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COMMERCE COMMISSION

Decision No. 556

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

PYNE GOULD GUINNESS LIMITED

and

WRIGHTSON LIMITED

The Commission:	Paula Rebstock David Caygill Denese Bates Peter Taylor
Summary of Application:	An application seeking clearance pursuant to s66(1) of the Commerce Act for the merger of Pyne Gould Guinness Limited and Wrightson Limited.
Determination:	Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed merger.
Date of Determination:	31 August 2005

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EXECUTIVE SUMMARY

Determination

1. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed merger between Pyne Gould Guinness Limited and Wrightson Limited.

Market Definition

2. The Commission considers it appropriate, for the purposes of the analysis, to define the following markets:

   - regional markets for saleyard facilities (the saleyard facilities markets);
   - the South Island market for livestock trading (the livestock trading market);
   - the national market for wool handling services (the wool handling market);
   - regional markets for the retail supply of agricultural and horticultural supplies (the rural supplies markets);
   - the national market for the retail supply of fertiliser (the fertiliser market);
   - the national market for velvet trading (the velvet market);
   - the national market for the production or importation and wholesale or retail supply of wheat seed (the wheat seed market);
   - the national market for the production or importation and wholesale or retail supply of barley seed (the barley seed market);
   - the national market for the production or importation and wholesale or retail supply of oat seed (the oat seed market);
   - the national market for the production or importation and wholesale or retail supply of ryegrass (the ryegrass seed market);
   - the national market for the production or importation and wholesale or retail supply of clover seed (the clover seed market); and
   - the national market for the production or importation and wholesale or retail supply of brassica seed (the brassica seed market).

Counterfactual scenario (without the acquisition)

3. The Commission considers that the appropriate counterfactual scenario in this case is the status quo.

Competition Analysis

The Saleyard Facilities Market

4. The Commission is satisfied that the merger, while having the effect of aggregating the only two shareholdings in a few South Island saleyards, would not have a material effect on the level of saleyard-on-saleyard competition. Any market power currently held by each of these saleyards would not be increased by the acquisition.

The Livestock Trading Market

5. The proposed merger would result in the aggregation of the two largest participants in the South Island livestock trading market, facilitating between them around [ ]% of all cattle sales and [ ]% of all sheep sales. However, it is considered that the merged entity would be constrained by the following:

   - thirty four independent livestock firms, albeit many of which are small with few agents;
   - low entry barriers and the ability of firms in the market to expand quickly, often by persuading the agents of other firms to switch; and
   - the very significant role of meat companies in the South Island which acquire prime stock for processing and store stock on behalf of their shareholders, utilising their own agents in the field.

6. Having regard to these factors, the Commission is satisfied that the proposed merger would not result in a substantial lessening of competition in the South Island market for livestock trading services.

The Wool Handling Market

7. The Commission is of the view that there would be little change, in competition terms, between the factual scenario and the counterfactual scenario. Accordingly, the Commission is of the view that a substantial lessening of competition is unlikely to occur in the wool handling market.

The Rural Supplies Market

8. The Commission has considered the nature and degree of competition in the rural supplies market and considers that the presence of independent rural supplies stores and the increasing possibility for 'off-site' purchases will constrain the combined entity in the factual scenario.

9. The Commission has also had particular regard to the existing supply arrangements for agricultural and horticultural chemicals and considers that there is no possibility for the supply of these chemicals to be foreclosed in any way as a result of the merger.

10. Accordingly, the Commission considers that the merger, in respect of agricultural and horticultural supplies, is unlikely to lead to a substantial lessening of competition in the factual scenario compared to the counterfactual scenario.

The Fertiliser Market

11. The Commission is of the view that the ability to purchase fertiliser direct from Ravensdown, an ability which will remain unchanged by the merger, is sufficient to constrain the combined entity in the fertiliser market post merger. As such, the Commission considers that a substantial lessening of competition is unlikely to result in the fertiliser market.

The Velvet Market

12. The Commission is of the view that the degree of existing competition in the velvet market is sufficient for the Commission to be satisfied that the merger is unlikely to substantially lessen competition.

The Wheat Market

13. The Commission is of the view that the degree of existing competition, including the presence of near competitors in the wheat market is sufficient to prevent a substantial lessening of competition in this market.

The Oat Market

14. The Commission is of the view that the degree of existing competition, including the presence of near competitors in the oat market is sufficient to prevent a substantial lessening of competition in this market.

The Barley Market

15. The Commission is of the view that due to the degree of existing competition in the barley market a substantial lessening of competition is unlikely to result as a consequence of the merger.

The Ryegrass Market

16. The Commission is of the view that the merger will not create opportunities for the combined entity to foreclose the possibilities of conducting research and development with AgResearch or distort the final distribution of seed at the retail level.
17. The Commission is also of the view that there is likely to be no lessening of competition in respect of the sale of AR37 inoculated grass post merger given the degree of competition it will face from the established incumbent endophyte, AR1.
18. In conclusion, the Commission is of the view that there is a sufficient degree of existing competition within the ryegrass market, considering that barriers to expansion are low, such that a substantial lessening of competition is unlikely to result in the factual scenario.

The Clover Market

19. The Commission is of the view that given the state of existing competition, the ability to expand production and the presence of near entrants a substantial lessening of competition would be unlikely to result in the clover market as a consequence of the merger.

The Brassica Market

20. The Commission considered the nature and strength of the existing competition from other brassica suppliers and from other winter feed options. The Commission also considered the scope for potential competition and concluded that these considerations, in aggregation, were sufficient for the Commission to be satisfied that a substantial lessening of competition in the brassica market was unlikely to result from the merger.

Overall Conclusion

21. The Commission has analysed the state of competition in the factual scenario and the counterfactual scenario in all of the relevant markets and considers, for the

reasons stated above, that a substantial lessening of competition is unlikely to result from the proposed merger.

22. Accordingly, the Commission determines to give clearance to the Application of Pyne Gould Guinness Limited and Wrightson Limited to merge.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 5 July 2005. The notice sought clearance for Pyne Gould Guinness (PGG) and Wrightson Limited (Wrightson) to merge their entire businesses.

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice under s 66(1) 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 Applicants. Accordingly, a decision on the Application was required by 31 August 2005.
3. The Commission's approach to analysing this 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 has, or is 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.
5. The substantial lessening of competition test was considered in Air New Zealand & Qantas v Commerce 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.[2]

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. 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.
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.

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[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.
[2] *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

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.

THE PARTIES

Key Parties

Pyne Gould Guiness Limited (PGG)

11. PGG is based in Dunedin, and is a rural servicing provider to the South Island agricultural sector. PGG also has limited involvement in the North Island, and a small presence in Australia.
12. PGG is listed on the New Zealand Stock Exchange, with 55.49% of the company's share capital held by Pyne Gould Corporation Limited (PGC). PGC is a widely held company also listed on the New Zealand Stock Exchange. PGC will hold approximately 22% of PGG Wrightson, post-merger.
13. PGG's core services include:
    - Rural Supplies: PGG operates 43 rural supplies stores throughout the South Island, and also has a store in Hastings. These stores supply a wide range of farmer consumables including fencing, apparel, equipment, chemicals, animal health products, fertiliser, seeds and leisure goods.
    - Wool: PGG provides wool brokering services in the South Island.
    - Livestock Trading Services: PGG employs 100 agents who operate throughout the South Island and, more recently, PGG has expanded into the North Island by employing 10 ex-Williams & Kettle agents.

- Seeds: PGG seeds has a particular emphasis on the breeding and distribution of cereals, turf & amenity grasses; pasture; commodity forage trading; seed production; seed processing and research and development.
- Insurance: PGG offers a variety of insurance services (pursuant to a power of attorney from Vero).
- Real Estate: PGG specialises in rural real estate, with branches located in various centres throughout the South Island.
- Bloodstock: Through its Standard Bred division, PGG conducts the sale of Standard bred horses.
- Finance: PGG offers a comprehensive range of financial services specifically designed to meet the requirements of farmers.
- Velvet: PGG is involved in the marketing of velvet through its Velpool division.
- Irrigation: PGG moved into the irrigation and pumping area in 2003. Operating predominantly in the South Island, PGG irrigation and pumping is involved in irrigation system design, construction, installation and maintenance.

Wrightson Limited (Wrightson)

14. Wrightson is a national rural servicing company based in Porirua. Wrightson recently acquired Williams & Kettle Limited (W&K) which was the subject of a Commerce Commission investigation (see Previous Decisions section). Williams and Kettle owned and operated a number of horticultural supply stores in the North and South Islands, trading under the name Fruitfed.
15. Wrightson is listed on the New Zealand Stock Exchange, with 50.1% of the company's share capital held by Rural Portfolio Investments Limited (RPI). RPI will hold approximately 30% of PGG Wrightson, post-merger.
16. Wrightson's core services include:
    - Rural and Horticultural Supplies: Wrightson operates 77 rural supplies stores throughout the country, supplying all manner of farm supplies and equipment including animal nutrition products, grain and seed, chemicals, clothing, fuel, fencing, machinery, and leisure goods. In addition, Wrightson operates 35 Williams & Kettle and Fruitfed branded stores throughout New Zealand.
    - Wool: Wrightson operates nationwide wool brokering services, and has a 35% shareholding in The New Zealand Merino Company Limited.
    - Livestock Trading Services: Wrightson manages a variety of relationships between farmers, meat processors, exporters and breeders (including the buying and selling of livestock on behalf of clients at auction, the facilitation and development of supply contracts, and the facilitation of the sale of velvet by electronic tender).
    - Seed and Grain: Wrightson offers a wide variety of seed and grain products for New Zealand climates. Wrightson is also involved in agricultural research in New Zealand, with a focus on plant genetics, seed enhancement and forage animal performance.

- Insurance: Wrightson offers insurance solutions with particular emphasis on the rural sector through an alliance with Aon New Zealand Limited.
- Velvet: Wrightson operates a nationwide velvet pooling operation.
- Real Estate: Wrightson specialises in rural real estate throughout New Zealand.
- Financial Services: Wrightson provides a comprehensive range of financial services including loans and credit facilities.

Agricom Limited (PGG/Agricom)

17. PGG/Agricom, established in 1986, is a New Zealand seed company which specialises in pasture and forage seeds.
18. PGG/Agricom is one of three parties to the Ryegrass Endophyte Group Agreement (with Wrightson and AgResearch), a collaborative research arrangement in the area of ryegrass endophytes. PGG/Agricom also has an exclusive arrangement with AgResearch in respect of ryegrass breeding.
19. PGG/Agricom was acquired by PGG in June 2005.

Other Relevant Parties

Rural Livestock Limited (Rural Livestock)

20. Rural Livestock are Canterbury based stock and station agents. It currently has 14 agents and is the only company, other than Wrightson and PGG, which is selling at Canterbury Park saleyard.

Federated Farmers of New Zealand Inc. (Federated Farmers)

21. Federated Farmers is a rural sector organisation representing more than 18,000 farmers and farming families nationwide.
22. Federated Farmers has specific divisions dedicated to represent specific interests in meat and wool, mohair, rural butchers, high country, beekeeping and grains. It is also involved with policy development and lobbying.
23. Federated Farmers also has specific regional divisions to represent the interests of farmers in different geographic locations throughout New Zealand.

Allied Farmers Limited (Allied Farmers)

24. Allied Farmers is a rural servicing company primarily in the North Island. As well as providing livestock trading services Allied Farmers is involved in other areas including wool handling services, financial services and real estate services.
25. Allied Farmers also has a total of 15 rural merchandise stores in the King Country, Waikato and Taranaki regions.

CRT Limited (CRT)

26. CRT is a farmer co-operative operating in the South Island specialising in farm related inputs. CRT operates a number of rural supplies stores throughout the South Island and also negotiates commercial arrangements with individual suppliers on behalf of its shareholders. As well as rural supplies stores, CRT is also active in rural real estate.

RD1 Limited (RD1)

27. RD1 is a wholly-owned subsidiary of Fonterra Co-operative Group Limited. RD1 operates a number of rural supplies stores nationwide although these stores are predominately in the North Island. Currently, there are five RD1 stores in the South Island. As a subsidariy of Fonterra, RD1's primary focus is towards its dairy farming shareholders although its stores do cater for the wider farming community.

Elders New Zealand Limited (Elders)

28. Elders has operated in New Zealand since 1984 and is predominantly in the North Island. [ ].

29. Elders has access to 24 North Island saleyards through ownership or license agreements and has over 80 livestock agents.

30. Elders has a merchandise store in Taranaki and offers supply of a few items on a New Zealand wide basis including fertiliser.

Specialty Grains and Seeds NZ Limited (Specialty Seeds)

31. Specialty Seeds is a retailer of a range of seeds, including ryegrass, clover and brassica seeds, as well as a number of cereals and grains such as wheat. Specialty Seeds is also involved in the provision of forage and seed related advice.

Peter Cates Limited (Peter Cates)

32. Peter Cates is a grain and seed company based in Canterbury and was established in 1974. It is involved in all areas of seed and in other areas such as chemicals and fertiliser. As well as being involved in retailing seed domestically it is also involved in seed multiplication for overseas markets.

33. Peter Cates is 20% owned by Germinal Holdings Limited, a large international seed company.

New Zealand Agriseeds Limited (Agriseeds)

34. Founded in 1987, Agriseeds is a New Zealand seed company that focuses on pasture seeds. Agriseeds is owned by the Royal Barenbrug Group which has a large international presence in seeds.

35. Agriseeds operates at the wholesale level selling its seed through independent seed retailers and through chains such as RD1, CRT and Wrightson. It has a number of ryegrasses, clovers, fescue grasses and grains in its portfolio.

Cropmark Seeds Limited (Cropmark)

36. Cropmark seeds is a seed company based in Canterbury that was incorporated in 1999. It has a plant breeding operation with a particular focus on ryegrass.

37. It has a number of products in its portfolio, including varieties of ryegrass, clover, chicory, brassica, and it is particularly strong in barley.

AgResearch Limited (AgResearch)

38. AgResearch is a Crown Research Institute and has the objectives of underpinning the sustainability and profitability of New Zealand’s pastoral sector, establishing a range of biotechnologies and systems and exporting those where appropriate.

39. AgResearch typically undertakes scientific research in conjunction with industry participants and is a party to the Ryegrass Endophyte Group Agreement with Wrightson and PGG/Agricom. It has a [ ]% ownership stake in the intellectual property developed by that group.

40. Research and development in the area of grass seed cultivars is done by Grasslanz Limited (Grasslanz) in Palmerston North, which is owned by AgResearch.

The New Zealand Institute for Crop and Food Research Limited (Crop and Food)

41. Crop and Food is a Crown Research Institute which undertakes research in the areas of sustainable land and water use, high performance plants, personalised food, high value marine products, biomolecules and biomaterials.

42. In respect of plant development Crop and Food undertakes research into the development of arable and fodder crop cultivars and issues licences to industry participants to market these.

DLF-Trifolium A/S (DLF)

43. DLF is based in Denmark and is the largest producer in the world of clover and ryegrass seed. DLF entered New Zealand in October 2004 and currently has [ ] of seed planted in New Zealand for multiplication purposes.

44. DLF informed the Commission that it [ ]

Ravensdown Fertiliser Co-operative Limited (Ravensdown)

45. Ravensdown is one of the two large fertiliser companies in New Zealand. It is a co-operative that sells directly to customers rather than through retail outlets.

46. Ravensdown also supplies a number of other products and services, including Agrochemicals, AgLime, drenches and soil analysis.

Ballance Agri-Nutrients Limited (Ballance)

47. Ballance is one of the two large fertiliser companies in New Zealand. Ballance has three phosphate manufacturing plants based in Mount Maunganui, Invercargill and Whangarei. It also operates an ammonia urea plant at Kapuni, Taranaki.

48. Ballance employs 450 people, sells 1.3 million tonnes of product annually with an annual turnover of $350 million.

New Zealand Grain and Seed Trade Association Incorporated (NZGSTA)

49. The NZGSTA is an industry body that exists to represent its members, totaling over 80 companies, all of which are involved in the New Zealand grain and seed industries.

Southstock Limited (Southstock)

50. Southstock is a stock and station agent based in Invercargill.

SouthWest Livestock (2004) Limited (SouthWest)

51. SouthWest is a stock and station agent based in Gore.

H&T Agronomics Limited (H&T)

52. H&T Agronomics was established three years ago and is a retailer of a range of seeds, including ryegrass, clover and brassica seeds, as well as a number of cereals and grains such as wheat. H&T also specialises in the provision of agronomic advice.

Tectra Holdings Limited (Tectra New Zealand)

53. Tectra New Zealand provides wool appraisal services and market information to wool growers, traders and processors.

AgriQuality Limited (AgriQuality)

54. AgriQuality is a State Owned Enterprise that is focussed on quality assurance and biosecurity services at all points in the food chain from production through to end consumption.

55. AgriQuality provides a number of certification services designed to identify products that are safe and free of contaminants.

Pacific Seeds Pty Limited (Pacific Seeds)

56. Pacific Seeds is a seed company based in Australia and was established in 1962. It markets its products through its subsidiary company in New Zealand.

57. Pacific Seeds is involved in corn, maize, wheat, forage and other seeds and until recently had an ownership link with Advanta seeds in the United Kingdom.

58. Pacific Seeds currently supplies roughly [ ] of brassica seed into the New Zealand market and has a relationship with PGG/Agricom in respect of forage grasses in Australia.

59. [ ].

Stevens Seeds (NZ) Limited (Stevens Seeds)

60. Stevens Seed is a seed company based in Canterbury which undertakes multiplication for international seed companies and also sells seed into the domestic New Zealand market.

61. It has an exclusive arrangement with RAGT/Joordans and currently markets two of its brassica products under licence. Stevens Seed currently supplies roughly [ ] of rape and [ ] of turnip seed into the New Zealand market each year.

62. Stevens Seed also has a white clover, red clover, perennial ryegrass, Italian ryegrass and hybrid ryegrass in its portfolio.

Seed Production NZ Limited (Seed Production)

63. Seed Production is a Mid/South Canterbury based seed company that specialises in supplying seed, fertiliser, agricultural chemicals and management advice for agricultural crops.

64. Seed production employs 14 staff in New Zealand and has an involvement in forage grass and crops as well as turf seed. It markets around [ ] of Burley kale in New Zealand and exports roughly [ ].

Advanta Seeds UK Limited (Advanta)

65. Advanta is heavily involved in plant breeding and research and development. It breeds and markets a number of cereals, forage grasses, fodder crops, pulses, amenity grasses and a number of other products.

66. Advanta brassica seed is currently marketed in New Zealand by Pacific Seeds. Until recently Advanta and Pacific Seeds had an indirect ownership link.

Saaten Union GmbH/Petersons (Petersons)

67. Petersons was established in 1965 with a focus on research, marketing and the development of breeding programmes. Petersons has a particular focus on cereal products and, although not its primary focus, it has some fodder crops in its portfolio.

68. Brassica seed from Petersons is currently being marketed in New Zealand by Wrightson.

Germinal Holdings Limited (Germinal Seeds)

69. Germinal Seeds was established in the United Kingdom in 1983 and specialises in cereal and fodder seeds. It is a large international company with an established presence in many countries worldwide.

70. Germinal Seeds has a reciprocal arrangement with Wrightson in relation to the supply of brassica seed with Wrightson marketing Germinal's seeds in New Zealand, South America and elsewhere.

71. Germinal Seeds has a 20% ownership in Canterbury based Peter Cates Limited.

Royal Barenbrug Group (Barenbrug)

72. Barenbrug, founded in 1904, is an internationally operating seed company, headquartered in the Netherlands, specialising in plant breeding, seed production and marketing.

73. It conducts plant breeding worldwide and has a portfolio of in excess of 300 varieties which are also marketed on a worldwide basis.

74. Barenburg operates in New Zealand through its subsidiary, Agriseeds.

Game Industry Board/Deer Industry New Zealand (DINZ)

75. DINZ is an industry body tasked with promoting and assisting the orderly development of the deer industry. It represents the interests of producers and processors of deer and deer related products including velvet and venison.

PREVIOUS DECISIONS

76. The Commission has assessed the degree and nature of competition in the agricultural sector on a number of occasions.

77. In respect of the livestock industry the Commission considered the merger of Wrightson NMA Limited (now Wrightson) and Dalgety Crown Ltd in 1986 (*Decision 172*)[3]. The Commission issued an order under the Commerce Act 1975 permitting the acquisition subject to behavioural conditions that it was intended would facilitate entry to and participation in livestock and wool auction facilities. Wrightson subsequently did not comply with all of the conditions. Although *Decision 172* remained in force subsequent to the passing of the 1986 Commerce Act, the Commission did not have the jurisdiction to enforce conditions or consents pursuant to the 1975 Act. That jurisdiction lay with the Secretary of Commerce.

78. Between 1990 and late 1992 the Commission received complaints against Wrightson and Elders from livestock companies which alleged they had been

[3] Commerce Commission, *Decision 172: Wrightson NMA Limited/Dalgety Crown Limited* 27 August 1986.

denied access to saleyards in breach of the *Decision 172* conditions and the 1986 Act. The Commission concluded that a breach of the 1986 Act had occurred. It entered into a settlement with Wrightson and Elders whereby agents would be granted access to saleyards upon meeting criteria of financial standing and payment to the yard owners of 1% of the value of stock sold.

79. Between 1993 and March 1996 the Commission received complaints from livestock agents alleging that JF Jones and Wrightson in the Waikato region and Wrightson and Elders in the Auckland region had been refusing access to their saleyards in breach of the Act. In an April 1996 Investigation Report the Commission stated that it was unable to enforce the conditions of access set out in *Decision 172* and that the 1993 administrative settlement was unenforceable as the statutory time limit had expired.

80. In the 1996 Investigation Report the Commission concluded that there was not a separate market for livestock auctioning services or for access to saleyards and defined a market for livestock trading services. It also concluded that due to the high level of competition in this market, there was no person in a dominant position and no evidence of an arrangement which had the effect of substantially lessening competition in the market

81. The Commission has looked specifically at the New Zealand seed industry twice before. In 1996 it considered the Application of Wrightson to acquire Hodder and Tolley Limited (29 April). The Commission defined six markets:

- research and development services in seed technology;
- crop contracting and grain brokering services;
- seed cleaning services;
- wholesale/retail supply of grain and seeds;
- grain drying and storage; and
- seed coating services.

82. The Commission concluded that the presence of existing competitors, the relative low barriers to entry and expansion and, in some markets, the availability of alternative methods or processes, would ensure that no person would acquire, or would be likely to acquire, a dominant position in any of the affected markets, as a result of the implementation of this proposal.

83. In September 2003 the Commission cleared an application by South Pacific Seeds Pty Limited to acquire the New Zealand vegetable seeds sales division of Yates Limited (Decision 508). The Commission defined separate markets for capsicum, tomato and cucumber seeds and concluded that the degree of existing competition in the market, the long and short term entry of potential competitors and the countervailing power of large suppliers would be sufficient to make a substantial lessening of competition, in any of the markets, unlikely as a result of the acquisition.

84. Between 2001 and 2005 the Commission has also completed four investigations into three acquisitions and the establishment of a joint venture in the rural industry, for which no clearance applications were submitted.

85. The investigation into the acquisition of a 19.9% shareholding in Wrightson by Elders concluded that no substantial lessening of competition would be likely to

occur in any of the relevant markets. Similarly the investigation into the purchase of a 19.9% shareholding in Wrightson by RD1 (the RD1 Report) recommended that the acquisition had not breached the Commerce Act.

86. The Investigation report into the establishment of a joint venture between Wrightson and PGG to form New Zealand Wool Handlers Limited recommended that no further action be taken on the basis that a substantial lessening of competition would be unlikely to result in any of the markets.

87. The Commission also investigated the acquisition of Williams and Kettle Limited by Wrightson in December 2004 (the W&K Report). The relevant market was defined as the North Island market for the provision of livestock trading services, with the provision of saleyard facilities considered to be a component of that service.

88. The W&K Report concluded that the change in some saleyard shareholdings would not be likely to affect the level of competition in the market for livestock trading services. It was considered in the report that although the acquisition had increased the percentage shareholding Wrightson previously held in various important saleyards, Wrightson's power to deny access to those saleyards had not changed as it already had effective control over them.

89. Ultimately, the report recommended that the acquisition had not breached section 47 of the Act as it would not be likely to result in a substantial lessening of competition in the relevant market.

INDUSTRY BACKGROUND

Livestock Trading

90. PGG and Wrightson both employ livestock agents throughout the South Island and both have ownership interests in South Island livestock saleyards.

91. Livestock is traded in a number of ways. The application lists four significant sales channels for farmers to sell livestock. These are:

    - by auction at saleyard;
    - in the paddock;
    - by direct procurement; and
    - by private treaty between farmers (not involving agents).

92. In addition there are a limited number of transactions undertaken through the internet, although not yet sufficient in number to have an important market influence.

93. The proportion of livestock transactions using the different sales channels is difficult to determine with any precision. In particular the number of farmer-to-farmer transactions is difficult to measure.

94. The Commission sought an estimate from the Applicants of the proportion of stock sold through the different channels. PGG advised that in 2003/04, of the total sales it facilitated [ ]% were at saleyard auction, [ ]% were in the paddock and [ ]% were direct to slaughter. A major independent livestock company, Rural Livestock, stated that for sheep its percentages were auction sales [ ]%, private

sales [ ]% and slaughter tallies were [ ]%, whereas for cattle auction sales were [ ]%, private sales [ ]% and slaughter tallies [ ]%.

95. The Applicants provided the following estimates of the percentage of total stock traded in the South Island last year that was traded under the auspices of PGG and Wrightson:

Prime Cattle	[ ]%
Store Cattle (excluding Bobby Calves)	[ ]%
Total Cattle	[ ]%
Prime Sheep	[ ]%
Store Sheep	[ ]%
Total Sheep	[ ]%

96. The Applicants also provided their estimate of stock numbers sold through saleyards, by paddock sales and sales direct to meat companies. These estimates, slightly adjusted by the Commission following discussions with the Applicants, are as follows:

Cattle			
	Saleyards	[ ]%	
	Paddock sales (excluding meat companies)	[ ]%	
	Meat companies	[ ]%	
			100%
Sheep			
	Saleyards	[ ]%	
	Paddock sales (excluding meat companies)	[ ]%	
	Meat companies	[ ]%	
			100%

97. Of the 283 South Island livestock agents, 100 are currently employed by PGG and 85 by Wrightson. The other livestock companies employing agents are significantly smaller and many operate only in limited parts of the South Island.

98. Livestock agents facilitate transactions of livestock on behalf of buyers and sellers. Agents may have direct access to a saleyard (through an arrangement with the saleyard company) or, if they do not have such an arrangement, they may be able to reach an agreement with someone who has the right to sell at the saleyard on their behalf.

99. There are a number of features about South Island saleyards which appear to differ from those in the North Island. First, the proportion of total stock sold through saleyards is less. Second, the proportion of sheep to cattle sales through saleyards is much higher in the South Island. Third, with the exception of Canterbury Park, Tinwald, and Owaka, each saleyard is owned by a company with many individual shareholders and is a stand-alone business. In the North Island the saleyards tend to be owned by livestock firms and are run as part of the overall livestock trading services offered to farmers. Because of this, there appear to be fairly uniform charges throughout the North Island (and possibly a degree of cross-subsidisation) whereas in the South Island charges appear higher and less

uniform. In addition, the Applicants have argued that the issue of access to saleyards is more pertinent to the North Island than the South Island.

100. There are a total of 36 firms providing livestock trading services (livestock firms) who employ 283 livestock agents throughout the South Island.

101. In addition meat processing companies have between them a total of 130 representatives operating throughout the South Island. The functions of livestock agents and those of meat company representatives are not fully comparable. For instance unlike agents the representatives usually acquire stock rather than facilitate a trade between other parties. Further the primary purpose of meat company representatives is to acquire stock for processing at the plants owned by their employer, and accordingly the representatives focus mainly on prime stock. Nevertheless facilitating store stock transactions is becoming a more significant aspect of their activities. Alliance, for example, described to the Commission its increasing role as the agent for store stock transactions between its shareholders. It does not charge a commission for performing this service.

102. While their functions differ in some respects, the meat companies place an important constraint on stock and station agents in the livestock trading services market. They provide a significant number of farmers who wish to buy or sell stock with an alternative to dealing with stock and station agents.

103. Table 2 shows the number of stock and station agents and the number of meat company representatives employed in the South Island. The Commission has treated these combined figures with some caution. Because of their differing functions it is not clear that one meat company representative has the same competitive impact as one stock and station agent in the livestock trading services market.

Table 2: Number of Stock and Station Agents in the South Island (Including Meat Companies)

Entity	No. of SI agents	% of Total
Wrightson	85	21%
PGG	100	24%
Merged Entity	**185**	**45%**
Rural Livestock Limited	20	5%
Peter Walsh & Associates Limited	9	2%
South Island Dairy Farmers Limited	8	2%
Southstock Limited	8	2%
South West Livestock	8	2%
Independents with 5 or less agents	45	11%
Total Independents	**98**	**24%**
Meat company agents		
Alliance	53	13%
PPCS	46	11%
Canterbury Meat Packers	12	3%
9 Other meat companies	19	4%
Total Meat Companies	**130**	**31%**
Total	**413**	**100%**

Primary Source: Wrightson

Wool

104. Wool is grown throughout New Zealand although the majority is grown in the South Island. Growers have a variety of options to sell their wool including through a broker, merchant, exporter, end-user and/or the internet. Figure 1 outlines the wool chain.

Figure 1: The Wool Chain in New Zealand

Farming → Shearing → Mode of Sale Elected
→ Broker
→ Merchant
→ Exporter
→ End-user
→ Internet
↓
Procurement
↓
Wool Handling & Storage
↓
Sales/Marketing

105. The two most common methods of sale are through a wool broker or merchant. A wool broker is an agent who sells on behalf of the grower by various modes including auction, arranging a contract between grower and end-user, or buying direct from the grower to fulfil the broker's own contract. The broker charges the grower a commission for selling their wool through auction or arranging a contract with end-users.

106. A merchant buys wool directly for on-sale. Alternatively, a number of processors, such as spinners and millers, buy wool directly from the grower.

Velvet

107. Velvet is usually traded through velvet pools, the two largest being those operated by PGG and Wrightson, or on-farm sales through independent agents.

108. If selling through a pooling operation, the farmer retains ownership of the velvet at all times. The pool operator will usually grade, store and sell the velvet with the proceeds (minus a velvet pool commission) returning to the farmer.

Grain and cereals

109. Wheat cultivars fall into two categories (based on their end use): milling wheat, typically used in making bread; and feed (or biscuit) wheat, typically used to feed stock, most notably chickens.

110. Industry participants stated that milling wheat has added protein which is desired by the bread manufacturers, whereas feed wheat typically has lower quality parameters with the focus more on higher yields.

111. Oat is a cereal grain that is grown both for human consumption and as a stock feed especially for horses. Crushed oats and oat flour are used in a number of products manufactured for human consumption including porridge and muesli.

112. Oats are generally grown in cool, moist climates particularly Otago, Southland and Canterbury.

113. Barley is another crop grown for both human and animal consumption. Malting barley is a key ingredient in beer and feed barley is an important stock feed crop comprising approximately 40% of New Zealand feed grain use.

114. Stringent requirements exist on the quality of barley used for malting. The barley must be of a certain cultivar, have a certain grain size and the grain cell wall must

have certain characteristics. These quality considerations do not exist for feed barley.

Seeds

115. In planting pasture grasses a farmer will generally select a variety of Lolium perenne (perennial ryegrass) or Lolium multiflorum (Italian or annual ryegrass) or a hybrid of these two. Perennial ryegrass is, in general, preferred to Italian ryegrass because of its persistence. However, Italian ryegrass can establish slightly more quickly than perennial ryegrass and thus is used commonly in areas where re-sowing of ryegrass is more frequent (Southern, cooler regions).

116. The New Zealand pasture seed industry has changed significantly in recent decades with a focus on technology developments leading to increased productivity gains. One of the most notable advancements is the commercial identification of endophytes and the sale of ryegrass incorporating endophytes.

117. An endophyte is a fungus which grows in a symbiotic relationship with the grass, protecting it from certain pests. Endophytes are known to fight-off certain pests such as Listronotus bonariensis (the Argentine stem weevil) by producing certain alkaloids such as Peromine that have pest repelling, or pest killing, qualities.

118. Some endophytes are known to produce the Ergovaline and Lolitrem B alkaloids which are generally avoided wherever possible due to their adverse impact on animal health. Lolitrem B is known to cause ryegrass staggers which presents in the form of animal twitching, and in moderate cases the animal can fall over. Ergovaline is known to cause some heat stress to animals, reductions in liveweight gains, and lameness. However, Ergovaline has been identified as an alkaloid that offers protection against Heteronychus arator (black beetle). As such, endophytes that produce these alkaloids are often seen as 'compromises' in that they offer better pest protection, but are not as safe from an animal health perspective.

119. Endosafe was the first novel (commercially identified and marketed) endophyte marketed in the 1990s. Endosafe contained the Peramine alkaloid and, being free of Lolitrem B, was thought to be completely safe for animals. However, it was later discovered to contain Ergovaline which can cause serious health issues to the grazing animal. This ultimately caused some of the cultivars (producing the higher levels of Ergovaline) to be withdrawn from the market.

120. In 2001, Grasslanz introduced the AR1 endophyte which was seen as the break-through endophyte as it offered protection against the Argentine stem weevil (through the presence of the animal-safe Peramine alkaloid), but it did not produce the undesirable Ergovaline and Lolitrem B alkaloids. As a result, it increased pasture growth significantly without the adverse animal health issues of wild endophytes or Endosafe. AR1 was seen as the break-through development and is now the dominant novel endophyte used in ryegrass seed throughout New Zealand.

121. Wrightson, AgResearch and PGG/Agricom are currently involved in the identification and testing of new novel endophytes through a ryegrass endophyte group agreement (REG agreement). A new novel endophyte, known as AR37, has been identified through this research and is currently being developed [ ]. AR37 is similar to AR1 and is thought to provide protection from the Argentine stem weevil, but it is also thought to have some effect on the black beetle and larvae of the porina moth. The endophyte also

appears to help certain cultivars of ryegrass recover more quickly from a grass grub attack. Unlike AR1, AR37 has been known to [ ]. These qualities have been attributed to a newly identified alkaloid known as Jahnitrem, though the endophyte is still being tested by AgResearch.

122. Many of these advancements in productivity, innovation and technology have been made possible by the introduction of plant variety rights, which have provided some incentive for seed companies to invest in research and development.

123. Grants of plant variety rights are made by the Commissioner of Plant Variety Rights in accordance with the provisions of the Plant Variety Rights Act 1987. These grants extend rights for 20 years for seeds relevant to this application. Subject to a request in accordance with the Act the Commissioner may consider granting a compulsory license for the reproduction and sale of reproductive material of a certain variety to other industry participants. Such a request can only be made 3 years after the original grant was issued and the compulsory licence may only be granted in situations where the Commissioner is satisfied that there are not sufficient quantities available to the New Zealand public at a reasonable price.

124. The Plant Variety Rights Commission informed the Commission that a request for the grant of a temporary licence has never been made in respect of forage seed and would only be granted in special circumstances.

125. Clovers are different both in appearance and function than ryegrass. Clovers, particularly white clover, is used extensively in New Zealand to affix nitrogen to the soil. Clover is also high in protein and a relatively easy way to provide grazing animals with such nutrients.

126. Whilst some technological advancements are being made in white clover through the breeding and development of better cultivars, participants in the seed industry were of the view that technological development in this area is less pronounced than in ryegrass. The main advancements in white clover are generally around better seed persistence, increased stolon density and leaf size.

127. In respect of brassica seed, four main varieties are grown in New Zealand as supplementary animal feed options:

- *Brassica Campestris rapifera* (turnip);
- *Brassica Napus napobrassica* (swede);
- *Brassica Napus oleifera* (rape); and
- *Brassica Oleracea acephala* (kale).

128. The different varieties have different physical characteristics and as such the best crop to grow in a particular situation may well vary with geographic location, soil conditions, climatic conditions and other factors.

129. Brassica crops are often grown due to their ability to produce relatively high levels of dry matter production in relatively short time periods. Brassica seeds are particularly utilised in the cooler regions of New Zealand (such as Southland) where all-grass based wintering systems are more difficult.

MARKET DEFINITION

130. 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."[4]

131. For competition purposes, a market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.[5]

132. 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 id defined in terms of the five 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.

Product Markets

133. Initially, markets are defined for each product supplied by two or more of the parties to an acquisition. For each initial market so defined, the Commission considers whether the imposition of a SSNIP would be likely to be profitable for the hypothetical monopolist. If it were, then all of the relevant substitutes must be incorporated in the market.

134. 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. The degree of demand-side substitutability is influenced by the extent of product differentiation.

135. Close substitute product 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.

136. 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.

Livestock

137. In respect of the trading of livestock, a preliminary question is whether or not the traders of different types of livestock – prime stock, store stock, cattle, sheep,

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

[5] Australian Trade Practices Tribunal, *Re Queensland Co-operative Milling Association*, above note 10; *Telecom Corporation of NZ Ltd v Commerce Commission & Ors* (1991) 3 NZBLC 102,340 (reversed on other grounds).

dairy cows, calves, cull cattle, pigs, deer, and so on – can readily switch to trading other types (that is, there is strong supply side substitution) and should be assessed within the one ‘livestock’ product market.

138. In their application, the Applicants have argued that the relevant product market is that for livestock as a whole. For instance, they consider that for livestock companies, such as themselves, prime stock is a core component of their livestock trading businesses and should be placed in the same market as store stock.

139. Elders noted that typically different types of livestock are sold through different selling methods. Its economic adviser has noted, however, that the product dimension of the relevant market appears to be livestock.

140. Different categories of livestock have different characteristics which may make them more suitable for selling by one method rather than another. For instance, the proportion of store stock sold through saleyards is significantly higher than that for prime stock (which are more likely to be the subject of paddock sales direct to meat company representatives). Also a greater proportion of cattle go through saleyards (perhaps 19%) than sheep (perhaps 9%). In particular, a very high percentage of calves pass through saleyards.

141. It may be that there will be future occasions when it would be appropriate for the Commission to consider different types of livestock within discrete markets. In this instance the Commission notes that the principal parties are engaged in transacting all types of livestock and that they have the ability to readily change between types as circumstances change. In other words there is ready supply-side substitutability.

142. For the purpose of analysing the proposed merger the Commission considers that the livestock-related competition issues can be considered fully in the context of a single livestock product market.

Wool

143. Fine wool has a much smaller fibre diameter than coarse wool and, typically, the products have different end-buyers. Fine wool has a fibre diameter of between 14 and 23 microns, whereas coarse wool has a diameter between 31 and 42 microns[6]. For example, fine wool is typically used in fashion garments and apparel while coarse wool is typically processed into carpets. Further, fine wool is handled more often than coarse wool and so commands a higher per bale commission.

144. The Applicants submitted that both coarse wool and fine wool fall within the same product market. Industry participants advised the Commission that the process involved in the trading of fine wool and coarse wool is identical such that a person trading coarse wool could, with little additional effort, also trade fine wool. For example, both products are shorn, stored, handled, transported and distributed in the same way (although fine wool is handled more frequently).

145. The Commission considers that for the purposes of the present application fine wool and coarse wool can be appropriately bundled within the same product market.

[6] Wool that is graded between these microns is typically referred to as half-bred.

Agricultural and horticultural supplies

Fertiliser

146. In the RD1 Report, the Commission considered there to be a separate market for fertiliser. The investigation considered that although fertiliser could be regarded as part of rural merchandise, it is typically delivered directly to farmers by the two large manufacturers (Ravensdown and Ballance) and is sold directly to the farmers by Ravensdown.

147. Based on the RD1 report the Applicants submitted that fertiliser should be analysed separately and that the relevant market is the national market for the distribution of fertiliser.

148. Ravensdown advised the Commission that in 2001 it made a business decision to by-pass the merchandise stores altogether and established its own distribution network. Its current turnover is approximately [ ] of which [ ] of its product is delivered directly to customers by Ravensdown itself. Ravensdown considered that the remaining percentage of its product is purchased by particular retailers who then on-sell Ravendown's fertiliser to specific customers at cost.

149. Ravensdown estimated its market share to be approximately [ ] with the other main competitor in the fertiliser market being Ballance. Other participants confirmed this figure as accurate. Typically, Ballance fertiliser is distributed through the merchandise stores such as Wrightson, PGG, CRT and RD1.

150. All industry participants advised the Commission that the effect of the proposed merger on the fertiliser market would be minimal. Any aggregation would occur only in the distribution of fertiliser to retail stores which would account for less than half of all sales, the aggregation having no effect on the sales of Ravensdown. Further, the Commission considers that the recent example of Ravensdown shifting its entire catalogue to direct distribution indicates that there are relatively low barriers to entry into direct distribution.

151. Given the above, the Commission is of the view that fertiliser should be defined as a separate product market for the purposes of the analysis.

Other supplies

152. The Applicants submitted that any rural supplies market could be categorised along individual product lines. Each product line then faces considerable competition from a variety of competitors including full services suppliers (like Wrightson and PGG stores), independent retailers and direct sales from manufacturers. Nevertheless, the Applicants submitted a composite approach to the market definition which involves bundling all product lines together into one rural merchandise product market.

153. Typically the rural merchandise industry supplies a number of different products, including:

- agricultural chemicals;
- animal health products;
- animal equipment;
- animal feed and feed storage;
- fencing;

- machinery and spare parts;
- seeds;
- hardware and clothing; and
- fertiliser (as previously mentioned).

154. In the RD1 Report, the Commission considered that the larger rural merchandise stores, such as the Wrightson and PGG, were not in a separate market on their own. This was because farmers did not regard the larger merchandise stores as 'one stop shops' and farmers would often make their purchases from two or three, if not more, outlets. Further, smaller merchandise stores and other retailers of the various types of merchandise (such as the Warehouse) compete directly with the larger rural merchandise chains on some product lines.

155. The W&K Report also considered the issue of rural merchandise and staff considered that a composite market, as described in the RD1 Report, was appropriate.

156. Store customers and many industry participants spoken to in regard to the present application were of the view that there is not a separate market for the larger, branded, merchandise stores and that the Applicants' stores actively competed with the smaller chain stores and independent outlets. The Commission did not find any changes in market conditions that indicated that it would be appropriate, for the purposes of the present application, to take a narrower view of the product market.

157. The Applicants noted that as part of the recent W&K acquisition, Wrightson acquired W&K's 100% interest in the Fruitfed chain of horticultural supplies stores. Fruitfed is a major retailer of agrichemicals, such as chemical sprays for weeds and pests, to the horticultural industry. Accordingly, there will be some aggregation in respect of horticultural supplies in specific regions where both parties currently operate. The Applicants submitted that, given the similarity in the functional and geographic market dimensions of both agricultural supplies and horticultural supplies, the same analysis used for agricultural supplies can be applied to horticultural supplies. On this basis the Applicants have grouped together both agricultural supplies and horticultural supplies.

158. However, the Commission received submissions that 'horticultural supplies' is a distinct market and included product categories such as machinery, irrigation, fertiliser, agrichemicals and general supplies. Of particular concern was the retail supply of agrichemicals and the related technical advice.

159. The Commission surveyed industry participants on whether, for the purposes of the present application, there is a separate product market for agrichemicals. Industry participants stated that, along with agrichemicals, a typical customer of these products would also purchase other products such as pruning equipment, safety equipment, fencing and netting equipment.

160. The Commission considers that in some instances there will be a degree of demand-side substitutability between agricultural and horticultural supplies but in many cases specific products will be required in order to fulfil specific needs.

161. However, the Commission considers that there is a strong degree of supply side substitution between horticultural supplies and agricultural supplies such that a competitor supplying agricultural supplies would be able to expand, fairly easily,

into supplying horticultural supplies. Having considered the nature of the supply agreements between the Applicants and various horticultural product suppliers (including suppliers of horticultural chemicals) the Commission is of the view that the merger would not foreclose entry into supplying horticultural products.

162. Accordingly, the Commission considers for the purposes of the present application that, the relevant competition effects are best identified by defining a broader product market which incorporates horticultural supplies within the same product market as agricultural supplies, with the exclusion of fertiliser which is considered to form a separate product market (together, rural supplies).

Velvet

163. The proposed merger will involve the combination of the two main velvet pools operated in New Zealand. Although there may be a limited degree of supply-side substitutability with velvet and the pooling and trading of other products the Commission is of the view that, for the purposes of the analysis, it is appropriate to define the product market as being that for velvet.

Grain and Cereals

164. The Applicants did not identify grains and cereals as an area potentially affected by the merger. However, discussions with industry participants suggested that concerns existed over seeds for a number of grains and cereal products, particularly wheat, oats and barley.

165. Further, the Commission was informed that differences existed within those categories between, for instance, the different varieties of wheat used for human consumption and that used as a supplementary stock feed, i.e., differences between milling wheat and feed wheat. The same comments were made in respect of oats and barley.

166. The Commission is of the view that there are different demand-side characteristics between the different types of grains and cereals, identified in the industry background, and further that there are differing demand side characteristics between the different types and varieties of wheat and oats, etc from a final crop perspective. However, in this instance the Applicants are the vendors of the seed only and the Commission considers that there exists a degree of demand-side substitutability for a seed farmer in choosing which crop to produce, particularly as between the different varieties of their preferred crop.

167. In this instance, the Commission considers that it is appropriate to define markets for the individual types of grain rather than a broader market for arable crop seeds. Further, the Commission does not consider it appropriate to disaggregate the markets further to identify separate markets within the different varieties, for instance feed and human consumption wheat. Any differing effects will be acknowledged in the competition analysis.

168. Accordingly the Commission concludes that the relevant grain and cereal product markets are those for:

- wheat seed;
- oat seed; and
- barley seed.

Forage Seeds

169. The Applicant submitted that, contrary to the Commission's findings in Decision 508, there is a large degree of substitutability between different varieties of forage seeds. Accordingly the Applicants defined the relevant product market as that for forage seeds being comprised of perennial ryegrass; short rotation ryegrass; long rotation ryegrass; Italian ryegrass; white clover; red clover; brassicas and to a lesser extent tall fescue; cocksfoot; lucerne and herbs.

170. However, the Commission was informed by industry participants that there is very little demand-side substitutability between the above varieties of seed, each having their own particular uses and characteristics. Further the Commission was informed by [ ] that the merger is of significant concern in respect of ryegrass, white clover and brassica seed.

171. This was confirmed by [ ]. No party interviewed expressed any concerns in the areas of tall fescue, cocksfoot, lucerne or herbs, therefore those categories are not considered further. The categories of ryegrass, clover and brassica are analysed below.

<u>Ryegrass</u>

172. As discussed in the industry background, ryegrass can be categorised into two broad categories namely perennial ryegrass and Italian ryegrass with hybrids of these two forming a third category. A farmer is likely to pick a particular variety based on the characteristics he/she desires, which in turn will be influenced by geography, type of stock, soil and other factors. The Commission was informed by Federated Farmers that a farmer would be unlikely to consider different forms of ryegrass substitutable once the decision had been made to use a particular type. However, from a supply perspective there is a high degree of substitutability between the seed varieties. Accordingly, the Commission is of the view that a single market encompassing the different varieties of ryegrass is appropriate.

173. The Commission also considered whether it was necessary to define separate product markets for ryegrasses that were inoculated with different endophytes given that endophytes are inextricably linked to ryegrass.

174. Specifically, the Commission considered whether it would be appropriate to define separate markets for AR1 and AR37 novel endophytes given that their particular attributes will make them more suited to particular farmers' needs based on the pests that are problems for that farmer. Particular attention was paid to this due to the fact that AR37 is intended to be commercialised by PGG/Agricom and Wrightson (in conjunction with AgResearch through the Ryegrass Endophyte Group Agreement). PGG/Agricom and Wrightson will be amalgamated as a part of the current proposal.

175. The Commission interviewed a number of parties as to the substitutability between different endophytes, including the Applicants, AgResearch representatives, scientists, various seed companies and representatives of Federated Farmers. Most parties interviewed informed the Commission that the degree to which the endophytes are substitutable for each other will ultimately depend on a number of factors including the location of the farmer, the prevalence of certain pests, climatic conditions, soil type, the animal being grazed, the characteristics of the endophyte, the cost of the seed, the advice of seed companies

and personal preference. For instance in parts of New Zealand where the black beetle is more of a problem[7] a farmer may well prefer the increased benefits that AR37 may be able to offer over an endophyte free grass or even an AR1 grass.

176. When AR1 was commercialised, the AgResearch royalty was set at [ ] of the wholesale seed price. AgResearch informed the Commission that this, in hindsight, was too low as it did not capture enough of the real benefit that the technology was giving the farmer. Accordingly, the rate was increased to [ ] in late 2004 (which is still seen as low by AgResearch).

177. As a result, parties to the Ryegrass Endophyte Group Agreement have agreed that the royalty on AR37 should be roughly [ ]. This would equate to a royalty payment of effectively [ ] compared with the [ ] royalty component on AR1 sales. The Applicants submitted that [ ], will not allow scope for any further price increases post merger due to the ability, in most instances, for farmers to use AR1. The Applicants submitted that this [ ] would occur in both the factual and the counterfactual.

178. The Commission is of the view that the increased royalty cost is an important factor and likely to be a critical consideration of the farmer when choosing which endophyte to use. [ ] in some instances may well cause reluctance on behalf of farmers to switch away from the tried and tested AR1 endophyte, particularly in areas where the black beetle is not prevalent.

179. This would be likely to increase the pressure on the combined entity to differentiate AR37 on other quality considerations and place considerable pressure on the price of AR37.

180. The Commission obtained estimates from AgResearch identifying the uptake of AR1 by New Zealand farmers in the years following its introduction to the market. These indicated that AR1 obtained the following market shares (as a percentage of total ryegrass seed sales).

2001	[ ]%
2002	[ ]%
2003	[ ]%
2004	[ ]%

181. The Commission does not consider the uptake of AR37 will necessarily match that of AR1. AR1 was introduced following 10 years of marketing and produced significant benefits to farmers by way of increased yields with virtually no adverse side effects. As AR1 is the incumbent and tested product, AR37 is likely to face some resistance particularly in early years of its introduction.

182. Having weighed all of the relevant factors, the farmer is likely to make a judgment as to which seed best suits their needs. In Southland, where the Argentine stem weevil and black beetle are not prevalent, a farmer may consider that little value could be gained from using an endophyte inoculated grass. Further, Federated Farmer's representatives in Southland informed the Commission that most farmers would prefer a grass with no endophyte. Similarly, the ryegrass staggers

[7] Northland, Bay of Plenty, and coastal regions of Northern Taranaki and Waikato.

that have been observed in some trials of the AR37 endophyte may cause a farmer to prefer an AR1 endophyte grass, particularly if his pasture is not affected by the black beetle.

183. Due to the above factors, the Commission is of the view that, in most instances there is likely to be a high degree of substitutability between the AR1 and AR37 endophyte ryegrasses such that it is appropriate to consider them falling within the same market. Also, based on the uptake figures of AR1 the Commission considers that there is some degree of substitutability between grasses containing other, or no, endophytes.

184. Accordingly, the Commission is of the view that a single ryegrass product market is appropriate for the purposes of the analysis.

<u>Clover</u>

185. White clover grows on a network of stolons which allows it to spread whereas red clover grows upright and spreads only through seed. Red clover is generally considered to have an inferior persistence to white clover and produces more dry matter in the summer months but less in the winter. Red and white clovers are often sown together in pasture seed mixes though, as a trend, white clover is now used much more than red clover.

186. The fact that white and red clovers are sown together (rather than in substitution for each other) in pasture mixes indicates that there may be limited demand-side substitutability between the types of clover. However, the Commission considers that there is a large degree of supply-side substitutability between them as a supplier could fairly readily and costlessly switch between the supply of such seeds given a small incentive to do so.

187. The Commission is of the view that it is appropriate to consider a combined clover market for the purposes of the analysis consisting of both red and white varieties.

<u>Brassica</u>

188. Brassica crops are used as a supplementary feed for animals during times when grass growth is less than required. Brassicas are also often used to fatten lambs before slaughter and as a pasture break crop (although this latter use is a spin-off effect from their use as a supplementary feed). The decision to use a brassica, and ultimately which type of brassica, will depend on a number of factors including the time period in which the feed is needed, the type of stock to be fed, climatic conditions, soil conditions, farmer preference and other considerations.

189. Accordingly, the Commission considered whether brassicas are more correctly viewed as a distinct product market or as components of a broader supplementary feed market. Parties interviewed had differing perspectives on the substitutability (from a demand perspective) between brassicas and other supplementary feed options such as silage, hay, ryegrass or greenfeed.

190. One dairy farmer spoken to said that he has completely moved away from brassicas and feeds purely silage to his animals in the winter. He thought that this option would be cheaper for him in the long run and nutritionally better for the animal. Alternatively, [ ] stated that he considers brassica to be the best option both from a price perspective and a farm management perspective.

191. A standard application of the ssnip test in this case is difficult because the price of brassica seed represents a fairly small component of the total cost of providing brassica as a source of winter feed. As such, many of the farmers interviewed by staff were of the view that a 10% increase in the price of brassica seed would not influence them to switch to alternative supplementary feeds, at least in the short-term.

192. The Commission is of the view that there is a degree of substitutability between brassica and other supplementary feed options, however, it is unclear as to whether the extent of the substitutability would be sufficient to make the imposition of a ssnip unprofitable. In many instances the options are complementary and used in combination to provide a diversified feed to the animal and to mitigate certain animal health issues.

193. The Commission also considered whether the different varieties of brassica seed are substitutable for one another such that they can be grouped in one product market.

194. The Commission was informed by [ ], that there are differences between rapes, kales, swedes, turnips and the other brassicas available particularly in respect of dry matter production and the suitability of grazing particular animals on particular varieties. Further, Mr Gundy informed the Commission that particular varieties are better suited to sheep than cattle and some varieties are better suited to dairy cow grazing than sheep and so on. However, other industry participants and some farmers suggested that there is a degree of substitutability between the crops with the end view of providing sufficient winter feed (or summer fattening feed).

195. Swede, kale and turnip are mainly grown as supplementary winter feed in the southern regions of New Zealand, whereas rape (and to some extent turnip) are generally used to fatten lambs during the summer months. Turnip, being faster maturing than swede and kale, is seen as an important winter crop as it can be planted later and produce good quantities of dry matter.

196. Swede and kale can take between 14 and 26 weeks to mature (depending on the particular variety of each). The length to maturity combined with the physical attributes of the crops mean that they are often planted together, therefore producing an abundance of dry matter. Conversely, rape and turnip can mature within 12 to 14 weeks providing a source of feed more quickly than swede and kale.

197. Due to the length to maturity and the end use for which they are grown it may be accurate to view kale and sweede as being more substitutable in most instances than with rape and turnip, which in turn, are reasonable substitutes in some instances.

198. Some farmers also informed the Commission that the choice of a brassica may be influenced by the type of animal being grazed. For instance, a sheep farmer may prefer a swede to a kale because sheep tend to ‘nibble’ at kale leaving waste, whereas a farmer with cattle may be open to using a kale or swede (not to mention his other options such as silage and hay). The choice may also be influenced by climatic conditions, for instance a kale may be preferred to a swede in areas prone to heavy snowfall because it is a ‘taller’ crop and less susceptible to being covered by the snow.

199. The use of brassica crops has declined by 45% (across all four varieties) over the last 45 years[8], whilst agricultural production has increased substantially. However, farmers informed the Commission that there has been a move back towards the use of brassicas in recent times due to the improving cultivars that are available.

200. Given the above considerations the Commission is of the view that the degree of substitutability between the different varieties of brassica (although varying on a case by case basis) is such that it is not appropriate to disaggregate the market into distinct brassica varieties. Although there is a degree of substitutability between brassica and other supplementary feed options the Commission considers it is appropriate in this case to define the market as including brassica only. In doing so, the Commission acknowledges that there is a degree of competition present at the margins of the market from other supplementary feed options and also acknowledges that there are varying degrees of substitutability between the different brassica varieties.

201. Accordingly, the Commission considers that, in respect of forage seeds, the relevant product markets are:

- ryegrass seed;
- clover seed; and
- brassica seed.

Conclusion on Product Markets

202. The Commission concludes that the relevant product markets are the markets for:

- livestock;
- wool;
- rural supplies;
- fertiliser;
- velvet;
- wheat seed;
- barley seed;
- oat seed;
- ryegrass seed;
- clover seed; and
- brassica seed.

Functional Markets

203. The production, distribution and sale of a product typically occur at a series of functional levels, conventionally arranged vertically in descending order. Generally, the Commission identifies separate relevant markets at each functional

[8] White & Hodgson, "*New Zealand Pasture and Crop Science*", Oxford University Press, 1999, Auckland.

level affected by an acquisition, and assesses the impact of the acquisition on each.

Livestock

204. A point of contention amongst interested parties is whether the provision of saleyard facilities forms a separate market by itself (for the purpose of competition analysis) or whether it should be regarded as just one element in a wider livestock trading market. Some parties pointed out that there are circumstances where selling through saleyards offers farmers clear advantages over selling through alternative trading vehicles. The majority of farmers spoken to by the Commission stated that their stock is sold both on the farm and at saleyards.

205. As noted above the principal methods of trading livestock are by auction at saleyards, in the paddock, by direct procurement, and by private treaty between farmers.

206. There are situations where one method of selling livestock offers important advantages over the others. Saleyards usually offer the sellers a bench of buyers and the concomitant confidence that full market prices will be achieved, price transparency, the ability to aggregate stock with other sellers' stock to create more marketable quantities, and some reduction in the risk of non-payment. It is considered by some that saleyard transactions may be more likely to reflect rising market trends than other types of transactions. On the other hand, saleyard transactions involve saleyard fees and transport costs and the risk of damage to the stock during transportation or at the saleyards.

207. The Commission has been advised that in a forced sale situation (e.g., where drought conditions require an urgent sale) a saleyard transaction is generally preferred because it provides immediate access to a range of prospective buyers of that stock.

208. On-farm transactions avoid transport costs and saleyard fees and provide buyers with greater certainty as to the background of the stock (which meat companies and their overseas customers value). However, as these transactions tend to be one-on-one dealings the parties can be less certain that the trade will reflect the market's current supply and demand. This may mean that the vendor will miss out on gains (and losses) when the market is in a volatile state.

209. [ ] has submitted to the Commission that given a particular set of circumstances about supply and demand, location of stock, proximity to saleyards and the impact of climatic conditions on the livestock market, farmers will have a strong preference for a particular means of selling livestock. It has argued that farmers might switch as these circumstances change, but that they do not do so because of a sensitivity to a change in commission rates (price) or service levels. [ ] considers that the various forms of selling livestock are complementary, not substitutable.

210. On the other hand, the Applicants submitted that the different methods of selling livestock are substitutable for each other with choice primarily driven by sensitivity to cost, climatic conditions and breeding stock requirement. Farmers weigh-up the risks of keeping stock on paddock or, conversely, not finding a buyer at the right time, yard fees, agency fees, procurement schedules and other factors.

211. The Applicants also submitted that competition by meat companies for stock is more intense in the South Island than the North Island.

212. The Commission discussed the issue of substitutability of the different methods of trading livestock with a number of parties including farmers brought together by Federated Farmers in Christchurch, Dunedin and Invercargill. Their views were mixed. Some considered saleyards as a relatively inefficient way of selling their livestock and tended to avoid them. In effect they considered that they were sufficiently well informed about market conditions to negotiate purchases or sales efficiently themselves without incurring commission fees, transport costs and yardage fees associated with saleyard sales. Others put significant quantities of stock through saleyards because they considered they could optimise their return (after meeting the costs of transacting) in this way. The transparent nature of the auction process at saleyards was seen as an attractive feature of that form of selling.

213. These parties confirmed the important role of meat companies in livestock trading in the South Island. These companies (including principally Alliance, PPCS, AFFCO, Canterbury Meat Packers and Progressive) buy substantial quantities of both prime stock and store stock direct from farmers. Alliance, for one, does not charge commission for store stock transactions and this (plus the absence of transport costs) makes it an attractive alternative to the saleyard option for its farmer shareholders. The meat companies between them have 130 agents in the field in the South Island.

214. Saleyard transactions appear to account for around 10% (for sheep) and 20% (for beef) of livestock transactions in the South Island. Farmers clearly receive some ancillary benefits from selling at saleyards – a number indicated the importance of the social aspects of attending sales. However, critical to their choice of saleyards over other methods of selling their livestock is, in most instances, whether or not they have confidence that saleyards are likely to achieve the best returns.

215. This normally requires the saleyards to provide accessible and efficient facilities at reasonable prices to meet the needs of farmers in the hinterland. It requires that there are competent drovers and, in particular, auctioneers. (These are usually provided by the agent who is selling on behalf of the farmer, rather than by the saleyard company itself.)

216. Also, of course, the saleyard must attract buyers as well as sellers. In this respect a saleyard has ‘two-sided platform market’ characteristics. It has to persuade sufficient sellers that appropriate buyers will be likely to attend the sale, and persuade buyers that sufficient sellers will support the sale to make their attendance worthwhile.

217. The relative importance of the above factors will change with circumstances. There will be periods when stock may be in plentiful supply (for instance, when farmers face drought conditions and are required to reduce their stock holdings) and saleyards may be regarded as the best means of making a sale. Alternatively, when stock numbers coming on the market are more limited farmers may be able to negotiate satisfactory transactions themselves without putting the stock through saleyards (and, perhaps, without utilising agents).

218. Nevertheless, the Commission considers that it is the on-going ability of saleyards in ‘normal’ conditions to provide an efficient means by which farmers can maximise their return on their livestock which determines their relative success

against other forms of selling livestock. In general, conditions of access to saleyards do not vary frequently [ ] which suggests that saleyards are not able/willing to take advantage of short-term 'special' conditions (such as a drought) to disadvantage users of saleyards.

219. The Commission considers that there may be a persuasive argument for saleyards to be considered sufficiently close substitutes for other forms of selling livestock to place saleyards and other forms of selling livestock within the one functional market for the purpose of its competition analysis. In this instance, however, the Commission is aware that for a number of parties a particular concern of the proposed merger is the impact that it might have on the ability of independent livestock agents to access saleyards in the South Island.

220. In its Mergers and Acquisitions Guidelines, the Commission stated that it defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition. In this instance, the Commission considers that a distinct saleyards functional market best allows the Commission to consider the access issue. In doing so the Commission notes that in this case its conclusions in respect of livestock selling are not affected by it placing saleyard facilities in a separate market from other forms of trading livestock.

221. The Commission is satisfied that the other means of trading livestock discussed above are sufficiently substitutable for each other to place them within the one functional market.

222. In conclusion, the Commission is of the view that it is appropriate to define two functional markets in respect of livestock:

- a saleyard facilities market; and
- a livestock trading market.

Wool

223. The Applicants submitted the relevant functional level is wool trading which incorporates both auction sales and direct sales. In this regard, industry participants described the route to market as similar to that of the livestock market with a degree of substitutability between auction sales (i.e., saleyards) and on-paddock sales.

224. The two most common methods of sale are through a wool broker or merchant/exporter. A wool broker is an agent who sells on behalf of the grower by various modes including auction, arranging a contract between grower and end-user, or buying direct from the grower to fulfil the broker's own contract. The broker charges the grower a commission for selling their wool through auction or arranging a contract with end-users.

225. For instance, Wrightson and PGG charge a variety of fees to growers for services provided in the course of its wool business. Those fees are structured differently depending on whether the wool is sold through the auction system, by contract or by private treaty.

226. A wool merchant buys wool directly from the grower or through auction or private treaty. An exporter is the same as a merchant but buys direct with the

specific intention of selling it to off shore end-users. A grower may consult two or three merchants/exporters, and choose the best offer, or deal with only one merchant on a regular basis. The merchant/exporter pays the grower immediately, or within 2-3 days of the sale having been made.

227. A grower can also sell wool directly to the processor; these include spinners and millers, such as Cavalier Bremworth Limited and Feltex Carpets Limited (both large carpet manufacturers). Internet selling is also an available option. For instance, Woolnet is an Internet-based trading system for New Zealand wool, owned and managed by Woolpro, a subsidiary of the New Zealand Wool Group. It is open to all New Zealand-based sellers and buyers of wool. In return for a commission, Woolnet permits registered wool sellers and buyers to use the site for trading and provides a settlement system for administering sales.

228. Once a mode of sale is elected, the grower arranges for the wool to be transported in bales into the distributor's wool store facilities, where the wool may be handled in a variety of ways.

229. The handling of wool includes the following facilities and services:

- receiving wool into designated wool-handling facilities;
- weighing wool;
- wool bale sampling by way of grab and core samples;[9]
- wool interlotting,[10] binning, classing and reclassing;
- stacking, storing and warehousing of wool bales;
- wool bale loading, unloading and delivery services; and
- displaying wool samples for sale and managing the show floor for wool sales.

230. Wool handling facilities and services may or may not form part of the infrastructure of the various modes of sale. For instance, most merchants/exporters arrange for wool to be transported directly from the grower to the miller. However, some merchants/exporters will have their own wool handling facilities and services. Further, some spinners have their own wool storage facilities.

231. Most brokers do have their own wool handling facilities and services. The grower does not pay for these services specifically. It is similar to a supermarket distribution and warehouse centre, which forms part of the supermarket's business, and is not an item specifically charged to the supplier.

232. In April 2004 Wrightson and PGG entered into a joint venture agreement to form New Zealand Woolhandlers Limited (NZWL). This joint venture concerned wool handling facilities and services while the procurement and sales/marketing operations have remained separate.

233. Industry participants stated that, typically, wool brokers deal with a grower's wool in a variety of ways:

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[9] This process is where a syringe-type instrument is injected into a bale and a sample extracted. This sample is then sent to a laboratory and tested for particular specifications like strength, a quality important to carpet manufacturers.

[10] Interlotting occurs when the number of received bales of a particular line is less than a minimum number – usually 3 bales. The broker then combines bales from several growers to produce a lot size that is more economically viable.

- selling wool through auction as an agent; or
- arranging a contract between a grower and exporter/end-user as an agent

234. The split between auction sales and direct sales are identified in Table 3 below.

Table 3: Auction Sales versus Direct Sales

Tonnes	**2001/2002**		**2002/2003**		**2003/2004**	
Auction Sales	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Direct Sales	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Total	**[ ]**	**100%**	**[ ]**	**100%**	**[ ]**	**100%**

Source: Tectra New Zealand

235. The Applicants noted that the figures in Table 3, supplied by Tectra New Zealand, exclude wool which is contracted directly from processors which would skew the data further away from auction sales.

236. In terms of demand-side substitutability, growers have, as noted above, other outlets to sell their wool. One such outlet is wool merchants, who purchase wool directly from the grower, either by forward contract or on the spot. The wool merchant will then on-sell this wool to the end user, like a carpet manufacturer. Another alternative to the wool merchant is an exporter.

237. From the grower's point of view, the principal differences between wool brokers (excluding direct buying from the grower) on the one hand, and wool merchants, exporters and direct buying from end-users on the other, are:

- a grower's perception as to what mode will achieve a better price; and
- speed of sale. There are time lags when selling through auction compared to a private sale where a grower can shear one day, sell the next and then receive payment within 2-3 days.

238. Industry participants informed the Commission that farmers would switch to one of the modes of sale outlined above in the face of a price rise or decrease in quality. It is common for growers to employ a variety of these methods, and switch between them. Therefore, the Commission considers there is very high demand-side substitutability between brokers, merchants, exporters and direct buying.

239. On this basis the Commission concludes that wool brokers, merchants, exporters and direct buyers compete in the same market, that being the market for wool handling services.

Rural supplies

240. The Applicant submitted that the relevant functional market is the retail sale of rural merchandise (including horticultural supplies). Both Wrightson and PGG retail merchandise supplied to them by manufacturers and therefore the aggregation would occur at the retail level.

241. Accordingly, the Commission concludes that the appropriate functional level is the retail level.

Fertiliser

242. Due to the way in which fertiliser is sold and distributed the relevant functional level is the retail supply of fertiliser.

Velvet

243. In the context of the proposed merger the salient question, in respect of velvet, is whether velvet pooling, at a functional level, should be distinguished from other methods of trading velvet.

244. The pooling operations combined account for approximately 75% of the velvet traded in New Zealand, whilst the remaining 25% consists of direct purchases, usually by independent traders, which occur on farm. Similar to livestock, a farmer ultimately has options as to the method by which his/her product is sold. The decision is likely to be made following consideration of the price that might be paid for the product.

245. The Commission is of the view that the appropriate functional dimension is the trading of velvet and that there are no characteristics of a particular selling method (i.e., pooling) that would merit a functional market distinction.

Grain and Forage Seeds

246. Grain and forage seeds are either locally grown or imported for re-sale within New Zealand. The method for obtaining seed will vary depending on the type of seed, the nature of the business and the quantity required.

247. The Commission is of the view that in respect of all of the grain and seed markets defined above the appropriate functional market is the production or importation and wholesale or retail supply.

Geographic Markets

248. 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.

Livestock trading

249. Typically livestock transactions take place on a farm or within a reasonable proximity to the farm – usually within 150 km to 200 km. It is unusual for stock to be transported beyond that distance to go to a saleyard. Accordingly, it is considered appropriate to define the geographic markets for saleyards as being the area within 200 km of each saleyard, referred to as regional markets.

250. Other types of livestock transactions do not appear so geographically constrained. While the transaction may normally take place on the farm, buyers, or their agents, or agents of the seller can and do travel quite long distances to facilitate a trade. For instance, [ ], spoke of occasions when it had gone to the North Island to facilitate a dairy stock transaction. [ ] suggested that the livestock trading market is in fact a national market with regional undercurrents. It noted that the major meat companies all operate on a national basis and all source stock across the nation and truck them between islands to suit production schedules and product mix requirements.

251. The Applicants have noted that the increasing value of livestock has reduced the relative cost of transport considerably, that it is not uncommon to see stock transported over distances of around 200 km to 300 km, and that transacting on a

liveweight basis has opened up the market to an increased number of participants transacting over a much wider geographic area.

252. In the past the Commission has used an island market to consider competition issues in livestock trading. It is not yet satisfied that any market changes are sufficient to justify broadening the geographic market. Accordingly, the Commission has adopted a South Island geographic market for the purpose of assessing the impact of the proposed merger on competition in livestock trading.

Wool Handling Services

253. The two main auction faciiities in New Zealand are in Christchurch and Napier. Typically a grower sends samples of a particular bale of wool the week before an auction. This sets the catalogue of wool for the auction the following week.

254. The Christchurch auction is facilitated by the New Zealand Wool Brokers Association (NZWBA) while the Napier auction is run by Hawkes Bay Woolbrokers (HBW). HBW and NZWBA advised that the two auctions do not compete with one another. Competition comes from on-paddock sales, or direct sales, that by-pass the auction system and growers would typically make a decision on which method to use based on their need to sell and the expected price at auction, compared to selling directly. Industry participants stated that growers would quickly switch between methods of sale if one was more competitive for a particular grade of wool.

255. Industry participants informed the Commission that growers have a preference to sell to brokers, merchants, or end-users in relatively close proximity to their farms.

256. Presently, PGG does not participate at the Napier auction and it has only recently entered the North Island, although this is primarily in retail supplies. However, many brokers, such as Wrightson and Primary Wool, participate in both North Island and South Island auctions. Further, Wrightson through its affiliation with the New Zealand Merino Company sells merino wool in the Australian auction system.

257. Separate geographical markets could exist only if the distribution costs incurred by the grower and/or buyer are sufficiently large to drive a wedge between the price paid at the separate North Island and South Island auctions. Such a wedge would prevent an arbitrage mechanism occurring whereby the price would be equalised across the different auctions.

258. The Commission considers that should the price at one auction consistently out-price the alternative auction then growers would divert their wool to the more competitive market and that the relevant freight costs are not so high as to enable differential pricing between the two auctions.

259. Accordingly, for the purposes of the present application, the Commission considers there to be a national market.

Rural Supplies

260. The Applicants submitted that there are individual regional markets for rural merchandise. This follows the approach of the Commission in the RD1 Report, which considered that although farmers travel considerable distances to purchase rural merchandise they generally purchase within their own regions.

261. However, the Applicants also submitted that the market could easily be considered South Island-wide due to the number of ‘on-farm’ sales made by travelling store representatives from rural service companies which has resulted in regional boundaries becoming defunct.

262. Farmers advised the Commission that it is typical for a farmer to have an account with a number of merchandise stores even in instances where the nearest town had only a single rural supplies store. All parties spoken to stated that farmers would react quickly if they found out they could get a product cheaper at another retailer. Several farmers related rural merchandise to the situation for supermarket shopping. For instance, it is quite common for farmers to ‘stock-up’ on consumer goods from supermarkets when visiting larger towns or cities in a region, and that the same situation occurred for rural merchandise products.

263. However, the Commission encountered various views on the distance farmers would travel to purchase particular products though all considered that the higher the cost of the item the further they would be willing to travel in order to obtain it.

264. There are currently a number of rural towns that are serviced by a single merchandise store. Industry participants advised the Commission that these stores are constrained by stores in neighbouring towns such that they are unable to extract excessive rents from their customers.

265. The Commission understands that, typically, the branded merchandise stores have common prices between stores. The Applicants stated that it would encounter resistance from farmers if they found out that they were charged a different price than another farmer in a different part of the country for the same product. However, other participants stated that there are some variances in prices primarily because different regions have different requirements than others.

266. The Commission also considered whether distinct regional markets would overlap in consumer demand such that a South Island market is appropriate given a chain of substitutability that would exist, linking these markets together. However, the Commission considers, for the purposes of the analysis, that it is appropriate in this case to define separate regional geographic markets and to take account of any overlapping substitution effect in the competition analysis.

Fertiliser

267. Fertiliser is supplied on a nationwide basis, primarily by Ballance (which sells through retail supplies outlets) and Ravensdown (which sells direct). The Commission considers that the appropriate geographic market is the national market.

Velvet

268. Due to PGG having a limited presence in the North Island, any competitive impact of the merger is likely to be felt predominantly in the South Island. In respect of velvet trading the Commission considers that it is appropriate to define a South Island geographic market.

Grain and Forage Seeds

269. As seeds can be packed in a way that eliminates wasted freight space, grass and grain seeds can be easily transported between regions domestically (and even imported) at relatively low cost compared to the retail value of the seed. This

enables all of New Zealand's seed and grain companies to operate on a nationwide basis.

270. The Commission, analysed whether it would be appropriate to define separate regional markets based on the comparative characteristics of different endophytes, particularly AR1 and AR37. In determining this the Commission considered whether it would be possible for price discrimination to occur between regions based on the varying degrees of substitutability between different endophytes in varying places around the country. For example, given that AR37 endophyte is likely to be more attractive to farmers with a black beetle pest problem, the Commission considered whether the competition dynamic was in some way unique in those particular areas such that separate geographic markets could be defined.

271. However, due to the low transportation costs and the relatively small area affected by the black beetle in New Zealand, the Commission considers that any price discrimination between geographic areas would be very difficult to sustain.

272. Accordingly, the Commission concludes that, for all of the seed and grain markets defined, the relevant geographic market is the national market.

Conclusion on Market Definition

273. The Commission concludes that the relevant markets are:

- regional markets for saleyard facilities (the saleyard facilities market);
- the South Island market for livestock trading (the livestock trading market);
- the national market for wool handling services (the wool handling market);
- regional markets for the retail supply of rural supplies (the rural supplies market);
- the national market for the retail supply of fertiliser (the fertiliser market);
- the South Island market for velvet trading (the velvet market);
- the national market for the production or importation and wholesale or retail supply of wheat seed (the wheat seed market);
- the national market for the production or importation and wholesale or retail supply of barley seed (the barley seed market);
- the national market for the production or importation and wholesale or retail supply of oat seed (the oat seed market);
- the national market for the production or importation and wholesale or retail supply of ryegrass (the ryegrass seed market);
- the national market for the production or importation and wholesale or retail supply of clover seed (the clover seed market); and
- the national market for the production or importation and wholesale or retail supply of brassica seed (the brassica seed market).

FACTUAL AND COUNTERFACTUAL

274. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative

judgment considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (the counterfactual).[11] The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

275. The Applicants submitted that the rationale for the merger is to reduce costs by eliminating unnecessary duplication in all areas of activity. It was submitted that this would, in turn, lower the prices for farmers and increase the opportunities for research and development, particularly in relating to seed cultivars.

276. The merger will essentially bring together two of the larger, and more diversified, rural servicing companies in New Zealand. The merger would also bring together three of the largest seed companies in New Zealand with PGG/Agricom having recently been acquired by PGG.

277. The relevant factual scenario in respect of all markets is the aggregation of PGG and Wrightson's operations and services.

Counterfactual

278. The Commission is not aware of any reason that suggests the parties would not continue to compete in the market as at present. Whilst the Applicants submitted that the merger was, in their view, essential to meet the changing dynamics of the rural servicing industry, no information was put to the Commission regarding the viability of either company.

279. Accordingly, the Commission assumes for the purposes of the analysis that the appropriate counterfactual in all markets is the status quo.

COMPETITION ANALYSIS

Saleyard Facilities Market

Existing Competition

280. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors). Supply-side substitution by near competitors arises either from redeployment of existing capacity, or from expansion involving minimal investment, in both cases involving a delay of no more than one year.

281. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other, providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

282. The Commission identifies market shares for all significant participants in the relevant market. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used.

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

283. An aggregation that would result in a low concentration level is unlikely to be associated with a substantial lessening of competition in a market. On this basis, indicative safe harbours may be specified.

284. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

285. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market. Specifically, the Commission seeks to understand the dynamics of the competition that would exist between the remaining firms in the market, compared to what would exist in the absence of the merger.

286. There are 33 saleyards in the South Island. Three of these – Canterbury Park (Christchurch), Tinwald (near Ashburton) and Owaka (South Otago) are currently jointly owned by PGG and Wrightson. The two companies also have a majority interest in the Sheffield saleyard (together 54%) and minority interests in 14 other saleyards including Waiareka (37%), Omarama (37%), Palmerston (42%), Balclutha (26%) Omakau (32%), West Otago (42%) and Lorneville (23%).

287. The saleyards vary substantially in significance. Only 9 have regular weekly sales. Other saleyards may hold sales on a weekly basis during the period of greatest demand, but others can have as few as two or three sales a year.

288. Five saleyards offer 'liveweight selling' – that is they provide scales which allow livestock to be weighed at the salesyard. Liveweight selling for cattle is generally seen as an advantage by both buyers and sellers because it provides additional information to the market about the value of the stock being sold. However, sheep generally are not sold by weight and hence scales in themselves do not give their saleyard company owners an advantage over other saleyard companies when it comes to trading sheep.

289. The nine saleyards with weekly sales are set out in Table 4:

Table 4: Saleyards with Weekly Sales

Yard	Location	Ownership	Liveweight Selling
Brightwater	Nelson	Farmers	No
Marlborough	Blenheim	Wrightson 1% PGG 1% Others 98%	Yes
Canterbury Park	Christchurch	Wrightson 50% PGG 50%	Yes
Tinwald	Ashburton	Wrightson 50% PGG 50%	No
Temuka	Temuka	Wrightson 1% PGG 1% Others 98%	Yes
Waiareka	Oamaru	Wrightson 23% PGG 14% Others 62%	No
Balclutha	Balclutha	Wrightson 13% PGG 13% Others 75%	Yes
Charlton	Gore	Wrightson 4% PGG 1% Others 95%	No
Lorneville	Invercargill	Wrightson 21% PGG 2% Others 76%	Yes

290. As noted, farmers may send their stock up to 150-200 km to a saleyard, although this distance may be greater if the saleyard is running a specialty sale or has sophisticated facilities such as liveweight sales and attracts a likely full bench of buyers. The Commission has been advised that farmers are increasingly favouring the larger saleyards in their region (such as Blenheim, Canterbury Park, Temuka, Balclutha and Lorneville) at the expense of smaller saleyards. However, even the smaller yards can provide valuable services including specialty sales (a ewe fair or a stud ram sale for example) perhaps several times a year.

291. The Owaka saleyard is an example of a small saleyard serving a market niche with only one or two sales a year. It is considered very unlikely that there would be any market power associated with these saleyards. Transferring these sales to alternative saleyards to avoid an unreasonable increase in yard fees, for instance, would not appear difficult.

292. Direct competition between saleyards tends to be limited to saleyards within 200 km of each other, and particularly between the larger saleyards within that radius.

293. It is noted that the parties to the merger have effective control over Canterbury Park, Tinwald (Ashburton) and Sheffield which are within a reasonable vicinity of each other. Tinwald is constrained to some extent by the presence of the larger, predominantly farmer-owned Temuka saleyard (which has liveweight selling) to the south. Similarly Sheffield, which is a small saleyard, would face some competitive constraint from similar-sized saleyards at Hawarden, Culverden and Cheviot.

294. Canterbury Park appears to be less effectively constrained by direct competition from neighbouring saleyards. Its size and the facilities it offers put it into a different category from its neighbours. Its yardage fees of [ ] per head for cattle and [ ] for sheep are [ ]. This may reflect a degree of market power, although the Applicants suggested that they are a result of the yard's high operating costs including the high rental payments made to Canterbury A&P Association. In any event, the issue is not whether the saleyard has market power but whether the merger would decrease existing levels of competition (and thereby increase the current level of market power).

295. In this respect the merger would not in itself lessen the present level of saleyard-on-saleyard competition. Currently, Canterbury Park and Tinwald (at Ashburton - the saleyard with weekly sales which is closest to Canterbury Park) are both owned 50% by PGG and 50% by Wrightson. The merger would change the way the shareholding in each is held (post-merger both would be 100% owned by a merged PGG/Wrightson), but it would not change the fact that they are in common ownership. Thus the two saleyards would not be competitors post-merger, but this merely mirrors the present situation. Other saleyards in the vicinity will continue to provide alternative outlets for some farmers in the vicinity, although in general the constraint that this places on Canterbury Park is limited as these saleyards tend to be relatively small with less frequent sales. This limited competition will continue post-acquisition.

296. The Commission has focussed particularly on Canterbury Park when considering the competitive impact of the merger in the saleyards markets because it is the largest of the saleyards owned by the parties to the merger and also because a number of independent livestock agents have expressed concern that the merger may affect their ability to obtain access to that saleyard. The access issue is discussed below in the context of the livestock trading market and constraints on new entry and expansion in that market.

297. For other saleyards in which PGG and Wrightson have a significant interest, the Commission is satisfied that the merger, while having the effect of aggregating the two companies existing shareholding in those saleyards, would not have a material effect on competition between saleyards in general. Like the situation with Canterbury Park, any market power currently held by each of these saleyards would not be increased by the acquisition.

Conclusion on Saleyards Facilities Market

298. The Commission has concluded that the proposed acquisition would not result in a substantial lessening of competition in the market for the provision of saleyard facilities.

Livestock Trading Market

Existing Competition

299. The general view of interested parties spoken to by the Commission is that a key to success of stock firms in the livestock trading services market is the relationship between the firms' livestock agents and the farmer client. This relationship is typically built up over time and, if it works well, is greatly valued by the farmer. It was a common view that farmers value this relationship over which they have with the firm. A good agent may take between 70%-80% of their farmer clients with them when they switch employer or establish their own firm.

300. This situation appears to be different from that of earlier years when many individual farmers were committed to a particular company because of traditional loyalty and/or because the company was also the provider of the farmer's finance. The large number of mergers in the sector and the current competitive nature of the financial sector (including in the provision of farm finance) has meant that farmers are much more willing to change their livestock company than they were in the past.

301. Most farmers spoken to considered that the current (pre-merger) state of the market is quite competitive, notwithstanding the demise of many stock and station companies in the past two or three decades. In the main they considered that they had alternatives to their present supplier of livestock trading services. Of concern to some farmers, and to some independent livestock firms, was the ability of these independent firms and new entrants to gain access to what they saw as key saleyards. This is discussed further below.

302. The increasing role of meat companies buying direct from farmers was seen as having a positive influence on competition in the market.

303. The Applicants stated that competition between agents and meat companies is so vigorous that commission rates for paddock sales average about [ ] across the South Island, and in some areas can fall as low as [ ]. This compares with commission rates in the North Island of between [ ][12].

304. In its submission on behalf of the Applicants, CRA stated:

> "The merged entity would be the single largest player in the South Island livestock trading services market, by quite a long way. Nevertheless, in our view the merged entity is unlikely to have the ability to unilaterally exercise market power because of the large number of remaining competitors (including the meat companies) and the ease of expansion in this market. The industry is fluid, in the sense that agents switch brands frequently. Livestock trading, and rural servicing more generally, is a human resource business in which the quality of resource is more important: the main loyalty of agents is to their farmer clients."

305. The Commission agrees that the livestock trading market will be quite concentrated post-merger with the merged entity having by far the largest market share. However, almost all independent stock firms spoken to saw the merger as providing them with an opportunity to increase their share of the market and, for some, extending the area in which they operate. In part they saw the potential for growth as coming from clients of Wrightson and PGG who are likely to have less loyalty to the merged entity than they had to either Wrightson or PGG. Also they considered that it may provide a propitious time to approach the better agents of PGG and Wrightson to persuade them to switch companies and to take a significant proportion of their farmer clients with them. The Commission notes that the Wrightson/Dalgety merger in 1986 led to significant changes in the allegiances of agents.

306. Apart from competition from other livestock firms, the merged entity will also face strong competition from meat companies for many livestock trading transactions.

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[12] Paragraph 46 of Commission report dated 21 April 2005 on Wrightson's acquisition of Williams & Kettle.

307. The livestock firm competitors (though not necessarily the meat company competitors) are significantly smaller than either PGG or Wrightson and in the main each operates in only part of the South Island market. It has been suggested by some that selling livestock through these smaller and less well resourced firms may increase the risk to the seller of payment default, although there appear to be few instances in the past when small firms have defaulted on payments. In addition, it has been suggested that the smaller firms may have difficulty gaining access to saleyards and may therefore not be able to offer the full range of livestock trading services which will be available from the merged entity. These issues are discussed below.

Conclusion on existing competition

308. The livestock trading market is currently competitive. Both Wrightson and PGG are important competitors in this market, but important competition also arises from other livestock firms (albeit they are relatively small in comparison with Wrightson and PGG, but have the ability to expand) and from meat companies buying direct from farmers.

Potential Competition

309. An acquisition is unlikely to result in a substantial lessening of competition in a market if the businesses in that market continue to be subject to real constraints from the threat of market entry.

310. The Commission's focus is on whether businesses would be able to enter the market and thereafter expand should they be given an inducement to do so, and the extent of any barriers they might encounter. Where barriers to entry in a market are clearly low, it may be unnecessary for the Commission to identify specific businesses that might enter. In other markets, where barriers are higher, the Commission may seek to identify possible new entrants as a way of testing the assessed entry barriers.

311. New entry into the livestock trading services market has been common in the past, although entry has generally been on a small scale and often by firms set up by those already in the sector, including by those with previous experience as livestock agents. These people had established credibility with farmers and, in the case of agents, were often able to take farmer clients with them to the new firm.

312. In the application the Applicants note that the proposed merger will inevitably see existing competitors pick up various agents from both PGG and Wrightson, or agents will leave the merged entity to establish independent businesses. They added:

> The restraints of trade applying to agents are not onerous, and the flexibility and freedom with which agents operate make transfers or start-up in this industry particularly easy.

313. Entry by firms without an established reputation is likely to be more difficult and it is likely that it would take longer for such firms to provide an effective competitive presence.

314. It has been argued by some parties that livestock firms without the ability to access larger saleyards would be at an important competitive disadvantage and their ability to enter and expand in the market would be constrained. The issue of whether access to saleyards constitutes a substantial barrier to entry in the

livestock trading market and whether that barrier would be raised by the proposed merger is discussed below.

Barriers to Entry

315. 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.

Access to Saleyards

316. The Applicants have stated in their application that while the merger will result in the merged entity holding all of the shares at Canterbury Park and Tinwald (and a large shareholding in Balclutha), access to any of these saleyards would be granted if required by an agent. They also state that post-merger, all saleyards will continue to be available to other competitors.

317. Subsequently, however, the Applicants stated that there are practical limitations to the number of selling firms which can operate out of any saleyard. They suggested that there are logistical problems if there are more than three or four selling firms at any saleyard, and that only the Stortford Lodge saleyard in Hawkes Bay has as many as five sellers.

318. The Applicants informed the Commission that there have been very few requests for access to South Island saleyards in recent years and that no independent agent or company has been denied access in the last five years. However, at present it is understood that three independent firms are seeking access to Canterbury Park [

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319. It is noted that independent agents need not have direct access to a saleyards themselves to have their stock sold through that saleyard. Rather they can put stock through that saleyard by utilising the services of one of the parties which does have access (and sharing their commission with that party). For instance Rural Livestock (as well as PGG and Wrightson) sell livestock at Canterbury Park on behalf of several small independents. However independents spoken to consider that access in their own name is important as it provides a shop window for the firm and a means by which they can become better known in the farming community.

320. For those saleyards in which PGG and Wrightson have significant equity interests, the following companies/agents (other than PGG and Wrightson) have access as shown in Table 5 below.

Table 5: South Island Saleyards and Companies/Agents With Access

Saleyards	Selling Companies/Agents
Canterbury Park	Rural Livestock
Sheffield	Rural Livestock
Tinwald	Provincial Livestock
Waiareka	Whitestone Livestock, Waitaki Livestock
Omarama	Peter Walsh & Associates
Palmerston	Otago Livestock
Allanton	Only PGG
Balclutha	Used to be Peter Grieve Livestock
Owaka	No other party
Omakau	No other party
West Otago	Southwest Livestock, Otago Livestock
Lorneville	Southstock

321. Independent agents have suggested to the Commission that the terms of access they may face when selling livestock at saleyards owned by PGG and Wrightson might be less advantageous than those faced by the merged entity and that this may constitute a barrier to entry or expansion. Alternatively the Applicants submitted that there would be no price discrimination, and in any event the shares held by farmers in most saleyards would prevent the merged entity from instituting such a policy.

322. Some independent agents suggested that as long as the pre-merger situation continues where PGG and Wrightson are each 50% shareholders in Canterbury Park, Tinwald and Owaka, they may be able to exercise any negotiating power with one of them (from common interest elsewhere or from favours owed) to achieve access on favourable terms, whereas if the saleyards are owned by the merged entity that might be less likely.

323. The Commission has given careful consideration to this suggestion and the other points raised above. It does not rule out the possibility that the owner of a saleyard may have market power. However, it does not consider that the merger would be likely to make a significant difference to whether independent agents would have difficulty in obtaining access to saleyards on competitive terms.

324. Currently if there was a commercial advantage to either PGG or Wrightson denying an independent access, it is likely there was a similar commercial advantage to the other (given their similar interests in the market). In any case, if an independent agent has a special relationship with either PGG or Wrightson which may assist it to obtain access to a saleyard, it may well be that this relationship would carry forward into the merged entity. The Commission recognises that there may be exceptions to this. However, it considers that overall access to saleyards (and the related barrier to entry or expansion in the livestock trading market) would not be materially affected by the merger.

325. Further the Commission recognises that independent agents who do not have access to saleyards in their own name will continue to be able to place stock in saleyards by using independent agents who do have access. While this arrangement may not be fully satisfactory to firms denied access in their own right, it ensures that they will be able to offer their farmer clients the opportunity to sell their livestock in saleyards, should that be their wish.

326. The Commission concludes that while access to saleyards can be an important factor in determining the likelihood of entry or expansion in the livestock trading market, the ability to obtain access would not be materially affected by the proposed acquisition.

Conclusion on the Livestock Trading Market

327. The proposed merger would result in the aggregation of the two largest participants in the South Island livestock trading market, facilitating between them around [ ]% of all cattle sales and [ ]% of all sheep sales. However, the Commission considers that the merged entity would be constrained by the following:

- thirty-four independent livestock firms, albeit many of which are small with few agents;
- low entry barriers and the ability of firms currently in the market to expand quickly, often by persuading the agents of other firms to switch; and
- the significant role of meat companies in the South Island which acquire prime stock for processing and store stock on behalf of their shareholders, utilising their own agents in the field.

328. Having regard to these factors, the Commission is satisfied that the proposed merger would not result in a substantial lessening of competition in the South Island market for livestock trading services.

Wool Handling Market

Existing Competition

329. Wool brokers regularly conduct auctions at facilities that they either own or access via license. The two main facilities are in Christchurch and Napier. Sale dates at these facilities are determined by the Wool Auction Sales Committee. This committee comprises wool brokers and wool exporters with a representative broker from both the North Island and South Island.

330. Further, the order of selling at these facilities is determined at the beginning of a season. The initial order is then rotated automatically after each sale. For example in the South Island the company first in the roster will move to second place, and then to third after each subsequent sale.

331. [ ] NZWBA, informed the Commission that although there are currently no non-members of the Association brokering at the auction, it is essentially a ‘public’ auction. Membership requires a knowledge and understanding of the industry but this did not represent a barrier to entry to the auction. Further he advised that there had never been any disagreements over access between current members and no organisation had ever been asked to leave the auction.

332. [ ] HBW, stated that there are no significant barriers to accessing the wool auction from brokers. He stated that of more concern is the ability of buyers to pay for the wool which has forced new buyers to submit an application confirming their financial history and credibility.

333. Outside the auction process, wool brokers, wool exporters, wool merchants and some processors (such as Feltex and Cavalier) purchase wool direct from wool growers. Wool brokers themselves will buy wool direct from the grower to either

on-sell under future contracts or put through the auction system. The Applicants submitted that this method is the most significant sales channel accounting for approximately [ ] of the wool traded in New Zealand.

334. Industry participants stated that, compared to direct sales, there is a degree of objectivity offered by the auction process and many brokers prefer this method of selling. The auction process requires samples to be displayed and enables the wool bale to be objectively tested by third parties. [ ] advised the Commission that direct selling is a riskier business (than auctions) as the wool yield and wool quality is not tested. This is one of the reasons all its wool is brokered through the auction process.

335. The Applicants submitted that the merged entity would continue to face strong competition from wool brokers competing for sales at various wool auctions throughout the country. Existing competition comes from a mix of national and regional competitors. The main national competitors are Wrightson and Primary Wool whereas Southland Woolbrokers and PGG typically operate only in the South Island and Country Auctions and Allied Farmers typically operate only in the North Island.

336. Table 6 shows the estimated market shares for wool sold at auction in the North Island, in the South Island and nationally, for the year 2004/2005. The figure is the percentage of wool bales auctioned by each competitor. It is estimated that this represents approximately 50% of the total sales of wool.

Table 6: Summary of Growers wool sold by auction for the year 2004/2005 (by percentage of brokered bales)

	North Island	**South Island**	**National Market**
Wrightson	[ ]%	[ ]%	[ ]%
PGG	[ ]%	[ ]%	[ ]%
Merged Entity	*[ ]%*	*[ ]%*	*[ ]%*
Primary Co-op	[ ]%	[ ]%	[ ]%
Southland Wool	[ ]%	[ ]%	[ ]%
Allied Farmers	[ ]%	[ ]%	[ ]%
Country Auctions	[ ]%	[ ]%	[ ]%
Total	**100%**	**100%**	**100%**
Total Bales	**[ ]**	**[ ]**	**[ ]**

337. Industry participants noted that although the percentage figure is an average of the entire year's sales, there is significant variance between specific weekly, fortnightly or monthly auctions. For example, [

] Industry participants advised the Commission this is indicative of the nature of sales and illustrates the ability of existing competitors to increase capacity.

338. The Commission has previously considered that access to a wool auction facility can be gained by paying an access fee and that this fee did not represent a barrier to expansion or entry[13]. [ ] advised the Commission that it had concerns on the future status of the Christchurch auction facility, but it did not consider this would affect its ability to compete in the market. Further, it is not concerned with the proposed merger and considers that, post-acquisition, it would continue to be business as usual.

339. [ ] advised that changes to the structure of the market have enabled smaller companies to compete more strongly. Previously there was a concentration of selling in the summer months which accounted for approximately 60% of sales. This concentration put pressure on smaller operators to increase their capacity in a relatively short period of time. Currently sales are spread throughout the year which has allowed for a smoother flow of sales and increased the viability of smaller firms.

340. As with livestock agents, industry participants described wool brokering as a ‘people business’ where the reputation of brokers is important. Industry participants advised that growers typically related to the person and not to the company that the broker works for. Should a representative switch companies it is common for growers to follow that representative to the new company. Further brokers are not restricted by any capacity constraints and could expand their operations relatively easily.

341. The Applicants advised the Commission that farmers are not captive to selling their wool at any particular time and have the option of storing their wool until they get their desired price. Industry participants stated that currently, due to the combination of falling commodity prices and the rising dollar, growers are tending to hold their clip this year, anticipating that prices will improve next year.

342. Industry participants stated that wool was becoming a ‘by-product’ of the sheep meat industry and that it no longer had the eminence it once had. This has resulted in a number of private merchants, such as Dunstan Wool, exiting the market in recent times. However other participants were upbeat about the industry due to the strength of the New Zealand dollar and the quality and reputation of New Zealand wool.

343. Auction participants typically display samples in a showroom prior to an auction. In Christchurch the main showroom is leased by NZWL. NZWL is 50/50 owned by Wrightson and PGG who have advised the Commission that it will be available for all brokers to use. It is currently used by Wrightson, PGG and Southland Wool. The other operator in the South Island is Primary Co-op which uses its own showroom located in its warehouse.

344. The actual auction room and associated facilities in Christchurch are leased from a third party by the NZWBA. NZWBA is a not for profit industry organisation which splits the costs of the facilities amongst all the brokers based on the percentage of bales sold (by the broker).

345. Further, the Wool Auction Sales Committee determines the sale dates and the order of sale at the auction. This Committee comprises representatives from the Council of Wool Exporters and Brokers which includes brokers and wool merchants.

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[13] Decision 436 Newco/Merino New Zealand Limited/Wrightson Limited (7 June 2001)

346. The NZWBA is responsible for who is granted access to the auction process. In assessing the granting of access the NZWBA considers the credibility of the proposed participant, if the proposed participant has the necessary equipment to extract samples for display and whether they have the industry knowledge to meet industry standards and practice.

347. The cost of running the NZWBA (and hence the auction) is split between all the participants. Currently [ ] of the cost is split evenly between participants via a fixed amount per annum.[14] The remaining costs are recovered from a fee collected from participants which is based on the number of bales sold.

348. Currently, all the merino wool that is brokered or auctioned through Wrightson goes through the New Zealand Merino Company. This company is a joint venture between Wrightson, with a 35% shareholding, and New Zealand Merino Growers, with the remaining shareholding. The Commission considered this joint venture in Decision 436.

349. [

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350. The Applicants advised the Commission that currently PGG brokers a very small amount of merino wool whereas the bulk of all New Zealand merino wool is distributed through the New Zealand Merino Company.

351. The Commission considers that there would be a small degree of aggregation in merino wool with the current services offered by PGG being amalgamated into Wrightson's operation through the NZ Merino Company. This would result in a loss of an existing competitor in the brokering of merino wool. However, unlike in Decision 436, the Commission does not consider there to be a separate market for merino wool. Further, given the minimal volume of merino wool sold in comparison to the volume of coarse wool sold, the Commission considers the [ ] would have a minimal effect on the wool market.

Conclusion on Wool Handling Market

352. The Commission is of the view that there would be little change, in competition terms, between the factual scenario and the counterfactual scenario. Accordingly, the Commission is of the view that a substantial lessening of competition is unlikely to occur in the wool handling market.

Rural Supplies Market

Existing Competition

353. The Applicant submitted that there will be aggregation in various South Island towns with the merged entity having the only full service stores in eight towns. However, all industry participants, whether suppliers, retailers or customers,

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[14] [ ]

advised the Commission that the market for rural supplies would continue to be competitive and that there would still be sufficient competition from existing competitors to constrain the combined entity. Numerous customers advised the Commission that the traditional loyalty that many farmers had to specific rural stores was long gone and farmers are very price conscious.

Table 7: Number of Rural Supply Stores by Region

Retail Stores	Nelson/ Marlborough	West Coast	Canterbury	South Canterbury	Otago	Southland	**Total**
Wrightson	7	1	8	5	8	6	**35 (20%)**
PGG	1	2	11	7	12	10	**43 (24%)**
Combined Entity	*8*	*3*	*19*	*12*	*20*	*16*	***78*** **(44%)**
CRT	5	3	5	3	3	5	**24 (14%)**
RD1				1	1	3	**5 (3%)**
Other	6	5	22	13	11	12	**69 (39%)**
Total	**19**	**11**	**46**	**29**	**35**	**36**	**176**

354. The Commission received very few complaints in regard to competition concerns for rural supplies. In contrast, a number of industry participants including existing competitors [ ] viewed the proposed merger as an opportunity for them to attract customers away from either PGG or Wrightson. Industry participants considered PGG and Wrightson to have been historically more expensive, especially in relation to the stores of the co-operatives, CRT and RD1.

355. The Applicants submitted that there is reduced importance of physical stores for the purchasing of rural supplies. It estimated that approximately [ ] of PGG's products in the South Island are arranged through 'on-farm' visits by store representatives rather than farmer visits to stores. The Applicants also gave some weight to the influence of internet purchases and the growth of on-line sales in this sector. Industry participants disagreed with this statement in regard to retail purchases. For example [ ] The Commission considers that the growth of 'off-site' purchases will to a certain extent provide a competitive constraint on the combined entity in the factual scenario.

356. The Commission is also of the view that other retail stores will provide a degree of competition to the combined entities' specialised rural supply stores, across certain product ranges.

357. The Commission received submissions in regard to the retailing of horticultural supplies. Currently the two main retailers of horticultural suppliers are PGG and the Wrightson-owned Fruitfed stores. Historically PGG has been in the South Island and has only recently expanded into the North Island with one store. Fruitfed has six of its 19 stores in the South Island which are located in the main fruit growing regions of Nelson/Marlborough, Central Otago and Christchurch.

Prior to the Williams & Kettle acquisition, Wrightson did not offer a full service in such supplies. In particular, the Commission received concerns in respect of the supply of agrichemicals used for the spraying of commercial fruit and grapes.

358. In regard to agrichemicals, industry participants described the need for technical advisors and on-field representatives' expertise in the use of such chemicals, although there is a degree of 'cash and carry' products sold in stores. For example, CRT sells some of these products but does not have any technical advisors. [ ] stated it is a hard call (about getting into agrichemicals) because of the need for volume to make the terms of trade with the manufacturers viable [ ].

359. The Applicants submitted that the existing competitors of horticultural chemicals include Fruitfed, PGG, Independent Cropcare Distributors (ICD), Farmlands and CRT, as well as a number of independent companies throughout the country. ICD is a nationwide buying group of 17 independently owned companies (with 28 outlets) including Tasman Crop Protection (Tasman).

360. [ ], considered the combined ICD group to be the largest competitor to Fruitfed. He did not consider PGG to be a significant national competitor, although PGG is strong in Marlborough where it has an established reputation and customer base.

361. Further, [ ] did not consider the proposed merger would have an effect on the industry in [ ].

<u>Supply Arrangements for Agrichemicals</u>

362. The Applicants submitted that standard terms of trade exist between themselves and the major suppliers. These terms include product support and volumes, staff and client training on product knowledge, pricing, promotion and merchandising. These terms are typically negotiated on an annual basis.

363. Industry participants advised the Commission that the main suppliers, in agrichemical supplies include:

- Bayer Crop Science;
- Dow Argo Sciences;
- Nufarm NZ;
- Sungenta Crop Protection;
- BASF NZ Ltd; and
- Dupont NZ Ltd.

364. All these companies are, or are subsidiaries of, large multinational corporations. The Commission understands that all these companies currently use Wrightson/ Fruitfed, PGG, the ICD stores as well as the regional co-ops and smaller independent stores to distribute their products to market. [ ] informed the Commission that their focus in New Zealand is on research and development and that currently it is more efficient to use the retailers as distributors. Further the Commission is aware that a number of other manufacturers are by-passing the retail stores and supplying customers directly. For example, [ ].

365. The Applicants submitted PGG does not have any sole supply, or exclusive arrangements with any agrichemical companies. However, Wrightson/Fruitfed does have a number of such arrangements. Fruitfed stated this is because it has developed such products in-house as a strategy to compete with generics or where a decision has been made to rationalise a range (and Fruitfed has retained the product itself). Of the exclusive products it has, Fruitfed submitted that the vast majority of these products have substitutes readily available from competing suppliers. Of the products that do not have a competing product, Fruitfed currently supplies most of these products to both PGG and ICD to on-sell at what it has termed 'reasonable commercial terms'.

366. [ ]

367. Further, [ ] stated that it had no concerns with any existing supply arrangement or any potential agreements that may result from the proposed merger. [ ]

368. [ ] Nufarm NZ, considered Nufarm to be Fruitfed's largest supplier. He stated that the proposed merger would create the largest retailer of agrichemicals, but this has always been the case with Fruitfed. [ ]

Conclusion on Rural Supplies Market

369. The Commission has considered the nature and degree of competition in the rural supplies market and considers that the presence of independent rural supplies stores and the increasing opportunity for 'off-site' purchases, will constrain the combined entity in the factual scenario.

370. The Commission has also had particular regard to the existing supply arrangements for agricultural and horticultural chemicals and considers that there is no possibility for the supply of these chemicals to be foreclosed in any way as a result of the merger.

371. Accordingly the Commission considers that the merger, in respect of rural supplies, is unlikely to lead to a substantial lessening of competition in the factual scenario compared to the counterfactual scenario.

Fertiliser Market

Existing Competition

372. The Commission considers that there will be no change between the factual and the counterfactual scenarios in respect of the fertiliser market due to the continued ability to purchase fertiliser direct from Ravensdown, which will continue to keep downward pressure on the price of fertiliser to end consumers post-merger.

373. Accordingly, the Commission considers that the merger is unlikely to result in a substantial lessening of competition in this market and therefore does not consider it further.

The Velvet Market

Existing Competition

374. Mark O'Connor of Deer Industry New Zealand informed the Commission that Pyne Gould Guinness and Wrightson run the only two velvet pooling operations in New Zealand, but that there are a number of independent operators who purchase directly from the farmer. Approximatley 75% of velvet is sold through the velvet pools whilst the other 25% is sold to independent purchasers.

375. The ability to sell through an independent agent mitigates any degree of market power that the combined entity may have otherwise had as farmers will continue to have the option, in the factual scenario, of selling to the one velvet pool or to any number of independent agents.

376. Accordingly, the Commission is satisfied that a substantial lessening of competition is unlikely to result in the velvet trading market and therefore does not consider this market further.

Wheat Seed Market

Existing Competition

377. In regard to milling wheat the existing breeders (or NZ owners of cultivar rights) are PGG, Wrightson, Crop and Food and the Canterbury Seed Company. These same competitors are also active in feed wheat as well as Cropmark, Midlands, and Central Grain & Produce (CGP).

378. Industry participants stated that the vast majority of domestic wheat is supplied under contract to millers, either directly or through brokers. The three main millers are Goodman Fielder, Champion and the Ashburton Flour Mill. Typically the miller will have a contract with a grower, which is brokered by the seed breeder (or agent), to supply milling wheat to certain specifications. Mills announce contracts at fixed prices, prior to a crop being sown, and growers then decide whether or not to accept the contract. The Commission also understands that contracts are offered on the open market essentially on a first-in, first served basis, when required by millers.

379. Industry participants advised the Commission that growers are able to re-sow wheat seeds without the need to purchase new seed and as such they do not purchase seed every season. Unlike a brassica crop, wheat germinates new seed and a grower has the ability to replant these seeds. Plant Variety Rights are not affected by this as long as growers use seed that they have previously grown themselves.

380. Further, the Commission has been informed that a large amount of grain is imported, predominantly from Australia, and the domestic price of wheat grain reflects the Australian Standard White price for wheat (this price in turn tracks international prices). The majority of New Zealand wheat is grown and milled in the South Island although in the North Island a significant amount of milling

wheat is imported, primarily due to its higher quality and competitive price[15]. Although this effect takes place at the downstream crop level it has a corresponding effect on the wheat seed market.

381. Industry participants stated that currently, although there are variances in the amount of wheat seed imported annually, there are still significant amounts of wheat seed imported into New Zealand. This wheat is typically sourced from cultivars that are competing with the combined entity. Further, industry participants advised that wheat cultivars are readily available internationally and there is nothing to stop companies bringing cultivars into the country. For example, Kiwi Seed Company (Marlborough) Limited (Kiwi) currently retails a cultivar sourced from an American breeder.

382. The Applicants submitted that barriers to entry in wheat cultivars and other cereal cultivars are very low and this is illustrated by recent entry. For example, Ashburton Grain Consolidators (AGC), with cultivars bred through Crop and Food, has become a significant competitor in milling wheat in the space of five years. The Applicants noted that PGG/Agricom had a share in AGC, but recently divested this share as a result of the PGG/Agricom acquisition.

383. Crop and Food considered itself to have the largest breeding program in New Zealand and currently has a number of licensed agents with wholesalers, including Luisetti and AGC, for milling wheat. It considered competition came from other New Zealand breeders, such as PGG, but that typically most companies, including PGG and Wrightson, act as the New Zealand license holder for imported cultivars and distribute these accordingly.

384. [ ] advised the Commission that they considered there were no issues in this market. They stated that everything is driven by the mills and that if a farmer was unhappy with the price he was paying for seed there would always be the option of purchasing the seed off them.

385. Given these considerations the Commission is of the view that a substantial lessening of competition is unlikely in the wheat market and does not consider this market further.

Oat Seed Market

Existing Competition

386. Virtually all (12 of 14) oat varieties which currently have plant variety rights attached to them are owned by Crop and Food. Industry participants informed the Commission that the Applicants are not particularly strong in the areas of milling oats or feed oats, with others such as Peter Cates and Central Grain and Produce being more active in this market. Many varieties used in breakfast cereals are also currently imported.

387. Crop and Food has four varieties of feed oat currently, only one of which is presently licensed to the Applicants. One of these varieties, Makuru, is a variety for which there are no plant variety rights. In addition NZ Agriseeds and Peter Cates both market feed oat varieties.

[15] For example, the Commission considered the wheat industry in Decision 289 Goodman Fielder Ltd / Defiance Mills Ltd (14 April 1997) noting that [ ] of milling wheat was imported.

388. Additionally, the Commission is of the view that the ability to source feed oat varieties from overseas is so easy as to make international supplies near competitors into the market.

389. Given these considerations the Commission is of the view that a substantial lessening of competition is unlikely in the oat market and therefore does not consider this market further.

Barley Seed Market

Existing Competition

390. The Commission was informed by industry participants that the Applicants (combined) would have a rather small share of market in respect to barley seed. The Commission was informed that the majority of barley seed is sold by Cropmark. Vaughn Ormsby of Cropmark informed the Commission that Cropmark have approximately [ ] of the New Zealand Barley industry.

391. Accordingly, the Commission is of the view that the merger is unlikely to have the consequence of substantially lessening competition in this market in the factual scenario compared to the counterfactual scenario.

The Ryegrass Seed Market

Existing Competition

392. The Commission has sourced Agriquality certified seed statistics for 2004-2005. These statistics present the total planted hectares of particular seeds in New Zealand. However, the statistics do not differentiate between seed that is sold domestically and seed that is being multiplied for export. As such the calculation of market share figures relating to the domestic presence of a particular industry participant is difficult to distil.

393. In respect of the current level of competition, most industry participants were of the view that the market for ryegrass was competitive with NZ Agriseeds in particular being a strong competitor. Cropmark seeds also have a presence in this market and are of the view that [ ].

394. The Commission is of the view that barriers to expansion in the supply of ryegrass seed are low. Quantities of New Zealand produced seed can be fairly readily adjusted over a 12 to 14 month period allowing for the provision of seed to meet increased demand if forecast. In respect of imported seed, tested and proven in the New Zealand market, it is often the case that simply placing an order with the overseas supplier can provide access to large tonnages of seed within four weeks.

395. The Commission was also informed by Claus Ikjaer of DLF that [

]

396. [ ] both informed the Commission that their primary concern in this industry is the access to endophyte technology being developed by AgResearch, in conjunction with Wrightson and PGG/Agricom. They also expressed concern over the potential for them to be excluded from future investment and research which would cause them to become marginalised within the industry.

397. To address these potential issues the Commission sought a copy of the ryegrass endophyte collaborative research agreement between AgResearch, Wrightson and PGG/Agricom. [

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398. [

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399. [

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400. [

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401. In the factual the number of competitors potentially marketing AR37 endophyte from January 2007 will be reduced from two to one. [

]. Due to the time required to multiply stocks of seeds into commercially saleable levels, the combined entity will effectively have a [ ] window in which it will be the only company with grass products available with the AR37 endophyte.

402. However, as discussed in the market definition section, the Commission is of the view that the Applicants will face strong competition from other industry participants marketing the AR1 endophyte, which is known in the market to be a safe and proven product.

403. AR1 endophyte falls outside the scope of the REG agreement and will continue to be accessible to all industry participants; the royalty component of the endophyte and the cost of future inoculations being controlled entirely by AgResearch.

404. Industry participants expressed concern over future access to endophytes such as AR37 on reasonable commercial terms. Although there will be only two parties to the REG agreement in the factual as opposed to three in the counterfactual, there is nothing to suggest that incentives regarding the access to such technology will change as a result of the merger. AgResearch informed the Commission that it has an incentive to encourage the uptake of the technology by other industry participants as this would in turn increase the value of the total royalties collected.

405. The Commission also considers that incentives regarding the setting of the royalty component of the endophyte sale price are in no way altered by the merger, as they are not related to the degree of downstream competition between Wrightson and PGG/Agricom.

406. A further concern of industry competitors was the security of access to distribution channels and that the combined entity would be of a scale which would enable it to exclude its competitors from its retail arm. However, the

Commission is of the view that such a scenario would be of concern only if the combined entity were to have a degree of market power in the agricultural and horticultural supplies market. As analysed above, the Commission is of the view that there are a sufficient number of independent retailers and competing supply chains such as CRT which mitigates any market power of the combined entity.

407. Further, [ ] both informed the Commission that they would look to encourage other competitors through their stores in the event that the combined entity attempted to dictate terms in respect of forage seed.

Conclusion on Existing Competition

408. The Commission is of the view that there is a sufficient degree of existing competition within this market, considering that barriers to expansion are low, such that a substantial lessening of competition is unlikely to result in the factual scenario.

409. The Commission is also of the view that there is unlikely to be a substantial lessening of competition in respect of the sale of AR37 inoculated grass given, as analysed in the market definition, the degree of competition it will face in the factual scenario from the established incumbent endophyte, AR1.

410. Further the Commission is of the view that the merger will not create opportunities for the combined entity to foreclose the possibilities of conducting research and development with AgResearch or distort the final distribution of seed at the retail level.

The Clover Seed Market

Existing Competition

411. Clover is a legume that is constantly heralded as New Zealand's most important forage plant due to its nitrogen affixing properties, which in turn provides high quality herbage.

412. Industry participants informed the Commission that although there is a focus on developing clover, the technology advancements have not been as pronounced as they have been in ryegrass. The biggest developments in clover have been in increased leaf size and in stolon density (surface roots). The developments have helped to increase both dry matter production, persistence of the grass and the efficiency of nitrogen fixation. At present, AgResearch does not have an exclusive breeding arrangement with any industry participant in respect of clover.

413. The major competitors in the clover market include the Applicants, NZ Agriseeds and Cropmark. NZ Agriseeds competes with its Aran, Apex, Prop and Sustain varieties. Cropmark has varieties called Demand and Nanoak.

414. In addition, the Applicants submitted that there are other proprietary lines available accounting for approximately [ ] of the market. Further, the Applicants submitted that the combined market share of NZ Agriseeds, Cropmark and the other varieties would be in excess of [ ] of the market.

415. The Commission considers that barriers to expansion in the clover market are low and, similar to ryegrass, volumes of seed produced can be adjusted to meet demand easily over the short to medium term. In many cases volumes of seed can be imported to meet excess demand which, the Commission understands, is done on a regular basis particularly by [ ].

416. The Commission is also of the view that there are a number of near entrants into the market for clover including Germinal Seeds, Midland Seeds and DLF Trifolium which are all currently multiplying seed in New Zealand for export overseas. The Commission is of the view that this production could be relatively easily diverted to the New Zealand domestic market given a financial incentive to do so. This would be increasingly possible over a two year period as domestic and international demand can be properly assessed and supply can be adjusted accordingly.

417. [

]

Conclusion on Clover Market

418. The Commission is of the view that given the degree of existing competition, the ease and potential for production to be expanded, and the presence of a number of near entrants, a substantial lessening of competition is unlikely to result in this market as a consequence of the merger.

The Brassica Seed Market

Existing Competition

419. Crop and Food have an exclusive breeding arrangement with Wrightson which dates back to the late 1980s.

420. The market for brassica is characterised by two large players (PGG and Wrightson), each with their own brassica breeding programme and offering a full portfolio of brassica seed, and a few small fringe competitors.

421. The Applicants submitted that the existing producers of brassica seed (whether locally produced or imported) in the New Zealand market are Wrightson, PGG, Cropmark, NZ Agriseeds, Pacific Seeds, Stevens Seeds, Seed Production and, as a near entrant, Departement Voor Plantengentica (a Belgian firm).

422. The Applicants listed NZ Agriseeds as a competitor with its Barabus Stubble Turnip variety. However, the Commission was informed by NZ Agriseeds that it ceased supplying this product into the market four or five years ago and is, therefore, not considered to be a competitor in this market. Further, Departement Voor Plantengentica does not currently supply seed to the New Zealand market and could not be contacted by the Commission. Accordingly, it is not considered to be an existing or near competitor for the purposes of the analysis.

423. Again, market share information is difficult to accurately distil. Cropmark provided the following estimates of market share based on Agriquality Seed Certification statistics as shown in Table 8 below.

Table 8: Approximate Market Shares For Brassica Varieties

	Swede		Turnip		Kale		Rape	
	Varieties	Tonnage	Varieties	Tonnage	Varieties	Tonnage	Varieties	Tonnage
Combined entity	5 (100%)	107 (100%)	9 (75%)	194 (80%)	4 (80%)	222 (73%)	4 (67%)	178 (89%)
Others	0	0	3 (25%)	49 (20%)	1 (20%)	83 (27%)	2 (33%)]	23 (11%)

424. However, the Commission is of the view that the above market share figures may overestimate the true market share of the Applicants as seed certification statistics do not take into account seed that is directly imported for resale. The figures also include quantities of seed being multiplied for sale in overseas markets.

425. The Commission received the following information from the Applicants which illustrates the volume of seed sold and the corresponding turnover for each particular variety of brassica as shown in Table 9 below.

Table 9: Sales of Brassica Seed by the Applicants (kgs and turnover)

	Volume (kgs)				Turnover			
	Wrightson		PGG		Wrightson		PGG	
	2003/04	2004/05	2003/04	2004/05	2003/04	2004/05	2003/04	2004/05
Forage Brassicas	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	[ ]	[ ]
Kale	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	$[ ]	$[ ]
Other Brassicas	[ ]	[ ]	[ ]	[ ]	$[ ]	[ ]	[ ]	[ ]
Rape	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	$[ ]	$[ ]
Swede	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	$[ ]	$[ ]
Turnip	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	$[ ]	$[ ]
Total	[ ]	[ ]	[ ]	[ ]	$[ ]	$[ ]	$[ ]	$[ ]

Source: The Applicants

426. The combined entity will have the dominant share of the brassica market post merger having, by the calculations above, more than [ ] of the market in most varieties.

427. The other industry competitors with brassica varieties currently available are Seed Production, Stevens Seed, Pacific Seeds and Cropmark.

428. Seed Production has a kale variety (Burley) of which roughly [ ] is sold per annum. It also grows a common rape variety that is grown in large quantities for the export market. Rodger Gundy of Seed Production stated [ ].

429. Rodger Gundy stated that [ ].

430. Stevens Seeds sells approximately [ ] tonnes of rape in New Zealand per annum and exports between [ ] to Australia. Peter Stevens stated that it was possible to source big quantities of seed from his overseas supplier on four weeks notice (he estimated that [ ]). He also said that some quantities are grown in New Zealand.

431. The supplier to Stevens Seed is RAGT/Joordans which is a very large seed company based in Holland. Peter Stevens said that [ ].

432. Cropmark currently supplies one kale variety into the New Zealand market, [ ].

433. Pacific Seeds currently supplies a few brassica products into New Zealand and Australia which are sourced from Advanta Seeds in the United Kingdom. [ ].

434. The Commission estimates that Seed Production, Stevens Seed, Cropmark and Pacific Seeds currently collectively supply close to [ ] of brassica into the domestic New Zealand market out of an estimated total of 500-600[16].

435. The Commission considers that barriers to expansion in the brassica market are low. Existing suppliers of brassica seed could relatively easily and quickly increase production of seed (through either domestic production, overseas multiplication or importation) such that large quantities of seed could be available, given demand for them.

Constraint from other supplementary feed options

436. As discussed in the market definition, brassicas are primarily used as a supplementary feed in either the winter or summer. They are often chosen for their ability to produce high volumes of dry matter production in fairly short spaces of time. However, there are a number of other supplementary feed options that will constrain an exercise of market power in the factual at the margins of the market. These options include silage, hay, bailage, all winter grazing and to a lesser extent grain.

437. Although in some cases these options vary in their degree of substitutability (for example, all winter grazing, due to climatic conditions, is likely to be difficult for a Southland farmer) they are all technically substitutable as a supplementary feed. As acknowledged earlier, one Southland farmer interviewed by the Commission, said that he had moved completely to silage as a supplementary feed with the view to save money in the long run.

Conclusion on Existing Competition in the Brassica Market

438. The Commission is of the view that, in the factual, the merged entity would face some degree of competition from other existing competitors in the market. The Commission also acknowledges that there would be some competitive tension at the margins of the market from other winter feed options such as all winter grazing (in warmer areas), silage, hay and bailage.

Potential Competition

Barriers to Entry

439. The Applicants submitted that importing seed is relatively easy and essentially gives seed companies access to unlimited seed. However, industry participants informed the Commission that while importing seeds would not be difficult, the real issue is in being able to find an international supplier of brassica seed and

[16] Figure refers to quantity of seed sold domestically and excludes volumes multiplied for export.

then in the time delay in having to test the seeds in New Zealand conditions, to the satisfaction of potential buyers.

440. The Applicants submitted that the entry of PGG is a good indication of the ease with which it is possible to set up and supply brassica into the New Zealand market. However, [ ] informed the Commission that PGG was extremely fortunate to have an existing breeding programme and access to some brassica cultivars.

441. The amount of testing that would need to be performed would depend on the preference of the importing company. The Applicants submitted that one year's testing data would be enough to introduce a seed to the New Zealand market. [ ] stated that it would be more inclined to evaluate seeds over a longer period of time because it would be a risk for it to market seed it was not completely confident in.

442. The potential for sourcing brassica seed from international suppliers and the need to test the brassica seed in New Zealand are discussed further in the likelihood and timeliness of entry sections below.

443. The Commission considers that it may be possible for a breeding programme to be developed over a number of years whilst participating in the market by importing resellable quantities of seed. As discussed in the existing competition section there is potential for significant quantities of seed to be imported in certain circumstances.

444. In respect of importing seeds few regulatory barriers exist. Rob Taylor, Senior Policy Advisor in MAF's biosecurity division informed the Commission that the certification process of other countries is generally recognised in New Zealand and that effectively all that is required are suitable storage facilities and transport equipment.

<u>Conclusion on Barriers to Entry</u>

445. The Commission is of the view that barriers to entry into the brassica market are low subject to the ability to source an international supplier of brassica seed. Entry through the importation of seed, at least initially, would be significantly easier than the establishment of a breeding programme which may take a number of years.

The "LET" Test

446. 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).

447. The mere possibility of entry is, in the Commission's view, an insufficient constraint on the exercise of market power, and would not alleviate concerns about a substantial lessening of competition. In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational business would be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment, including allowance for any risks involved.

448. If it is to constrain market participants, the threat of entry must be at a level and spread of sales that is likely to cause market participants to react in a significant manner.

449. If it is to alleviate concerns about a substantial lessening of competition, entry must be feasible within a reasonably short timeframe, considered to be two years, from the point at which market power is first exercised.

Likelihood

450. Industry participants suggested that this is a particularly difficult area to compete in and that there are very few brassica breeding programmes worldwide. Most stated that, given a small amount of testing, brassicas could be imported and compete to a certain extent, but the real difficulty is in finding international companies which have the ability to supply them.

451. The Applicants submitted that with only one large supplier of brassica seed in the factual there would be an incentive for another industry participant to develop a brassica portfolio and compete. The Commission tested this view with [ ] and [ ] which both stated that, subject to being able to source suitable brassica seeds, they would seriously consider entering this market.

452. The Applicants listed the following companies as international companies that could potentially supply the New Zealand market:

- Germinal Seeds (UK);
- RAGT/Joordans (Holland);
- DLF-Trifolium (Denmark);
- Scottish Crops Research Institute/Advanta (UK);
- Petersons (Germany);
- AgriObtentions (France); and
- Barenburg (Holland).

453. The ability for a potential entrant to source brassica seed from the companies listed is examined in the following paragraphs.

454. Germinal Seeds has a 20% shareholding in Peter Cates, a grain and seed company operating in Canterbury. Despite its shareholding in Peter Cates, Germinal Seeds markets its brassicas through Wrightson in New Zealand. [ ]

455. [ ]

456. The Commission was informed by John Harrison of Peter Cates that, [ ]

457. William Gilbert of Germinal Seeds informed Commission staff that [ ]

458. The Commission understands that RAGT/Joordans has an exclusive arrangement with Stevens Seeds who markets some of its varieties in New Zealand. [ ]

459. Claus Ikjaer of DLF, informed the Commission that DLF [ ]

460. Scottish Crops/Advanta Seeds has a breeding program in Europe and some of its seeds are currently sold in New Zealand by Pacific Seeds whilst some are yet to be introduced. As mentioned above, [ ]

461. PGG/Agricom informed the Commission that between 1998-2001 it evaluated developing a full brassica portfolio and evaluated a number of options from Advanta. It trialed Advanta material and concluded that [ ] The Applicants submitted that the opportunity to market Advanta's full brassica portfolio still remains today.

462. The Commission was informed by Peter Garland of Advanta Seeds that Advanta has a range of kales, rapes, turnips and swedes that has been tested as good performing crops in the New Zealand environment. He said that the [ ]

463. Mr Garland said that the brassica varieties currently available have performed well in extensive trialling in New Zealand conditions and the requirements for further testing before they were marketed in New Zealand would be minimal.

464. Mr Garland advised that Advanta [ ]

465. The Commission considers that [ ] would provide further scope for a new entrant to market those seeds in the New Zealand environment.

466. The Commission was informed by NZ Agriseeds that Petersons [ ]

467. AgriObtentions has two kale varieties; one is marketed by Cropmark the other is marketed by Wrightson. As such they are not considered potential entrants into the brassica market.

468. Barenburg owns one turnip variety which is licensed to Wrightsons and is not considered to be a potential entrant into the market.

469. The Commission is of the view that, whilst many of the international brassica suppliers have arrangements with industry participants including the Applicants,

there is scope for a new entrant to market a portfolio of brassica seeds from Advanta. This potential is increased by [

]

Extent

470. The Commission considers that new entrants would be likely to take a measured approach to entering the brassica market, as PGG did in the mid 1990s, starting small and gradually increasing both volumes and varieties. However, given the ability to expand in this market through the importation of seed the Commission is of the view that there is little concern with the extent of entry in this case given that entry is possible and likely.

Timeliness

471. The importation of seed for re-sale can be done relatively easily and quickly, but it is likely that a new entrant will take a measured approach, and there may be some time delay in encouraging acceptance of the new products by farmers, thus increasing the importance of trialing. Industry participants informed the Commission that even if the seeds they wish to import had undergone testing in New Zealand conditions they would still wish to perform some of their own testing.

472. In the instance of entering the market with Advanta seeds, the Commission considers that it may not be necessary, given the extensive testing performed by Advanta and PGG/Agricom, to perform years of testing on the seeds. It is of the view that even if testing was undertaken to confirm the results and provide some comfort to prospective purchasers, entry could still be achieved within a two year time period.

Conclusion on Potential Competition in the Brassica Market

473. The Commission is of the view that there are few barriers to entry into the brassica market other than sourcing brassica seed overseas and performing testing to ensure that the seeds are suited to the New Zealand environment, and encourage uptake of the seeds by New Zealand farmers. Based on the market enquiries, the Commission considers that entry is likely, would be sufficient in extent to constrain the actions of the merged entity and could be achieved within a two year time period.

Conclusion on Brassica Market

474. The Commission is satisfied that a combination of the degree of existing competition from smaller competitors and from alternative supplementary feed options, and the likelihood, extent and timeliness of new entry, a substantial lessening of competition in the factual scenario compared to the counterfactual scenario is unlikely to occur in the brassica market.

OVERALL CONCLUSION

475. The Commission has analysed the state of competition in the factual scenario and the counterfactual scenario in the following markets:

- the livestock trading market;
- the saleyard facilities market;
- the wool handling market;
- the rural supplies market;
- the fertiliser market;
- the velvet market;
- the wheat market;
- the barley market;
- the oat market;
- the ryegrass market;
- the clover market; and
- the brassica market.

476. The Commission, having considered the nature of existing competition and the scope for potential competition in each market, is satisfied that the merger is not likely to have the effect of substantially lessening competition any of the relevant markets.

477. Accordingly, the Commission determines to give clearance to the Application of Pyne Gould Guinness Limited and Wrightson Limited to merge.

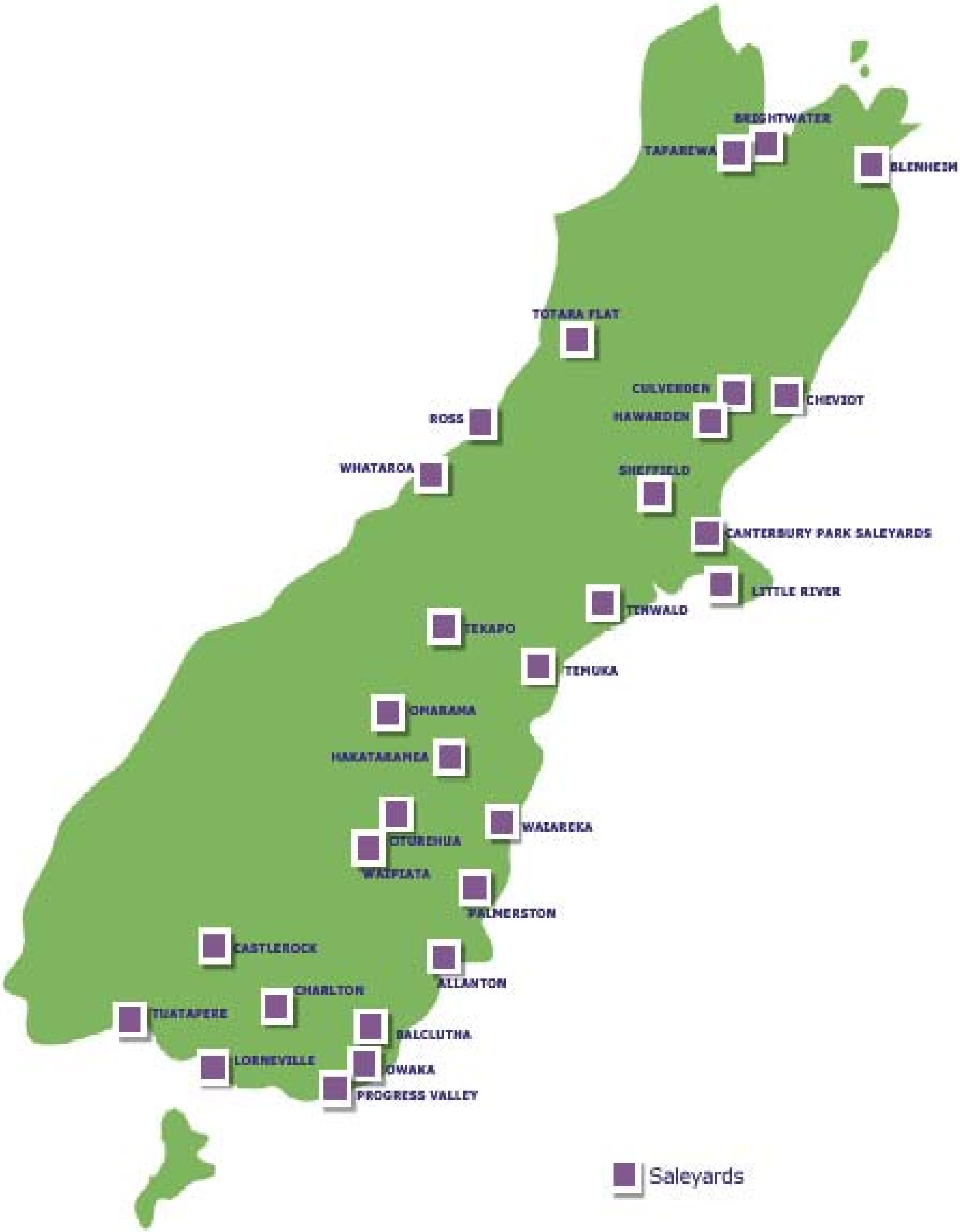
DETERMINATION ON NOTICE OF CLEARANCE

478. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed merger between Pyne Gould Guinness Limited and Wrightson Limited.

Dated this 31st day of August 2005

Paula Rebstock
Chair
Commerce Commission

APPENDIX 1: MAP OF SOUTH ISLAND SALEYARDS



APPENDIX 2: OWNERSHIP OF SOUTH ISLAND SALEYARDS

Name	Owner	Wrightson	PGG	Merged Entity	Other
Blenheim	Marlborough Saleyards Company Limited	1%	1%	2%	98%
Tapawera	Farmers	-	-	0%	100%
Brightwater	Farmers	-	-	0%	100%
Ross	Farmers	-	-	0%	100%
Whataroa	Farmers	-	-	0%	100%
Canterbury Park	Canterbury Saleyards (1996) Limited	50%	50%	100%	-
Cheviot	Farmers	-	-	0%	100%
Culverden	Farmers	-	-	0%	100%
Hawarden	Hawarden Saleyards (1953) Ltd	1%	1%	2%	98%
Little River	Farmers	-	-	0%	100%
Sheffield	Sheffield Saleyards Limited	33%	21%	53%	47%
Tinwald	Ashburton Saleyards Company Limited	50%	50%	100%	-
Temuka	Temuka Co-operative Saleyards Company Limited	1%	1%	2%	98%
Tekapo	Farmers	-	-	0%	100%
Waiareka	Oamaru Farmers' Saleyards Co Ltd	23%	14	38%	62%

Name	Owner	Wrightson	PGG	Merged Entity	Other
Hakataramea	Farmers	-	-	0%	100%
Omarama	Omarama Saleyards Ltd	23%	14%	38%	62%
Oturehua		-	-	0%	100%
Waipiata		-	-	0%	100%
Palmerston	Palmerston Saleyards (1961) Ltd	27%	18%	45%	55%
Allanton		-	100%	100%	100%
Balclutha	Balclutha Saleyards Company Limited	13%	13%	25%	75%
Owaka	Owaka Saleyards Ltd	60%	40%	100%	-
Lees Stream	Farmers	-	-	0%	100%
Mt Benger	Mt Benger Saleyards Ltd	-	-	0%	100%
Cromwell	Cromwell Saleyards Company Limited	-	-	0%	100%
Omakau	Omakau Saleyards Ltd	21%	11%	32%	68%
Charlton	Gore Livestock Centre Limited	4%	1%	5%	95%
West Otago	West Otago Cattle Saleyards Company limited	23%	21%	44%	56%
Castlerock	Castlerock Saleyards Limited	5%	1%	6%	94%
Lorneville	Invercargill Saleyards Company Limited	21%	2%	23%	76%
Tuatapere	Tuatapere Saleyards Ltd	5%	1%	6%	95%
Progress Valley	Maurice Yorke	-	-	0%	100%

Source: Wrightson