



## COMMERCE COMMISSION

### **Decision No. 549**

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

**PROVET NZ PTY LIMITED**

**and**

**NATIONAL VETERINARY SUPPLIES LIMITED**

**The Commission:** Peter JM Taylor  
David Caygill  
Denese Bates QC

**Summary of Application:** The acquisition by Provet NZ Pty Limited of the business and assets of National Veterinary Supplies Limited.

**Determination:** Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

**Date of Determination:** 5 May 2005

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## EXECUTIVE SUMMARY

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 29 March 2005. The Notice sought clearance for the acquisition by Provet NZ Pty Limited (Provet or the Applicant) of the business and assets of National Veterinary Supplies Limited (NVS).
2. Provet and NVS wholesale animal health and animal nutrition products to registered veterinary practices in New Zealand.
3. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the national markets for:
  - the wholesale supply of premium pet food (the premium pet food market);
  - the wholesale supply of companion animal remedies (the companion market); and
  - the wholesale supply of livestock animal remedies (the livestock market).
4. In respect to the premium pet food market, post-acquisition, the combined entity's market share is inside the Commission's safe harbour guidelines and the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market.
5. In respect to the companion market, post-acquisition, the Commission considers SVS Veterinary Supplies Limited would continue to be a strong competitor. The combined entity would also be constrained by the relative ease with which veterinarians can switch between wholesalers.
6. In the present situation, potential competition comes in two forms: de novo entry and manufacturers supplying direct to veterinarians. The Commission considers that a new entrant is likely to face moderate barriers to entry, particularly in terms of access to manufacturers given that many manufacturers are reluctant to support new entry. Manufacturers could supply direct, although the Commission recognises that wholesalers currently provide a more cost-effective option for manufacturers. However, on balance, those barriers are not insuperable as evidenced by Provet's entry and subsequent success. Overall, the Commission considers the ability of manufacturers to direct supply and the prospect of wholesaler encouraged entry, in the event of the combined entity exercising market power, would be sufficient to constrain the combined entity.
7. With regards to countervailing power, the Commission considers that, post-acquisition, manufacturers are likely to continue to provide a constraint on the combined entity through their ability to either discontinue supply to a wholesaler and/or support a potential new entrant.
8. The Commission considers that, post-acquisition, any increase in the scope for coordinated market power would be dampened by the ease of de novo entry and the ability of manufacturers to support new entry, cease supply to a wholesaler or direct supply veterinarians themselves, should they become dissatisfied with veterinarian wholesalers.
9. The Commission considers that the vertical integration brought about by the proposed acquisition is unlikely to constitute a substantial lessening of

competition in either the upstream manufacturing market or the downstream companion market.

10. In respect to the livestock market, the Commission considers that the level of aggregation, post-acquisition, is minimal due to the presence of manufacturers direct selling and the Commission is satisfied that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the livestock market.
11. The Commission is satisfied that the proposed acquisition would not have, nor be likely to have, the effect of substantially lessening competition in any of the affected markets.
12. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Provet NZ Pty Limited of the business and assets of National Veterinary Supplies Limited.

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 29 March 2005. The Notice sought clearance for the acquisition by Provet NZ Pty Limited (Provet or the Applicant) of the business and assets of National Veterinary Supplies Limited (NVS).

## PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the application was required by 6 May 2005.
3. The Applicant sought confidentiality for specific aspects of the application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Merger and Acquisition Guidelines.<sup>1</sup>

## STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission may grant a clearance for an acquisition where it is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in a market. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.<sup>2</sup>
6. The Commission considers that it is necessary to identify a real lessening of competition that is not minimal.<sup>3</sup> 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 able to be sustained for a period of at least two years.
8. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced service, quality or innovation, for there to be a substantial lessening, or likely substantial lessening, of competition, these also have to be both material and sustainable for at least two years.

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<sup>1</sup> Commerce Commission, *Mergers and Acquisition Guidelines*, January 2004.

<sup>2</sup> *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

<sup>3</sup> See *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

## **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**

### **Provet**

11. Provet is a subsidiary of Provet Pty Ltd, an Australian company, which in turn is owned by Provet Holdings Ltd, also an Australian company. The majority of Provet Holdings Ltd's shareholders are veterinarians. In Australia, the Provet Group of companies operates as wholesalers in the animal health and animal nutrition markets, and supply products to registered veterinary practices.
12. Provet wholesales animal health and animal nutrition products to registered veterinary practices in New Zealand. Its sole distribution warehouse is located in Auckland. Provet entered the New Zealand market in August 2002. Initially, Provet concentrated its operation in the Auckland region but it has since expanded to include customers in the South Island. However, the majority of its customers are in the north of the North Island.

### **NVS**

13. NVS is a privately owned and operated company. It previously operated as Northern Veterinary Supplies Limited before changing its name in 2000.
14. NVS wholesales animal health and animal nutrition products to registered veterinary practices in New Zealand. Its distribution warehouses are located in Auckland, Palmerston North and Christchurch.
15. In December 2000, NVS purchased its Christchurch warehouse from Chemstock Animal Health Limited (Chemstock), a national veterinary wholesaler. The remaining operations of Chemstock were sold to a rival wholesaler, SVS Veterinary Supplies Limited (SVS).

16. In addition to wholesaling, NVS manufactures six animal health remedies. Its most widely-used product is Pentobarb, an animal euthanasia drug. NVS supplies Pentobarb to its own customers and to SVS, but not to Provet. NVS also manufactures electrolytes, lubricants and a selenium drench.

### **Wholesalers**

#### *SVS*

17. SVS is a privately owned and operated company. SVS wholesales animal health and animal nutrition products to registered veterinary practices in New Zealand. Its distribution warehouses are located in Hamilton, Palmerston North and Christchurch.
18. SVS began wholesaling only in the South Island in 1987 but expanded its operations to the North Island in December 2000, when it purchased the North Island business of Chemstock, which included the Hamilton and Palmerston North warehouses.

#### *Southern Medical Products Limited (SMP)*

19. SMP predominantly wholesales human pharmaceuticals in the South Island. In 2000, it expanded into the wholesaling of animal health and animal nutrition products. Its distribution warehouse is in Dunedin.
20. The majority of SMP customers are in the Otago and Southland regions, although it does have customers in other parts of the South Island.

### **Manufacturers/Suppliers**

#### *Pfizer New Zealand Limited (Pfizer)*

21. Pfizer is a subsidiary of Pfizer Inc, a publicly held corporation listed on the New York Stock Exchange. Pfizer Inc develops, manufactures, and markets pharmaceutical, consumer and animal health products which are available in approximately 150 countries. Pfizer supplies and markets these products in New Zealand.

#### *Bayer New Zealand Limited (Bayer)*

22. Bayer is the New Zealand subsidiary of the Bayer Group, an international research-based group with businesses in healthcare and nutrition for both humans and animals. The Bayer Group is headquartered in Germany. Bayer supplies and markets these products in New Zealand.

#### *Merial New Zealand Limited (Merial)*

23. Merial is a joint venture between Merck, Sharp and Dohme and the Aventis Company. It manufactures a range of animal health products and supplies them in approximately 150 countries.
24. Merial's strongest brands in New Zealand are Frontline, for the treatment of fleas and ticks, and Ivomec, a liquid, pour-on and injectible parasiticide.

#### *Other manufacturers/suppliers*

25. In addition to those manufacturers, there are a number of other suppliers of animal health remedies to the New Zealand market, most of whom import the remedies from their overseas affiliated companies. The other major suppliers to the New Zealand market include:



- Boehringer Ingelheim New Zealand Ltd;
- Schering-Plough Animal Health Ltd;
- Virbac Laboratories (NZ) Ltd;
- Fort Dodge NZ Ltd;
- Bomac Laboratories Ltd; and
- Ethical Agents Ltd.

### **Other Relevant Parties**

#### *Masterpet Corporation Limited (Masterpet)*

26. Masterpet wholesales pet supplies including pet accessories, pet healthcare products and premium pet food. Currently, Masterpet has a wholesaling relationship with all veterinary clinics in New Zealand. Masterpet does not supply any animal health pharmaceuticals.

#### *New Zealand Veterinary Association Inc (NZVA)*

27. The NZVA is an incorporated society that represents veterinarians. NZVA interfaces between regulatory authorities and the industry in matters of animal health, welfare and production, animal remedies, biosecurity, food safety and general veterinary matters. Over 80 per cent of veterinarians registered in New Zealand are NZVA members.

#### *New Zealand Food Safety Authority (NZFSA)*

28. The NZFSA administers legislation covering food sold in New Zealand, primary processing of animal products and official assurances related to their export, exports of plant products and the controls surrounding registration and use of agricultural compounds and veterinary medicines.
29. The Agricultural Compounds and Veterinary Medicines Group (ACVM) is the business group of the NZFSA which is responsible for the regulatory control of agricultural compounds (veterinary medicines/plant compounds) and their importation, manufacture, sale pursuant to the Agricultural Compounds and Veterinary Medicines Act 1997.

### **INDUSTRY BACKGROUND**

30. The New Zealand market for animal health remedies is relatively small and, as such, the remedies are typically manufactured off-shore and imported into New Zealand by the local subsidiaries of the international manufacturers.<sup>4</sup> In order to make the functional level clear, the Commission will refer to these local subsidiaries as manufacturers for the purposes of this report.
31. The major purchasers of animal health remedies are registered veterinarians, of which there are approximately 2000 currently in New Zealand, practicing in 500 clinics.
32. Wholesalers offer a broad portfolio of animal health products to veterinarians. For example, the Applicant has over 7600 product lines in its portfolio including

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<sup>4</sup> There are a number of domestic manufacturers, such as Bomac Laboratories Ltd, Ancare New Zealand Ltd and to a lesser extent NVS, however, these manufacturers appear to be in the minority.

animal health remedies, pet nutrition, animal related merchandise and veterinary practice disposable items. By having a larger range of products, the wholesaler can offer veterinarians the convenience of a ‘one-stop-shop’.

## **MARKET DEFINITION**

33. 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.”<sup>5</sup>

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

### **Product Market**

35. 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.

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

37. 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.

38. The Applicant submitted that the relevant markets are those for the national supply of :

- animal related merchandise;
- veterinarian disposable items;
- pet nutrition; and
- animal health products.

### *Animal Related Merchandise & Veterinarian Disposable Items*

39. The Applicant submitted that post-acquisition, the degree of aggregation that would occur in respect of animal related merchandise and veterinarian disposable items would be minimal. The Commission has conducted inquiries with participants in these markets and concurs with the Applicant’s contention. To this extent, for the purposes of this application, the Commission does not intend to define or consider these markets further.

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<sup>5</sup> s 3(1) of the Commerce Act 1986.

*Pet Nutrition*

40. The Applicant submitted that the pet nutrition market consists of the supply of manufactured pet foods although it suggested that there may be a distinct market in respect to the supply of premium pet foods. The Commission's market enquiries suggest that the wholesale sales channels of premium pet foods are veterinarians and pet shops. Medium and low range products are generally sold in supermarkets and are not sold to veterinarians.
41. Differentiation between products sold to veterinarians and those sold to supermarkets is reflected in the price. The prices of products sold exclusively to veterinarians and pet stores are typically significantly higher than those sold to supermarkets. For example, a 2.26kg bag of Hill's Science Diet dog food wholesales for [ ] to a veterinary practice while a 2.5kg bag of Tux dog biscuits wholesales for [ ] to a supermarket.
42. However, the Commission notes that supermarkets are extending their ranges of pet food, and that recently Progressive Enterprises has imported a premium line (previously retailed by veterinarians and pet shops only), which competes on its supermarket shelves with other lower cost brands.
43. Premium pet foods generally differ in their technical specification to those sold to supermarkets, such as the nutritional composition, and include food formulated to address specific problems in cats and dogs, such as weight control and urinary problems. This would indicate the product has a specific use that is distinct from a medium or a low range product. Further, the nutritional content in a premium product is, typically, of a higher quality than the nutritional content in a supermarket product. The Commission notes that when veterinarians are selecting a premium product, they are selecting a product with particular characteristics, such as the technical specification, and for these characteristics they pay a price-premium. The Commission is of the view that this indicates a limited degree of demand-side substitutability between premium pet food and medium or low range products.
44. However, industry participants stated that, despite the claims of pet food manufacturers, there are no significant benefits from feeding a healthy animal premium pet food rather than a medium or a low range product. This was the same conclusion published in a recent industry survey<sup>6</sup>. This would indicate a degree of demand-side substitutability between premium products and medium or low range products.
45. Acknowledging that there are arguments in favour of both a narrow and broad product market, the Commission considers that for the purposes of the present application, the relevant competition effects are best identified by defining a separate product market for premium pet food due to a limited degree of demand-side substitutability. The Commission considers that if there are no competition concerns in the narrowly defined market, there are unlikely to be any in a more broadly defined market.
46. Accordingly, the Commission considers the relevant product market to be the wholesale supply of premium pet food.

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<sup>6</sup> Consumer Magazine, The truth about cats' and dogs' foods, *Consumer Magazine*, 414, September 2002, p 20-24.

*Animal Health Products*

47. The Applicant submitted that the animal health products market consists of a significant number of products, and that it is necessary to identify and consider separate markets for particular product lines or products.
48. The Applicant submitted that the product categories might include:
  - anthelmintics (endo-parasiticides such as worm preparations);
  - antibiotics;
  - anaesthetics;
  - ecto-parasiticides (such as pour-on cattle and sheep drenches and flea treatments for cats and dogs); and
  - analgesics (pain-relief and sedatives).
49. The Commission considers it important to note that the proposed acquisition would occur at the wholesale level and that the competition at this level occurs between wholesalers for orders from downstream veterinary practices. The Commission understands that each of Provet, NVS and SVS carry very similar animal remedies and are supplied largely by the same upstream manufacturers.
50. Within their animal health divisions, upstream manufacturers such as Merial, Bayer and Pfizer have separate business units for ‘companion animals’ and for ‘livestock animals’. Industry participants advised the Commission that livestock animals include cattle, sheep, deer, swine and poultry, and that companion animals are cats, dogs and horses.
51. Further, veterinary practices distinguish themselves as predominantly large animal or livestock practices or predominantly small animal or companion practices, although there is some overlap. For instance, a city practice is more likely to treat companion animals than livestock, although some practices will serve both companion and livestock animals.
52. The Applicant contended that the manufacturers of animal remedies compete in the wholesale market by supplying remedies directly to farming clients, veterinarians, and to rural resellers such as Williams and Kettle and RD1. While the Commission accepts that this is the case in respect of the bulky, higher value livestock animal remedies such as ecto-parasiticides, and livestock anthelmintics, in general, manufacturers seldom supply directly in respect of the remedies for companion animals.
53. [ ], advised the Commission that the reason for this is the nature of livestock remedy sales, which tend to be high value, large volume but lumpy due to seasonal demand. For example, intramammary preparations tend to be used once a year. In contrast, sales of companion animal remedies such as vaccines are typically low value, small volume and frequent, and to a greater number of veterinarians.
54. Manufacturers stated that dealing with approximately 500 veterinarian practices individually would increase their transaction costs and therefore, it is more efficient to use a wholesaler to supply companion animal remedies to the market.

55. Veterinarians interviewed by the Commission confirmed that, except in a small minority of cases where a veterinary practice is large enough to warrant supply direct from the manufacturer, veterinarians purchase companion animal remedies only through a wholesaler. Veterinarians advised the Commission that this is because veterinarians could not predict what animals would require treatment and so to reduce inventory costs, and as storage space is also an issue, orders are frequent but, typically, only for small quantities of remedies.
56. The Commission does not consider that, in this instance, delineation by product type, as submitted by the Applicant, would best enable it to identify any competition concerns to which this proposal may give rise.
57. While recognising that remedies differ within specific animal groups, the Commission considers it appropriate to delineate between livestock animal remedies and companion animal remedies given the difference in the nature of sales and the different participants with respect to companion and livestock remedies.
58. Industry participants advised the Commission that it is relatively easy for wholesalers to supply both types of remedies and, presently, no wholesaler specialises in either companion or livestock remedies. This would indicate a degree of supply-side substitutability which would favour a broader product market.
59. However, while acknowledging that there are arguments in favour of both a narrow and broad product market, the Commission considers that for the purposes of the present application, the relevant competition effects are best identified by defining separate product markets for companion and livestock animal remedies. The Commission considers that if competition concerns are not identified within the narrowly defined market, they are unlikely to arise in a more broadly defined market.
60. Accordingly, the Commission considers that for the purposes of assessing the competition implications of the proposed acquisition, the appropriate product markets are:
  - companion animal remedies ; and
  - livestock animal remedies.

### **Functional Markets**

61. The production, distribution and sale of a product typically occur through a series of functional levels – for example, the manufacturing/import level, the wholesale/distribution level and the retail level. It is often useful to identify the relevant functional level in describing a market, as a proposed business acquisition may affect one horizontal level, but not others. Generally, the Commission will seek to identify separate relevant markets at each functional level affected by an acquisition and assess the impact of the acquisition on each.
62. Provet and NVS wholesale to veterinarians remedies supplied to them by the manufacturers of those remedies and therefore the aggregation would occur at the wholesale level.
63. Accordingly, the Commission concludes that the appropriate functional level is the wholesale level.

### **Geographic Markets**

64. 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.
65. In this instance, the distributors of companion animal remedies and livestock remedies operate on a national basis. Although Provet commenced its operations in the greater Auckland region, it has recently expanded to serve veterinarians in the South Island. Both SVS and NVS distribute their remedies throughout New Zealand. Further, all parties interviewed believed that the market was national in scope.
66. The wide geographic spread of wholesalers' warehouses might suggest separate geographic markets for the North and South Islands. However, following industry-wide consultation, the Commission understands that veterinary wholesalers have national prices. Further, separate geographic markets could only exist if the distribution costs incurred by wholesalers were sufficiently large to drive a wedge between the prices paid in different geographic regions. Such a wedge would prevent an arbitrage mechanism occurring whereby prices would be equalised across different geographic spaces through market forces. However, wholesalers typically dispatch veterinary supplies by courier, the charge for which is similar in the North and South Islands and also between them. The advantage of the geographically diverse warehouses is in the reduction of delivery time to the veterinarian.
67. On this basis, the Commission concludes that the appropriate geographic market is national in scope.

### **Conclusion on Market Definition**

68. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the relevant markets are the national markets for the wholesale supply of:
  - premium pet food (the premium pet food market);
  - companion animal remedies (the companion market); and
  - livestock animal remedies (the livestock market).

### **COUNTERFACTUAL AND FACTUAL**

69. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a "with" and "without" comparison rather than a "before" and "after" comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).<sup>7</sup> The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

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<sup>7</sup> Commerce Commission, *Decision 410: Ruapehu Alpine Lifts/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

### **Factual**

70. The Applicant submitted that the key driver for the acquisition is to expand its operations to achieve economies of scale, particularly in the areas of product cost and efficiency of logistics. [ ]].
71. The Applicant further submitted that changes to the regulatory environment, currently being implemented by the ACVM are likely to significantly affect the industry. It stated that these changes will create increased competition in the supply of prescription animal remedies. Accordingly, the Applicant considers that this increased competition will become a serious threat to its long term viability unless it can build scale quickly.
72. The Applicant stated that it expects the major competitive benefit resulting from the acquisition will be the ability for greater coordination of stock, thus enabling higher service levels to be provided to veterinarians. It intends to operate the combined entity under the Provet brand.
73. The Commission considers that in the factual scenario, there would be two major national wholesalers in the companion and livestock markets, the combined entity and SVS. In addition, there would be direct selling from manufacturers in the livestock market whilst, in the companion market, there would be a small competitor in the lower South Island, SMP.
74. In respect to the premium pet food market, the Commission considers there would be the combined entity and SVS, together with a number of other wholesalers supplying veterinarians and pet shops including Masterpet, as well as manufacturers direct selling.

### **Counterfactual**

75. Absent the proposal, it is likely that the present three major participants, Provet, NVS and SVS, would continue to operate in the relevant markets. However, manufacturers and veterinarians advised the Commission that they did not expect that all three participants would survive in the short term and that it was likely that one of the participants would exit within two years.
76. The major reason they gave for this was that the New Zealand market is not large enough to support three major operations. They pointed to the history of entry and exit in the veterinary wholesale markets. For instance, prior to 2000 there were three veterinarian wholesalers, NVS, SVS and Chemstock. In 2000 Chemstock sold its operations to NVS and SVS, respectively, reducing the number of competitors to two. In 2002, Provet commenced operations increasing the number of competitors to three.
77. In addition, industry participants cited low margins, [ ] on average, and the need therefore to differentiate on the basis of quality of service. [ ]

78. To that extent, [ ]

].

79. [ ] advised the Commission that, since Provet entered the New Zealand market in 2002, veterinarians had been expecting a wholesaler to exit the market and that it was only a matter of time before there was some form of consolidation. The Commission considers it is likely that in the counterfactual scenario, given the history in the industry, one of the major participants would exit the companion and livestock markets.

80. Further, [

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81. [

]

82. Accordingly, the Commission considers it likely that in the counterfactual scenario, there would be two major participants in the companion and livestock markets, with manufacturers also competing in the livestock market.

## COMPETITION ANALYSIS

### Existing Competition

83. 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).
84. 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.
85. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- 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
  - 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%.
86. 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.

*The Premium Pet Food Market*

87. The existing competitors in the premium pet food market are Provet, NVS, SVS, and Masterpet, with a number of other wholesalers supplying veterinarians and pet shops, as well as manufacturers direct selling. Table 1 shows the estimated market shares for the wholesale of pet food in the premium pet food market in the 2004/2005 year.

**Table 1: Estimated Market Shares for the Premium Pet Food Market for 2004/2005**

Wholesaler/Distributor	Revenue (04/05)	Market Share
Provet	[ ]	[ ]%
NVS	[ ]	[ ]%
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]%</i>
SVS	[ ]	[ ]%
Masterpet	[ ]	[ ]%
Manufacturers/Other Distributors	[ ]	[ ]%
Total	[ ]	100%

Source: Supplied by industry participants.

88. Table 1 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three-firm concentration ratio would be [ ]. This is inside the Commission's safe harbour guidelines.
89. In addition, the combined entity would face strong competition from Masterpet, with a market share of [ ], and specialised pet food wholesalers, as well as competition from manufacturers that are direct supplying premium pet food.
90. Therefore, given the minimal aggregation that would occur as a result of the proposed acquisition, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition. Accordingly, for the purposes of this application, the Commission does not intend to consider this market further.

*The Companion Market*

91. The major competitors in the companion market are Provet, NVS, SVS and a smaller competitor in the South Island, SMP. All wholesalers distribute remedies to registered veterinarians. As stated in the market definition section, there is, typically, no direct selling from manufacturers in the companion market. Veterinarians interviewed by the Commission confirmed that for companion animal remedies, except in a small minority of cases where a veterinary practice is large enough to warrant supply direct from the manufacturer, veterinarians purchase companion animal remedies only through a wholesaler.

92. The Commission considers it appropriate to adopt a conservative approach to estimating the total size of the market which excludes instances of direct sales. The Commission recognises that if competition concerns are not identified within a conservative approach, they are unlikely to arise in a wider market estimate. Accordingly, the Commission has limited its market share analyses to veterinary wholesalers.
93. Table 2 shows the estimated market shares for veterinary wholesalers for the wholesale of remedies in the companion market for the 2004/2005 year.

**Table 2: Estimated Market Shares for Veterinary Wholesalers in the Companion Market for 2004/2005**

Wholesaler	Revenue (04/05)	Market Share
Provet	[ ]	[ ]%
NVS	[ ]	[ ]%
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]%</i>
SVS	[ ]	[ ]%
SMP	[ ]	[ ]%
Total	[ ]	100%

Source: Supplied by industry participants.

94. Table 2 indicates that, post-acquisition, the combined entity would have a market share of [ ] and the three-firm concentration ratio would be 100%. This is outside the Commission's safe harbour guidelines.
95. Presently, Provet, NVS and SVS offer very similar portfolios of remedies in the companion market. Industry participants estimated that between 90-95% of remedies offered by one wholesaler are offered by the other two. Further, there are no categories in the companion market which one wholesaler has exclusively. Industry participants stated that Provet, NVS and SVS do not compete on the composition of their portfolios.
96. SMP has a significantly smaller portfolio than the other three wholesalers. For example, Provet has 7600 product lines while SMP has 2000 product lines. Although SMP has a number of customers throughout the South Island, these customers are predominately in the Otago and Southland region. Provet, NVS and SVS all stated that SMP was a small competitor in the market and [ ]
97. The Applicant submitted that SVS has the ability to increase supply through the use of its existing capacity and because it already has the existing relationships with veterinarians.
98. SVS is the combined entity's largest competitor, and its significant share of the companion animal remedies market at [ ] makes it a particularly strong competitor. [ ]

[ ] Further, since the announcement of the proposed acquisition, the Commission is aware that SVS has been actively promoting itself to potential clients. The Commission considers that SVS's strength as a competitor, and so

its effectiveness as a constraint on the combined entity, is further bolstered by SVS's [ ]

99. Provet, NVS and SVS all have transparent pricing lists that are available to veterinarians, and competitors. All industry participants stated that the wholesalers' price lists are very similar and margins are low. Although it was possible for a prospective client to scrutinise the respective price list for disparities, the nature of the variances, if any, meant that any savings would be negligible.
100. The Applicant submitted that veterinarians do not generally purchase exclusively from any one wholesaler, but rather maintain accounts with a number of wholesalers and manufacturers to ensure that they are able to secure the lowest price and to ensure quick supply of the required items. However, the Commission understands that it is more common for veterinarians to have one main wholesaler and use an alternate if this wholesaler is out of stock. For example, [ ]
101. All industry participants interviewed by the Commission stressed that the level of service was the most important driver in the market. Service is measured by the ability of the wholesaler to provide the desired product in the fastest possible time.
102. Typically, the companion market is characterised by a large number of product lines ordered in small quantities and often with limited shelf life. A veterinarian may deal with a range of different animals requiring a number of diverse remedies. In order to reduce the inventory costs of these items and also because storage space is at a premium for many veterinarians, ordering is relatively frequent, commonly twice a week and in some cases daily.
103. All wholesalers offer a same-day delivery service (if ordered by a specific time) or an overnight courier service. These services are provided by external parties.
104. Wholesalers stock remedies in their warehouses and then deliver these remedies to the veterinarian as quickly as possible. Veterinarians do not have any contractual ties with any particular wholesaler and are free to switch to an alternate supplier. Veterinarians advised the Commission that it is relatively common for veterinarians to switch between wholesalers as a specific wholesaler may not be able to supply the requested remedy when required. Although inconvenient for the veterinarian, if a product is not in stock with one wholesaler, the veterinarian can switch the order to a competing wholesaler, given that prices are, typically, comparable between wholesalers.
105. [ ]
106. [ ] uses NVS almost exclusively for its companion animal remedies. It uses SVS occasionally for certain remedies when it cannot get them from NVS. Alternatively, [ ] is visited regularly by a Provet representative and could use Provet if it desired.
107. The Commission is aware that veterinarians negotiate between manufacturers and wholesalers. For example, in March this year, [ ]

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108. [ ] stated that instances of direct sales are increasing in the industry, although primarily in the livestock market. The primary reason for this is that clinics like itself, with a mix of livestock and companion animals, are often able to obtain cheaper prices from manufacturers. However, [ ] still sees a need for wholesalers, especially in the companion market because they offer an extensive range of remedies and it is convenient for it to have a single supplier. [ ] informed the Commission that it has an informal policy of supporting the wholesaler if there are no significant savings from sourcing directly from the manufacturer.

#### *Conclusion on Existing Competition*

109. The Commission considers that, post-acquisition, SVS would continue to be a strong competitor in the companion market. The combined entity would also be constrained by the relative ease with which veterinarians can switch between wholesalers and to a moderate extent the direct selling activities of the manufacturers.

#### **Potential Competition**

110. 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. 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 should they try.

#### *Barriers to Entry and Expansion*

111. 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.
112. Industry participants advised the Commission that the requirements for entering the companion market were:
- warehousing and logistical support;
  - access to customers;
  - registration with the ACVM; and
  - access to suppliers.
113. The Applicant submitted the major barrier to entry is the need to establish logistics arrangements to enable next day delivery of a large range of remedies to veterinarians. This requires investment in warehousing and information systems. Presently NVS and SVS have three warehouses, while Provet has a single warehouse in Auckland. Apart from the need to secure a small proportion of the prescription animal remedies in locked storage, there are no specific

requirements for storing the remedies. Typically, the remedies are bought in bulk from the manufacturer and are then distributed to the wholesalers' clients in accordance with their requirements. Further, all wholesalers use contract couriers to delivery their orders to clients and so do not need a specific delivery department. Accordingly, the Commission does not consider access to warehousing represents a significant barrier to entry.

114. Manufacturers have their own representatives marketing and supporting their remedies. For example, [ ] has 18 area representatives throughout New Zealand. These representatives regularly visit veterinarian clinics and supply all the technical information on the remedy but do not accept orders. Although wholesalers may sell the remedy to the veterinarian, their input into product knowledge and use is minimal.
115. Subsequently, there is less need for an extensive sales force and there is no need for qualified staff in the administration and use of the remedies. For example, [ ] 'on the road' throughout the country. [ ].  
Accordingly, the Commission does not consider the need for qualified support staff in the use of companion remedies a significant barrier to entry.
116. Another key requirement of a wholesaler is the ability to attract customers. However, as previously stated, it is common for veterinarians to have accounts with a number of different wholesalers. The benefit of this is that if, for any particular reason, a wholesaler is out of stock the veterinarian can easily switch to another competitor for that remedy. Veterinarians do not have any contractual ties with any particular wholesaler and would be free to switch to a new entrant.
117. A new entrant would need to invest time in establishing relationships with veterinarians and would need to market its new operation but, as shown by the entry of Provet, it could attract new customers relatively quickly. Provet stated that it was able to gain a 'critical mass' of customers within [ ] of starting operations. Accordingly, the Commission does not consider that access to veterinarians represents a significant barrier to entry.
118. The Applicant submitted that legislative and regulatory conditions are unlikely to be a barrier to entry. The Commission explored the regulatory environment with the ACVM. Debbie Morris, ACVM Director, advised the Commission that all traders of prescription animal remedies must be registered as 'approved traders' with the ACVM but that all current wholesalers of these remedies are deemed to be approved.<sup>8</sup> Industry participants advised the Commission that the requirements for achieving 'approved trader' status, such as identifying a chain of responsibility, reflect common industry practice. Accordingly, the Commission does not consider the regulatory environment under the ACVM to represent a significant barrier to entry.
119. Industry participants stated that gaining supply from manufacturers to be the most important requirement for a potential entrant. In the course of its

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<sup>8</sup>[

investigation the Commission found that manufacturers are selective in who they supply. Manufacturers stated that they spend large amounts of money on the research and development of their remedies, and are unwilling to supply wholesalers their remedies if they felt the remedies would not be adequately distributed.

120. [

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121. Manufacturers who limit their supply to specific wholesalers informed the Commission that the main reason for the selectiveness was because they consider, that presently, their remedies are adequately distributed.

122. [

]

123. Accordingly, the Commission considers gaining supply from manufacturers to be a moderate barrier to entry. However, the Commission considers that this moderate barrier is not insuperable as evidenced by Provet's entry in 2002 and its subsequent success in gaining market share.

124. The Applicant identified a number of potential entrants into the relevant markets. These included human pharmaceuticals manufacturers and wholesalers, pet nutrition wholesalers, Australian veterinary wholesalers, rural supply companies and pet shop suppliers.

125. However, the Applicant specifically cited [ ] as a potential entrant. In speaking with other industry participants [ ] was also identified as the most likely new entrant.

126. [ ] informed the Commission that it has seriously considered entering the companion market as it currently has[

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127. [ ] stated that the only reason it has not entered this market is resistance from manufacturers to supply it with product. [

[ ] informed the Commission that its chances of entering the market at this point in time were almost zero because of its inability to access supplies from manufacturers.

128. In speaking to manufacturers, the Commission was informed that the reason for manufacturers choosing [ ]

]

129. As discussed in the counterfactual, [

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130. Accordingly, the Commission considers that entry would be unlikely to occur due to the small size of the market and given the history of entry and exit it is unlikely that the market is large enough to support three national competitors.

Conclusion on Barriers to Entry and Expansion

131. The Commission does not consider warehousing and logistical support, access to customers and the regulatory environment to be significant barriers to entry, although access to manufacturers is considered a moderate barrier. However, the Commission considers, on balance, it is not so high as to deter potential entry. This is evidenced by the recent entry of Provet in 2002. Nevertheless, the Commission considers new entry would be unlikely due to the small size of the market and given the history of entry and exit it is unlikely that the market is large enough to support three national competitors.

*Direct Selling by Manufacturers*

132. As previously discussed in the market definition, the Commission understands that, except in a small minority of cases where a veterinary practice is large enough to warrant supply direct from the manufacturer, veterinarians purchase companion animal remedies only through a wholesaler.
133. The Applicant submitted that most manufacturers, while finding it convenient to use wholesalers to aggregate demand, have existing direct channels of supply that could increase in volume should there be any attempt by wholesalers to raise prices or reduce quality.
134. Manufacturers informed the Commission that they are, generally, not keen on direct selling in this market because of the nature of the sales. Sales are typically low value, small volume and frequent, and to a greater number of customers, resulting in higher transaction costs to the manufacturer.
135. However, manufacturers indicated to the Commission that they could direct supply in this market although they would need to expand their distribution arrangements to cope with increased volumes of smaller sales.
136. Industry participants informed the Commission that, historically, margins at the wholesale level are low and that any attempt by wholesalers to increase this margin would make the direct selling option more attractive to manufacturers.
137. Further, the Commission is aware of some instances of direct selling already occurring. For example, [ ] stated that direct sales account for 15% of its sales in the companion market in 2004. [ ] advised the Commission that he regularly approaches manufacturers and has been successful in negotiating direct supply for his company, based on the volumes it purchases. He also stated that should smaller veterinarian practices be unable to access direct supply options, it is common for veterinarians to group together into 'buying groups' in order to increase their purchasing power. NZVM informed the Commission that a number of these groups already exist, namely in the Nelson/Marlborough, Canterbury and Waikato regions.

### Conclusion on Direct Selling by Manufacturers

138. The Commission considers that manufacturers could increase their instances of direct selling to veterinarians, although presently it is more cost-effective for them, in the main, to use a wholesaler for the majority of their sales in the companion market.

### *Conclusion on Potential Competition*

139. The Commission considers that, on balance, barriers to entry are not so high as to deter potential entry. However, the Commission considers new entry would be unlikely due to the small size of the market. Nevertheless, the ability of manufacturers to direct supply and the prospect of wholesaler encouraged entry, in the event of the combined entity exercising market power, would be sufficient to constrain the combined entity.

### **Countervailing Power**

140. In some circumstances the potential for the combined entity to exercise market power may be sufficiently constrained by a buyer or supplier to eliminate concerns that an acquisition may lead to a substantial lessening of competition.
141. In this proposed acquisition, the Commission has considered the countervailing power of manufacturers of animal health remedies. Apart from the six animal remedies that NVS manufactures itself, existing competitors distribute remedies supplied to them by manufacturers.
142. Typically, wholesalers purchase the remedies outright and there are no exclusive contracts for distribution between manufacturers and wholesalers. As discussed in the section on potential entry, manufacturers are selective in who they supply their remedies to. The Commission was informed by manufacturers who limit their supply to specific wholesalers, that the main reason for the selectiveness was that they considered their remedies to be adequately distributed by the present wholesalers.
143. However, if manufacturers became dissatisfied with the existing wholesalers they have the ability to support a potential new entrant. The Commission has previously considered that access to manufacturers is a moderate barrier to entry and this would go some way to reducing this barrier. Additionally, the Commission considers the threat of manufacturers ceasing supply to existing participants is a credible threat and would be likely to constrain the combined entity, post-acquisition.

### *Conclusion on Countervailing Power*

144. The Commission considers that, post-acquisition, manufacturers are likely to continue to provide a constraint on the combined entity through their ability to either discontinue supply to a wholesaler and/or support a potential new entrant.

### **Co-ordinated Market Power**

145. The Commission is of the view that where an acquisition materially enhances the prospects for any form of co-ordination between businesses in the market, the result is likely to be a substantial lessening of competition.
146. In broad terms, effective co-ordination can be thought of as requiring three ingredients: collusion, detection and retaliation.



147. Collusion involves businesses in a market either each individually coming to a mutually profitable expectation as to co-ordination (tacit collusion), or together reaching agreement over co-ordination (explicit collusion).
148. Detection requires that businesses that would deviate from the likely co-ordination are able to be swiftly detected by the other market participants involved.<sup>9</sup>
149. Deviations from the terms of co-ordination need to be not only quickly detected by the other suppliers, but also the deviating firm needs to be faced with a credible threat of swiftly being punished.
150. The Commission considers that in the companion market there are some structural and behavioural characteristics that may facilitate tacit collusion. For instance, the proposed acquisition would be likely to increase the market concentration by reducing the number of major participants in the companion market from three to two, namely the combined entity and SVS.
151. In addition, prices are transparent as the wholesalers provide published price lists to their clients. Although it is common for manufacturers to provide recommended “sell to vet” prices to wholesalers, manufacturers informed the Commission that once wholesalers purchase their product, they are free to on-sell the product at whatever price they feel appropriate. Also, the service offered by wholesalers is comparable despite the fact that wholesalers try to differentiate themselves by the quality of the service they offer.
152. Further, although SMP is a small competitor in the companion animal market with a market share of [ ], the Commission considers its [ ]
153. Consequently, the combined entity and SVS could tacitly collude on price in the companion animal market. However, the Commission considers that any attempt to collude on price would be undermined by the countervailing power of manufacturers identified above. Further, the Commission considers that any collusion to raise prices would increase the likelihood of potential entry into the market and/or manufacturers discontinuing existing supply to wholesalers.

#### *Conclusion on Co-ordinated Market Power*

154. The Commission considers that, post-acquisition, any increase in the scope for coordinated market power would be dampened by the ease of de novo entry and the ability of manufacturers to support new entry, cease supply to a wholesaler or direct supply veterinarians themselves, should they become dissatisfied with veterinarian wholesalers.

#### **Vertical Integration**

155. Vertical acquisitions are those that involve businesses operating at different functional market levels in the production of a particular good or service. Where a vertical acquisition also has horizontal implications, the Commission considers each aspect of the acquisition in its own right.

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<sup>9</sup> Stephen Martin, *Industrial Economics: Economic Analysis and Public Policy* (2<sup>nd</sup> edition), New York: Macmillan, 1994, ch 6.

156. The Commission is of the view that, in general, the vertical aspects of acquisitions leading to vertical integration are unlikely to result in a substantial lessening of competition in a market unless market power exists at one of the affected functional levels. Where such a situation is found to exist, the Commission considers whether the acquisition would strengthen that horizontal position, or have vertical effects in upstream or downstream markets, and whether that change would substantially lessen competition.
157. Currently, NVS manufactures six animal remedies. These remedies account for [ ]. Pentobarb, a euthanasia drug, is the most significant with annual sales of [ ]. Presently no other veterinary wholesaler is also a manufacturer.
158. The Commission considers NVS could have market power if there is a distinct market for euthanasia drugs. Pentobarb is the major product supplied to the market and the Commission has been informed that it has loyal following amongst veterinarians.
159. However, the Commission is aware that there are a number of technical substitutes for Pentobarb manufactured internationally. However, industry participants stated that the demand for Pentobarb is relatively small and, currently, there is little need for another product. Also, manufacturers informed the Commission that they are not constrained by any tariff barriers in importing remedies. Accordingly, should the combined entity attempt to exercise any assumed market power in respect of Pentobarb, the Commission considers that veterinarians would have the ability to switch to another product supplied by a competing manufacturer.
160. Currently, NVS supplies Pentobarb to its own customers and to SVS, but not Provet. In the factual scenario, there will be one vertically integrated firm, the combined entity, and one other supplier, SVS. In the counterfactual, there will remain one vertically integrated firm.

#### *Conclusion on Vertical Integration*

161. The Commission considers that the vertical integration brought about by the proposed acquisition is unlikely to constitute a substantial lessening of competition in either the upstream manufacturing market or the downstream companion market.

### **The Livestock Market**

#### *Existing competition*

162. The existing competitors in the livestock market are the three national wholesalers, Provet, NVS, SVS and manufacturers who directly sell to the end-customer.
163. Provet, NVS and SVS wholesale products in the livestock market to veterinarians only. However, manufacturers direct sell to veterinarians, farming clients and to rural resellers such as Williams and Kettle, and RD1.
164. Industry participants stated that, compared to the companion market, there were more manufacturers supplying the livestock market. This is because the market is significantly larger, with large, lumpy sales, and is more mature due to its historic concentration on production animals. For example, [

] with turnover of approximately \$32m in the livestock market, does not supply the companion market even though it has a number of companion remedies in its international portfolio.

165. Industry participants were unclear on the total size of the livestock market. This is because New Zealand is one of the few countries that does not have a sophisticated auditing and data collection system for sales of livestock animal remedies. All industry participants stated that it is difficult to gauge the size of the market due to the varying degree of direct selling from manufacturers.
166. The Commission surveyed wholesalers, manufacturers, veterinarians and other industry participants to provide an estimate on the size of the livestock market, based on their own sales data and industry experience. Based on these estimates, and on the sales figures supplied, the Commission has conservatively estimated the total livestock market to be approximately \$150-175m per year. Table 3 shows the estimated market shares for the wholesale of remedies in the livestock market for the 2004/2005 year.

**Table 3: Estimated Market Shares for the Livestock Market for 2004/2005**

Wholesaler/Distributor	Revenue (04/05)	Market Share
Provet	[ ]	[ ]%
NVS	[ ]	[ ]%
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]%</i>
SVS	[ ]	[ ]%
Manufacturers	[ ]	[ ]%
Total	\$150m	100%

Source: Supplied by industry participants and Commission estimates.

167. Sales at the wholesale level account for approximately [ ] of all sales. The remaining [ ] of sales in the market come directly from manufacturers. For example for the 2004/2005 year, [ ] in direct sales came from Pfizer, [ ] came from Bayer and [ ] came from Meril while the remaining manufacturers share is attributed to numerous other manufacturers, including those listed in the parties section.
168. Table 3 indicates that Provet's share of the livestock market is small compared to the amount of direct selling from manufacturers. Therefore, given the minimal aggregation that would occur as a result of the proposed acquisition, the presence of SVS as a competitor and the amount of direct selling from manufacturers, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market as a result of the acquisition. Accordingly, for the purposes of this application, the Commission does not intend to consider this market further.

## OVERALL CONCLUSION

169. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the national market for:

- the wholesale supply of premium pet food;
  - the wholesale supply of companion animal remedies; and
  - the wholesale supply of livestock animal remedies.
170. The Commission considers that in the counterfactual scenario there would be two major wholesalers in the companion and livestock markets, with manufacturers also competing in the livestock market.
171. In respect to the premium pet food market, post-acquisition, the combined entity's market share is inside the Commission's safe harbour guidelines and the Commission is satisfied that there is unlikely to be a substantial lessening of competition in this market.
172. In the companion animal market, post-acquisition, the combined entity would have a market share of [ ] and the three-firm concentration ratio would be 100%. This is outside the Commission's safe harbour guidelines.
173. The Commission considers that in the companion market, post-acquisition, SVS would continue to be a strong competitor. The combined entity would also be constrained by the relative ease with which veterinarians can switch between wholesalers.
174. The Commission considers that, on balance, barriers to entry are not so high as to deter potential entry. A new entrant is likely to face moderate barriers to entry, particularly in terms of access to manufacturers given that many manufacturers are reluctant to support new entry. Manufacturers could supply direct, although the Commission recognises that wholesalers currently provide a more cost-effective option for manufacturers. However, these barriers are not insuperable as evidenced by Provet's entry and subsequent success. Overall, the Commission considers the ability of manufacturers to direct supply and the prospect of wholesaler encouraged entry, in the event of the combined entity exercising market power, would be sufficient to constrain the combined entity.
175. In respect of countervailing power, the Commission considers that, post-acquisition, manufacturers are likely to continue to provide a constraint on the combined entity through their ability to either discontinue supply to a wholesaler and/or support a potential new entrant.
176. The Commission considers that, post-acquisition, any increase in the scope for coordinated market power would be dampened by the ease of de novo entry and the ability of manufacturers to support new entry, cease supply to a wholesaler or direct supply veterinarians themselves, should they become dissatisfied with veterinarian wholesalers.
177. The Commission considers that the vertical integration brought about by the proposed acquisition is unlikely to constitute a substantial lessening of competition in either the upstream manufacturing market or the downstream companion market.
178. In respect to the livestock market, the Commission considers that the level of aggregation, post-acquisition, is minimal due to the presence of manufacturers direct selling and the Commission is satisfied that the proposed acquisition is unlikely to lead to a substantial lessening of competition in the livestock market.

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

**DETERMINATION ON NOTICE OF CLEARANCE**

180. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Provet NZ Pty Limited of the business and assets of National Veterinary Supplies Limited.

Dated this 5<sup>th</sup> day of May 2005

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Peter JM Taylor  
Division Chair  
Commerce Commission