From: Kim Wake **On Behalf Of** Grant David
Sent: Wednesday, 8 April 2015 4:35 p.m.
To: Mya Nguyen
Cc: Marette Morrissey; Tania Pringle
Subject: CWH/NZWSI - Conference required

Dear Mya

At paragraph 38 of its draft determination the Commission notes that it may determine to hold a conference prior to making a final determination but have not currently scheduled to do so. While the Commission indicates that it may revisit this decision following receipt of submissions on the draft determination, you have asked that Godfrey Hirst give early indication of its view as to the need for a conference.

In short, Godfrey Hirst's view is that holding a conference will be essential to the Commission's proper consideration of this matter, which has vital consequences for not only the New Zealand wool scouring industry but also those other industries which are affected by wool scouring.

We note that the Commission's own *Authorisation Guidelines* state (at para 140) in succinct fashion the purpose and benefit of a conference. They say:

> *140. The purpose of a conference is to allow Commissioners to question the applicant and interested parties on topics on which we consider we need further information or clarification. A conference allows:*
>
> *140.1 Commissioners to test preliminary views with interested parties;*
>
> *140.2 Commissioners to test the submissions of interested parties; and*
>
> *140.3 Interested parties to hear and comment on each other's views.*

That purpose – and the benefits of a conference – do not differ for mergers and agreements. The practical difference however is that the Commission's decision in relation to a merger is irreversible; but agreements can be changed and authorisations in respect of agreements can be revoked. Thus, with an authorisation in respect of a merger, it is vital that the Commission gets its decision right and takes every procedural step to do so.

As we have stressed previously to the Commission, the proposed shareholder composition of Cavalier Wool Holdings post-acquisition makes this application for authorisation substantially different from the proposal previously considered and ultimately authorised by the Commission in its Decision 725. In particular, the advent of Lempriere (Australia) Pty Limited as the major shareholder – and the apparent shareholding and ultimate ownership of that company – give rise to substantially different considerations in relation to both the competition and public benefit/detriment analysis. Further, the existence of the Lempriere Option, together with the Drag-along right, provided for in the Shareholders Agreement provide for a range of scenarios which all need to be considered.

Those scenarios, and the commercial intentions of CWH's putative shareholders need to be fully – and openly – explored by the Commission, especially given the Commission's express acknowledgement (at para 9 of the draft determination) that no application for clearance or authorisation has been received in respect of Lempriere's shareholding and so the competition consequences of that shareholding have not been considered in the draft determination. We note

however that the Commission has in fact drawn some conclusions already in relation to CWH's post-acquisition shareholdings in its public benefit/detriment analysis.

As will be made apparent from Godfrey Hirst's submission on the draft determination, there are also other substantial matters that require open and full testing by the Commission, which can only properly be done at a conference.

Regards

GRANT DAVID
CONSULTANT