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## PGG Wrightson settles proceeding relating to NAIT saleyard fees

The High Court has approved the penalty agreed between PGG Wrightson Limited (PGW) and the New Zealand Commerce Commission (Commission) to resolve the proceeding brought by the Commission against PGW, among other companies that operate livestock saleyards. The settlement avoids protracted and costly litigation.

The proceedings alleged there were agreements between PGW and other livestock industry competitors in relation to the charging of fees for services provided at saleyards to comply with the requirements of the National Animal Identification and Tracing Act 2012 (NAIT) introduced in July 2012.

NAIT was enacted to provide traceability of cattle and deer to enhance New Zealand's ability to respond quickly in the event of a biosecurity event such as a disease outbreak. Traceability is seen as having a number of benefits for the sector and for New Zealand as a primary producer and exporter.

Implementing the NAIT regime required PGW's livestock business to invest in new technology and systems to ensure accurate records could be kept of the movements of animals through its saleyards.

The implementation of NAIT impacted all livestock businesses with saleyard operations and consequently the New Zealand Stock & Station Agents Association (Association) played an industry role in co-ordinating its implementation. In advance of the new legislation coming into effect, the regulator, NAIT Limited sought livestock industry collaboration through the Association and its members to assist the transition to the new regime and to achieve consistent procedures across the industry.

In the absence of government funding to cover costs incurred by livestock businesses in gearing up for and delivering NAIT related services, fees were intended to be introduced by Association members, principally to defray service delivery costs.

At the time NAIT was introduced into Parliament, PGW understood that the implementation of the new tracing requirements would involve a significant amount of management time and resources. Consequently, PGW established a project early on to implement the NAIT requirements and was ahead of its peers in planning for the new requirements. In its capacity as an Association member, PGW shared a lot of its knowledge with other members and saleyard joint venture partners. This sharing of information included the NAIT-related fees that PGW had determined to implement.

PGW independently determined the fees it considered it needed to charge to cover the saleyard services it was obliged to provide under NAIT. PGW's approach in determining those fees was principally to recover the additional costs to the business in delivering NAIT tracing services. Saleyard tagging fees were also introduced to deter the delivery of untagged cattle to saleyards in order to give effect to the legislation and to minimise saleyard operational issues.

In the context of the NAIT project implementation, Association members entered into dialogue about how members could recoup the costs of implementing the new requirements. Accordingly, while PGW implemented the fees it had independently determined through its project planning it understood that other livestock companies would also be charging the same fee regime PGW proposed through the Association.

In reaching agreement with the Commission, PGW has agreed to pay a pecuniary penalty of \$2.7 million and to review the NAIT related fees it charges. This payment reflects the role PGW took in

coordinating much of the industry response and planning relating to the implementation of NAIT including errors made in reaching arrangements affecting price in breach of the Commerce Act. The penalty includes a discount which reflects resolution prior to trial and the fact that PGW provided its full cooperation to the Commission investigation into the matter.

The court acknowledged that the circumstances in which the matter came about were unusual “because PGW got together with the other companies on the initiation of NAIT Ltd, which was tasked with executing the transition to the new animal identification and tracing regime. These competing entities, all members of the NZSSAA, were acting in response to a new regulatory environment. They had to work out cost structures to respond to the new NAIT requirements as NAIT Ltd would not pay for or subsidise the set-up and ongoing costs of compliance with the Act. Agreeing to NAIT procedures led, it would seem almost incidentally, to decisions on the appropriate fees.”

Justice Raynor Asher in his judgment noted that “PGW drifted into infringement as a consequence of endeavouring to comply with the complex regulatory scheme, rather than through making a knowing decision to price fix at the outset.” He went on to comment that PGW’s “actions in accepting responsibility and promptly ending the price fixing warrant significant discount” in terms of penalty.

PGW’s Chief Executive Mark Dewdney said “it was a tough lesson for the business to learn and was especially disappointing given all the good work that was done facilitating the implementation of the NAIT scheme, an ‘industry good’ initiative.”

“From everything I have heard or read about PGW’s involvement in the implementation of the scheme it seems we were well intentioned and made an earnest effort to be fair and transparent. However, with the benefit of hindsight, more care should have been taken in respect of matters relating to the fees imposed when NAIT came into effect.” Dewdney said.

“There are definite learnings to be taken from this matter and as a business we have carefully looked at what occurred and have implemented initiatives to improve our internal processes and controls.”

In a separate penalty hearing in relation to the same matter the Court has fined Rural Livestock Limited \$475,000.

The Commission has also filed court proceedings making similar allegations against Elders New Zealand Limited and five individuals. Settlements have not been agreed in those proceedings, which remain before the courts.

The Commission also considers that a number of other livestock companies and the Association are likely to have breached the Commerce Act. The Commission has therefore issued warnings to:

- Allied Farmers Limited
- Peter Walsh & Associates Limited
- CRT Livestock Limited
- L.I Redshaw Limited
- Central Livestock Limited
- Hazlett Rural Livestock Limited
- Southstock Limited
- the New Zealand Stock and Station Agents’ Association.

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Ends.