

Rachel.

Assessment Report

201520049 – Elviti Finance

Signed [Signature]

Key information

Incident date	18 July 2019
Triage date	23 July 2019
Assessment date	30 September 2019
Incident officer	Alison Barker
Assessment team	Susie Campbell

Brief summary of Incident as alleged

Incident overview

1. This incident was referred by M & I for a potential breach of condition by Elviti Finance Limited (Elviti).
2. Elviti were granted consent in March 2016 to acquire 100% of shares in NZP Holdings Limited (NZP) (and subsidiary NZ Pharmaceuticals) and associated sensitive land in Palmerston North. NZP is a biopharmaceutical manufacturer specialising in bile acids and complex carbohydrate products.
3. There were only 2 special conditions attached to their consent:
 - Condition 3: 'invest [s 9(2)(b)(i)] into the Target's [s 9(2)(b)(ii)] programme by 31 December 2018'. They have satisfied this condition. They were also conditioned to report on progress of their [s 9(2)(b)(ii)]
 - Condition 4: 'procure the Target to create at least 8 jobs in NZ by 31 December 2017, such jobs to be generally similar to the job positions referred to in Appendix S of the Application.'
4. This incident relates Condition 4. In short, their annual reports indicated that they had not created the required number of new positions by December 2017. This was still the case when they reported in June 2019.

Recommendation

5. Elviti's response to our Please Explain letter outlined their recruitment and hiring activities since consent was granted. It shows that they had not satisfied condition 4 by December 2017, with only 3 of the 8 positions filled by that time.
6. They have now taken steps to increase their FTEs and have created and filled 'generally similar' roles to those contemplated in the application (see table 1 below). They also have a number of roles they say are 'at advanced stages of recruitment.' Elviti consider that they have satisfied the condition, however they have not addressed the fact that they did not satisfy it in the required timeframe, ie by December 2017.
7. I recommend that we issue a compliance letter to Elviti advising them that they have breached the Act as they were required to meet the condition in the timeframe specified. We could remind them of their obligations under the Act, and that we will take this breach into consideration when considering any future breaches of the Act.

Information in and attached to this report may be legally privileged

8. I recommend this action on the basis that:
 - (a) their conditions are not tied to disposal
 - (b) they have now taken steps to remedy the breach, however they only had two special conditions so they should have been more proactive in meeting the condition or seeking a variation.

Asset concerned

9. Elviti were granted consent in March 2016 to give effect to:
 - (a) an overseas investment in sensitive land – 13ha of land at 68 Weld St, Palmerston North.
 - (b) an overseas investment in a significant business asset – acquisition of rights and interests in 100% of the shares of NZP Holdings Limited, the consideration of which exceeds \$100m.

Person/s concerned

10. Elviti Finance Limited was incorporated in NZ in September 2015 to acquire 100% of the shares in NZP Holdings Limited. Elviti is an overseas person under the Act.
11. Elviti is wholly owned by Elviti Holdings Limited, which was established to hold the interests of four Archer Capital Fund 5 entities, along with various existing shareholders/managers in NZP who retained an interest.
12. The Archer Group management entity is the majority parent of Elviti. The Archer Group is one of Australia's Leading private equity investment houses. Archer Group (on behalf of a number of other Funds that it manages) has made several previous investments in NZ and has received OIO Consent under the Act a number of times.

Brief summary of information reviewed/inquiries made since triage

Review of Application

13. I went back through the application documentation to make sure that we were clear about what the consent condition refers to. I noticed that appendix S of the application had been revised during the application process. The version that was attached to the incident report was the original version. A revised version was sent by email dated 25 November 2015 (Andrew Petersen, Bell Gully).
14. The revised version was more prescriptive about the types of roles they expected to create as part of the consent. This is the version that went in the Ministerial. I referred to this revised version in the Please Explain letter.

Please Explain Letter

15. On 8 August 2019 we wrote to Elviti advising that it appears that they may be in breach of special condition 4, and seeking an explanation for:
 - (a) Why there is a discrepancy in the number of FTEs reported in the 2015 application (120) and the Annual Reports (72 in 2017; 76 in 2019).
 - (b) What efforts have been made to attract and retain suitable staff to fill the positions outlined in special condition 4?
 - (c) What steps Elviti intends to take to meet this condition?
16. On 23 August 2019 Glenn Shewan of Bell Gully responded for Elviti.

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Discrepancy in numbers

17. Mr Shewan explained that the 120 FTE referred to in the application includes factory staff as well as head office staff (all NZ based). The 72-76 referred to in the annual reports excludes factory staff. They did not include factory workers in the reports because "NZP's factory operator workforce can fluctuate over time due to changes in customer demand patterns (and corresponding production requirements)." However they also provided the following table to show the factory worker numbers over the last 3 years:

	May-17	May-18	May-19
FTE Head Office Staff	74	74	76
FTE Factory Operators	46	52	53
FTE NZP NZ Workforce	120	126	129

Recruitment to positions specified in condition 4:

18. Elviti consider that they have gone to considerable lengths to recruit people to fill the positions referred to in condition 4 of the consent. They consider that they have satisfied the condition because:
- NZP's NZ based workforce has increased by more than 8 FTE since the time of the Application.
 - A number of additional roles are currently being actively recruited or remain open.
19. Elviti set out the details for the positions it has recruited since consent was granted. The condition was for roles "generally similar to" those outlined in schedule S of the application. I have created a table which shows the roles contemplated in Schedule S, roles created in line with schedule S, and alternative roles created:

No.	Appendix S of application	Vacancies filled	Alternative positions created / filled
1	General Manager	GM - Appointed April 2016 (internal promotion)	
2	Finance Manager	FM - Appointed (Jan 2017)	
3	Head of Quality		Chief Strategic Officer - appointed May 2017
4	R & D technician		<i>Chief Commercial Officer (open but vacant) "recruitment now at an advanced stage"</i>
5	R & D technician		<i>Corporate Accountant (open but vacant) 'recruitment at an advanced stage'</i>
6	Operator	Process Operator - Appointed (no date given)	
7	Operator	Process Operator - Appointed (no date given)	
8	Administration Staff member	IT support Officer appointed (May 2018)	
			Quality Control Lab Technician (June 2019)
			Project Fitter (engineering) (June 2019)
			<i>IT systems administrator (open but vacant)</i>
			<i>Quality Engineer – recruitment underway</i>

* Highlighted positions were filled by December 2017.

** positions in italics are open but vacant/recruitment underway

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20. This table shows that Elviti have created and filled 8 positions, although one appointment was internal.
21. The aggregate annual salary of the recruited positions (and those that are currently being recruited) is [s 9(2)(b)(ii)] p.a., which exceeds the [s 9(2)(b)] p.a. set out in the Consent.
22. Elviti have used a number of recruitment channels including Seek, LinkedIn, TradeMe Jobs, INZ's skillfinder website, local Palmerston North recruitment agencies, wider NZ recruitment agencies, and NZP's website. They noted that advertising on their website was temporarily down for a period but has recommenced.
23. Elviti used specialist recruitment companies to fill certain senior positions (Inside recruitment, Adecco).

Assessment

24. The information provided by Elviti shows that are technically in breach of condition 4 because they did not fill the required positions by December 2017. By my calculation they had only employed a further 3 staff in the positions or positions similar to those contemplated in schedule S of the application, by that time.
25. However, they have increased the base workforce and have filled "generally similar" positions. They also are in advanced stages for recruiting a further 2 key positions.
26. In the context of the consent as a whole the employment conditions were important, given they only had two special conditions to meet.
27. I recommend that we issue a compliance letter to Elviti Finance, as outlined above at paras 5-8.
28. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of the Rules?	Y	Consent holder failed to recruit and fill 8 FTE positions by December 2017, as required by special condition 4.
Does the Incident fall within the OIO's Enforcement Criteria?	Y	A benefit that was an important factor in the decision to allow the investment has not been delivered.
Is there any reason to qualify, amend or add to the answer to Triage questions?	N	

Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed	✓	Elviti is in breach of its conditions of consent by failing to create the required jobs in the required time.
The Incident progress to Investigation Stage 1		
No further action be taken and the		

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Recommendation	Tick	Basis for answer
Incident be closed		
An Enforcement Tool be deployed and then the Incident be closed	✓	Recommend issuing a compliance letter, as outlined above at paras 5-8.

[s 9(2)(a)]

~~Pedro Morgan~~ / Sarah Scott
Principal Advisor Enforcement

Agree:

Disagree:

Amend as marked:

Date: 1/10/19

[s 9(2)(a)]

Jeremy Ford
Manager Enforcement

Agree:

Disagree:

Amend as marked:

Date: 1/10/19,

Notes/guidance for Investigation Team

Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	
Otherwise	
Investigation team members	
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	
Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	
Comments/Guidance on Investigation	