

Melissa Hay

From: Marette Morrissey <Marette.Morrissey@comcom.govt.nz>
Sent: Wednesday, 4 March 2015 12:39 p.m.
To: Grant David
Cc: Mya Nguyen; Melissa Hay
Subject: CWH/NZWSI: Response to your 2 March request under the OIA [CCNZ-iManage.FID179058]
Attachments: Email from M Morrissey to Bell Gully - 3 February 2015.pdf; File note of call with Bell Gully - 30 January.pdf; 1961692_Letter to Cavalier re option and theory of vertical foreclosurepdf

Grant

In response to your email of 2 March, please find attached the following documents provided to you under the Official Information Act.

Kind regards

Marette Morrissey

Senior Legal Counsel | Competition Branch
Commerce Commission | *Te Komihana Tauhokohoko*
44 The Terrace | PO Box 2351 | Wellington 6140 | New Zealand
DDI +64 (0)4 924 3696 | Mob 021 225 4459 | marette.morrissey@comcom.govt.nz

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From: Grant David [mailto:Grant.David@chapmantripp.com]
Sent: Monday, 2 March 2015 10:52 a.m.
To: Marette Morrissey
Cc: Mya Nguyen; Melissa Hay
Subject: RE: CWH/NZWSI: Response to your request under the OIA [CCNZ-iManage.FID179058]

Hi Marette

Thanks for sending me the attached documents.

I note however

That the file note of your conversation with Bell Gully of 4 February refers to "MM's email of 3 February". Please could I have a copy of that document too.

For the avoidance of doubt I clarify that my request of 23 February extends to all correspondence and discussions has had relating to the Lempriere Option as well as the variation letter and form of deed intended to amend that Option.

Kind regards

Grant

From: Marette Morrissey [mailto:Marette.Morrissey@comcom.govt.nz]
Sent: Friday, 27 February 2015 3:23 p.m.
To: Grant David
Cc: Mya Nguyen; Melissa Hay
Subject: CWH/NZWSI: Response to your request under the OIA [CCNZ-iManage.FID179058]

Grant

In response to your email of 23 February, please find attached the following documents provided to you under the Official Information Act.

As you will see, the draft documents provided to the Commission on 8 and 10 February were initially provided in confidence for comment. We have consulted with Bell Gully and these draft documents are no longer considered confidential as final versions of the documents have been made publicly available.

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- Email from Bell Gully to the Commission attaching the updated option deed - 12 February

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From: Grant David [<mailto:Grant.David@chapmantripp.com>]
Sent: Monday, 23 February 2015 11:08 a.m.
To: Marette Morrissey; Mya Nguyen
Cc: Melissa Hay
Subject: RE: CWH/NZWSI: Written response to your questions [CCNZ-iManage.FID179058]

Dear Marette

Thank you for the variation letter and agreed form of Deed to which it refers.

Was there any correspondence between any of the parties to these documents or their counsel and the Commission, or any discussions with those parties or their counsel, in relation to those documents and more generally in relation to the Option Deed to which these documents refer?

If so, I request copies of that correspondence/ those discussions as a matter of urgency in terms of s.12(2) of the Official Information Act in order to enable me to advise my client in relation to the intended effect and procedural probity of those documents, and potentially make urgent submissions to the Commission in this regard, prior to the completion and issue of that draft determination.

Regards

Grant

From: Marette Morrissey [<mailto:Marette.Morrissey@comcom.govt.nz>]
Sent: Friday, 20 February 2015 11:52 a.m.
To: Grant David; Melissa Hay
Cc: Mya Nguyen
Subject: CWH/NZWSI: Written response to your questions [CCNZ-iManage.FID179058]

Grant

Further to our conversation on 11 February, as per your request we set out our written responses to your questions below.

**is the applicant proposing to make the Lempriere Option conditional on Commission approval?*

Yes

**how is the applicant proposing that this be done?*

The parties have executed a variation letter to the Sale and Purchase Agreement, which will bind the parties into entering into an Option Deed. The Option Deed sets out that exercise of the option is conditional on Commerce Commission approval. Please find **attached** to this email the executed variation letter and the agreed form of the Option Deed. These documents are public so can also be provided to your client under the OIA.

**does the Commission intend to have regard to that conditionality and if so how?*

Yes, exercise of the Lempriere option is conditional on Commission approval, so we will take into account Lempriere's 45% shareholding in CWH in our analysis, but will not consider the possibility of Lempriere having a 72.5% shareholding in CWH as any increase in shareholding would be subject to approval.

As set out in our Mergers and Acquisitions Guidelines at [2.17] citing Hammond J in *NZ Bus (CA)*, "Where a merger is conditional on clearance or authorisation, we do not consider that a person has acquired an equitable or legal interest in the relevant assets or shares at that time".

**does the applicant claim that the Shareholders Agreement (which includes the Lempriere Option) and other Transaction Documents constitute part of its application?*

The applicant's view is that the Shareholders' Agreement and other transaction documents do not constitute part of its application, but form part of the evidence that the Commission can review when determining the application.

**does the Commission regard the Shareholders Agreement and other Transaction Documents to constitute part of the application and if so how?*

The documents were provided to the Commission in support of CWH's application. We will consider this issue as part of our analysis prior to issuing the Draft Determination.

We are concentrating on drafting the Draft Determination and as per your earlier email and our response, we do not consider that a meeting with Godfrey Hirst is required at this time. If the situation changes we will be in touch. Once Godfrey Hirst and other interested parties have had the opportunity to read the Commission's Draft Determination, Godfrey Hirst and others are welcome to make further submissions on the option and any other matters.

Regards

Marette Morrissey

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Marette Morrissey

From: Marette Morrissey <Marette.Morrissey@comcom.govt.nz>
Sent: Tuesday, 3 February 2015 10:00 a.m.
To: Phil Taylor (phil.taylor@bellgully.com); Phil.t.taylor@gmail.com
Cc: Mya Nguyen; Glenn Shewan (Glenn.Shewan@bellgully.com); Emma Harris (Emma.Harris@bellgully.com); Penny Pasley (Penny.Pasley@bellgully.com)
Subject: Further comment on Lempriere's option [CCNZ-iManage.FID178757]

Phil

We set out below our initial thoughts in response to your question, "Does the Commission believe that if the transaction is authorised then the Commission has essentially also authorised Lempriere to acquire up to a 72.5% shareholding in CWH because of the option in the Shareholders' Agreement?" We have yet to fully explore these issues with Commissioners.

We are considering Cavalier's application for authorisation to acquire control over NZWSI's wool scouring business and assets and as a consequence of that transaction, Lempriere will acquire a 45% shareholding in CWH. The option in the Shareholders' Agreement gives Lempriere the ability post-merger to acquire up to 72.5% of CWH.

Any authorisation granted would be on the basis that Lempriere has a 45% shareholding in CWH. However, we consider that there is a real chance that Lempriere may execute the option and therefore we propose to conduct our analysis on the basis that Lempriere has a 72.5% shareholding in CWH. This means our analysis is based on a worst case scenario, in the sense that it is the scenario that may give rise to the greatest competition concerns.

This would not necessarily mean that Lempriere had authorisation for the acquisition of the further 27.5% of the shareholding. For example, if the Lempriere option was not executed until sometime after the initial transaction, the Commission would reserve the right to assess the facts at that time in order to ascertain whether the acquisition would likely result in a substantial lessening of competition.

Kind regards

Marette Morrissey

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Marette Morrissey

From: Mya Nguyen
Sent: Friday, 30 January 2015 1:24 p.m.
To: CWH Project Team
Subject: File note: Call with Phil Taylor and Penny Pasley of BG re CWH matters (including vert foreclosure letter). [CCNZ-iManage.FID178757]

Call date: 30 January 2015
Call time: 12:57pm

Phil and Penny called to discuss outstanding queries.

1. Resource consent submission can be released in its entirety (no confidential information).
2. They are happy for the \$14 to be released in the Gavin Lonergan FN. (as per my email of 29 January)
3. There are no new negotiations/agreements between Cavalier Bremworth and CWH for scouring services.
4. Our current information request asks for the Factual model – BG suggested providing the Counterfactual models as well.
5. Phil is checking the confidentiality status of all the information to be provided on Monday/Tuesday next week.
6. The submission on the confidentiality claims of some of the Godfrey Hirst submissions is currently being drafted. Will provide to us asap.

Phil commented that he understood the logical jump for the Commission to go from 45 to 72.5, however, he wanted a response to the following query.

- Does the Commission believe that if we authorise the Transaction then we essentially also authorise the grant of the option. (MM will draft a response and circulate to the team).
- Phil believes his client will question this and wants our position.

Call ended

Mya Nguyen

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27 January 2015

Phil Taylor and Glenn Shewan
Consultant/Senior Associate
Bell Gully
PO Box 4199
AUCKLAND 1140

Dear Phil and Glenn

Consideration of vertical foreclosure in the merchant market

1. In addition to the horizontal aggregation in the wool scouring market, we are considering whether the transaction may give rise to foreclosure in the wool merchant market and how the level of Lempriere's shareholding may impact on this analysis.
2. We set out our preliminary views on these matters below and invite you to comment on our preliminary analysis. We would appreciate receiving any feedback Cavalier may have by **5pm Tuesday 3 February 2015**.

Theory of harm - foreclosure in the wool merchant market

3. The proposed transaction would result in Lempriere, the owner of New Zealand's largest wool merchant NZWSI, having a substantial interest in the resulting monopoly scouring company. Given its interest in the wool merchant market, Lempriere's interest in the monopoly scouring company could give it both the incentive and the ability to provide its trading firm, NZWSI, with preferential scouring rates. We set out our theory of how vertical foreclosure could arise below.
4. Any move to raise NZWSI's rivals' costs would place these rival merchants at a competitive disadvantage in the downstream market for the sale of clean wool. The merged entity could refuse to sell wool scouring services to NZWSI's rivals, foreclosing them from the market altogether. However, in the alternative, the merged entity could raise the price for such services, or alter the quality of its service either by providing lower quality scouring or less timely delivery, so that rivals are relegated to a niche position or are more generally rendered less able to compete effectively. This could in turn enable NZWSI to exercise market power in this market to the detriment of downstream wool customers and/or upstream wool suppliers (ie, farmers).

The option clause in the Shareholders' Agreement

5. The application states that as a result of the transaction, Cavalier Wool Holdings (CWH) will be owned:
 - 5.1 45% by Lempriere;
 - 5.2 27.5% by Cavalier Bremworth;
 - 5.3 13.75% by ACC; and
 - 5.4 13.75% by Direct Capital.
6. Clause 9.1 of the Shareholders' Agreement grants Lempriere an option to acquire the shares of Direct Capital and ACC if it wishes to do so before 31 December 2016. There is also a second option that expires on 31 December 2018 (clause 9.4) and potentially further options to be agreed (clause 9.5).
7. If Lempriere decides to exercise the option, its shareholding in CWH will increase from 45% to 72.5%.

Is there a real chance that the option will be executed?

8. There are two ways in which we could undertake our analysis of Lempriere's proposed shareholding in CWH.
 - 8.1 Option 1: There is no real chance of Lempriere gaining a 72.5% shareholding by way of the option and therefore we conduct our analysis on the basis that Lempriere has a 45% shareholding in CWH.
 - 8.2 Option 2: There is a real chance that Lempriere may execute the option and therefore we conduct our analysis on the basis that Lempriere has a 72.5% shareholding in CWH.
9. Our preliminary view is that we should adopt option 2, the conservative approach. We consider that there is a real chance that Lempriere may execute the option and therefore we propose to conduct our analysis on the basis that Lempriere has a 72.5% shareholding in CWH.
10. Doing so means our analysis is based on a worst case scenario, in the sense that it is the scenario that may give rise to the greatest competition concerns.

Impact on foreclosure theory of harm if Lempriere obtained 72.5% ownership in merged entity

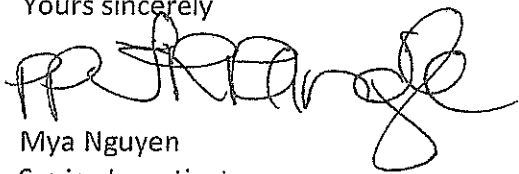
11. In the case where Lempriere has a 72.5% shareholding in CWH, any constraint provided by ACC and Direct Capital on Lempriere's ability to raise rivals' costs would be removed.

12. The greater shareholding may enhance Lempriere's ability to foreclose in the merchant market (because of its ability to change the scouring agreement and also to affect rival merchants by reducing quality, increasing time to scour, raising scouring prices, etc) which could have flow on effects at the farm gate and/or downstream wool customers.
13. Lempriere could conceivably also attempt to reduce any remaining resistance to this strategy by providing Cavalier Bremworth wool scoured at the preferential scouring rate through NZWSI. Therefore the likelihood of vertical foreclosure may be much higher under this ownership scenario.

Conclusion

14. Please provide any comments that Cavalier may have on:
 - 14.1 our theory of harm in respect of foreclosure in the merchant market; and
 - 14.2 our proposed approach to analysing Lempriere's shareholding in CWH, being 72.5%, as opposed to 45%, and how the level of Lempriere's shareholding may impact on any foreclosure analysis.

Yours sincerely



Mya Nguyen
Senior Investigator

Melissa Hay

From: Marette Morrissey <Marette.Morrissey@comcom.govt.nz>
Sent: Friday, 27 February 2015 3:23 p.m.
To: Grant David
Cc: Mya Nguyen; Melissa Hay
Subject: CWH/NZWSI: Response to your request under the OIA [CCNZ-iManage.FID179058]
Attachments: File note - Call with Bell Gully re Lempriere option 4-2-2015.pdf; Email from Bell Gully to the Commission attaching draft deed – 8 February.pdf; 17508338_Draft deed relating to the exercise of options.pdf; Email from the Commission to Bell Gully commenting on the draft deed – 9 February.pdf; Email from Bell Gully to the Commission attaching draft variation letter - 10 February.pdf; 17522644_Draft Variation letter - SPA.pdf; Email from Bell Gully to the Commission attaching the updated option deed - 12 February.pdf; Deed relating to the exercise of options (redlined).pdf

Grant

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As you will see, the draft documents provided to the Commission on 8 and 10 February were initially provided in confidence for comment. We have consulted with Bell Gully and these draft documents are no longer considered confidential as final versions of the documents have been made publicly available.

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Regards
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**is the applicant proposing to make the Lempriere Option conditional on Commission approval?*
Yes

**how is the applicant proposing that this be done?*

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Marette Morrissey

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File note - Telephone

Date of Filenote: 04 February 2015 11.04/14924
Date of call 04 February 2015
Time: 4:03 pm to
Telephone number: 021 994 216
Parties: Tania Pringle (TP), Murette Morrissey (MM), and Mya Nguyen (MN) - NZCC
Phil Taylor (PT) - Bell Gully, Counsel for Cavalier
Classification: In-Confidence - Commercial
Subject: File note: Call w/ Phil Taylor of Bell Gully re Lempriere option 4/2/2015

Restricted information in this document is contained in square brackets

We were calling to discuss the Lempriere option referred to in MM's email of 3 February.

We discussed whether making the option conditional would change the Commission's analysis. We confirmed that if the option were made conditional then we would have to consider the impact made by the condition.

PT suggested that a deed between shareholders be signed making the option conditional. The deed would likely be irrevocable; it would state that all shareholders agree to amend the Shareholders Agreement to make the option conditional on Commission clearance or authorisation.

TP noted that the Commission would likely want to have the deed but also an amended Shareholders Agreement.

Signed: _____
Mya Nguyen

Deed

relating to

options granted under the shareholders' agreement relating to [*New name for Cavalier Wool Holdings Limited*]

Direct Capital Investments Limited

Direct Capital

and

Accident Compensation Corporation

ACC

and

[*Lempriere entity*]

Lempriere

and

Cavalier Bremworth Limited

Cavalier Bremworth

and

[*Renamed CWH*]

Company

Date

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

This Deed is made on 2015

between (1) **Direct Capital Investments Limited (Direct Capital)**
and (2) **Accident Compensation Corporation (ACC)**
and (3) **[Lempriere entity] (Lempriere)**
and (4) **Cavalier Bremworth Limited (Cavalier Bremworth)**
and (5) **[Renamed CWH] (Company)**

Introduction

- A. The parties to this Deed are the parties to a shareholders' agreement in relation to the Company to be entered into on or about the date of this Deed (the **Shareholders' Agreement**).
- B. Under clause 9 of the Shareholders' Agreement, Lempriere is granted certain options to acquire all of the Shares held by Direct Capital and ACC on the terms and conditions set out in that clause.
- C. The parties have entered into this Deed to impose a condition upon the exercise of any such option. For the purposes of clause 18.2 of the Shareholders' Agreement, this Deed supplements the Shareholders' Agreement.

It is agreed

1. Definitions

1.1 Definitions

In this Deed:

Commerce Commission means the New Zealand Commerce Commission;

Condition means the condition on the exercise of an Option as set out in clause 2.1 of this Deed;

Option means the Original Option, the Second Option or any further option granted in accordance with clause 9.5 of the Shareholders' Agreement (as applicable); and

Shareholders' Agreement has the meaning given to it in paragraph A of the Introduction to this Deed.

1.2 Capitalised terms

Capitalised terms used but not defined in this Deed have the meanings given to them in the Shareholders' Agreement.

2. Option conditional

2.1 Exercise of Option conditional

The parties agree that the exercise of an Option is in all respects conditional on the Commerce Commission granting:

(a) **Authorisation**

an authorisation for the exercise of that Option under Part 5 of the Commerce Act 1986; or

(b) **Clearance**

a clearance pursuant to section 66 of the Commerce Act 1986 in respect of the exercise of that Option

in each case, on terms and subject to conditions, acceptable to Lempriere (acting reasonably).

2.2 Waiver

The Condition is for the benefit of Lempriere and, for so long as each remains a Shareholder, Direct Capital and ACC, and may be waived in whole or in part only by the written agreement of:

- (a) Lempriere;
- (b) for so long as they remain a Shareholder, Direct Capital and ACC; and
- (c) the Commerce Commission.

2.3 Lempriere undertaking

To give effect to the Condition, Lempriere undertakes to Direct Capital and ACC that it will not exercise an Option unless and until the Condition has been satisfied or has been waived in accordance with clause 2.2.

3. General

3.1 Amendments and termination

- (a) Subject to clause 3.1(b), this Deed cannot be amended, modified, varied, supplemented or terminated except:
 - (i) in writing signed by the parties; and
 - (ii) with the prior written consent of the Commerce Commission.
- (b) If a party ceases to be a Shareholder, then this Deed may be modified, varied, supplemented or terminated without the need for the approval or agreement of that party.

3.2 Contracts (Privity) Act

The provisions of clauses 2.2 and 3.1 are intended to create a benefit in favour of, and to be enforceable by, the Commerce Commission for the purposes of the Contracts (Privity) Act 1982.

3.3 Assignment

A party cannot assign or otherwise transfer the benefit of this Deed without the prior written consent of the other parties.

3.4 Counterparts

This Deed may be signed in any number of counterparts (by facsimile or pdf copy) all of which, when taken together, constitute one and the same instrument.

3.5 Governing Law

This Deed is governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Execution

Executed as a deed.

**Direct Capital Investments
Limited by**

Director

Director

Print Name

Print Name

Accident Compensation Corporation by

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Witness to both signatures

Print name

Occupation

Address

[Lempriere Entity] by

Director

Director

Print Name

Print Name

Cavalier Bremworth Limited by

Director

Director

Print Name

Print Name

[Renamed CWH] by

Director

Director

Print Name

Print Name

Mya Nguyen

From: Emma Harris <Emma.Harris@bellgully.com>
Sent: Thursday, 12 February 2015 1:01 p.m.
To: Mya Nguyen
Cc: 'Phil Taylor'; Phil Taylor; James Cooney; Penny Pasley
Subject: Sholpan - deed relating to the exercise of options (redlined)
Attachments: Deed relating to the exercise of options (redlined).pdf

Hi Mya,

Please find **attached** a redlined version of the deed relating to the options granted under the Shareholders' Agreement incorporating the NZCC's suggested amendments.

Please let us know if you have any questions.

Kind regards,
Emma

Emma Harris Solicitor

BELL GULLY

DDI +64 9 9168975
Vero Centre, 48 Shortland Street, Auckland, New Zealand

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Mya Nguyen

From: Phillip Taylor <phil.t.taylor@gmail.com>
Sent: Sunday, 8 February 2015 7:57 p.m.
To: Mya Nguyen; Murette Morrissey; Tania Pringle
Cc: Penny Pasley; Emma Harris; James Cooney
Subject: 17508338_Deed relating to the exercise of options.DOCX
Attachments: 17508338_Deed relating to the exercise of options.DOCX

Dear All, please see attached a draft deed which is intended to provide conditionality of the Option and in order to remove doubt that the Option is conditional. The draft is sent to the Commission on a confidential basis for its comments. Once the document is settled then it can be executed and we will then provide a signed public version which can be provided to others under the Official Information Act.

Please let us know if the Commission has any comments and confirm that the Commission remains of the view that the condition will allow the Lempriere shareholding to be considered at the 45% level for the purposes of the Authorisation Application.

Kind regards Phil

Sent from my iPad

Mya Nguyen

From: Phil Taylor <phil.taylor@bellgully.com>
Sent: Monday, 9 February 2015 3:46 p.m.
To: Mya Nguyen; Marette Morrissey; Tania Pringle
Cc: Penny Pasley; Emma Harris; James Cooney
Subject: FW: 17508338_Deed relating to the exercise of options.DOCX [CCNZ-iManage.FID178757]

Hi Team, that seems fine. I have discussed with the whole client group and subject to sign off from Mayne Wetherell from a corporate perspective I don't anticipate any problems with those amendments.

I will confirm as soon as I have a final OK.

Phil

From: Harris, Emma EKH
Sent: Monday, 9 February 2015 1:15 p.m.
To: 'Mya Nguyen'
Cc: Taylor, Phil PRTT; 'Phillip Taylor'; Marette Morrissey; 'Tania Pringle (tania.pringle@comcom.govt.nz)'; Pasley, Penny PYP
Subject: RE: 17508338_Deed relating to the exercise of options.DOCX [CCNZ-iManage.FID178757]

Hi Mya,

Just emailing to let you know that Phil is currently out of the office and will not be back before 1.30pm. He also does not have his phone on him.

I will get him to give you a call when he returns.

Kind regards,
Emma

From: Mya Nguyen [<mailto:mya.nguyen@comcom.govt.nz>]
Sent: Monday, 9 February 2015 1:11 p.m.
To: 'Phillip Taylor'; Marette Morrissey; Tania Pringle
Cc: Pasley, Penny PYP; Harris, Emma EKH; Cooney, James JWC
Subject: RE: 17508338_Deed relating to the exercise of options.DOCX [CCNZ-iManage.FID178757]

Dear Phil

Thank you for your email. I am responding on behalf of Marette Morrissey.

We set out our thoughts on the draft Deed below. We would be happy to discuss these with you over the phone this afternoon. We are free at 1:30pm today if that suits.

- We are unsure of the meaning of the final sentence in clause 2.1 - "in each case, on terms and subject to conditions, acceptable to Lempriere (acting reasonably)" – given that merger clearances and authorisations cannot be subject to conditions. Can this be reworded or removed?
- As currently set out in clause 2.2, the condition can be waived by the parties. While we note that any waiver also requires the consent of the Commission, we do not think it appropriate for the Commission to be involved in private party agreements in a voluntary merger regime.
- We suggest that in order for the Commission to consider Lempriere's shareholding at 45%, the parties should have no ability to waive the condition. We suggest that clause 2.2 should be amended to reflect this.

For the reasons above, the Commission does not need to be named in clause 3.1(a)(ii) and we suggest deleting clause 3.2.

Kind regards
Mya

From: Phillip Taylor [<mailto:phil.t.taylor@gmail.com>]
Sent: Sunday, 8 February 2015 7:57 p.m.
To: Mya Nguyen; Murette Morrissey; Tania Pringle
Cc: Penny Pasley; Emma Harris; James Cooney
Subject: 17508338_Deed relating to the exercise of options.DOCX

Dear All, please see attached a draft deed which is intended to provide conditionality of the Option and in order to remove doubt that the Option is conditional. The draft is sent to the Commission on a confidential basis for its comments. Once the document is settled then it can be executed and we will then provide a signed public version which can be provided to others under the Official Information Act.

Please let us know if the Commission has any comments and confirm that the Commission remains of the view that the condition will allow the Lempriere shareholding to be considered at the 45% level for the purposes of the Authorisation Application.

Kind regards Phil

Sent from my iPad

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DRAFT: 10.2.15

[•] February 2015

Letter of variation between -

New Zealand Wool Services International Limited

Cavalier Wool Holdings Limited

Direct Capital Investments Limited

Accident Compensation Corporation

Cavalier Bremworth Limited

(together, the **Parties**).

1. The Parties entered into an agreement relating to the sale and purchase of shares in Kaputone Wool Scour (1994) Limited and Whakatu Wool Scour Limited on 21 October 2014 (the **Sale Agreement**).
2. The Parties propose to amend the Sale Agreement on the terms set out in this letter.
3. With effect from the date of this letter, in accordance with clause 17.6 of the Sale Agreement, the Sale Agreement is amended by:
 - a) inserting, as a new definition in clause 1.1, "**Option Deed** means the deed relating to options granted under the Shareholders' Agreement, in the form of that document which has been agreed in writing on behalf of the Vendor and on behalf of the Purchaser as being in agreed form;"
 - b) inserting, in the definition of "Transaction Documents" in clause 1.1 after the reference to the "Information Sharing Protocols", ", the Option Deed";
 - c) inserting as a new item 15 in the Vendor's deliverables table in Part A of Schedule 2, the following:

15.	Option Deed	Option Deed duly executed by the Transferee.
-----	--------------------	--

- d) inserting as a new item 12 in the Purchaser's deliverables table in Part B of Schedule 2, the following:

12.	Option Deed	Option Deed duly executed by each Covenantor and the Purchaser.
-----	--------------------	---

4. Other than as amended by this letter, the Sale Agreement continues in full force and effect.
5. This letter may be signed in any number of counterparts (by facsimile or pdf copy) all of which, when taken together, will constitute one and the same instrument. A party may enter into this letter by executing any counterpart.
6. This letter is governed by and construed in accordance with New Zealand law.

**New Zealand Wool Services
International Limited**

Director

Print Name

Cavalier Wool Holdings Limited

Director

Print Name

**Direct Capital Investments
Limited**

Director

Print Name

**Accident Compensation
Corporation**

Director / Authorised Signatory

Print Name

Cavalier Bremworth Limited

Director

Print Name

DRAFT: 9.2.15

Deed

relating to

options granted under the shareholders' agreement relating to [*New name for Cavalier Wool Holdings Limited*]

Direct Capital Investments Limited

Direct Capital

and

Accident Compensation Corporation

ACC

and

[*Lempriere entity*]

Lempriere

and

Cavalier Bremworth Limited

Cavalier Bremworth

and

[*Renamed CWH*]

Company

Date

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

This Deed is made on 2015

- between (1) **Direct Capital Investments Limited (Direct Capital)**
and (2) **Accident Compensation Corporation (ACC)**
and (3) **[Lempriere entity] (Lempriere)**
and (4) **Cavalier Bremworth Limited (Cavalier Bremworth)**
and (5) **[Renamed CWH] (Company)**

Introduction

- A. The parties to this Deed are the parties to a shareholders' agreement in relation to the Company to be entered into on or about the date of this Deed (the **Shareholders' Agreement**).
- B. Under clause 9 of the Shareholders' Agreement, Lempriere is granted certain options to acquire all of the Shares held by Direct Capital and ACC on the terms and conditions set out in that clause.
- C. The parties have entered into this Deed to impose a condition upon the exercise of any such option. For the purposes of clause 18.2 of the Shareholders' Agreement, this Deed supplements the Shareholders' Agreement.

It is agreed

1. Definitions

1.1 Definitions

In this Deed:

Commerce Commission means the New Zealand Commerce Commission;

Condition means the condition on the exercise of an Option as set out in clause 2.1 of this Deed;

Option means the Original Option, the Second Option or any further option granted in accordance with clause 9.5 of the Shareholders' Agreement (as applicable); and

Shareholders' Agreement has the meaning given to it in paragraph A of the Introduction to this Deed.

1.2 Capitalised terms

Capitalised terms used but not defined in this Deed have the meanings given to them in the Shareholders' Agreement.

2. Option conditional

2.1 Exercise of Option conditional

The parties agree that the exercise of an Option is in all respects conditional on the Commerce Commission granting:

(a) **Authorisation**

an authorisation for the exercise of that Option under Part 5 of the Commerce Act 1986; or

(b) **Clearance**

a clearance pursuant to section 66 of the Commerce Act 1986 in respect of the exercise of that Option.

~~in each case, on terms and subject to conditions, acceptable to Lempriere (acting reasonably).~~

2.2 No Waiver

~~The Condition cannot be waived for the benefit of Lempriere and, for so long as each remains a Shareholder, Direct Capital and ACC, and may be waived in whole or in part only by the written agreement of:~~

~~(a) Lempriere;~~

~~(b) for so long as they remain a Shareholder, Direct Capital and ACC; and~~

~~(c) the Commerce Commission.~~

2.3 Lempriere undertaking

To give effect to the Condition, Lempriere undertakes to Direct Capital and ACC that it will not exercise an Option unless and until the Condition has been satisfied ~~or has been waived in accordance with clause 2.2.~~

3. General

3.1 Amendments and termination

~~(i)(a) Subject to clause 3.1(b), this Deed cannot be amended, modified, varied, supplemented or terminated except: in writing signed by the parties; and~~

~~(ii) with the prior written consent of the Commerce Commission.~~

(b) If a party ceases to be a Shareholder, then this Deed may be modified, varied, supplemented or terminated without the need for the approval or agreement of that party.

~~3.2~~ **Contracts (Privity) Act**

~~The provisions of clauses 2.2 and 3.1 are intended to create a benefit in favour of, and to be enforceable by, the Commerce Commission for the purposes of the Contracts (Privity) Act 1982.~~

~~3.3.2~~ **Assignment**

A party cannot assign or otherwise transfer the benefit of this Deed without the prior written consent of the other parties.

~~3.4.3~~ **Counterparts**

This Deed may be signed in any number of counterparts (by facsimile or pdf copy) all of which, when taken together, constitute one and the same instrument.

~~3.5.4~~ **Governing Law**

This Deed is governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Execution

Executed as a deed.

**Direct Capital Investments
Limited by**

Director

Director

Print Name

Print Name

Accident Compensation Corporation by

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Witness to both signatures

Print name

Occupation

Address

[Lempriere Entity] by

Director

Director

Print Name

Print Name

Cavalier Bremworth Limited by

Director

Director

Print Name

Print Name

[Renamed CWH] by

Director

Director

Print Name

Print Name

Mya Nguyen

From: Penny Pasley <Penny.Pasley@bellgully.com>
Sent: Tuesday, 10 February 2015 5:48 p.m.
To: Mya Nguyen; Marette Morrissey; Tania Pringle
Cc: phil.t.taylor@gmail.com; Phil Taylor; James Cooney; Glenn Shewan; Emma Harris
Subject: CWH/NZWSI SPA Variation Letter
Attachments: 17522644_Variation letter - SPA.DOC

Hi Mya,

Further to the recent emails regarding the Option Deed, please see the **attached** draft variation letter to the Sale and Purchase agreement. This letter requires the parties to enter into the Option Deed on completion of the Transaction, and is intended to give the Commission comfort that the parties have bound themselves to enter into the Option Deed.

Please let us know if you have any comments. Otherwise, the parties will execute the agreement and provide a copy to the Commission. While this draft is provided to the Commission on a confidential basis for comment, we do not expect there will be any need for confidentiality of the final executed variation letter.

Kind regards
Penny

Penny Pasley Solicitor

BELL GULLY

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Vero Centre, 48 Shortland Street, Auckland, New Zealand

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