

# [Public Version]

## COMMERCE ACT 1986: BUSINESS ACQUISITION

### SECTION 66: NOTICE SEEKING CLEARANCE

DATE : 31 October 2005

The Registrar  
Business Acquisitions & Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

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

#### **EXECUTIVE SUMMARY**

The applicant seeks clearance from the Commission to acquire the business known as Greyson Gates. The market aggregation occurs in the market for the manufacture and wholesale supply of rural gates and gate hardware in New Zealand (“the relevant market”).

The acquisition is considered most important in the context of recent consolidation of the retail market for rural supplies. The degree of countervailing market power able to be exercised by the rural resellers in New Zealand is considered significant and not dissimilar to the countervailing market power of supermarkets in New Zealand.

More importantly, the applicant considers that there will be no substantial lessening of competition in the relevant market for the following key reasons:

- There will continue to be two major competitors to the combined entity with a distinct competitive advantage over the combined entity, namely the ability to also supply wire and wire products to the rural resellers;
- The presence of a number of near entrants in associated industries;
- The countervailing market power of the rural resellers is considered as sufficient to support new and near entrants to the market in response to an increase in prices by the major suppliers, including the combined entity; and
- The absence of any major barriers to entry to the relevant market other than access to the rural resellers.

## PART I: TRANSACTION DETAILS

### The Proposed Business Acquisition

#### 1 The Business Acquisition for Which Clearance is Sought?

- 1.1 The acquisition for which clearance is sought is the acquisition by Gallagher Group Limited ('Gallagher'), or a nominee being a wholly owned subsidiary of Gallagher, of all of the business assets (the 'Business') of Greyson Gates Limited ('Greyson').
- 1.2 A copy of the Heads of Agreement for the sale and purchase of the Business is attached as appendix 1.

## THE PERSON GIVING NOTICE

#### 2 Who is the person giving this notice?

- 2.1
 

Gallagher Group Limited  
 Private Bag 3026  
 Hamilton  
 Telephone (07) 838 9800  
 Facsimile (07) 838 9899  
 Attention: Steve Tucker or Stephen Hoffman  
 Email: [stevet@gallagher.co.nz](mailto:stevet@gallagher.co.nz) or [stephenh@gallagher.co.nz](mailto:stephenh@gallagher.co.nz)

All correspondence and notices in respect of this application should be directed in the first instance to:

Quigg Partners  
 Level 7, The Bayleys Building, 28 Brandon Street  
 PO Box 3035  
 Wellington  
 Telephone (04) 472 7471  
 Facsimile (04) 472 7871  
 Attention: David Quigg / John Horner  
 Email: [davidquigg@quiggpartners.com](mailto:davidquigg@quiggpartners.com) or [johnhorner@quiggpartners.com](mailto:johnhorner@quiggpartners.com)

## CONFIDENTIALITY

#### 3 Requested Confidentiality

- 3.1 Gallagher does not require the fact of the proposed acquisition to be confidential.
- 3.2 Gallagher does request that specific information contained in or attached to the notice is kept confidential. Gallagher seeks confidentiality for the information in this application that is contained within square brackets and written in italics (e.g., [*example*]). We have provided a copy of this application with such confidential information deleted for the assistance of the Commission.
- 3.3 Gallagher requests that, on expiry of any confidentiality order that the Commission may make, the confidential information continues to be withheld under section 9 of the Official Information Act 1992. Confidentiality is sought on the grounds that:

- a) The information is commercially sensitive and valuable and its disclosure is likely to unreasonably prejudice the commercial position of Gallagher; and
- b) There are no other considerations that render it desirable in the public interest to make the information available under the Official Information Act 1982.

## **DETAILS OF THE PARTICIPANTS**

### **4 The Participants**

- 4.1 The acquirer of the Business is;

Gallagher Group Limited, details of which are set out in paragraph 2.1 above, or a wholly owned subsidiary. Refer [www.gallaghergroup.co.nz](http://www.gallaghergroup.co.nz) for more information.

- 4.2 The seller of the Business is;

Greyson Gates Limited, a wholly owned subsidiary of Perry Group Limited ('Perry').

Contact person for Greyson and Perry is;  
 Kim Willoughby  
 Executive Director  
 Perry Group Limited  
 Private Bag 3091  
 Hamilton

Telephone (07) 838 3633

- 4.3 All correspondence and notices in respect of this application to Perrys and Greysons should be directed in the first instance to:

Harkness Henry and Co.  
 KPMG Office  
 85 Alexandra Street  
 Private Bag 3077  
 Hamilton

Telephone No. (07) 838 2399

Fax No. (07) 839 4043

Attention: Chris Marr

### **5 Inter-Connected to or Associated persons**

#### **5.1 Gallagher Group / Associates**

- a) Gallagher is based in Hamilton, and is the principal operating company and wholly owned subsidiary of Gallagher Holdings Limited.
- b) The corporate wiring diagram of Gallagher is set out in Appendix 2, and includes all trading subsidiaries

## 5.2 Greyson Gates / Associates

- 5.2.1 The owner of the Business, Greysons has no equity interest in any other company.
- 5.2.2 Perrys own 100% of the shares in Greyson and will continue to do so after the acquisition of the Business assets. Following the acquisition, Greyson will no longer trade in the manufacture and marketing of gate and gate hardware, as per the terms of the sale and purchase agreement (see Appendix 1).

## 6 Existing Beneficial Interests

- 6.1 Neither Greyson nor Gallagher have any beneficial interest in the other party.
- 6.2 Gallagher currently holds 4,743,352 of the ordinary shares of Tru-Test Corporation Limited ('Tru-Test') (14.69%). Tru-Test is a competitor in the gates and gate hardware market.

## 7 Links Between Participants and their Competitors

- 7.1 Franklin Machinery Limited ('Franklin') is a wholly owned subsidiary of Gallagher. Franklin's primary business is the manufacture of gates and gate hardware under the brand Franklin. Gallagher sales team distribute Franklin gates and gate hardware, along with Gallagher supplied electric fencing and animal weigh scales to NZ rural resellers.
- 7.2 Gallagher and Hurricane Wire Products Limited ('Hurricane') are party to a manufacturing arrangement to contract manufacture through Franklin a range of Hurricane gates, and gate hardware products, branded Hurricane. The value of these sales from Franklin to Hurricane was [ ] for gate hardware and [ ] for gates in the twelve months ending September 2005. A copy of the original agreement for the distribution of Franklin gate hardware by Hurricane is set out in Appendix 3.
- 7.3 Franklin has a hotdip galvanising facility at Pukekohe, which it uses for internal use and external contract manufacturing. Hurricane is, from time to time, a hotdip galvanising customer, primarily for pool fencing panels and products distributed to the building sector. No formal agreement exists.
- 7.4 Franklin also purchases some raw material gate rod from Hurricane and flat and hollow bar steel from Steel and Tube Holdings Ltd (Hurricane parent company), as well as from other suppliers. No formal agreement exists.
- 7.5 Franklin has in the past contract manufactured gate hardware products for Tru-Test, branded Cyclone. The value of these sales from Franklin to Cyclone for the twelve months ending September 2005 was [ ].
- 7.6 Hurricane acts as sales and marketing agents for Gallagher branded electric fencing products in selected rural and hardware stores. In the twelve months ending September 2005, this amounted to [ ] of sales to Hurricane by Gallagher. A copy of this agreement is set out in Appendix 4.
- 7.7 Gallagher act as sales and marketing agents for Hurricane branded wire and wire products in selected rural stores. In the twelve months ending September 05 this amounted to [ ] of sales to Gallagher by Hurricane. A copy of this agreement is set out in Appendix 5.
- 7.8 Greyson and Tru-Test are party to a manufacturing agreement for Greyson to contract manufacture gate hardware products. The value of these sales from Greyson to Tru-Test was [ ] for the twelve months ending August 2005. A copy of this agreement is set out in Appendix 6.

## 8 Common Directorships

- 8.1 No director of Gallagher is also a director of any other company involved in the markets in which Greysons business operates other than companies directly or indirectly controlled by the Gallagher Group.

## 9 What are the business activities of each participant?

- 9.1 The Gallagher group comprises of a number of companies with a primary focus on the design, manufacture and marketing of animal and security management systems in New Zealand, and exported to more than 100 countries internationally, through a network of subsidiary and associate companies, and distributors. The group includes the Gallagher Animal Management Systems, Gallagher Security Management Systems and Gallagher Plastic divisions and the Sunplas Engineering and PEC Fuel Pumps companies. Approximately [ ] of Gallagher sales revenue is from export sales, excluding dividends and royalties from overseas investments.
- 9.2 Gallagher is headquartered in Hamilton, New Zealand and, directly or indirectly, employs more than 450 staff in New Zealand.
- 9.3 Gallagher key products are categorised as follows:
- Rural gates and gate hardware;
  - Electric fencing products;
  - Animal weighing systems and accessories;
  - Contract manufacturing products;
  - Security access control products; and
  - Fuel dispensing products.
- 9.4 Greyson is based in Putaruru and employs approximately 39 staff. The company primarily manufactures and distributes rural gates and gate hardware.
- 9.5 Perrys own 100% of the shares in Greyson. Perrys have the following key business divisions;
- Perry Developments – commercial, industrial, and residential property development.
  - Perry Environmental – waste management and resource recovery.
  - Perry Entertainment – leisure sector interests.
  - Perry Metal Protection – galvanising facilities, and the manufacture of rural gates and gate hardware through Greyson.
  - Perry Aggregates – aggregates, quarry, and lime processing activities.

## 10 Reasons for the Proposal and Intentions in Respect of the Acquired Business

- 10.1 [ ]

## PART II: IDENTIFICATION OF MARKETS AFFECTED

### HORIZONTAL AGGREGATION

## 11 Market Where There Would be an Aggregation of Business Activities

- 11.1 The proposed acquisition of the assets of Greysons by Gallagher will result in aggregation in the business activity of the market for the manufacture and wholesale supply of rural gates and gate hardware in New Zealand.
- 11.2 **Product Dimension** – within the market defined in 11.1 above, the following product groups can be defined;
- (a) Rural Gates – primarily steel or wooden gates, however a gate in a gateway can also be created using other materials e.g., tape and spring electric gates. Gates are sold through rural resellers, but end-users (Farmers) routinely construct gates themselves or purchase custom-built gates from a local engineering firm.
  - (b) Rural Gate Hardware – consisting of hinges, gudgeons and latches used in the hanging of a rural gate.
- 11.3 The applicant considers that the product groups defined in 11.2 (a) and (b) are part of the gate and gate hardware market based on the following supportive evidence;
- (a) the Commerce Commission, in Decision 531, dated 26<sup>th</sup> August 2004, in regard to Gallagher Holdings Limited and Tru-Test Corporation Limited (‘Decision 531’) considered that it was ‘not inappropriate to treat gates and gate hardware as falling in the same product market’ in that instance (p.41, para 197-198).
  - (b) it is generally accepted in the industry that gates and gate hardware are treated as a product category by buyers within rural resellers.
  - (c) all significant gate suppliers to the industry also supply hardware which is branded a brand owned by them even if they source and do not manufacture the hardware. Whilst, the rural resellers are increasingly profit driven buying organisations they have shown through past behaviour that they are not uncomfortable with these contract manufacturing arrangements and have not always gone direct to the manufacturing source for hardware. This reinforces the view that the hardware is seen as part of and incidental to the gate.
- 11.4 **Functional Dimension** – the functional dimension of the market defined in 11.1 above, is a combination of the manufacture and wholesale supply. This view was reinforced by the Commerce Commission, in Decision 531, which noted that the relevant functional market for the purpose of that application was ‘the manufacture and wholesale supply or...gates and gate hardware..’ p.44 para 217.
- 11.5 The applicant also provides the following evidence to support this view;
- (a) All the participants noted as supplying rural gates in this application are also manufacturers of gates. Whilst Hurricane sub-contract some of their gate manufacturing to Gallagher (refer 7.2), they also retain a gate manufacturing plant in Christchurch for the remainder of their requirements.
  - (b) As gate hardware is seen as incidental to, and part of, the supply of gates (refer 11.3), suppliers of gates whom do not manufacture gate hardware have been relatively easily able to source their

requirements and change suppliers with minimal disruption or concerns from rural resellers. For example, Tru-Test has sourced hardware from each of Walker Ltd, Gallagher, and Greyson.

- 11.6 The **geographic dimension** of the markets defined in 11.1 is national.
- 11.7 The Commission in Decision 531 considered that there were two separate geographic markets for the gate and gate hardware market – one in the North Island and one in the South Island (para 222-223, pp.45-46). The applicant provides the following evidence to support the view that this market should be considered as a national market;
- 11.8 Rural resellers have gone through significant amalgamation and consolidation over the last five years. As a result these organisations cover larger geographical regions and, through centralised purchasing, increasingly source from national suppliers in order to present a consistent reseller brand image. Examples of this consolidation are:
- RD1 formed from amalgamation of New Zealand Dairy Company, Kiwi Dairy Company, Tui Dairy Company, and Northland Dairy Company;
  - Pyne Gould Guinness acquired and merged Reid Farmers and Southland Farmers into PGG;
  - CRT acquired Landbase and Greenfields;
  - Williams and Kettle acquired Fruitfed
  - Acquisition of Williams and Kettle by Wrightsons, and the subsequent merger of Wrightsons with Pyne Gould Guinness.

A table of rural supply stores for gates and gate hardware in New Zealand is as follows:

Rural Stores	Main Area	Approx. No. of Stores	Contact Person – Fencing Category Manager
RD1 Limited (Refer: <a href="http://www.rd1.com/">http://www.rd1.com/</a> )	National – predominant North Island	52	John Candy
Wrightson Limited (encompassing farm supplies stores of Wrightsons, Pyne Gould Guinness, and Williams and Kettle) (Refer: <a href="http://www.wrightson.co.nz/">http://www.wrightson.co.nz/</a> )	National	135	Alwyn Cole
Farmlands Trading Society Limited (Refer: <a href="http://www.farmlands.co.nz/">http://www.farmlands.co.nz/</a> )	North Island	31	John Stokes
Taranaki/King Country Farmers (Allied Farmers Limited) (Refer: <a href="http://www.alliedfarmers.co.nz/">http://www.alliedfarmers.co.nz/</a> )	North Island	15	Brian Edlin
CRT Society Limited (Refer: <a href="http://www.crt.co.nz/">http://www.crt.co.nz/</a> )	South Island	23	Grant Smith
Goldpine Industries (Refer: <a href="http://www.goldpine.co.nz/">http://www.goldpine.co.nz/</a> )	South Island	19	Ken McMike
Other Stores (of significance)	Throughout	45	
Total		320	]

11.9 The above table shows 6 significant rural supply organisations in New Zealand with more than 10 stores as part of their affiliation. These 6 organisations represent approximately 85% of the stores available for reasonable level of merchandising gates and gate hardware.

11.10 The Commission noted that rural resellers located in the South Island have historically paid more for gates and gate hardware than resellers located in the North Island (Decision 531, para 222, p.45). It is acknowledged that freight will be more expensive when shipping between islands, and where practical a supplier will seek to recover this from the customer, however;

- a. Rural resellers who operate in both islands, have traditionally sourced their gate hardware requirements nationally from the one supplier. [ ]

11.11 In summary, the applicant will proceed on the basis of the following market:

- the manufacture and wholesale supply of rural gates and gate hardware in New Zealand.

## Differentiated Product Markets

### 12 Standardised or Differentiated?



- 12.1 Whilst there are some minor physical product differences it is the applicants view that both rural resellers and end user farmers buy largely on price, rather than brand. This is supported by past market activity where large rural resellers/customers have changed suppliers of gates and gate hardware [ / ]. This view was supported by the Commission in Decision 531 determined that ‘gates are largely an undifferentiated commodity product where there appears to be few issues involved for a large rural reseller in building a second brand’ (para 605, p.101).

### **13 Characteristics of Differentiation**

- 13.1 There are minimal physical differences in gates between manufacturers. Participants generally carry a range of gates based on structural strength and then sizes within that.
- 13.2 A different style of gate is generally used more in the South Island based on long established farming traditions in the region where the gate is infilled with mesh as opposed to the bar gate. Cyclone and Hurricane tend to carry a wider range of these products likely to be the result of a cost structure advantage through previous and current in-house manufacture of mesh raw material and their current reseller customer base being more concentrated in the South Island requiring them to carry this wider range.
- 13.3 There are minor differences in gate hardware, some of which are protected by patents, which attempt to differentiate based on quality or ease of application/use.
- 13.4 Currently all the participants, with the exception of Tru-Test only have a single product/brand strategy to the rural resellers for gates and gate hardware. Tru-Test uses both the Cyclone brand and the PEL brand to market gate hardware and are therefore able to offer rural resellers additional choice in brand/product and a point of difference with those resellers they wish to differentiate themselves from in the gate hardware market. However, it does not appear that Tru-Test have utilised an exclusive brand for any reseller as has been done with Wrightsons (rural reseller) and the Speedrite electric fence brand.

## **VERTICAL INTEGRATION**

### **14 Vertical Integration Between Firms at Different Functional Levels**

- 14.1 The proposal will not result in vertical integration between participants involved at different functional levels. Both Greyson and Gallagher are involved at the same functional level in both the manufacture and wholesale supply of rural gates and gate hardware.

### **15 Previous Involvement in Acquisitions**

- 15.1 In respect of the relevant markets identified above the following have been notified to the Commission;

- (a) Application by Gallagher for clearance to acquire Tru-Test Corporation, dated 19<sup>th</sup> May 2004. Tru-Test also competes in the manufacture and wholesale supply of gates and gate hardware, through Cyclone. The Commission in Decision 531 considered the acquisition was ‘unlikely to lead to a substantial lessening of competition in... the North Island gates market; the South Island gates market...’ (para 20, p.10).
- (b) A second application by Gallagher to acquire Tru-Test dated 15<sup>th</sup> November 2004, the subject of the Commission’s Decision 545;
- (c) [ ]

15.2 Gallagher has been advised that neither Greysons nor any interconnected body corporate has sought clearance from the Commission nor have they undertaken any acquisition of assets or a business or shares in the last three years in the market identified in questions 11.11.

### PART 3 : CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

#### 16 Existing Competitors

16.1 Current estimated market share information (by sales volume) for the relevant markets is as follows in Table B:

Table B: Rural Gates and Gate Hardware Market Share

Company	\$M	%
Gallagher	[ ]	[ ]
Tru-Test		
Hurricane		
Greysons		
Walker		
Other (Steel)		
Other (Wooden)		
Total Market	\$ [ ]	[ ]

Based on the market share estimates above the proposed acquisition falls within the safe harbours set out in the Commission guidelines.

16.2 Participants – Manufacturers and wholesale suppliers of gate and gate hardware product include:

- Gallagher – distributed under the brand Franklin;
- Tru-Test – distributed under PEL and Cyclone;
- Hurricane – distributed under the Hurricane brand;
- Greysons – distributed under the Greysons brand;
- Walker Industries (New Zealand) Limited (‘Walker’) – predominately gate hardware manufacturer, distributed under the ‘Hang-it’ brand.
- Other (Steel) / Other (Wooden) – the applicant estimates that 60,000 wooden gates and 50,000 steel gates are manufactured outside those participants listed, based on Franklin wooden, weld on, and bolt on gate hinges sold at an estimated [ ] market share and an assumed cost of [ ] per gate.

- Other Steel Gate Manufacturers include;
    - Tornado Industries Ltd – refer [www.tornadogates.co.nz](http://www.tornadogates.co.nz)
    - R D Leith (2001) Limited (from [www.ubd.co.nz](http://www.ubd.co.nz))
    - NZ Farm Tools Ltd (from [www.ubd.co.nz](http://www.ubd.co.nz))
    - Farm Engineering Services Limited (from [www.ubd.co.nz](http://www.ubd.co.nz))
    - Northland Metal Industries Limited (from [www.ubd.co.nz](http://www.ubd.co.nz))
- 16.3 The information in Table B is based on wholesale sales value. The market share estimates for the manufacture of gates and gate hardware have been determined using the information provided in paragraph 7 of this application. The competitor information provided in Table B (with the exception of Other, which are more likely direct sales to farmers) is estimated based on yard space allocations in rural resellers as a percentage of the total estimated account size and is considered to have a high level of accuracy.
- 16.4 Because the products are relatively undifferentiated, productive capacity is likely to be a more important consideration than sales in determining market power but more difficult to find a method of calculating. Based on excess capacity at Franklin, Gallagher estimate that all of the suppliers to rural resellers listed in 16.3 are significant enough to have the resources available to increase output beyond current production.
- 16.5 Current estimated market share has been used. No readily available data exists to provide this for the previous five years. Where significant, any changes to the market composition over the last five years is noted below;
- 16.5.1 [ ]
- 16.5.2 [ ]
- 16.5.3 Franklin formed the contract gate manufacturer for Hurricane relationship referred to in 7.2 [ ]. The contract manufacture relationship for gate hardware was formed [ ].
- 16.5.4 Cyclone was acquired by Tru-Test in November 2001
- 16.5.5 [ ]
- 16.5.6 [ ]

## Other Considerations

### Near Entrants

- 16.6 There are numerous light engineering firms and residential and industrial gate and fencing firms with the capital equipment and resources to make rural gates. From this a new entrant could then establish a gate hardware range e.g., Greysons have extended their range from gates into gate hardware in the last two years. Examples of such firms are included below, and are taken from the applicants application to the Commerce Commission for clearance to acquire Tru-Test Corporation dated 19<sup>th</sup> May 2004.
- Non rural gate manufacturers (source [www.ubd.co.nz](http://www.ubd.co.nz) gate manufacturers) such as:
    - Eric Moess Fencing Limited (Cambridge) (refer: [www.emfencing.co.nz](http://www.emfencing.co.nz);
    - Chaytor Fences Limited<sup>1</sup> (Tauranga); and
    - Tower Gates (1980) Limited (Carterton) (refer:: <http://towergates.com/>).

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<sup>1</sup> Address details: 90 Birch Avenue, Judea, Tauranga 3001. Telephone: (07) 578-6197, Fax: (07) 578-6197

- Stock handling equipment manufacturers (source [www.ubd.co.nz](http://www.ubd.co.nz) stock handling) such as:
    - Racewell Ltd (Te Kuiti) (refer: <http://www.racewell.co.nz/>);
    - Delta StockCrates Limited<sup>2</sup> (Fielding); and
    - Prattley Industries Limited (Temuka) (refer: <http://www.agritech.org.nz/prattley.shtml>).
  - Light engineering (source [www.ubd.co.nz](http://www.ubd.co.nz)) such as:
    - Kea Equipment (1999) Ltd – Hamilton (trailer manufacturers (refer: <http://www.keatrailers.co.nz/>);
    - Dornoch Farms Ltd<sup>3</sup> – Mosgiel (farm equipment manufacturers); and
    - Farm Engineering Services Ltd<sup>4</sup> - Te Awamutu (dairy shed manufacturers).
- 16.7 The Commission in Decision 531 noted the presence of a number of small engineering firms able to supply rural gates and gate hardware to farmers and noted 'there is some scope for farmers to source gates from a local firm or simply construct the gate themselves in the face of the combined entity either raising its price or reducing the quality of its service' para 607, p.102.
- 16.8 In addition to the above, the applicant also considers that the firms mentioned in 16.6 near entrants, would also be in a position to wholesale supply to rural resellers, as well as farmers as a constraint on the major suppliers.

### **Productive Capacity**

- 16.9 Productive capacity is not considered to be a barrier to entry for the near entrants listed above. The primary reason that these near entrants have not entered the market would be their inability to gain distribution through the rural resellers. With the consolidation of the rural reseller market (refer 11.9), there has been an increased trend for centralised purchasing, supporting fewer suppliers with national coverage to maximise buying advantage. A near entrant would likely have productive capacity to service one of the key rural resellers as a first or second tier supplier in a narrower product range within a short time period. From this base a larger product range and distribution network could be added to.

### **Imports**

- 16.10 The applicant considers that the ability to import provides some constraint where distribution channels exist or can be easily established.
- 16.11 Given that both Gallagher and Greyson currently export gate and gate hardware (refer ) it is feasible that offshore manufacturers (particularly Australia) could supply the New Zealand market. The list below identifies a sample of offshore suppliers whom could supply the New Zealand market.

#### **Australia**

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<sup>2</sup> Address details: 64-66 Washdyke Flat Road, Washdyke. Telephone: (03) 688-2274. Fax: (03) 688-2289.

<sup>3</sup> Address details: 11 McGlashan Street, Mosgiel 9007. Telephone: (03) 489-4286, Fax: (03) 489-4287.

<sup>4</sup> Address details: 116 Mahoe Street, Te Awamutu 2400. Telephone: (07) 871-7734, Fax: (07) 871-7792.

- Poplar Pastoral Australia – refer [www.poplarpastoral.co.nz](http://www.poplarpastoral.co.nz) . Australian farm gate hinging and fastening systems. Has established a web-site and contact details for New Zealand customers.
- Eltrak – elgate branded gate fittings refer [www.eltrak.com.au](http://www.eltrak.com.au)
- RMD Metal Products – manufacture Downee branded gate fittings in Australia refer [www.rmdmp.com.au](http://www.rmdmp.com.au)
- Smorgen Steel – rural gate manufacturers, refer [http://www.smorgonsteel.com.au/divisions/distribution\\_rural.cfm](http://www.smorgonsteel.com.au/divisions/distribution_rural.cfm)

#### Other Markets

- [ ]

#### Exports

16.12 The export figures for rural gate products of Gallagher and Greysons are;

- Gallagher – [ ] for the twelve months ended 30th June 2005 to Australia, North America, Europe/UK.
- Greysons – [ ] for the twelve months ended 30<sup>th</sup> September 2005. Includes [ ]

#### Greyson as a Competitor

16.13 [ ]

#### Conditions of Expansion

#### 17 Market Conditions

- 17.1 Any significant expansion is likely to be the result of gaining access to a rural reseller that the participant did not have previously or a change in preferred supplier by a reseller. The applicant considers that all of the existing competitors would be able to expand their current offerings to another reseller with none of the market conditions listed likely to operate as constraints.
- 17.2 In Commerce Commission Decision 531, the Commission found that in that decision Hurricane would represent a ‘strong constraint on the combined entity’ para 599, p.101 and that Walker would be ‘likely to constrain the combined entity’ and be able to ‘offer rural resellers a full range of gate hardware as an alternative to the combined entity’ para 606, p.101.

#### 18 Existing Businesses Which Could Expand

- 18.1 Refer 17.1 – Expansion by all participants in their current product range is likely to be by way of either increasing utilisation of existing capacity or through the expansion of existing capacity.

#### 19 Conditions Influencing Expansion

- 19.1 The applicant believes there are no market conditions that are considered likely to impede the business decision of any participant to increase manufacture and distribution other than prevailing economic conditions and the extent of the additional distribution obtained for this increased output.

## **20 Expected Timeframe For Manufacture and Distribution to Increase**

- 20.1 Existing competitors are likely to be able to increase supply of their existing product range using existing capacity within 1-3 months. Where there is no such existing capacity, additional capacity could be easily achieved by expanding existing premises/equipment, relocating or opening and operating an additional site, or outsourcing production. This could be expected to take approximately 3-6 months.

## **21 Extent to Which the Possible Competitive Response of Existing Suppliers would Constrain Gallagher**

- 21.1 The applicant considers rural resellers are increasingly placing more weight on price and product range in the vendor selection process and decreasing value on other supplier services and supplier brand value.
- 21.2 With increasing consolidation by rural resellers, the rural resellers are placing more emphasis on building their brand awareness to ensure customer loyalty to their organisation, irrespective of whose products they choose to merchandise. As a result, the brand value of the manufacturer/supplier is decreasing in importance to some of the resellers and as a consequence rural resellers are more prepared to adopt new brands and sole brand supply.
- 21.3 The combined entity would therefore be constrained by the rural resellers option to allow competitors new or additional shelf space and then lend them other support in building distribution.

## **22 Extent Overall to Which the Conduct of Existing Competitors Would Constrain Gallagher**

- 22.1 The countervailing power of the rural resellers, which has been built through their market consolidation, along with the absence of barriers to expansion (both output and product range expansion) means that the merged entity would naturally be constrained by the conduct of existing competitors in the market.

## **Coordinated Market Power**

### **23 Market Characteristics that Would Facilitate or Impede Co-Ordination Effects.**

- 23.1 The applicant submits that the proposed acquisition would not result in a change in the relevant market that will facilitate possible coordination between competitors. Rather, there are various characteristic that would impede coordination as follows:
- (a) Price of gates and gate hardware is relatively price elastic and as a consequence impedes co-ordination efforts;
  - (b) absence of an industry association for gates and gate hardware;
  - (c) the markets increased expectation of 'next day' delivery and 'delivery on time and in fill' does not facilitate colluding with competitors on output restrictions;

- (d) the presence of small and fringe competitors and the ability of these competitors to expand;
- (e) the countervailing market power, through concentration and account size, of the key rural resellers;
- (f) the relative ease and speed of new and near entrants, including imports, for gates and gate hardware;
- (g) the absence of any history of price fixing or other collusive behaviour between participants in the gate and gate hardware market, to the knowledge of the applicant.

## **24 Market Characteristics Facilitating or Impeding Monitoring and Enforcement of Co-ordinated Behaviour**

24.1 There are a number of market characteristics that would, post acquisition, facilitate the monitoring and enforcement of coordinated behaviour by market participants as follows:

- (a) Seller concentration for gates and gate hardware to rural resellers is relatively high. The smaller number of firms that have to be monitored highlights coordinated activities more quickly.
- (b) The nature of sales by the participants is generally small, frequent orders to resellers based on pre-agreed pricing reviewed annually. Any changes to pricing quickly become industry knowledge and are given in advance of implementation.
- (c) With the exception of Hurricane, there is no potential through vertical integration forward that would prevent price cuts being concealed in upstream reseller markets. Such opportunity if used by Hurricane is mitigated by other rural resellers and the need to remain competitive to end-users relative to them.
- (d) The market for gates and gate hardware is a mature market with slow growth, and can be cyclical based on farmer income in that period. Market share gains by participants generally translate to market share losses for other firms.
- (e) The cost structures between firms producing like products are considered to be similar.
- (f) Trade price lists are generally visible in the market, but specific discounts and rebates offered to each reseller are less visible. However, due to the concentration in the reseller industry any significant or unjustified variations are easily detected.

## **25 Details of Price Co-Ordination, Price Matching, or Price Following by Market Participants**

25.1 The applicant is not aware of any price co-ordination, price matching or price following by market participants.

## **26 Why the Acquisition of Greyson Will Not Increase the Risk of Co-ordinated Behaviour in the Market Place.**

- 26.1 Gallagher has had a long association (65 years) with the rural industry and has a reputation as a responsible market player with high integrity. Brand preservation and reputation are key drivers of Gallagher activity.
- 26.2 Gallagher has a history of acting independently of its competitors' activities and strategy. Rather, Gallagher strives to build on its position as a technology, product and market leader worldwide, - independent of competition.
- 26.3 Further, the proposed acquisition will not increase the risk of co-ordinated behaviour because of the effect of the characteristics of the relevant market detailed in paragraphs 23.1 and 24.1.
- 26.4 The rural resellers have long been partners with Gallagher in the distribution of its product range to rural end-users, and are critical to the future success of Gallagher in New Zealand. The countervailing power by the rural resellers will deter any coordinated behaviour not in the best interests of the resellers and their customers.

#### **PART 4 : CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION**

##### **27 Market Conditions that would Act as a Barrier to the Entry of New Competitors**

- 27.1 Refer comments given in paragraph 16.9 for near entrants which outlines a possibility of how a new entrant may come to market.
- 27.2 Provided the rural reseller supports the new entrant through giving access to distribution the applicant does not believe there are any significant barriers to entry for a new competitor. Even less so if the new competitor was not required to have a complete range immediately but did so through organic growth in their product range.
- 27.3 A new competitor could look to import a range of products and/or purchase a lot of the required capital equipment second hand using general purpose engineering equipment and then as volumes grew look to more specialised automated equipment. To highlight the relatively low capital cost the [ ]

##### **28 Businesses which could supply the market**

- 28.1 Businesses which do not currently supply the market but could do so through investing in new facilities or diverting production to New Zealand include;
  - (a) Overseas manufacturers and distributors of gates and gate hardware e.g.,
    - (i) Smorgon Steel Rural - Australia (refer <http://www.smorgonsteel.com.au/rural/locations/index.cfm> );
    - (ii) OneSteel Reinforcing – Australia (refer [http://www.onesteel.com/images/db\\_images/productspecs/Ironbark\\_Rural\\_Mesh.pdf](http://www.onesteel.com/images/db_images/productspecs/Ironbark_Rural_Mesh.pdf) ); and
    - (iii) Poplar Pastoral – Australia (gate hardware) – refer <http://www.poplarpastoral.co.nz/>.
  - (b) Near entrants – manufacturers of non rural gates, cattle handling equipment, light engineering equipment – refer 16.6;



- (c) Raw material suppliers integrating forward (as with the acquisition of Hurricane by Steel and Tube). Examples include:
  - (i) Fletcher EasySteel; and
  - (ii) Eagle Wire Products Limited.
- (d) Other key suppliers to the rural resellers, outside the relevant markets, who have the in-field support staff, and resources to enter the market; and
- (e) Rural resellers being involved directly, or sourcing from any combination of the above to create a 'house' brand and utilising their existing in-field support staff. That is, rural resellers integrating backwards.

## **29 Conditions of Entry Influencing Business Decisions to Enter**

- 29.1 None of the conditions of entry would adversely influence a decision to enter the market should the right incentives be present. The primary influence is considered to be access to distribution, which is in control of the resellers.

### **Likelihood, Sufficiency and Timeliness of Entry**

- 30 For new entrants supply through third party sourcing and rebranding could be achieved within 3-6 months. In-house design and manufacture could follow depending on resources available and distribution/additional sales gained.
- 31 The existence of current fringe competitors, generally selling direct to farmers, reinforces that a new entrant would consider entry profitable at current prices.
- 32 Gates and gate hardware is relatively standardised with price being an important element. A new entrant could compete on price with smaller independent rural resellers and expand in product range and distribution from there. It is the threat of new entrants and their expansion in the larger rural resellers that constrains the behaviour of the already established larger participants. Smaller fringe competitors still cause market participants to react to the benchmarks that they set.
- 33 A de novo entry in gates and gate hardware can be achieved without significant investment or skill acquisition costs and entry would not be constrained by the factors listed.
- 34 De novo entry for gates and gate hardware is likely to be 3-12 months.
- 35 The threat of de novo entry would act as a constraint to the merged entity, but acknowledged to a lesser extent than the threat of new competitors from the sources listed in 28.

## **PART 5 : OTHER POTENTIAL CONSTRAINTS**

### **CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS**

36 [ ]

[


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- 37 There exists the possibility that significant raw material providers could integrate forward to secure distribution of their products.
- 38 To the best of the applicants knowledge, the market for all the raw materials listed is a satisfactorily competitive market with sufficient choice amongst suppliers.

### **CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS**

- 39 The key acquirers of goods and services supplied by the merged entity are the rural resellers listed in the table in 11.8.
- 40 Ownership of rural resellers varies from private firms, to public companies and member cooperatives.
- 41 The extent to which conduct of acquirers constrain the merged entity is outlined as follows:
- 41.1 There has been significant consolidation in the rural reseller market. The top 6 rural resellers represent approximately 85% of the material reseller stores and the gain or loss of any of these key customers by a participant creates a competitive environment which constrains the merged entity;
- 41.2 As a result of this consolidation the rural resellers have rationalised their purchasing to generally one, sometimes two larger competitors, with a relatively small amount, if any, of fringe competitors gate and gate hardware;
- 41.3 The resulting outcome is that the relatively few larger competitors, with such few customers, have significant sales to gain or loose through the change in any rural reseller support.
- 41.4 The applicant considers that some rural resellers are increasingly placing more weight on shorter term profitability in the vendor selection process and decreasing value on other elements of the suppliers offering e.g., on-farm support, long term product innovation, and manufacturer brand value.
- 41.5 Rural resellers, as a result of consolidation, are increasing their activity on building their brand awareness/value to ensure customer loyalty to their organisation. This loyalty by the end-farmer to the reseller reduces the need to merchandise all manufacturers brands and allows resellers to reduce the number of suppliers with less risk of their customers going elsewhere if their preferred brand is not merchandised at their preferred reseller.
- 41.6 The applicant considers that the conduct of acquirers can and would constrain the merged entity through a consolidated rural reseller market, strong reseller branding, and the resulting countervailing power of the resellers.

THIS NOTICE is given by **Gallagher Group Limited**

The company hereby confirms that:

- \* all information specified by the Commission has been supplied;
- \* all information known to the applicant which is relevant to the

consideration of this application/notice has been supplied;

\* all information supplied is correct as at the date of this application/notice.

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this                      day of                      2005.

Signed for and on behalf of  
Gallagher Group Limited

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William M. Gallagher  
Chairman and Chief Executive Officer

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

JB108303

[The contents of all Appendices are confidential]