

Commerce Commission – Application by Fonterra / Silver Fern Farms for Authorisation of a Restricted Trade Practice

Process Steps and timeframe

The Commission's consideration of an application under section 58 is a public process and the Commission will be seeking comment from interested parties throughout the process. Comment will be sought through face to face interviews, written submissions and possibly a public conference.

The key milestones in the process are outlined below along with the Commission's proposed timeline.¹

Milestone	Proposed Date(s)
Registration of Application	13 September 2011
Release of Statement of Preliminary Issues	7 October 2011
Closing date for submissions on Application	3 November 2011
Release of Draft Determination	15 December 2011
Submissions on Draft Determination	1 March 2012
Conference (if held)	19-23 March 2012
Release of Final Determination	15 May 2012

In order to have an informed and transparent process, the Commission intends to publish the public version of all submissions and relevant information on its website. If the Commission does not receive separate confidential and public versions of a submission, it will assume that nothing is confidential in that submission and release it on its website.

Submissions or any enquiries should be addressed to:

The Registrar
Mergers and Authorisations
Competition Branch
Commerce Commission
P O Box 2351
Wellington 6140
registrar@comcom.govt.nz

The Commission prefers to receive submissions electronically by email where possible.

Conference

Section 62(5) of the Commerce Act requires the Commission to hold a conference in relation to an application for authorisation of a restricted trade practice if requested by the applicant or an interested party. A conference gives interested parties the opportunity to speak and highlight the major points of their submissions, and to address views put forward by other parties. It also gives the Commission the opportunity to ask questions but it is not an adversarial process. Members of the public and media representatives may attend the conference but are not entitled to address the conference.

¹ Please note that this timeframe is provisional only and the Commission reserves the right to amend the timeframe as necessary. The Commission will post any such amendments on its website

The applicant or any interested party who has been sent a copy of the Draft Determination can request that the Commission hold a conference in relation to the application. Such a request must be made within **10** working days after a date set by the Commission (usually the date on which the Draft Determination is released). If a request is made for a conference, all interested parties will be provided with full details of the conference arrangements once they are available.

The Commission may also, of its own motion, determine to hold a conference in relation to the draft determination.

Confidentiality

The Commission's preference is for as much information as possible to be in the public domain. However, the Commission recognises that there will be cases where interested parties making submissions may seek confidentiality for some of the information provided. The Commission recognises that this will sometimes be necessary, particularly in the case of commercially sensitive information.

All information received by the Commission from parties is subject to the provisions of the Official Information Act 1982 (OIA). The OIA offers protection to information in certain circumstances. These include when the public interest in making the information available is outweighed by good reasons to withhold information such as:

- it would be likely unreasonably to prejudice the commercial position of the supplier or subject of the information; or
- the information is subject to an obligation of confidence and making it available would be likely to either prejudice the supply of similar information in the future and it is in the public interest that such information should continue to be supplied, or be likely otherwise to damage the public interest.

Where confidential information is contained in any submission, document or correspondence to the Commission (including emails), parties should clearly identify the information that is confidential by highlighting it and enclosing it in square brackets [like this]. Parties should also provide two copies of documents, one marked "public", which has the confidential information removed from the square brackets, and the other marked "confidential". Parties should also provide a schedule that sets out the reasons why the relevant information is confidential.

In the absence of being advised otherwise, the Commission will assume that all of the information provided is public.