



2 April 2007

Mr Jeff Hamilton
Investigator
Commerce Commission
PO Box 2351
WELLINGTON

Dear Jeff

Commerce Act 1986: Application to Vary the Authorisation Granted in Decision 580 – Draft Determination

Thank you for your draft determination of 19 March 2007 and the following sets out the NZRU's submissions on that draft.

Conference

The NZRU does not intend to request that the Commission hold a conference in relation to the draft determination and does not consider that a conference is warranted in respect of this application.

Question 1: The Commission seeks comments on whether parties agree that this is a correct assessment of whether the authorisation in Decision 580 was granted on information that was false or misleading for the purpose of s65(1)(a) of the Act.

We set out in our 15 February 2007 letter to the Commission reasons why the NZRU considered that the Commission had no jurisdiction to vary decision 580 under section 65(1)(a) of the Act and the Commission's draft determination indicates that it is in agreement that it has no jurisdiction to vary decision 580 under section 65(1)(a). The NZRU accepts this conclusion and does not propose to make any further submissions on this issue. However, should information come to light or the Commission's analysis change in such a way that causes the Commission to reach a different conclusion, the NZRU would request the opportunity to make further submissions.

Question 2: The Commission seeks comments on whether interested parties agree that this is a correct assessment of whether the circumstances outlined by the NZRU constitute a material change of circumstance for the purpose of s 65(1)(b) of the act.

The NZRU agrees with the Commission's conclusion in paragraph 129 of the draft determination that there has been a material change of circumstance in terms of s65 (1)(b).

Question 3: The Commission seeks the views of interested parties on whether the approach to the exercise of its discretion, as described above, is appropriate.

The NZRU accepts the Commission's analysis.

Question 4: On the assumption that the Commission has established grounds pursuant to s 65(1), the Commission seeks the views of interested parties on whether the circumstances outlined by the NZRU are appropriately dealt with by an amendment to the authorisation granted in Decision 580.

The NZRU accepts the Commission's analysis.

Question 5: The Commission seeks further views on whether the factual and counterfactual scenarios described in this Draft Determination are appropriate for conducting the public benefits/detriments analysis?

The NZRU believes that when considering an amendment to an existing authorisation the correct analytical approach is to consider a counterfactual that does not include the authorised arrangement at all (i.e. no salary cap). The Commission's current approach to the counterfactual means an amendment to an authorised arrangement could only be granted where it increases net benefits. However an amendment to such an arrangement may be necessary due to various changes in circumstances and arguably such an amendment should be permitted as long as overall the benefits of the arrangement still outweigh the detriments and it should not matter whether incrementally the change increases or decreases net benefits as long as overall benefits do still outweigh detriments.

However, in the circumstances of this particular case the result is the same and the NZRU does not intend to prolong the Commission's task with a debate that is essentially hypothetical in this case.

Question 6: The Commission seeks further views on whether the markets described in this Draft Determination are appropriate for analysing the competitive impact of the proposed variation.

The NZRU agrees that the Commission has accurately defined the relevant markets.

Question 7: The Commission seeks the views of interested parties on its preliminary assessments of the public benefits and detriments arising from the proposed variation.

The NZRU agrees that the proposed amendment to vary the Collective Employment Agreement sought by the NZRU is likely to result in a small incremental net benefit being realised.

Question 8: What matters not covered by this Draft Determination should be taken into account by the Commission before it makes its final determination?

The Commission previously asked whether a final decision had been made that all of the All Black squad for the 2007 Rugby World Cup would not play in the 2007 Air New Zealand Cup competition, and in our letter to the Commission of 31 January 2007 we stated that:

"No formal or final Board decision has been made that the Rugby World Cup All Blacks will be unavailable for the 2007 Air New Zealand Cup but practicalities dictate that they will not be. The 2007 Air New Zealand Cup competition starts on Thursday 26 July 2007 and ends on 20 October 2007. The All Black team departs for the 2007 Rugby World Cup in France on 29 August 2007 so it is physically impossible for the team to play in the Air New Zealand Cup Competition during that time (e.g. from Round 6 onwards).

Prior to this the All Blacks are engaged in the in-bound tour (2 July - 16 July), the Phillips Tri Nations Tournament (23 June - 21 July) and have planned training camps scheduled for the weeks commencing 11 August and 25 August 2006 and further conditioning scheduled for the in-between weeks. Accordingly, from a practical perspective the All Blacks will be unavailable for the 2007 Air New Zealand Cup competition. We have attached a copy of the All Blacks 2007 proposed schedule (Confidential Attachment 4).

We note that an exception to this is that if the All Black coaches determine that it would be in the best interests of a player to play a game to get match fit. For example a player selected for the 2007 Rugby World Cup may have been injured and not played for a number of months and in this case it may make sense to give that player a game before departure."

We have again talked to All Black management who confirm that this reflects the current situation with it being the intention of All Black management to only allow All Blacks to play in the 2007 Air New Zealand Cup competition in exceptional circumstances, for example when a player needs to play to get match fit. However, the Commission should note that All Black management will have the final say on which (if any) All Blacks have any "game-time" in the 2007 Air New Zealand Cup before departing for the 2007 Rugby World Cup.

Question 9: The Commission seeks the views of interested parties on the drafting of a suitable amendment to provide sufficient certainty as to the scope of the salary cap relief in the salary cap framework.

The NZRU notes that the Commission proposes to amend the authorisation granted in Decision 580 largely by reference to the material contained in Appendix 6 of the application dated 12 December 2006, and in particular the proposed amendments to both the Collective Employment Agreement and salary cap regulations which have been provisionally agreed between the NZRU and the NZRPA. The NZRU accepts that proposal.

Yours sincerely

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