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TRANS-TASMAN COMPETITION & CONSUMER PROTECTION

SUMMARY

1. I oppose the thrust of the Commission's Productivity Paper and substantially all of the policy options listed in Table 1.

2. The optimal policy response for New Zealand, when considering its competition and consumer protection regime, is:

   (a) To maintain complete sovereignty over its law making, administration & enforcement; and

   (b) For the relevant New Zealand administrative institutions to keep New Zealand laws under review and benchmarked against world best practice as appropriate for a small, trade orientated, developed economy.

3. The adoption of most of the policy options listed in Table 1 would:

   (a) Have an adverse effect on New Zealand's sovereignty – for which there is no public support or political mandate.

   (b) Adversely affect New Zealand's proven ability to be an early adopter of, or leader in, international trends.

   (c) Impose significant costs on the majority of New Zealand businesses who would gain nothing from harmonisation with Australia.

   (d) Result in the Australianisation of New Zealand's competition and consumer protection laws and agencies when there is no evidence that Australia laws and agencies are better for New Zealand than New Zealand's existing laws and agencies.

   (e) Contribute to the hollowing out of New Zealand's intellectual base adversely affecting the capability to develop new policies, to be pro-active in advancing New Zealand's interests and responsive to issues affecting New Zealand citizens.

4. My preferred form of submission is to comment on the broad policy options noted in Table 1. I also provide comment on some of the specific questions raised in the Paper.

5. Before there can be any sensible analysis of the proposed policies there needs to be careful consideration of:

   (a) The New Zealand/Australia relationship & environment in a broader sense.

   (b) The political and constitutional implications of the policies proposed in the Paper.

ANALYSIS

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New Zealand/Australia Relationship & Environment

6. The differences between New Zealand & Australia are profound and the existing high degree of economic integration makes the differences more, not less, important:

(a) Australia is a much larger economy and has a significantly greater GDP per capita.

(b) Australian controlled and managed companies are dominant in many sectors of the New Zealand economy – especially banking, insurance, financial services, commercial property ownership, media, gas & electricity networks, electricity generation & retailing, general retailing & supermarkets.

(c) The New Zealand operations of such companies are significant in New Zealand terms but are generally relatively small in comparison to such companies' Australian businesses.

(d) Australia is considerably more bureaucratic than New Zealand. It is a federal system with complicated power sharing arrangements among Federal & State agencies. Competition law matters are regulated at Federal level by the ACCC and at State level by agencies such as Victoria's Essential Services Commission. More competition regulation bodies are sprouting up with the ACCC establishing the Australian Energy Regulator and on 1 July 2004 Victoria establishing a new Competition & Efficiency Commission. Australian agencies are supported by large budgets and administrative staff that in size and scale dwarf the relatively light handed approach taken in New Zealand[1].

(e) Over the past 20 years, New Zealand government policy has tended to be light handed while Australia, at different Federal and State levels, has taken a more regulatory price controlling path. The utilities sector is the best example of this. There are no price controls in New Zealand, New Zealand has not adopted "CPI minus x" pricing rules in any of the electricity, airport or port sectors. Various New Zealand Minister's of Commerce have declined to impose price control on specific assets – notwithstanding various interest groups lobbying for such an outcome.

(f) Because of the small size of its economy, New Zealand has had to be more tolerant of single or few firms dominating local markets. The principal policy response to mitigate the adverse effects of local market domination has been to make New Zealand one of the most open economies in the world. New Zealand was, and is still, a leader in dismantling tariff and non-tariff trade barrier on imports, border controls on foreign investment are, by world standards, low and there are no controls on cross-border movements of capital.

(g) New Zealand is more permissive of parallel importing and generic products (e.g. pharmaceuticals) and imposes very few (none that I can actually think of) mandatory local quotas.

[1] In writing this submission, I have not discovered the budgets for the Essential Services Commission or the new Competition & Efficiency Commission. Suffice to say that the ESC employs 50 staff to deal with some, but not all, aspects of infrastructure regulation in Victoria. The ACCC has a budget for the current financial year of A$121.8 million. By contrast, the New Zealand Commerce Commission had a budget in 2003 of NZ$15 million.

(h) New Zealand seldom offers industry protection (through subsidies, tax relief, grants or the like) and even less seldom mandates a minimum percentage New Zealand ownership (Air New Zealand may have been the only example).

(i) The Australian business style is more aggressive.

7. New Zealand's success as a trading nation and an attractive place for foreign investment are, in part, due to sound policy of successive New Zealand governments. Key features include:

(a) Liberal foreign exchange controls.

(b) Tolerant foreign investment criteria.

(c) Maintenance of a robust and independent legal system and Government bureaucracy.

(d) Tariff & quota reductions.

(e) Even handed treatment of New Zealand and foreign companies.

(f) A reasonably fair & transparent taxation system – especially in seeking to avoid double taxation of investment returns from New Zealand.

(g) Securities & takeovers law reform and enforcement that have brought New Zealand into line with world best practice.

8. New Zealand has been particularly successful, in world terms, in encouraging foreign investment and the provision to its citizens of a wide range of goods & services. The differences in how New Zealand deals with some important policy issues, compared with the home country of the foreign investor, would appear to have been no disincentive to investment in New Zealand. To the contrary, especially for Australian investors, there appears to be substantial comfort in the New Zealand, its laws and the regulation and enforcement of them[2].

9. I don't know whether Australia adopted the right policies for itself but I am confident that New Zealand has adopted the right policies for itself and that Australia's policies would have been wrong for New Zealand.

Comparable Economic Unions

10. The initiatives under consideration in the Paper are out of step with how other sovereign states have dealt with similar issues.

11. The European Union (EU) has over 40 years gradually moved from a limited treaty based association focussed on removing barriers to movements of labour and investment to a more integrated political and economic union. Over this time, much care has been taken to ensure that there is political and electoral support for the changes and integration. This is in stark contrast to how the New Zealand Government appears to be proceeding on this issue.

[2] Recently Australian investors, Origin Energy & Prime Infrastructure acquired majority stakes in NZX40 energy companies, Contact & Powerco.

12. Even after all this time, competition laws are not integrated. Each individual member state maintains its own domestic competition laws and authorities. It is only when a competition has a "community dimension" that jurisdiction passes to the EU. The EU competition authority is independent of all member states. The decisions are not made by the relevant dominant member state. It is also highly relevant that the most recent changes to European anti-trust and competition laws and administration have passed some authority back to local regulators and courts to enforce EU law[3].

13. The EU, right from its establishment has always been acutely aware of the need to balance authority and not allow any single member state or small group of members dominate law making, policy or administrative functions. The EU employs various mechanisms to achieve this: rotating presidencies, super-majorities, placement of major bureaucratic institutions in small, and different, countries & mandating use of multiple languages.

14. The North American Free Trade Agreement between the United States, Canada and Mexico (NAFTA) has not involved "harmonisation[4]" of competition or consumer protection laws or authorities. The NAFTA treaty requires that each member country have laws proscribing "*anticompetitive business conduct*" and have means of enforcement. The treaty also recognises the importance of "*cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area*". This approach of cooperation, following on from the base position that individual members take responsibility for their own laws, is sensible and pragmatic.[5].

15. NAFTA, when dealing with consumer protection type issues, states as its basic principle that each member country may "*adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.*"[6]. Harmonisation is not the goal. Chapter 9 then goes into complex detail to seek to ensure that domestic consumer protection legislation and the like is not used to frustrate free trade. The salient point for the Commission is that none of the three NAFTA countries agreed to give up sovereignty in this area. Committing to cooperation and not establishing non-tariff trade barriers is sensible but not applicable to the New Zealand/Australia situation. To the best of my knowledge, there is no empirical data that suggest that either New Zealand or Australia generally seek to impose non-tariff trade barriers against each other[7].

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[3] I touch on these issues in my Weekend Herald (New Zealand Herald) article May 15-16 2004 (United we stand, united we suffocate). More comprehensive explanations of the EU system can be found on http://europa.eu

[4] By which I mean the adoption of a common competition law or mutual recognition of each others competition laws.

[5] See www.nafta-sec-alena.org for more details. See especially Chapter 15 of the NAFTA treaty.

[6] See Chapter 9 of the NAFTA treaty.

[7] An exception might be Australian apple & pear growers fatuous biosecurity arguments in respect of fireblight. This sort of self interested behaviour is inevitable and can't be stopped by any treaty. Arguments about biosecurity or national interest will always be able to be run.

16. The United States of America constantly confronts the issue of what issues are best dealt with locally at State level and what should be dealt with in a uniform manner at Federal level. The trend is towards "New Federalism", which is the devolution of power by the Federal Government to the States. Even those people who prefer, intellectually, commonality of the laws of the 50 States are now recognising that consumers achieve better protection when the States takes responsibility for passing their own laws and funding their own enforcement agencies[8]. New York State, though its activist Attorney General, Eliot Spitzer, has successfully prosecuted some leading investment banks for various duplicitous actions under New York State law while the Federal Government has been a spectator.

17. The salient point for the Commission is that, whatever theoretical or intellectual justifications may be given for uniformity, unless responsibility is kept local remote lawmakers and bureaucrats will underdeliver. Given the inevitability that harmonisation would result in Australianisation this risk is particularly acute for New Zealand.

Harmonisation is a Synonym for Takeover & Loss of Sovereignty

18. The Paper frequently uses the term "harmonisation". I consider this a regrettable term as it intends to carry positive connotations (who opposes harmony?) but is vague as to what it might mean in any particular circumstance.

19. When the circumstances of New Zealand and Australia are analysed (as I have very briefly done above) harmonisation can only mean New Zealand conforming its laws and institutions to those of Australia. It would naïve for any business person or politician to believe that two parties:

    (a) Of such different in size;

    (b) Of different ability to adapt & change;

    (c) Of such disproportionate power (by virtue of economic wealth, resource allocation and location of authority – particularly with many large New Zealand companies being subsidiaries of Australian companies);

    (d) With demonstrable differences in approach to many regulatory and economic policy matters; and

    (e) With the most powerful economic institutions having significantly more investment in one country (Australia) than the other (New Zealand),

    could form a partnership of equals in which both are as likely as the other to change to the other's model.

Policy Option 1 – Further Harmonisation of Competition & Consumer Protection Laws

20. Harmonisation is a term that can have different meanings in different contexts.

21. It can mean mutual recognition. Mutual recognition can be useful and mutually beneficial. The key prerequisites are that the laws in each jurisdiction are attempting to achieve the same policy outcomes in similar environments and the citizens in each jurisdiction are essentially homogenous in respect of the issue being regulated.

[8] See the recent speech of Eliot Spitzer available at www.oag.state.ny.us/press/statements/georgetown_university.html

22. This is the case when considering the offering of securities. I support the mutual recognition proposal developed by the Ministry of Economic Development and the Department of the Treasury. New Zealand and Australia have independently chosen similar policy objectives in respect of the regulation of the public offer of securities[9] and New Zealand and Australian investors have the same interests.

23. The same does not apply to competition laws. The critical difference is that when considering, for example, a merger, the consumers of New Zealand are not homogenous with those of Australia. They are in different markets and the effects of the merger in each market will be quite different.

24. The adoption of the identical laws is equally inappropriate as it presumes that the market structures are the same. As I have briefly noted above, they are not and, as a result, a law that might work well for Australia might be quite inappropriate for New Zealand. Subtle differences in the law and the how it is applied are very important as the law makers, the regulators and the courts seek to create fair outcomes appropriate for the relevant market. It may be appropriate for identical words to be given slightly different meaning and effect in the two jurisdictions. That is a matter for domestic regulators and courts to develop over time.

25. The United States situation is again salutary. The States have assumed primary responsibility for consumer protection laws. As might be expected, the laws passed by each are substantially common, but not identical. There may be good reasons for subtle differences across State boundaries but the key reason why State law is better than Federal law is that someone local now has an interest and a responsibility for education and enforcement[10].

26. At this time, I have not presented views on why regulatory competition is in New Zealand's best interest. I may raise these arguments at a later time. At this time it is sufficient to note how the rejuvenated New Zealand Exchange (NZX) has promoted New Zealand's capital markets when others thought it was time to sell out to the Australian Stock Exchange.

Policy Option 2 – Greater Co-ordination of Authorisation, Administrative and Enforcement Processes

27. Once it is accepted that New Zealand and Australia are different markets and that each has an important national interest in retaining sovereignty and control over the competition and consumer protection issues, we can approach greater co-ordination issues in a sensible way.

28. Without a clear framework, greater co-ordination will tend to be Australianisation by stealth. In any joint working situation, the party bringing the greater resources and representing the more powerful interests will dominate the decision making. As noted

[9] This is hardly surprising as the same policies are applicable in most developed economies.

[10] A good example of how this works in practice are the "lemon laws" which relate to defective motor vehicles. See www.lemonlawusa.com. I comment further on these issues in my article in The Dominion Post July 3, 2004 "Keeping Kiwi Perspective Vital".

above, the EU, NAFTA and the United States[11] have strong structural protections to avoid the biggest parties dominating law and policy issues or achieving de facto control through control of the bureaucracy.

29. Cross border coordination and cooperation is important for New Zealand. This includes cooperating and coordinating with Australia. But this is best achieved by joining with multi-lateral agencies which provide useful intellectual property and guidance but which do not seek to dominate individual local markets. There are many useful examples of these: OECD, International Organization of Securities Commissions (IOSCO) and The International Accounting Standards Board (IASB).

30. New Zealand generally opts in to the recommendations of such bodies and benchmarks itself against their standards. I understand that Australia tends to do the same meaning that both countries are general move in the same direction.

31. We have recent empirical evidence of how important it is for New Zealand that it retains control over key administrative and regulatory institutions:

(a) New Zealand Exchange: The old New Zealand Stock Exchange was very nearly taken over by the Australian Stock Exchange. Many thought this appropriate and inevitable. Only a couple of years later, there is no support for such harmonisation. Instead it has been recognised that it is very important for New Zealand to retain such as institution under domestic control. Some prominent business leaders have publicly acknowledged their change of heart[12].

(b) Takeovers Panel: Rightly or wrongly, there was a perception that the lack of a codified and rigorously enforced Takeovers Code was adverse to the proper functioning of the securities markets and discouraging of foreign investment. New Zealand developed its own Takeovers Code, which is similar to its Australian equivalent, and there is a strong consensus that the Code has worked well. To the best of my knowledge, no one has said that New Zealand would have been better to harmonise with the Australian takeovers law and give jurisdiction for enforcement to ASIC and the Australian Takeovers Panel or form some sort of combined body.

(c) Securities Commission: In a similar fashion to the criticisms about the lack of a takeovers code, there was a perception that New Zealand was lax in enforcing its securities laws and that the laws themselves were deficient. The solution was a domestic one. There have been some changes to the law[13] and more rigorous enforcement of existing laws. The current leadership has a clear focus on establishing New Zealand as having world best practice standards, appropriate for

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[11] The United States constitution limits the grant of authority by the States to the Federal Government (although the boundaries are always being tested) and the bi-cameral Federal parliament gives disproportionate power to the small States through each State having 2 senators, irrespective of size or population.

[12] See the NZX Open publication (available at www.nzx.com/aboutus/publications/open1_2004.pdf) where Ralph Norris, CEO of Air New Zealand, states on page 18 that: "*A couple of years ago, I would have been of the view that we don't need a New Zealand stock exchange. I was in the camp that said we should merge with the Australian Stock Exchange. My views have now changed in that regard. I think it is very important that New Zealand continues to have a national stock exchange… I am now very much in the camp that we need to have a local exchange and an ability to raise capital in New Zealand.*"

[13] Principally the Securities Markets and Institutions Act. Changes to the Listing Rules of the NZX have also been of assistance.

New Zealand's situation. I'm not aware of anyone arguing that a better solution would have been to harmonise with Australia.

32. The appropriate policy for New Zealand is to maintain well resourced competition and consumer protection agencies and encourage them to maintain strong contacts with the equivalent bodies in Australia and elsewhere.

Policy Option 3 - Joint Decision Making on Trans-Tasman Issues by Competition and Consumer Protection Authorities

33. This policy is, perhaps, the most topical. The main proponent for it is Qantas, which has been frustrated in obtaining regulatory approval for its alliance with Air New Zealand.

34. Qantas' position is understandable. Superficially, it may appear easier to get one approval, rather than two.

35. But the Qantas position masks many important issues and problems:

(a) The Alliance would result in monopoly positions being achieved in different and distinct markets. Even a single regulator would need to make separate, market by market, determinations and it might reach different views for each market. This would be the case for any trans-Tasman competition issue.

(b) Unless the joint decision making authority is applying identical laws in New Zealand and Australia, it will have to make at least two different determinations.

(c) If the laws are different, but a common trans-Tasman panel is established to administer them, what justification can there be for New Zealand commissioners making determinations of Australian law, and vice versa?

(d) If the EU model is adopted then there would be the three different competition laws affecting New Zealand and Australia: the New Zealand, the Australian and the Australasian. The size of the combined markets and the infrequency that such issue arise make establishing a third law and bureaucracy a hideous complication and waste of money. New Zealand is advantaged by not having conflict of laws issues. I can see no benefit for New Zealand in joining some sort of Federal or treaty based system with its own hierarchy of laws and courts.

(e) The only alternative is that there be a single law. As I have argued above, that would be to the detriment of New Zealand. It would inevitably require New Zealand to adopt whatever Australia considered best for it. Australia must insist that it have a law appropriate for its domestic application as the great majority of Australian competition issues have no New Zealand implications.

(f) If the combined authority makes two determinations, one applying New Zealand law and the other Australian law, there is the risk that it will apply the law differently from how the domestic New Zealand authority would have done it. In any event, unless there is a common appeal authority, the final decisions would be made the relevant appeal authorities in each country. To avoid this then there has to be a common court system. This involves constitutional issues that are far advanced of any public or political support, such as there is, for harmonisation.

36. When carefully analysed, the reason that Qantas has failed to obtain regulatory approval for the Alliance lies in it being anti-competitive, not because of the regulatory structure.

37. The Commission should, when considering any submission made by Qantas on its failure to obtain regulatory approval for the Alliance, keep in mind the Alliance's highly unusual fact situation. Unusually and perhaps uniquely, both the ACCC and the Commerce Commission had to consider the effect of the Alliance on the same market, trans-Tasman air travel, although each considered different consumer groups. Bar the merger of trans-Tasman shipping or freight companies and perhaps telecommunication companies, I can't think of another fact situation where both regulatory agencies will need to consider the effects of a merger on the same market.

38. The common situation in a trans-Tasman merger of, say, ANZ & Westpac, would be the Commerce Commission considering the New Zealand implications and the ACCC the Australian. This is not especially duplicative as the facts and economic analysis required to support the merger in one market would be unique to that market. To the extent that there is some duplication in dual applications, the costs would be significantly outweighed by the benefits for New Zealand in having its own agency consider the merger by reference only to New Zealand law and the New Zealand market.

39. If the ACCC was permissive, but the Commerce Commission not, then ANZ & Westpac would have to find a solution that partitioned off, say, ANZ New Zealand. This might be the outcome with a single agency applying a single law.

40. Mergers of multi-national pharmaceutical, oil, bank, insurance & manufacturing companies are reasonably frequent. These companies understand that such mergers require multi-jurisdictional approval. I am not aware of any problems caused by the occasional need for the merging parties to obtain both New Zealand & Australian approval.

Policy Option 4 - Combined or Coordinated Institutional Frameworks

41. My reasons or opposing this policy are substantially the same as noted above.

42. Additionally, this approach would cause a hollowing out of New Zealand resident intellectual capital. Most of the Commerce Commission's work involves consideration by New Zealand resident professionals of domestic New Zealand transactions. An Australian based combined agency would deplete New Zealand of that knowhow. If the solution to this is the maintenance of a New Zealand division to consider solely New Zealand domestic transactions, then that begs the question of why a combined agency is needed in the first place.

43. The loss of resident intellectual capital would adversely affect New Zealand's ability to improve its laws, develop new policies, to be pro-active in advancing New Zealand's interests and responsive to issues affecting New Zealand citizens.

44. Finally, given the range of Australian regulators and agencies, it is fair enough to ask with which of them should the New Zealand agencies combine or coordinate with?

RESPONSES TO SPECIFIC QUESTIONS

45. My responses to some of the specific questions raises in the Paper follow.

Do the objectives of Australian and New Zealand competition and consumer protection regimes differ in such a way or otherwise hinder an integrated trans-Tasman environment?

46. No. Achieving a prosperous and mutually beneficial trans-Tasman market is not dependent on common competition or consumer protection laws or institutions.

47. The primary focus of such laws and regimes is to create the greatest economic wealth for New Zealand, balanced against appropriate protections for consumers. This is best achieved by adopting laws and institutions that have international respect, but which are tailored to New Zealand's relatively unique environment.

Do Australian and New Zealand competition and consumer protection substantive laws differ in such a way that hinders an integrated trans-Tasman environment?

48. No. The level of Australian ownership in key New Zealand sectors and the extent to which large Australian companies have operations in New Zealand is strong empirical evidence that the current situation is working well to ensure the free flow of investment and trade. Occasional complaints from interested parties, such as Qantas, who appear to have been unsuccessful in promoting anti-competitive arrangements must be considered in the context of how many trans-Tasman business operate profitably and seamlessly without offending the competition and consumer protection laws in either country.

49. Operating in multiple jurisdictions is invariably more complex and expensive. The issues are not legal or regulatory but environmental. Consumer demand, competitive forces & costs all differ from market to market, even if the product is the same[14]. When the Commission considers submissions that legal and regulatory factors are impediments to successful trans-Tasman business it would be well advised to consider if others in the same sector appear to be trading profitably & successfully. The success of many of the Australian companies in New Zealand is that they behave as locals – to the extent that few consumers would be conscious that they are acquiring goods and services from a foreign owned & managed company[15]. The Commission would also be well advised to consider the voluntary costs of tailoring a product or service for a different market versus any compulsory, regulatory costs. While I have no empirical data, I'd expect the former to be much greater and willingly incurred to gain competitive advantage.

To what extent do differences in or lack of cooperation, coordination or integration between the institutional frameworks of Australian and New Zealand hinder an integrated trans-Tasman environment?

50. In response to what is a pejoratively phrased question, the answer is none.

51. Cross border co-operation on a multi-lateral basis is sensible and should be encouraged as a means of promoting economic welfare in New Zealand. Cooperation and dialogue with Australia is sensible (as it is with others and international bodies like IOSCO) provided that it does not lead to New Zealand surrendering sovereignty or administrative authority.

Do you have any comments on the Commission's interpretation of the broad policy options in table 1?/Is there a better approach for categorising policy options than that shown in table 1?

52. The Commission was obliged to make enquiry within its terms of reference. But it is disappointing that in this Paper the Commission has given such a strong impression that it agrees with the broad policy statements. The Paper contains very little that indicates

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[14] The most recent high profile New Zealand company to discover this has been The Warehouse. Its discount shopping model has been very successful in New Zealand but has struggled in Australia.

[15] An excellent example would the National Australia Bank subsidiary, Bank of New Zealand.

that the Commission might conclude that the best interests of New Zealand (or Australia) are best served by maintaining a respectful distance or pursuing a different policy approach. This slant is illustrated by the formulation of the following question.

Given the deficiencies identified with trans-Tasman competition and consumer protection regimes in response to earlier questions, what policy options should the Commission consider to address these deficiencies?

53. See above. It is rather early in the process for the Commission to have concluded that there are deficiencies.

54. I am not aware of any prevailing view that New Zealand's competition or consumer protection laws are not working well.

55. The Commission should encourage New Zealand to maintain sovereignty over the formulation of its competition and consumer protection laws and regimes with a view to adopting world best practice, appropriate for an economy like New Zealand.

Are you aware of examples of best practice and international experience – possibly not involving Australia or New Zealand - that would provide useful guidance for developing and evaluating specific policy proposals for this study?

56. I have covered this extensively. The best outcome for New Zealand will come from observing how other small countries have integrated into the world economy and specific free trade/common economic zone arrangements, without surrendering sovereignty.

Benefits

57. I do not expect there to be any appreciable benefits for New Zealand in harmonising its competition and consumer protection regimes with those in Australia.

58. Harmonisation would not create greater access to the Australian market for New Zealand products and services or reduce in any material way the costs for New Zealand companies exporting to Australia. Higher costs to support exports are more a function of a lack of scale, providing support from a distance and the need to customise a limited run of products or services for a different market. A Melbourne company trying to break into the Perth market might encounter the same problems.

59. For the same reasons, harmonisation would not mean greater access to the New Zealand market for Australian products and services or reduce costs for New Zealand consumers.

60. My empirical support for this view comes being a director of a New Zealand hides and leather manufacturing company with significant exports to Australia. We have few problems exporting to Australia. Doing business in Australia is like doing business elsewhere in New Zealand and the world. Personal relationships, making sure the product is right for the customer and service quality are the most important issues. The differences, such as they are, in the competition and consumer protections laws are not relevant or material to our business.

Costs

61. The costs of regulatory compliance in New Zealand are significantly less than in Australia. If New Zealand was to harmonise its competition and consumer protection regimes with those in Australia that would increase costs in New Zealand, and give no benefit, especially for those domestic operators that do not trade with Australia.

62. My empirical support for this view comes from the following:

(a) I am a director of a start-up electricity retailing business in Victoria. Establishing a new business in Victoria, in a regulated industry sector, has been much more bureaucratic and expensive than it was to establish the same business in New Zealand. I offer no view as to whether the Victorian approach is right or wrong for its environment but I am adamant that the Victorian approach would be wrong for New Zealand. It would stifle business formation and competition and add nothing to consumer protection.

(b) I have a senior management role with Infratil, a company listed on the NZX with investments in Australia and elsewhere. Doing business for Infratil in Australia is more complex and expensive than in New Zealand. Legal and regulatory costs are significantly higher. As a recent example, Infratil completed a public offering of warrants. It extended that offer to its Australian shareholders. The Australian legal and regulatory costs merely to obtain an exemption to allow the offer to be made in Australia based on the New Zealand documents were approximately 75% as much as the legal and regulatory costs in New Zealand involved in the complete preparation and registration of the offering documents. Given the relative levels of work required, the Australian costs were significantly disproportionately higher.

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