

By email

Katie Rusbatch

Commerce Commission
44 The Terrace
Wellington

FROM **Torrin Crowther**
DDI +64 9 916 8621
MOBILE +64 21 867 746
EMAIL torrin.crowther@bellgully.com
MATTER NO. 400-4888
DATE 6 August 2015

Dear Katie

CWH: re Chapman Tripp Letter

We refer to Grant David's letter to Dr Berry on behalf of Godfrey Hirst, dated 5 August and provided to us earlier today. On behalf of the applicant we respond as follows.

1. When the letter was drafted, Chapman Tripp did not know what the 'new' information was (although of course a version for provision to those who had given confidentiality undertakings was provided shortly after it was provided to the Commission).
2. As a result, the reason for writing to Dr Berry some 15 weeks after the capex updates were provided (and 7 weeks after the redundancy update) appears to have been premised on the (mistaken) expectation that the 'new' information would impact more broadly than it does. In fact, it **[REDACTED]**.
3. The capex and redundancy updates were provided in April and June respectively. Despite what is claimed in the letter, **[REDACTED]** was dealt with in the Draft Determination – all that was provided after the Draft Determination was information in response to the Commission's questions and comments from the parties in relation to the timing of the relevant cost savings. The property valuations were commissioned by the Commission, not the applicant.
4. Quite what Godfrey Hirst/Chapman Tripp expected the applicant to do with **[REDACTED]**, other than to advise the Commission, is beyond us. To suggest that sending it to the Commission reflects the applicant trying to "salvage" the application is, to put it mildly, absurd.
5. **[REDACTED]** has no impact on Godfrey Hirst/Chapman Tripp's ability to file their submission on other issues on Monday 10 August – a deadline which the Commission first advised of on 20 July.
6. Having known about the capex and redundancy updates for months, and the Commission's proposal for dealing with valuations for some time, Godfrey Hirst's thinly veiled threat at the eleventh hour to look at "all avenues" to redress what it says are fairness and process issues is simply another attempt to misuse the authorisation process to further delay the Commission's consideration of the transaction.
7. Despite the rhetoric in the Chapman Tripp letter, the parties have in fact conducted themselves entirely appropriately throughout this process. Indeed, as counsel for a party vehemently opposed to the transaction, Chapman Tripp has had what must be close to unprecedented access to the parties' confidential information so that they can advocate on behalf of their client.

8. The Commission should, in our view, reject Godfrey Hirst's latest attempt to be the arbiter of what constitutes an appropriate process.
9. The parties are also entitled to a fair and proper process. Accordingly, the appropriate course of action is to proceed with the current timetable.

Please feel free to contact me should you wish to discuss any aspect of the above.

Kind regards

[Sgd: Torrin Crowther]

Torrin Crowther
Partner

cc: Tania Pringle, Mya Nguyen and Marette Morrissey
Commerce Commission