

Memorandum

Date: 23 April 2015

To: Chairman and Members
Commerce Commission

FROM: Grant David/Tim Smith
DIRECT: +64 4 498 4908/+64 4 498 2402
MOBILE: +64 27 4410 322/+64 27 225 2243
EMAIL: grant.david@chapmantripp.com/
tim.smith@chapmantripp.com
REF: 100136427/2228245.1

CAVALIER WOOL HOLDINGS AND NEW ZEALAND WOOL SERVICES INTERNATIONAL – CONFERENCE REQUIRED

Chapman Tripp yesterday provided to the Commission its proposed “public” version of the submission of Godfrey Hirst on the Commission’s draft determination (Godfrey Hirst submission). We endeavoured to keep deletions of commercially sensitive material to a minimum to assist the openness of the Commission’s process.

The Commission’s Authorisation *Guidelines* indicate that the Commission needs to gather and analyse information from market participants “to test the information provided in an authorisation application”. It also enables interested parties to hear and comment on each other’s views.

The conference procedure of course allows for further testing, especially of new information.

In fact the only deletions proposed on behalf of Godfrey Hirst from the public version of its submission are two paragraphs relating to potential service providers to Godfrey Hirst. Those deletions are intended to protect the commercial interests of those service providers, not Godfrey Hirst.

In addition, however, Chapman Tripp has proposed the deletion of substantial references to material provided to us by the Commission on a confidential to counsel and experts basis. Those further deletions, which relate to material provided by CWH and NZWSI, are still being reviewed by the Commission, to the effect that we have not yet been authorised to provide a public version of Godfrey Hirst’s submission to Godfrey Hirst.

The Commission provided to us yesterday both confidential and public versions of the submission on behalf of CWH (CWH submission). The public version of that submission – and especially the NERA Report which forms part of it – *does* contain substantial deletions. In particular, there is detailed reference in the NERA Report to additional capex now claimed to be planned in respect of the scours that will become redundant and sold. This last minute discovery of substantial items of seemingly required expenditure of course would push up avoided costs that can then be claimed as “benefits” to tip the balance.

But neither the additional items of capex nor the computation of the claimed avoided costs in respect of those items are publicly disclosed.

That reluctance to disclose those items relating to the operation of NZWSI wool scours of course contrasts with the criticism in paragraph 4 of the CWH submission that "CWH considers that James Irvine is a talented engineer and machinery manufacturer, but considers that he lacks experience in the operations of a scour, and has only limited knowledge of the various costs and revenues involved."

The import of that comment is that only someone with experience in operating a scour is qualified to comment on the likely costs and revenues involved in establishing a new scour. That is exactly why NZWSI's new claims to additional capex must be released to parties with requisite expertise – like Godfrey Hirst - for scrutiny and comment.

Godfrey Hirst will make full comment on all matters raised in the CWH submission in due course – and ideally at a conference to be held in respect of the draft determination. But, Godfrey Hirst does want to refute immediately the claim made in paragraph 10.4 of the CWH submission that "there is nothing fresh raised by Godfrey Hirst". That claim of course was made prior to CWH or its counsel having seen the Godfrey Hirst submission

As will be apparent to the Commission, the Godfrey Hirst submission contains 40 pages of reasoned comment on the draft determination with much of that comment comprising new information. The Godfrey Hirst submission also raises a number of significant legal, factual, economic and procedural issues in relation to the Application. In addition, the Godfrey Hirst submission comprises a detailed Economist's Report and Valuer's Report that refute or amend many of the Commission's preliminary views as set out in the draft determination.

There is the further specific claim in paragraph 10.4(b) of the CWH submission that "the Commission has already considered the existence of the Lempriere Option, discussed this with the parties involved and Godfrey Hirst and following amendment to ensure the Option is conditional upon future clearance or authorisation, concluded it is satisfied that the Option has no relevance to its investigation of the Application."

As will be apparent from the correspondence from Chapman Tripp to the Commission and materials released under the Official Information Act to Chapman Tripp by the Commission in relation to the Lempriere Option (which material comprises Appendices B and C of Godfrey Hirst's submission), those claims are patently untrue. The claimed conclusion as to the Option's relevance - and certainly the Commission and Bell Gully's joint amendment of that Option - were not matters in which Godfrey Hirst and other interested parties were involved, or indeed made aware of until well after the event.

By way of illustration, the first reference made to the Lempriere Option on behalf of the applicant is contained in the last paragraph of the CWH submission, over 6 months from the date when the Application was filed.

Godfrey Hirst submits that the Lempriere Option is vital to the Commission's determination of this matter. All of the mystery that surrounds the Lempriere Option – and Lempriere – needs to be removed at a conference.

Having considered the new information provided in the CWH submission and the substantial new legal, factual and economic material provided in the Godfrey Hirst submission, we consider it is now clear that the Application, and the information before the Commission in relation to the application, is significantly different from that considered by the Commission both in Decision 725 and in coming to its draft determination. However, to the extent that this can be disputed, it is evident that the similarity or otherwise of the legal, factual and economic justification of the present Application to the Application previously considered in Decision 725 is itself a matter that is in significant dispute

between the parties and the economic experts. In these circumstances, the only proper course available to the Commission is to hold a conference, as requested in our letter of 8 April and repeated in Godfrey Hirst's submission, to allow the competing legal, factual and economic positions to be appropriately tested by the Commission and the parties.

Senior Management of Godfrey Hirst, together with the authors of the Economist's Report and Valuer's Report which form part of the Godfrey Hirst submission, are available to attend.

Yours sincerely

Grant David/Tim Smith

CONSULTANT/SENIOR ASSOCIATE

DIRECT: +64 4 498 4908 / +64 27 225 2243

EMAIL: grant.david@chapmantripp.com/tim.smith@chapmantripp.com

