

22 December 2015

Central Livestock Limited
Attn: Shane Scott
By email: Shane@centrallivestock.co.nz

Dear Mr Scott

Commerce Act 1986: warning

1. I refer to our letter of 22 May 2015 concerning the conclusion of our investigation into allegations that certain livestock companies and saleyard owners, including Central Livestock Limited (**Central Livestock**), reached agreements on fees for cattle sales at saleyards following the introduction of the National Animal Identification and Tracing Act 2012 (**NAIT Act**).

Commission's view

2. The Commission considers Central Livestock is likely to have breached the price fixing prohibitions in the Commerce Act 1986 (the Act) by entering into agreements with its competitors (in its capacity as both a saleyard owner and agent) that:
 - 2.1 saleyards would introduce a tagging fee of \$25 per un-tagged cattle beast at New Zealand saleyards from 1 July 2012 (the **Tagging Fee Agreement**);
 - 2.2 where agents provided services at saleyards, they would charge farmers a radio frequency identification device (RFID) administration fee of \$1.50 per head of cattle (split equally between the vendor and purchaser), in relation to the increased costs of registering saleyard-based cattle movements (**RFID Fee Agreement**); and
 - 2.3 saleyards would increase existing yard fees by \$1.50 per head of cattle (split equally between the vendor and purchaser), to recover costs arising from compliance with the NAIT Act (**Yard Fee Agreement**).
3. The Commission has exercised its enforcement discretion to issue a warning to Central Livestock rather than to commence proceedings. In making a decision to warn, we have taken into account the extent of Central Livestock's involvement in the conduct.

Price fixing conduct prohibited by the Commerce Act

4. Section 27 via section 30 of the Act prohibits contracts, arrangements or understandings between competitors containing provisions that have the purpose or effect of fixing, controlling or maintaining the prices charged for goods or services.

5. A contract, arrangement, or understanding need not be formal, written, or signed. All that is required is for the parties to reach a consensus and a mutual expectation as to how at least one of them will act, or not act.

Basis for the Commission's view

Tagging Fee Agreement

6. The Commission is of the view that Central Livestock entered into the Tagging Fee Agreement with its competitors.
7. The terms of that agreement included Central Livestock and its competitors:
 - 7.1 imposing or procuring the imposition of the agreed tagging fee at saleyards they own (in part or in full); and
 - 7.2 passing on to farmers the agreed tagging fee in their capacity as agents.
8. The agreement appears to have evolved over the course of industry meetings in 2011 (in particular, the "NAIT Saleyard Selling Agents' Forum" on 5 April 2011 and a meeting of the NZSSAA on 25 May 2011). The agreement was further reaffirmed in the NZSSAA meeting minutes of 16 April 2012.
9. Central Livestock was present at the NAIT Saleyards Agents' Forum on 5 April 2011 (where we consider the Tagging Fee Agreement was entered into), attended the New Zealand Stock and Station Agents Association (NZSSAA) meeting on 16 April 2012 (at which the Tagging Fee Agreement was reaffirmed), and is noted as receiving a variety of communications from the NZSSAA that referenced the Tagging Fee Agreement.
10. Central Livestock endorsed a NZSSAA letter giving advice of the recommendation that its members charge a tagging fee of \$25. We acknowledge that the Taupo saleyard (in which Central has a 18.6% shareholding) does not charge a tagging fee at this amount, but selling companies operating there are permitted to do so.
11. In our view, the Tagging Fee Agreement fixed, controlled or maintained the price of yard services and stock and station agent services provided by the participating livestock companies and saleyard owners.

RFID Fee Agreement

12. The Commission is also of the view that Central Livestock entered into the RFID Fee Agreement with its competitors.
13. Central Livestock attended the Livestock Company Seminar on 13 December 2011 at which specific values for RFID fees were discussed. It also received the relevant agenda and was present at a NZSSAA meeting in 16 April 2012, where we consider the RFID Fee Agreement was entered into. Central Livestock also received and endorsed a letter from the NZSSAA that referenced that RFID Fee Agreement.

14. Data supplied to the Commission indicates that Central Livestock subsequently gave effect to the RFID Fee Agreement by introducing RFID fees across its business at \$1.50 on 1 July 2012, consistent with the RFID Fee Agreement.
15. In our view, the RFID Fee Agreement fixed, controlled or maintained the price of stock and station agent services provided by the participating livestock companies.

Yard Fee Agreement

16. The Commission is also of the view that Central Livestock entered into the Yard Fee Agreement with its competitors.
17. Central attended the Livestock Company Seminar on 13 December 2011 at which specific values for yard fees were discussed. It received the NZSSAA agenda (noting "yard fees" as a discussion topic) and was also present at the 16 April 2012 NZSSAA meeting where we consider the Yard Fee Agreement was entered into.
18. Central Limited affirmed the NZSSAA letter giving advice of the recommendation that referenced the Yard Fee Agreement. We acknowledge, however, that the Taupo saleyards increased its yard fees by an amount that was not entirely consistent with the Yard Fee Agreement.
19. In our view, the Yard Fee Agreement fixed, controlled or maintained price of yard services provided by the participating saleyard owners.

Associated legal proceedings

20. The Commission regards price fixing as serious conduct. As previously advised, the Commission decided to issue legal proceedings against PGG Wrightson Limited (**PGW**), Elders Rural Holdings Limited (**Elders**), Rural Livestock Limited (**Rural**) and five individuals for entering into agreements concerning saleyard-based fees that breached the price fixing prohibition in the Act.
21. The individuals involved are all current or former employees of PGW and Elders. PGW and Rural have both admitted that they engaged in conduct in breach of the Act and settled with the Commission on this basis. Penalty judgments against both parties have been handed down by the High Court today. Proceedings against Elders and the five individuals remain before the Court.

Commission guidance

22. Competition between firms typically derives from rivalry on price, quality, service, choice and other offerings. Conduct which fixes, controls, or maintains prices reduces competition and can be detrimental to consumers.
23. To avoid breaching the Act in future, we recommend that Central Livestock employees are mindful of the Act when attending meetings and/or otherwise interacting with competitors, particularly in circumstances where the conduct involved may interfere with any party's independent decision about a price, component of price, or any other matter relating to prices, such as a discount. This

same care is required when attending industry or professional association meetings where competitors or potential competitors are involved.

24. If in doubt, you should seek legal advice from a lawyer experienced in dealing with the Act.

Further action by the Commission and other parties

25. Only the courts can decide whether the Act has been breached or not. This warning letter does not represent a ruling of law.
26. The court can impose penalties where it finds the law has been broken. An individual can be fined a maximum of \$500,000 and/or be prohibited from being a company director or a manager of a company. A body corporate can be fined the greater of \$10 million, or three times the commercial gain from the breach (if this cannot be easily established, 10% of turnover). Every separate breach of the Act may incur a penalty.
27. While the Commission does not intend to take any further action against Central Livestock for this conduct, you should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking a private action for damages under section 82 of the Act.
28. We may draw this warning to the attention of a court in any future proceedings brought by the Commission against Central Livestock for other conduct in breach of the Act. Previous warnings may be considered an aggravating factor in sentencing by the court for any future conduct.
29. This warning letter to Central Livestock will be published on our website. We also intend to refer to this warning letter in a media release that will be published today.

Regards,



Ritchie Hutton
Head of Investigations
Commerce Commission