



COMMERCE COMMISSION

Cavalier Wool Holdings Limited Application for Authorisation to Acquire New Zealand Wool Services International Limited

Agenda for Conference 4 and 5 May 2011

This note attaches the agenda for the Commission's upcoming conference on Cavalier Wool's application for Authorisation.

Background

On 13 April, the Commission released its draft determination on the Cavalier application. Submissions on the draft were received by 27 April 2011. The conference is the next step in the consultation process. The Commission is due to make a final determination on the application **on or before 31 May 2011**.

Date, time and place of conference

The conference will be held at **The Mercure Wellington, 345 The Terrace, Wellington** on Wednesday 4 May and Thursday 5 May 2011. An additional confidential session to accommodate industry experts and counsel will be held on the morning of Friday 6 May 2011.

The conference will start at 9.00am each day, with a lunch break and breaks for morning and afternoon tea.

Conference Procedure

Parties are reminded that the Commission will have read all relevant material prior to the conference and parties and experts should be prepared to discuss any paper or document cited in submissions. The most important purpose of the conference is to allow Commission members to question parties on topics where the Commission considers that it needs further information or clarification of existing information. No opening submissions from parties are required at the conference. Parties should not merely restate the information or views they have already provided to the Commission in interviews and in submissions. Interested parties are not required to provide a statement of issues or written submissions at the conference.

Procedure for presenting statements

During the conference, each issue will be introduced by the Commission. Members of the Commission and Commission staff will question the parties and experts. The Commission may choose to direct some questions to experts. These questions will be clearly signalled as being for expert opinion and all experts will be asked to comment sequentially on those questions, without reference to the parties. Parties may then be provided with an opportunity to comment on the experts' opinions, once all experts have commented.

Oral responses/statements will be made from a central table. No party will have the right to ask questions of any other party during the proceedings unless requested to do so by the Commission. Parties may not raise new matters and discussion will be limited to clarification of those issues that have been raised in submissions throughout the authorisation process.

All parties are required to provide 40 public copies for attendees of any document produced during the conference which clarifies their position on matters raised at the conference. At the end of each day's proceedings, an electronic version of these documents must also be produced (in pdf format) for publishing on the Commission's website.

Attendance of experts at the conference

The Commission expects that all experts that have been advising parties will be available at the conference to respond to the Commission's questions and that experts attending the conference appear as experts in their fields rather than as an advocate for any particular party.

The Commission expects experts to follow the guidance provided in the Code of Conduct for expert witnesses contained in the High Court Rules. A copy of the Code of Conduct is attached as an appendix. Experts are requested to confirm in writing before the conference that they are appearing as experts and agree to follow the guidance in the Code.

Post conference responses

The purpose of the conference is to enable the Commission to make a final determination on the authorisation application. Should they be required, the Commission will request final submissions on issues discussed at the conference. No information that is not already on the conference record will be allowed to be introduced in any final submission. In addition, if a party is unable to provide relevant information in response to a direct question from the Commission, that party will be given the opportunity to respond. Post conference response will be required **on or before Friday 13 May 2011**.

Confidentiality

The Commission's expectation is that confidential material should be kept to a minimum during the conference in order to maintain as transparent a process as is possible.

Attendance at any closed confidential sessions would be limited to Commission members, Commission staff, the party presenting the confidential information, and counsel and /or experts who have previously provided the Commission with undertakings not to reveal the confidential information to any other party including the persons instructing the experts.

Transcription

The conference will be recorded on audiotape and a stenographer will also provide a transcript of the conference. A transcript of each day's discussion will be made available on the Commission's website as soon as is practicable the following morning.

Contact

Please contact Anthony Stewart at the Commission or if you have any questions or comments regarding the conference:

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Enforcement Branch
Commerce Commission
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Appendix: High Court Rules

Schedule 4 Code of conduct for expert witnesses

r 9.43

Duty to the court

1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.

2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

3 In any evidence given by an expert witness, the expert witness must—

- (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it;
- (b) state the expert witness' qualifications as an expert;
- (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise;
- (d) state the facts and assumptions on which the opinions of the expert witness are based;
- (e) state the reasons for the opinions given by the expert witness;
- (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness;
- (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.

4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

6 An expert witness must comply with any direction of the court to—

- (a) confer with another expert witness;
- (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
- (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.

[7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.]