

Confidential Email

The New Zealand Productivity Commission
P.O. Box 8036
The Terrace
Wellington 6143

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Email: transtasmanreview@productivity.govt.nz
CONFIRMATION VIA MAIL

Your Ref:

Our Ref: TJ 504076NZ

Contacts:

Tim Jackson – Partner

**PRODUCTIVITY COMMISSION INVESTIGATION INTO
STRENGTHENING ECONOMIC RELATIONS BETWEEN
AUSTRALIA AND NEW ZEALAND**

Introduction

Baldwins Intellectual Property and Baldwins Law Limited (Baldwins) welcome the opportunity to comment on the Commission's Joint Issues paper, Strengthening Economic Relations Between Australia and New Zealand, dated April 2012.

Support for NZ Law Society Submission dated 24 May 2012

Baldwins fully endorses the NZ Law Society submission to the Commission dated 24 May 2012.

Baldwins makes the following further comments below.

Additional Comments on the Joint Issues Paper

Question 31: How could Australia and New Zealand and enhance the creation and transfer of knowledge between the two countries to mutual benefit?

The background to Q31 refers to "knowledge spillovers between firms" being "an important source of dynamism and economic growth within an economy and between economies". This background also refers to knowledge being transferred through "movement of people", and refers to four possible areas where knowledge creation and flows could be enhanced through a trans-Tasman integration agenda. These areas are:

1. Integration in the higher education sector, government-owned research institutes and science policy agencies;
2. Facilitation of business information sharing;
3. Establishment of joint research facilities;
4. Introducing a single regulatory framework for patents and trademarks.

Knowledge spillover creating growth within an economy is generally referred to within the context of "clustering" innovative companies and individuals together. Where like-minded people and companies can be grouped together to create synergistic relationships, dynamism and economic growth can indeed follow. Knowledge spillover between firms in the private sector can however be seriously detrimental. Care needs to be taken when referring to concepts such as "knowledge spillover" to ensure that there is clarity as to meaning and context.

Integration in the higher education sector, government-owned research institutes and science policy agencies (area 1 above) and the establishment of joint research facilities (area 3 above) are clearly areas in which such knowledge spillover can be beneficial.

However, initiatives in this area must also take into account the context in which economic benefit from such integration and collaboration occurs.

Economic growth is derived from such initiatives by the creation of high technology "start-up" companies created by the dynamism within the organisations involved. Economic growth is also derived from an increase in the ability of state sector organisations to meet the demands of the private sector. In both cases, the benefit of such initiatives must be seen within the context of the economic policies of the countries involved. Australia, both at the Federal and State level, has a far more aggressive attitude toward attracting the establishment of innovative companies, and retention of those companies, within its economy than New Zealand does. This can be seen in Australia's willingness to provide tax incentives to start-up companies (e.g. the R&D tax credit option) as well as the provision of support to assist start-up companies to succeed (e.g. The BioSA IP Management Initiative (attached); and Commercialisation Australia www.commercialisationaustralia.gov.au). New Zealand provides targeted support for innovative companies, and has recently increased its budgeted tax spend in the R&D sector (including a proposal to create an Advanced Technology Institute), but there is little incentive for innovative companies to remain in New Zealand or to relocate to New Zealand. An exception to this is clearly the highly successful movie and film sector (e.g. Weta Workshop) which has specific, and unique, incentives provided. Acceptance that successful innovative companies will inevitably leave New Zealand is not an attitude that should be encouraged.

Within that context, there is a serious risk that increased state sector integration and the establishment of joint research facilities will result in a continued benefit to the Australian economy in the innovation sector. That continued benefit will be at least partially funded by the New Zealand taxpayer and, over time, will be to New Zealand's detriment. The effect of increased integration between the New Zealand and Australian economies is highlighted in Figure 4 "Trans-Tasman Born Population" provided on page 14 of the Issues Paper, and the observation that "...economic factors, such as greater opportunities and a higher standard of living, were more important than lifestyle or family factors..." (Green et al 2008).

Knowledge can be transferred through "movement of people", however outside of State Sector institutions, it is debatable whether such knowledge transfer should be encouraged. Indeed, within the innovative business community, control of knowledge being transferred through "movement of people" is an area of great concern. Capital flows, as a result of knowledge transfer, results when that knowledge is captured, controlled, and exploited. A transfer of knowledge through "movement of people" or other uncontrolled knowledge flows can result in a loss of opportunity and a lack of incentive for capital injection. Movement of people between higher education sector, government-owned research institutes, and science policy agencies, could have a beneficial effect, however issues of information control and ownership, when interacting with the private sector, would need to be addressed.

Facilitation of business information sharing (area 2 above) has the potential to provide mutual benefits to both Australia and New Zealand. Any sharing of business information, must be coupled with an understanding of the economic value of that information. Information that has been created by an innovative company has economic benefit provided that it can be captured, controlled, and exploited. Information that is in the public domain has economic benefit provided it is up-to-date, accessible and understood by those companies who wish to use that information.

Introducing a single regulatory framework for patents and trademarks (area 4 above) is unlikely to enhance the creation and transfer of knowledge between the Australia and New Zealand to mutual benefit. We have had the opportunity to review the submissions of the New Zealand Law Society on this point and we repeat that we endorse them. We also refer to the Sapere Research Group report entitled "Trans-Tasman harmonisation of intellectual property law regimes-the costs and benefits" (13 October 2011) prepared for the Ministry of Economic Development (copy attached). The "Summary of our assessment", which appears on page 1 of this report, states the following:

"The Ministry has strong policy grounds to pursue this initiative but there are risks and potential costs from a business perspective. Our findings are therefore equivocal."

The Conclusion of the Sapere Research Group report (section 5 on page 31) says:

"Neither of the proposals to harmonise trans-Tasman intellectual property analysed in this paper are a priority for business. There are some small benefits and some possible risks."

If harmonisation of the trans-Tasman intellectual property systems is not a priority for business, it is difficult to see how introducing a single regulatory framework for patents and trademarks will result in mutual benefit from a productivity perspective.

The transfer of knowledge via the patent system (which could be considered part of business information sharing (area 2 above)) already occurs, and amendments proposed to the New Zealand Patents Act 1953 to allow early publication of patent applications go some way to enhancing knowledge transfer in this area. The reality is, however, that knowledge transfer via the international patent system already occurs and will not be enhanced by providing a single regulatory framework for patents and trademarks between Australia and New Zealand. In fact, the creation of a single trans-Tasman patent has the potential to restrict the ability of New Zealand innovators to use information provided by the international patent system. At present, many patent applications that are filed in Australia are not filed in New Zealand, and the result is that New Zealand innovators currently have the opportunity to use international patent information in a way that Australian innovators do not.

As recommended by the New Zealand Law Society, thorough and robust policy development, including public consultation, would be required before the option of introducing a single regulatory framework for patents and trademarks is considered.

How could the creation and transfer of knowledge between Australia and New Zealand have mutual benefit?

Any review of how knowledge transfer can assist the economies of Australia and New Zealand to "mutual benefit" needs to be clear about what is meant by "knowledge transfer" and about the economic context in which such "mutual" benefits are intended to be created.

Knowledge "spillovers between firms" can be detrimental when viewed from the perspective of a private sector innovative company. Knowledge "spillovers between firms" can be beneficial when viewed from the perspective of the higher education sector, government-owned research institutes and science policy agencies. Clarity to avoid misunderstandings and to promote interaction is critical. Question 22 of the Issues Paper overlaps with this issue of how "mutual benefit" can be achieved.

Question 22: should concerns about "hollowing out" of the New Zealand economy influence integration policy. If so, how?

Question 22 asks whether we should have concerns about the "hollowing out" of the New Zealand economy as a result of integration policy. The simple answer to question 22 is - yes - and particularly so in the knowledge based sector. The reality is that the size and strength of the Australian economy will continue to attract New Zealanders (refer: Figure 4 page 14 Issues Paper).

In order for New Zealand to benefit from the creation and transfer of knowledge to/from Australia, New Zealand must first look to innovative policy initiatives which will encourage innovation and also encourage retention of the benefit of that innovation in New Zealand. If the benefits of innovation cannot be retained in New Zealand, or be attracted to New Zealand from other countries, those benefits will inevitably flow to New Zealand's trading partners which include, but are not restricted to, Australia. The more vibrant and strong the innovation environment becomes in Australia as a result of integration policies the more attractive that environment will be to New Zealanders. A "hollowing out" of New Zealand's innovation sector would have serious implications with regard to the New Zealand economy in the future.

The Single Economic Market (SEM) initiative includes the aim that "outcomes should seek to optimise net trans-Tasman benefit". If this aim is considered in a narrow, sectorial sense, then any creation and transfer of knowledge which is capable of achieving an economic benefit will have a "net trans-Tasman benefit", albeit that this benefit will be based in Australia. If, however, this aim is considered in a wider economic sense, then issues such as return on New Zealand taxpayer funding of the knowledge-based sector, reduction in the New Zealand taxpayer base (particularly from the knowledge-based sector), and increases in the number of New Zealand superannuitants, need to be balanced against the additional benefit to the Australian economy resulting from the creation and transfer of knowledge from New Zealand.

Conclusion

The concept of enhancing "the creation and transfer of knowledge between the two countries to mutual benefit" requires that New Zealand is on an equal footing with Australia in terms of the creation of knowledge, creating economic benefit from that knowledge, and the retention of those economic benefits. Without the ability to at least compete on an equal footing it is inevitable that New Zealand's productivity from the knowledge based sector will be affected by a "hollowing out" effect. It is also inevitable that Australia's productivity from the knowledge based sector will be accelerated based on New Zealand investment.

The concept of "mutual benefit" conflicts with the concept of "net trans-Tasman benefit". In the context of the trans-Tasman knowledge based economies, the SEM initiative has the potential to be significantly detrimental to New Zealand's productivity over time. The policy drivers behind the SEM initiative ("net trans-Tasman benefit") have the potential to reduce New Zealand's productivity in the knowledge based sector.

New Zealand is placing increasing importance on innovation to improve economic performance and standards of living in the future. New Zealand is not alone in this, with the attraction and retention of innovative industries being an increasingly competitive area internationally. New Zealand's relationship with Australia in the innovation sector also requires thorough and robust policy development, including public consultation. This policy development should not be combined with the bureaucratic concepts of "ease of doing business" across the Tasman that are behind the SEM initiative. Policy development for the innovation sector should focus on New Zealand's ambitions to be a leader in the global knowledge economy.

Yours faithfully

Baldwins Intellectual Property

Tim Jackson

Partner