

20 December 2006

Mr Chris Sayers
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Productivity Commission
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Dear Chris

Submission from the New Zealand Ministry of Economic Development on the Productivity Commission Discussion Draft for Performance Benchmarking of Australian Business Regulation

The Ministry of Economic Development has reviewed the discussion draft for the proposed Performance Benchmarking Study of Australian Business Regulation and considers it to be a well considered and comprehensive document. The opportunities and costs arising from such a study would appear to be potentially vast and it is therefore important that these are identified and assessed well in advance of any initiation of benchmarking exercises. The discussion draft canvasses these issues well.

As noted in the document, benchmarking serves a useful purpose in the continual quality improvement of regulatory frameworks. It offers a means of assessing the burdens imposed by regulation and whether these can be justified given alternatives in place in other jurisdictions. Of course, and again as noted in the discussion draft, to be meaningful such comparisons can only be made across regulations with broadly similar underlying objectives and benefits.

While the proposed study will focus on Australian business regulation, the Ministry notes that the potential relevance of New Zealand as an additional jurisdiction in the context of trans-Tasman regulation, and other regulation with common objectives, is identified in the discussion draft. The Ministry considers that the inclusion of New Zealand in aspects of any future benchmarking study would add a further dimension on which to compare the nature of and need for particular regulatory burdens, and would therefore add to the level of richness in the results of the study. It also complements on-going work between the two countries on strengthening the level of

regulatory co-ordination. As noted in the report several regulatory regimes are already shared between New Zealand and Australia (for example, several Ministerial Councils operating in Australia include New Zealand as a member) and many regulatory institutions have strong links with their trans-Tasman counterparts (for example, the Co-operation and Co-ordination Agreement between the New Zealand Commerce Commission and the Australian Competition and Consumer Commission). There is also the Trans-Tasman Mutual Recognition Agreement and the ongoing deepening of the work on regulation co-ordination between Australia and New Zealand. We would therefore like to use this short submission to convey our interest in potentially becoming involved in any study.

It is acknowledged that the commencement of any benchmarking exercise will be determined by the Council of Australian Governments (COAG) in February 2007. Depending on the outcome of COAG's determinations, any potential participation by New Zealand would be subject to New Zealand Cabinet approval.

Benchmarking aspects of the regulatory frameworks in place has scope to complement current initiatives in place, such as the Quality Regulation Review in New Zealand. This review is focussing on how regulation is administered and implemented and whether there is scope to make improvements to ease the compliance burden on business. This review will be completed in July 2007. Benchmarking particular regulations, or aspects of regulations, against different jurisdictions may prove worthwhile to maintain momentum for continual improvement in the administration of regulation in the longer term.

In addition, you may be aware that the New Zealand Cabinet has agreed that a Business Cost Calculator be implemented on a two year trial basis across government departments. The use of a common approach to compliance cost calculation and a common data interchange format offers scope to ensure consistency of measurement between the two countries, which will obviously be beneficial to any benchmarking exercises. Ministry officials are currently liaising with the Office of Best Practice Regulation on the build of the calculator for New Zealand implementation, which is planned for the first half of 2007.

We note that the Commission has highlighted the potential costs of undertaking benchmarking exercises in the region of several million dollars per annum. The extent of these costs, including those imposed on business in being involved in measurement exercise, would form an important consideration for the New Zealand government's potential involvement.

General comments on the suggested approach to benchmarking

The following comments relate to the two broad approaches suggested within the discussion draft.

Benchmarking regulatory compliance costs

The Ministry sees merit in developing indicators to measure the administrative costs involved in “becoming and being a business”, as well as delays in approval processes (“doing business”). We understand that the choice of the regulations to benchmark will be important and should be of relevance to all participating jurisdictions. It is likely that the New Zealand government would want to be involved in discussions on the merits of measuring against the chosen indicators for particular regulations on a case by case basis, should there be future participation by New Zealand.

In relation to the third component of benchmarking regulatory compliance costs, that is, measuring the duplication and inconsistency across jurisdictions (“operating across jurisdictions”), we consider that potential New Zealand inclusion could be useful in the context of existing common regulatory regimes such as food standards. We note the concept of notional businesses or business activities proposed in order to measure the extent of duplication and inconsistency. We consider that for any trans-Tasman benchmarking exercise, New Zealand’s business demographics, including the extent of trans-Tasman operations, be assessed in the design of the applicable notional businesses.

The quantity and quality of regulations

In reviewing the approach suggested for benchmarking the quantity and quality of regulations, the Ministry sees most merit from the indicators relating to regulatory design, administration and enforcement. These indicators are of direct relevance to the current Quality Regulation Review, which is centrally focussed on promoting regulatory concepts such as greater scope for discretionary reporting requirements, risk-based enforcement strategies and certainty of timeframes for approvals processes. As noted above, the Ministry considers that potential benchmarking with Australian jurisdictions on particular indicators could be a valuable means of maintaining momentum on continual improvements on regulatory frameworks in the longer term.

Thank you for the opportunity to consider the discussion draft for the proposed benchmarking study. We look forward to learning the outcome of COAG’s determination in the New Year.

Yours sincerely

Liz MacPherson
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Effective Markets Branch