173. In the counterfactual, [ ]

174. The key difference between the factual and the counterfactual is that [ ]

[16] [ ]

[17] (1)The Commission has included only the imports of flour it has been able to identify. Imports may account for more of the market, and if so, this would strengthen the Commission's conclusions with respect to the constraint provided by imported flour; (2) With respect to GWF the Commission has assumed: no retail bagged sales are tied, and the proportions of tied and un-tied sales are the same in both the North and South Islands; and (3) With respect to River Mill we have assumed its split between North and South Island sales of retail and industrial bagged flour has remained constant over time.

Flour imports

175. The Commission understands that it is infeasible to import bulk flour due to difficulties in keeping moisture away from unpackaged flour. Industry participants considered it relatively straightforward to import bagged flour, particularly into the North Island.

176. Industry participants viewed imported flour, which is generally sourced from Australia, to be of the same or better quality than New Zealand milled flour. (Those parties who thought Australian flour was of a higher quality advised the Commission that this was because of the higher number of sunshine hours in Australia, which it was said, lead to a higher protein content in the wheat. This in turn leads to a higher gluten content in the flour).

177. Sherratt Ingredients imports baker's flour from the Minildra Flour Mill in NSW, Australia, and distributes this to a large number of customers in the North Island, from major manufacturers such as [ ], through to small independent bakeries. The flour is imported in 25kg bags and so any users willing to purchase a minimum of 25kg of flour are able to source flour from Sherratt Ingredients. The Commission understands that Sherrat Ingredients' price for imported flour roughly matches the price for local flour. Although Australian flour has a larger freight component built into the price, so too are scale efficiencies arising from significantly larger milling operations than those found in New Zealand. Sherratt Ingredients advised the Commission that if its flour was more expensive than local flour, consumers would readily switch to local flour. Therefore, imported flour was viewed favourably as a possible substitute to domestic flour; there would be little problem with users switching to imports in the face of local price increases.

178. The amount of flour being imported by Sherratt Ingredients [ ]

179. Gilmours is a subsidiary of Foodstuffs (Auckland) Ltd. Gilmours informed the Commission that [ ]

180. Milligans advised the Commission that it feels that it competes directly with imported flour, [ ]

181. All supermarkets interviewed by the Commission advised that they would import flour if it were cost effective. Given that the cost of imported flour is roughly similar to the cost of domestic flour, this seems a plausible scenario. Progressive said that if flour prices went up post-acquisition it would look at importing immediately.

182. Yarrows informed the Commission that it had considered importing flour but, without being specific as to why, decided it was not economic to do so. However, Yarrows uses bulk flour, which as noted earlier, is infeasible to import in any event. Bakers Delight also advised the Commission that it had priced flour imported from Australia and found it to be marginally uncompetitive.

183. However, given the activities of Sherratt Ingredients and Gilmours and the fact that imported flour from Australia appears to be competitive in respect of price and quality, the Commission considers that imported flour is an important constraint on North Island suppliers of industrial bagged flour.

Existing competition – South Island

184. Existing competition in the South Island market for industrial bagged flour occurs between Goodman Fielder, George Weston, CFM and Milligans.

185. The Commission found no evidence of flour being imported into the South Island. The Commission has received anecdotal evidence that bakers are importing flour directly from Australia, and it is possible that some of these importers are located in the South Island. However, as the Commission has no firm evidence of this, it is not included in the market share calculations. In any event, the adding of imports of flour into the calculation would lower the concentration of the market, suggesting that a substantial lessening of competition is even less likely than under the current analysis.

Table 4: Market shares for the production and wholesale supply of un-tied industrial bagged flour (above 10kg) in the South Island[18]

	2005		2006		Factual		Counterfactual	
Company	Volume	Value	Volume	Value	Volume	Value	Volume	Value
GF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
River Mill	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined entity	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**	**[ ]%**	**[ ]%**
GWF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Milligans	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

186. As set out above, post-acquisition, Goodman Fielder has advised the Commission that [ ] In the factual scenario, competition in the South Island would be between Goodman Fielder, George Weston and Milligans.

187. Also as set out above, in the counterfactual, [ ]

Potential expansion – North Island

188. George Weston informed the Commission that it has recently conducted a major expansion of its Auckland mill and [ ]. George Weston also informed the Commission that [ ]

189. The Commission understands that [ ]

190. Accordingly, the Commission considers that post-acquisition the merged entity would be constrained by the threat of expansion by George Weston. The merged entity would also be constrained by the threat of expansion from current flour importers.

[18] See notes in previous footnote.

Potential expansion – South Island

191. George Weston has informed the Commission that [ ] As noted above, it is likely that [ ]

192. Milligans has advised the Commission that its flour mill [ ] Milligans has advised the Commission that [ ]

193. Accordingly, the Commission considers that post-acquisition the merged entity would be constrained by the threat of expansion by George Weston and by Milligans in the South Island.

Barriers to entry – North and South Islands

194. The Commission is of the view that the barriers to entry into the North and South Island flour markets are very similar, so the analysis below applies to both markets.

195. The parties interviewed by the Commission generally agreed that the cost of a new mill would be in the region of $10-15million, although Laurie Powell estimated only $3-4million. Most parties agreed that second-hand plant is not readily available, although Barry Marshall of Gourmet Grains and Seeds advised the Commission that second-hand plant is available from China at a cost of $300,000.

196. Laurie Powell advised the Commission that in his view the biggest barrier to entry is the competitive nature of Goodman Fielder and George Weston, who have a lot of spare capacity in their mills that they could use to increase volume and compete more vigorously with a new entrant.

197. Milligans advised the Commission that in addition to the basic milling plant, a new mill would also need silos, a weighbridge, an area for trucks, roading infrastructure, a good power supply, a conveying system, roller mills, sifters, baggers and so forth. Milligans also felt that resource consent may be an issue because of dust, noise and vermin, although several other industry participants considered that obtaining resource consents would not pose significant difficulties as milling operations tend not to generate any large negative externalities. In this case, the Commission does not consider that resource consent is a barrier to entry.

198. Foodstuffs Wellington felt that a new flour mill had no chance of being able to buy wheat cheaper or mill more efficiently than the existing competitors and so it would be unlikely to get a return on funds employed.

199. The Commission considers the barriers to entry to the market for the production and wholesale distribution of flour are high, in particular the cost of setting up a new plant.

The "LET" Test

200. As discussed with respect to bread above, in order for market entry to be a sufficient constraint, entry of new participants in response to a price increase or other manifestation of market power must be Likely, sufficient in Extent and Timely (the LET test).

<u>Likelihood of entry</u>

201. The Commission was informed by River Mill that [

]

202. Couplands advised the Commission that [

]

203. Milligans advised the Commission that [

]

204. Mr Barry Marshall of Gourmet Grains and Seeds, who currently manufactures specialist flours such as pea and rice flour in the North Island, advised the Commission that [

]

<u>Extent of Entry</u>

205. The Commission considers that for entry, or the threat of entry, to provide a competitive constraint on Goodman Fielder in the factual scenario, the entry would need to be of significant scale. Industry participants suggested that a new flour mill would not be able to achieve the volumes required to be economically viable due to the competitive nature of the existing competitors and the difficulty in sourcing customers of a sufficient size.

<u>Conclusion on new entry</u>

206. On balance, the Commission considers that it is unlikely that a new entrant will enter to a sufficient extent and within the timeframe required to act as a constraint on the merged entity.

Retail Flour

207. Existing competition for retail flour is between Goodman Fielder, George Weston and CFM in the North Island, and between Goodman Fielder, George Weston, CFM and Milligans in the South Island.

208. As can be seen in the market share tables below, CFM's retail flour supplies are minimal and the Commission is not concerned about aggregation in the market for retail flour.

Table 5: Market shares for the production and wholesale supply of un-tied retail bagged flour (10 kg and below) in the North Island[19]

	2005		2006		Factual		Counterfactual	
Company	Volume	Value	Volume	Value	Volume	Value	Volume	Value
GF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
CFM	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined entity	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**	**[ ]%**	**[ ]%**
GWF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Table 6: Market shares for the production and wholesales supply of un-tied retail bagged flour (10 kg and below) in the South Island[20]

	2005		2006		Factual		Counterfactual	
Company	Volume	Value	Volume	Value	Volume	Value	Volume	Value
GF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
CFM	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Combined entity	**0%**	**0%**	**0%**	**0%**	**[ ]%**	**[ ]%**	**[ ]%**	**[ ]%**
GWF	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Milligans	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

209. In any event, the Commission considers that the issues and conclusions in relation to retail flour are similar to those set out above in relation to industrial bagged flour.

COUNTERVAILING POWER

210. In some circumstances the ability of the combined entity to exert market power may be sufficiently constrained by a buyer or supplier of the service to eliminate concerns that an acquisition may lead to a substantial lessening of competition.

211. The Applicant submitted that supermarkets and oil companies would constrain the merged entity due to their significant buying power. The Applicant further submitted that this buying power, and hence pricing, also flows through into the route channel.

212. The Commission considers that it is unlikely that the largely fragmented purchasers that make up the route trade (excluding service stations but including dairies, butchers, greengrocers and so forth) would have any significant countervailing power. However the Commission agrees that the supermarkets, who are the largest purchasers of bread and a large buyer of flour, have considerable purchasing power that may constrain the merged entity.

213. Foodstuffs Co-ops co-ordinate their negotiations, and they consider that this provides them with a strong bargaining position. Foodstuffs South Island advised the Commission that it would only be concerned if it was reduced to purchasing from a

[19] See notes (2) and (3) in footnote 17.
[20] See notes (2) and (3) in footnote 17.

single supplier. It considered that as long as George Weston existed in the market, it could maintain its current purchasing power. Furthermore, its supply agreements with Goodman Fielder and George Weston are not contracted so that it can maintain flexibility in purchasing.

214. Foodstuffs and Progressive face relatively low costs in switching between suppliers, and therefore the threat of switching is likely to be viewed as a credible one by Goodman Fielder, post-acquisition.

215. The Commission also agrees that the oil companies can exercise a reasonable degree of countervailing power through their method of purchasing. Oil companies, through their service stations, are also large purchasers of bread. Caltex, for example, sells approximately [ ] loaves of bread each year, Shell [ ] and Mobil [ ] The oil companies run national, sealed bid tenders for the exclusive bread supply contracts every 2-5 years. Given the 'winner-take-all' element of these bidding rounds, suppliers have an incentive to compete vigorously for these contracts. Indeed the historical evidence indicates that these contracts have alternated between Goodman Fielder and George Weston frequently.

216. If Goodman Fielder or George Weston were to start raising their prices, at the next tender round the contract could easily be awarded to the other. Shell advised the Commission that [ ] Further, Mobil stated that [ ]

217. Accordingly, the Commission considers that these large buyers are easily able to switch between suppliers. Although recognising that there may be an element of brand loyalty in consumer purchases, the Commission considers that in the purchase of both bread and flour convenience will be more important to consumers in the route trade. Customers are, therefore, more likely to switch to another brand if a supplier does not stock the one they want, rather than seek out an alternative supplier.

218. The Commission considers that supermarkets can also exercise their countervailing power by making it difficult for their suppliers to obtain a price rise. George Weston advised the Commission that it can be a "minefield" to get a supermarket to agree to a price increase, and gave a recent example when it took eight months of negotiation before an increase was agreed.

219. Progressive advised the Commission that [ ]

220. Progressive also advised the Commission that [ ] Foodstuffs South Island also advised that [ ] The Commission considers that the ability of the supermarkets to sanction a supplier by allocating less shelf space to that supplier and/or more shelf space to other suppliers is a major contributor towards the countervailing power wielded by supermarkets. This countervailing power derives in large part from the fact that the supermarkets would still have a choice between at least

two major suppliers of plant bread, Goodman Fielder and George Weston, even post-acquisition.

221. The Commission considers that supermarkets are able to exercise some countervailing power through the award of contracts to bake their house-brand bread. These contracts are tendered for every 2-3 years. The Foodstuffs contract is a national contract (rather than three separate regional contracts), as is the Progressive contract. The Commission understands that Goodman Fielder and George Weston compete vigorously for these contracts, which provide them with significant volumes to maintain their economies of scale.

222. Finally, the Commission considers that the supermarkets can exercise countervailing power by supporting new entry. Foodstuffs Wellington, for example, has indicated to the Commission that if prices were to rise post-acquisition, it would support a new entrant by, for example, allocating trial shelf-space to that supplier. In respect of flour, Foodstuffs Wellington advised that it would be happy to talk to overseas interests to advise them of an opportunity in New Zealand. It would encourage those interests to enter the North Island market, and would assist them to do so, again, for example, with guaranteed shelf space. This is something it has done recently with a margarine product.

223. The Commission notes that it has previously considered the countervailing power of supermarkets in other consumer good categories where a high proportion of sales are in supermarkets.[21] In these investigations, the supermarket chains were found to have significant countervailing power to constrain the combined entity from exercising market power.

CO-ORDINATED MARKET POWER

224. The Applicant submits that the market currently exhibits no signs of tacit collusion, and that the acquisition will not facilitate tacit collusion. In making these assertions the Applicant relies on the following:

- the absence of wholesale price transparency;
- the presence of large, sophisticated buyers such as the supermarkets, oil companies and buying groups;
- the presence of a competitive fringe in the form of franchise and other bakeries; and
- the wide variety of bread products sold, meaning that it is very difficult to tacitly agree and enforce a price.

225. The Commission agrees that post-acquisition co-ordination between the remaining businesses is not more likely, and the effectiveness of pre-acquisition co-ordination will not be significantly enhanced.

226. The Commission has found no evidence of current co-ordination between Goodman Fielder and George Weston in any of the relevant markets. Customers interviewed confirmed that they consider the two to be very competitive.

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[21] *Decision 562: Fonterra Co-operative Group Limited/ New Zealand Dairy Foods Limited (November 2005); Decision 542: Fonterra Co-operative Group Limited / National Foods Limited* (December 2004); *Decision 529: Colgate Palmolive Company / Campbell Brothers Limited* (July 2004); *Decision 487: Burns Philp & Company Limited / Goodman Fielder Limited* (February 2003)

227. The Commission recognises that incentives may change when there is one less competitor in the market, and that co-ordination may be easier with fewer players. However, the Commission considers that co-ordination is not more likely post-acquisition due to the fact that wholesale prices are difficult to observe, that the supermarkets have countervailing power, and that River Mill has been only a small player in the relevant markets, in comparison to Goodman Fielder and George Weston.

VERTICAL INTEGRATION

228. The Commission considers that the resulting vertical integration is unlikely to result in a substantial lessening of competition in a market, as market power does not exist at either of the affected functional levels. While Goodman Fielder currently has, and post-acquisition will have, the largest market share in each of the affected markets, the threat of expansion by existing competition and the countervailing power of the major purchasers suggest that the requisite degree of market power does not exist.

229. Even if Goodman Fielder does have the requisite degree of power in a market, the Commission is of the view that Goodman Fielder would be unable to use its power in the flour market to affect the bread market, as other bakers are able to source their flour from George Weston or from imports. Further, Goodman Fielder would be unable to use its power in the bread market to affect the flour market as flour millers can supply their flour to a number of bakeries, wholesale distributors, supermarkets and so forth.

OTHER AFFECTED MARKETS

Wheat

230. The Commission met with representatives of Federated Farmers, The Grains Council and United Wheat Growers who expressed their concern that the acquisition will result in farmers having only two potential mills to contract with for the sale of their wheat.

231. While it was acknowledged that the volume of wheat purchased by CFM was comparatively small, (approximately [ ] tonnes pa out of a total of [ ] tonnes pa), and that CFM is not a pro-active price setter, the view was advanced that CFM remained a point of competition in that if Goodman Fielder and George Weston were not offering reasonable terms, a farmer could contract with CFM instead.

232. However, the Commission understands that one-year contracts for wheat are entered into between the farmers and millers in approximately April of each year. Goodman Fielder, George Weston and CFM all use their own standard contracts that are reasonably similar in terms. The Commission understands that it is not a negotiation process. Accordingly, farmers' ability to negotiate terms is limited, and the presence of CFM as a purchaser is unlikely to increase a farmer's chances of receiving favourable terms. However the Commission recognises that there will be some price competition between the mills.

233. The Commission understands that New Zealand currently consumes more wheat than it produces and accordingly the majority of wheat milled in the North Island is imported from Australia. The Commission also understands that as milling wheat has failed to keep up with other land uses, such as feed wheat or other crops, there are a lot of contracts available.

234. Further, the Commission understands that should a farmer be unable to obtain reasonable terms for milling wheat, he or she could consider the next best alternative

land use, for example, growing feed wheat. Federated Farmers has informed the Commission that approximately 40% of wheat grown in New Zealand is milling wheat. The balance of 60% is feed wheat grown for stock feed. The Commission understands that if a farmer were to decide to move out of milling wheat on the basis that he or she could not get reasonable terms from Goodman Fielder or George Weston, it is possible to move into feed wheat, although it is a gradual process and some areas are better suited to milling wheat. It would also then be possible to move back into milling wheat if desired, and so exit from the milling wheat market is not necessarily irreversible. River Mill informed the Commission that the price per tonne for feed wheat can exceed that for milling wheat.

235. Accordingly, growers could switch from the production of milling wheat to another crop, such as feed wheat, if Goodman Fielder and George Weston both attempted to extract lower prices.

236. Further, in respect of the South Island, the Commission considers that it is in the best commercial interests of Goodman Fielder and George Weston to encourage the production of local milling wheat as the landed price of imported milling wheat in the South Island is 10-30% higher than South Island produced milling wheat.

237. Accordingly, the Commission does not consider the impact that the acquisition will have on the market for wheat in New Zealand raises competition concerns.

Biscuits

238. Both Goodman Fielder and River Mill manufacture and supply ‘cookies’. A cookie is a wire cut, unmoulded biscuit, which tends to have a more rough or home-made appearance than other biscuits. The Commission considers that a cookie is a type of biscuit, and accordingly that the relevant market is that for the manufacture and supply of biscuits in New Zealand.

239. The market is dominated by two large manufacturers - Griffins Foods Limited and Arnott’s. Arnott’s has provided the Commission with scanned volume data that shows at the retail level that Griffins has a market share of approximately [ ]%, and Arnott’s of approximately [ ]%.

240. The data provided by Arnott’s shows that Goodman Fielder’s market share is approximately [ ]% and River Mill’s is approximately [ ]%. However, the data shows around [ ]% of the market is “Total Controlled Label”. Some of this will be attributable to River Mill who supplies the Signature Range house brand cookies to Progressive. However, the Commission considers that even without the exact figures, aggregation in the biscuit market will be minor.

241. Further, there are a large number of other biscuit manufacturers in New Zealand, and the market is constrained by a number of importers and retail bakers. These include Cookie Time, Couplands, Kraft Foods, Telgin Corp Ltd, Real Foods Aust Pty, Kaye’s Bakery, Baker Boys, Murray Biscuit Cop, Nutcorner Home Bakery and Freedom Foods, as well as supermarket in-store bakeries and independent bakeries.

242. The Commission accordingly does not consider that aggregation in the biscuit market raises competition concerns.

Pizza bases

243. Both Goodman Fielder and River Mill manufacture and supply pizza bases.

244. Aztec scan data provided to the Commission shows in the year to 04/02/07 Goodman Fielder sold [ ] pizza bases, giving it a market share at the retail level of approximately [ ]%.

245. River Mill supplies approximately [ ], per week, to commercial customers. An analysis of Aztec scan data shows that River Mill has an approximate market share at the retail level of only [ ]%.

246. Other manufacturers of pizza bases in New Zealand include McCain P/L, Maxwell Pastry Ltd and Mommas Frozen Products.

247. River Mill does have capacity to increase its production of pizza bases. However, given that it will be minimal, the Commission does not consider that aggregation in the market for pizza bases raises competition concerns.

OVERALL CONCLUSION

248. The Commission has considered the probable nature and extent of competition that would exist in the following markets post-acquisition:

- the manufacture and wholesale supply of plant bread in the upper North Island;
- the manufacture and wholesale supply of plant bread in the lower North Island;
- the production and wholesale supply of untied industrial bagged flour in the North Island;
- the production and wholesale supply of untied industrial bagged flour in the South Island;
- the production and wholesale supply of untied retail bagged flour in the North Island; and
- the production and wholesale supply of untied retail bagged flour in the South Island.

249. The Commission considers that in the counterfactual [ ].

250. The Commission considers that there would be a number of constraints on Goodman Fielder post-acquisition. In particular:

- existing competitors in both the bread and flour markets, particularly George Weston, who is currently very competitive and who has the capacity to increase production to compete more vigorously post-acquisition;
- [ ]
- supermarkets would be able to exercise significant countervailing market power over Goodman Fielder, through the threat of sanctions on Goodman Fielder, facilitating entry or expansion by existing or potential competitors, and their operation of house brand contracts; and
- with respect to flour, the threat of imports, particularly from Australia.

251. The Commission is therefore satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in any of the affected markets.

DETERMINATION OF NOTICE OF CLEARANCE

252. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Goodman Fielder Limited of the assets of River Mill Bakeries Limited.

Dated this 15th day of March 2007

David Caygill
Deputy Chair
Commerce Commission