Productivity Commission Draft Research Report: Australia New Zealand Competition & Consumer Protection Regimes

Submission

November 2004

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A. Introduction

1. The Ministry of Consumer Affairs (MCA) welcomes the opportunity to provide comments on the Draft Research Report released by the Productivity Commission in October 2004 entitled "Australia New Zealand Competition & Consumer Protection Regimes" (the "Report").

2. MCA appreciates the breadth and complexity of the Terms of Reference given to the Commission. In the context of an extremely tight timeframe, MCA considers that the Commission has made an important contribution to providing an increased understanding of the issues involved in the various options for fostering and enhancing a trans-Tasman business environment through greater cooperation, coordination and integration of Australian and New Zealand competition and consumer protection policy and law, its administration and enforcement.

3. In particular, MCA considers that the Commission's work will provide an important foundation for further efforts at trans-Tasman harmonisation in the area of consumer protection law. MCA looks forward to participating in continuing efforts in that regard.

4. This submission sets out some comments that MCA wishes to make on the Report. In making the following comments, MCA has endeavoured to be constructive in working towards a final report that provides the fullest understanding from which to proceed in inter-government discussions. MCA would be pleased to discuss any aspects of its submission in further detail with the Commission.

5. This response is separated into two principal sections. Section B deals with the substantive points MCA wishes to make on the Report. Section C addresses specific comments on facts or details of the Report which either flesh out, or correct, statements made in the Report. The annexure to this submission notes some minor typographical errors which might assist the Commission in finalising its report.

B. Substantive issues

6. The key substantive issues arising from the Report that MCA wishes to focus on in the balance of this section of its submission are:

   - the Report's focus on enforcement agencies, largely to the exclusion of administrative bodies;
   - the analytical standard apparently adopted by the Commission;

- evidentiary gaps that may call into question the robustness of some of the conclusions drawn in the Report;
- the limits that exist on coordination and cooperation between the New Zealand Commerce Commission (NZCC) and the Australian Competition and Consumer Commission (ACCC);
- the focus of the Report on competition law;
- the focus, objectives and purposes of consumer protection law; and
- the costs and benefits of closer cooperation and coordination.

B.1 Focus on enforcement

7. The study takes, as its primary focus, the enforcement of competition and consumer protection law and the way this gives effect to underlying policy.

8. Draft Recommendations 5.1 and 5.2 relate specifically to the NZCC and the ACCC. Draft Recommendation 5.3 relates to the introduction of safeguards to facilitate NZCC and ACCC cooperation. Only Draft Recommendation 5.4 - "[t]he Australian and New Zealand authorities should further enhance their cooperation and coordination, including operational, enforcement and research activities" - could be interpreted as suggesting a broader scope of cooperation and coordination than simply enforcement agencies.[1]

9. Cooperation and coordination between *enforcement* bodies, particularly in relation to information sharing, may well provide benefits as the Report notes. However, these benefits could be said to stem largely from the initial similarity of consumer protection legislative regimes in New Zealand and Australia. It is the *administration* bodies on either side of the Tasman that are best placed to coordinate approaches to the development of consumer protection law itself.[2]

10. The narrow enforcement focus is not clearly signalled in the Report and the relevance of the policy making bodies and their opportunities for moving towards

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1 Having said this, MCA notes that the discussion under the heading "Other cooperation and coordination initiatives" on pages 90 and 91 (which provides the preamble to Draft Recommendation 5.4) deals exclusively with the relationship between the NZCC and the ACCC. This leaves the impression that all the Draft Recommendations in the Report relate only to closer cooperation and coordination between the ACCC and the NZCC.

2 Although Parliaments ultimately, obviously, determine actual legislative changes.

greater integration of the Australian and New Zealand regimes are not explored. This is not consistent with the task set out in the second bullet point of the Terms of Reference (namely, "to identify options for achieving greater cooperation, coordination and integration of Australian and New Zealand competition and consumer protection ***policy and law, its administration and enforcement*** …" (emphasis added)).

11. The Report lacks clarity (and contains certain inaccuracies) about the roles and responsibilities of the various agencies. It also fails to differentiate between the statutory responsibilities for administration of the law, as opposed to the administrative arrangements established to carry out the role of enforcement.

12. For the purposes of clarification, MCA notes that, in Australia, statutory responsibility for administering the primary competition and consumer protection legislation, the Trade Practices Act 1974 (Cth) (TPA), resides with the Commonwealth Treasury. In New Zealand, the primary competition legislation, the Commerce Act 1986, is administered by the Ministry of Economic Development and the primary consumer protection legislation, the Fair Trading Act 1986 (FTA) is administered by MCA. The ACCC and the NZCC are charged with the enforcement of these laws in Australia and New Zealand respectively. The Consumer Guarantees Act 1993 (CGA) is self-enforcing legislation and is administered by MCA. The NZCC has no enforcement role with regards to the CGA.[3]

13. Table 3.2 (at page 26) shows that the Commission clearly recognises that there could be a role for greater co-ordination in law making, depending upon the balance of costs and benefits which it identifies, such as:

- economies of scale in law making and/or enforcement (such as from having identical laws and a combined regulator);

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[3] It is important to note, in this general context, the following points of clarification required in the Report:

- the Report stipulates (at page 11) that "[t]he main Australian agency responsible for competition and consumer protection policy is the Australian Competition and Consumer Commission (ACCC)." In fact, the Australian Treasury has the main policy (or administration) function; and
- the Report incorrectly states (at page 145) that the NZCC "administers" general fair trading legislation; in fact, the NZCC merely enforces such legislation. A similar error occurs in the final paragraph of section D.3 on page 146.

- reduced competition between regulatory regimes that would have encouraged the pursuit of more effective policies; and
- diseconomies of scale in law making and/or enforcement (such as longer delays and extra financial costs of formulating and updating laws in coordination with other jurisdictions).[4]

14. However, the Report itself provides little or no discussion on the identity and role of those bodies responsible for law-making, any current relationships they may have (or may need) and, how, if at all, greater coordination and cooperation at this critical level could be achieved.

15. Passing mention is made (for example, at page 16) that there is "some cooperation and coordination at the Ministerial level" in consumer protection through the Ministerial Council on Consumer Affairs (MCCA) and at the administrative level of the Standing Committee of Officials of Consumer Affairs (SCOCA). However, the Report does not provide any indication that there has been any analysis of the effectiveness of these existing mechanisms for cooperation and coordination outside of the enforcement sphere, nor consideration of other ways in which further cooperation and coordination might be achieved at the administrative level.

16. In MCA's view, there is scope within Option 3 of the Report to explicitly recognise the importance of the role of *administration* bodies in helping to ensure that the benefits of coordinated *enforcement* bodies are realised as legislation continues to evolve. Indeed, coordination and cooperation between administration bodies has the potential to provide benefits independent of their effect on enforcement bodies, by way of sharing expertise on areas of mutual interest and challenging policy thinking at an early stage.

17. MCA urges the Commission to explore this aspect of its Report and Draft Recommendations in greater detail. In addition, it would be useful for the Commission to explore and note the potential difficulties that could arise if consumer protection and competition law on either side of the Tasman were to diverge from one another due, in part, to a failure of administrative bodies to coordinate and cooperate. Such an addition would recognise the dynamic environment in which business, enforcement and administrative bodies work.

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[4] See, also, page 24 where the Commission identifies possible changes in costs incurred by government agencies in administering regulation, as being relevant to the issue of greater cooperation, coordination and integration. Note, though, at page 27, the Report focuses only "on the administration costs of competition regulators".

B.2 The analytical standard

18. Under the Terms of Reference, the Commission was asked to assess how the operation, administration and enforcement of Australian and New Zealand competition and consumer protection law affects, impedes or fosters an integrated trans-Tasman business environment.

19. At page 2 of the Report, the Commission indicates that it has sought to identify impediments where an issue is "likely materially to distort" the operation of the Australasian market. The rigorous standard adopted by the Commission is useful in focusing the study on significant individual issues arising in seeking to increase the levels of cooperation and coordination between the two countries, as well as in establishing what immediate steps should be taken to achieve the broad goal that underlies the study.

20. However, an issue that MCA raises for the Commission's consideration is whether the higher standard adopted by the Commission may risk overshadowing the more subtle benefits of closer coordination and cooperation. Such benefits can be difficult to assess, particularly in a constantly evolving environment that builds on earlier coordination efforts.

B.3 Evidentiary gaps

21. There are two particular evidentiary concerns that MCA wishes to raise which may call into question the robustness of some of the conclusions drawn in the Report, namely:

- the uncaptured experience of small- and medium-sized enterprises (SMEs); and
- the limitations of the evidence from enforcement agencies.

B.3.1 Uncaptured experience of SMEs

22. Based upon a review of the information provided in Tables A.1 and A.2, MCA notes that input into the Report from SMEs appears to have been very limited. This is important when considering Draft Recommendation 4.1 and comments in the Report such as "[t]he evidence presented to the Commission (on visits to key stakeholders and in submissions) tends to suggest that the benefits [of more effective regulation of cross-border competition and consumer protection] would be modest" (page XVIII).

23. Larger businesses may be better placed to absorb the costs imposed by trans-Tasman regulatory differences (that is, they face slightly higher costs but their business transactions still occur, allowing profits to be realised). MCA is concerned that SMEs, on the other hand, may not transact at all due to (actual or perceived) regulatory burdens arising from trans-Tasman differences.

24. In MCA's view, it is important for the Commission to seek to capture the experience of SMEs in terms of differences in the Australian and New Zealand regimes. SMEs form a very large group in New Zealand and their experience could potentially offer a very different perspective to that offered by the type of entity listed in Tables A.1 and A.2.

25. MCA understands that the Commission has consulted with some of the larger law firms in order to understand the SME perspective on the study's subject matter. However, the nature of the SME group is that they may well undertake their own inquiries into the regulatory requirements without recourse to a law firm or would not necessarily incur the costs associated with a top tier legal firm.

26. In the absence of being able to reach the SME group directly, MCA suggests that it would be appropriate to qualify Draft Finding 4.1 by recognising the evidentiary gap with regard to the experience of SMEs.

B.3.2 Evidence of regulators

27. The Report notes that the benefits of being able to more effectively regulate cross-border competition and consumer protection would be modest (at page XVIII). The principal reason is said to be the small number of trans-Tasman cases that are likely to arise. In support of this statement, the Report states (at page XIX):

> "For example, the Australian Competition and Consumer Commission identified only 64 cases having a trans-Tasman element, out of 63 695 complaints and inquiries recorded in 2003-04."[5]

28. It is not apparent from the Report whether any other regulators provided evidence to the Commission on this question. However, in MCA's view there are at least two difficulties with the evidence which the Commission uses to support its conclusion.

29. First, there is the lack of direct evidence from SMEs (as discussed in section B.3.1 of this submission).

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[5] See, also, the discussion at pages 64-65.

30. Secondly, given that the CGA is self-enforcing, evidence from regulators about the impact of differences in the trans-Tasman regimes may not be wholly reliable or complete in the absence of evidence from consumers.

31. We also note that Consumer Affairs Victoria was the only State or Territory government visited. It may be that wider State and Territory consultation would uncover other evidence on this point.

32. It is worthwhile noting that MCA is currently undertaking a review of the enforcement of consumer protection law in New Zealand. This review may, in time, provide a clearer picture (at least from New Zealand's perspective) on this issue.

B.4 ACCC/NZCC coordination and cooperation

33. An aspect of the Commission's call for closer coordination and cooperation between enforcement agencies that is perhaps not clearly spelled out in the Report is that, regardless of the levels of coordination and cooperation between enforcement agencies, there will still be jurisdictional and other issues faced in some cases in relation to consumers attempting to enforce their rights under the CGA. The CGA is self-enforcing – that is, the NZCC has no enforcement role in relation to claims under that Act. This means that, for example, an Australian who experiences a problem with a product bought in New Zealand will still face the same hurdles under the present regimes, regardless of any increased coordination and cooperation between the NZCC and the ACCC.

34. In respect of Draft Recommendations 5.1-5.3, MCA questions why the Commission appears not to have considered similar recommendations with respect to the NZCC's information gathering powers under Part VI of the FTA.

B.5 Focus of Report on competition law

35. A particular concern of MCA is that a significant proportion of the Report focuses on the study questions in relation to competition law. Whilst there is some discussion of consumer protection law from time to time, this discussion appears to be less considered than that pertaining to competition law.

36. For example, the bulk of the discussion in Chapter 4 pertains to competition law. It is interesting to note, in this context, the discussion of the objectives of the competition and consumer protection laws of Australia and New Zealand which then proceeds to focus entirely on the objectives of competition law.

37. First, given the important opportunity this Report represents for Australia and New Zealand to consider whether closer cooperation and coordination would be possible

in the consumer protection law area, MCA would be keen to see the Report reflect more of the analysis undertaken of the differences in the two regimes.

38. Secondly, MCA notes the comments in the Report (at page 151) that:

> "… in practice, efforts at harmonisation between Australia and New Zealand could potentially be ineffective if harmonisation does not also include relevant State and Territory legislation. In the course of the study, several participants commented on the need to work towards greater harmonisation of Australian law before considering greater cooperation, coordination and integration with New Zealand."

39. As this is such an important issue, it would be interesting and helpful if the Report were to reflect on ways in which this might be achieved and the role that New Zealand may be able to play in helping to achieve this. This is particularly so given that the Report states (at page 24) that:

> "[t]he Commission has also been asked to consider the potential implications of each policy option for existing cooperation between the Australian, State and Territory Governments of Australia."

40. For example, the Commission notes (at page 16) that "there is some cooperation and coordination at the Ministerial level in the area of fair trading, consumer protection and credit laws" through MCCA and supported by SCOCA. However, there are certain inherent limitations with respect to the MCCA/SCOCA regime in terms of its capacity to deal with broader issues around closer cooperation and coordination. As such, the Commission's views on how this regime might be enhanced, or other structures introduced, to address such issues would be welcome.

41. Thirdly, to the extent that the Commission has considered input from organisations other than large entities such as Telecom New Zealand and AAPT, MCA would find it helpful for the Report to reflect that input more clearly.

B.6 Focus, objectives and purposes of consumer protection law

42. At various points in the Report, there is a discussion about the focus of consumer protection policy, as well as the objectives and purposes of relevant legislation. In MCA's view, the report oversimplifies the commonalities of the Australian and New Zealand regimes in this regard and makes some erroneous assertions.

B.6.1 Focus of consumer protection policy

43. The Report states (at page 1) that:

> "[t]he "focus of consumer protection policy is to address market failure by improving the position of household and business consumers in market dealings."

44. In MCA's view, consumer policy may both pre-empt market failure (rather than address it *ex post*), and may be necessary in the case of varying levels of market imperfection that fall short of market failure.

45. Furthermore, the degree to which consumer protection policy focuses on business consumers varies considerably. On the one hand, provisions relating to misleading and deceptive conduct, as well as unconscionable conduct, enure to the benefit of business consumers. By contrast, New Zealand's CGA is not generally focused on business consumers (see the definition of "consumer" in section 2 of the CGA[6]).

46. The Report goes on to state that "[c]onsumer protection laws … mandate information disclosure". This statement is overly broad in terms of New Zealand consumer protection law. There are only three consumer information standards in force (relating to country of origin of clothing and footwear, fibre content and care labelling). Generally, the focus of New Zealand's consumer protection regime is on ensuring that consumers have access to accurate and "optimal" (rather than complete) information, and ensuring they place an appropriate value on that information.

B.6.2 The objectives of consumer protection policy

47. The Report states (at page 120, emphasis added) that:

> "The FTA and part (*sic*) V have ***indistinguishable*** objectives. For the FTA, this is encapsulated in the long title:
>
> > "An Act to prohibit certain conduct and practices in trade, to provide for the disclosure of consumer information relating to the supply of goods and services and to promote product safety."

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6 MCA notes that the definition provides some scope for coverage of business consumers, but falling considerably short of the scope under the other areas of consumer protection policy noted above.

48. In MCA's view, this is a significant overstatement. The long title of the FTA merely provides a statement of what is contained in the Act – it does little to enhance understanding of the purpose or object of the Act. Extrinsic material would need to be considered in order to glean such.

49. By contrast, the Trade Practices Act 1974 (Cth) (TPA) does set out a specific objects clause in section 2 thereof. That clause states that:

> "The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection."

50. In MCA's view, it is not possible to say that the FTA and TPA have ***indistinguishable*** objectives, as it would be difficult to conceive that the objective of the FTA is to enhance the welfare of Australians.

B.6.3 The purposes of consumer information and product safety policy

51. MCA notes that the commentary (at page 126) on consumer information and product safety legislation has been combined as if those two areas are treated in the same manner and have the same overriding purpose (that is, to "seek to mitigate information asymmetries").

52. This is accurate as far as information standards are concerned, but it does not adequately reflect the legislation for product safety which has an injury reduction or injury prevention purpose. Compulsory product recalls and banning provisions have been classified as a sanction or remedy – they are legislative instruments like the standards and should be discussed and cited as such.

B.7 Costs and benefits of closer cooperation and coordination

53. At page 20 of the Report, it is stated that the Commission has sought to determine the extent to which the existing regimes, *inter alia*, raise the administrative costs of "institutions" that administer the regimes in the two countries. Referencing page 3 of the Report (third bullet point under heading "The Commission's approach"), it appears the Commission is referring to the respective enforcement bodies. There could also be costs in terms of duplication of policy work that could theoretically be carried out by one government.

54. A potential benefit of greater cooperation, coordination and integration which is not covered explicitly in Table 3.2, is the ability for consumers to enforce their rights effectively – for example, by gaining access to the New Zealand Disputes Tribunal and its Australian counterparts in order to hold companies readily accountable in

trans-Tasman transactions. The counterpoint might be the increased costs for businesses associated with defending actions in such *fora*.

C. Specific comments

55. This section of MCA's submission sets out some more detailed comments on specific aspects of the Report.

56. In terms of international arrangements, MCA notes that:

- in the first full paragraph at page 15 of the Report, it is inferred that APEC consider issues of competition policy, but not of consumer protection policy. However, APEC does include a structure with a consumer protection focus - the Electronic Commerce Steering Group. This group is currently involved in the development of APEC's Privacy Principles and the implementation of the Voluntary Consumer Protection Guidelines for the On-line Environment; and

- MCA is also a member of the International Consumer Protection and Enforcement Network referred to on page 17.

57. MCA notes that the final three lines on page 27 of the Report may infer that the entirety of New Zealand consumer protection law is comprised in the two Acts mentioned. It should be clarified that those Acts embody New Zealand consumer protection law for the purposes of the study only.

58. The Report notes a number of differences in the sanctions and remedies under both consumer protection regimes (at pages 47-50). The Report draws the conclusion (at page 50) that such differences do not appear to be impeding the development of a trans-Tasman business environment or consumer confidence. The Commission appears to be citing MCA's previous submission in support of this proposition. However, in that submission, MCA was merely noting that it was not aware of any such evidence (largely because this is not the type of information which has traditionally come into the Ministry).

If there is other evidence upon which the Commission was relying in drawing its conclusion, it would be useful for the Report to present such evidence. If not, it would be useful for the Commission to consider whether these differences are likely to make New Zealand a lower risk environment for Australian companies to operate in, or Australia a higher risk country for New Zealand businesses to operate in, or are the differences simply irrelevant to the decision-making process?

59. At page 75 of the Report, the Commission discusses what types of things would be required in a framework for considering competition and consumer protection policy in terms of a single economic market, where one country simply adopted the laws of another country. MCA suggests that, even in such a scenario, ongoing policy coordination would still need to be a feature of any such framework.

60. Page 119, paragraph 2, refers to the Credit Contracts Act 1981. It would be helpful to footnote that this Act is to be repealed on 1 April 2005 and replaced by the Credit Contracts and Consumer Finance Act 2003 (see footnote 2 on page 134).

61. There are a number of other errors in the citations of New Zealand consumer protection law and the statements as to what that law provides for:

- page 120 – false representations in relation to goods, services, employment and land are addressed in sections 10-12 and 14 of the FTA, not sections 10-14 as stated;
- page 121 – misleading the public as to the nature and characteristics of goods and services is dealt with in sections 10 and 11 of the FTA, not just section 10;
- page 121 - pyramid selling schemes are dealt with in section 24, not 23, of the FTA;
- page 121 – in the discussion of s13(d) of the FTA, the words "will be" should be replaced with "were";
- page 122 (under the heading "Extraterritorial application") – the FTA applies to conduct outside New Zealand to the extent that the ***conduct*** relates to the supply of goods or services, or land, within New Zealand; not to the extent that the business so relates as stated in the Report;
- page 129 (first bullet point) – the Report states that section 5 of the CGA provides for a consumer's right to quiet enjoyment of a good. That section only provides for a consumer's right to undisturbed possession of a good; and
- page 129 (third bullet point) – MCA notes that sections 6-8, not 7 and 8, of the CGA deal with the quality and fitness for purpose of goods. However,

the standard under the CGA is "acceptable quality", not "merchantable quality" as stated in the Report.[7]

62. For the sake of greater clarity and accuracy, we suggest that the first five paragraphs under the heading "Legislative framework" on pages 126-127 and the heading "Compulsory product recalls" and subsequent two paragraphs on page 129 be replaced with the following:

> **Legislative framework**
>
> *Standards*
>
> Sections 65C and 65D of the TPA and Parts 2 and 3 of the FTA allow for certain standards of product safety and consumer information to be prescribed by regulation. In each jurisdiction, the relevant Minister can declare (or recommend the declaration of, through Executive Council) standards prepared by prescribed bodies (such as Standards Australia International Limited and Standards New Zealand) as a product safety standard or a consumer (product) information standard (s 65E TPA; ss 27 and 29 FTA).
>
> *Unsafe goods (product bans)*
>
> When a good is deemed 'unsafe' in Australia or New Zealand, it may be banned for an interim period. At the end of this interim ban, the product may be allowed back on the market (revoking the ban) or banned indefinitely (s 65C(5) TPA and s 31 FTA).
>
> *Compulsory recalls*
>
> In both Australia and New Zealand, where goods do not comply with particular safety standards or are of a kind which might cause injury, the Minister may issue a compulsory product recall order (s 65 TPA; s 32 FTA). In Australia, unless the Minister feels any delay in the recall could endanger the public, he or she must first hold a conference with the affected suppliers of the good. In New Zealand, no conference is required.

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[7] By contrast, section 16(b) of New Zealand's Sale of Goods Act (1908) does provide for the concept of "merchantable quality" in relation to sale by description. However, this legislation is not included in the Commission's Terms of Reference.

Offence

It is an offence to supply goods that are in breach of a product safety or information standard, an unsafe goods notice (ban) or a compulsory recall. In Australia, the prohibition on supply is qualified to the goods being intended to be used or likely to be used by a consumer. In New Zealand, the prohibition is absolute (ss 65C(1), 65D(1) and 65G(1) TPA and ss 28(1), 30(1), 31(5) and 32(5) FTA).

There are currently 26 compulsory product safety and information standards in Australia, covering the safety of goods ranging from baby walkers to balloon-blowing kits and disposable cigarette lighters. In New Zealand, the FTA has only six compulsory product safety standards, each of which have equivalent standards under the TPA regulations. In New Zealand however, the product safety provisions of the FTA are supplemented by the CGA which, under the requirement that goods be of 'acceptable quality', contains the explicit provision that the goods must be safe (s 7(1)(d), CGA). A similar provision is not found in the TPA.

63. If MCA's proposed amendments noted in paragraph 49 are not accepted, MCA nonetheless suggests that the third paragraph on page 127 be deleted. The product information standards section of the TPA (s65(D)) has nothing to say as to country of origin – this is elsewhere in the TPA and the FTA (under the misleading and false representations provisions). The direct correlation with the New Zealand Consumer Information Standard under the FTA is the Australian Commerce (Imports) Regulations 1940 (regulations 7 and 8).

64. In relation to the discussion on page 127 about the Trans-Tasman Mutual Recognition Arrangement, MCA notes that:

- the third sentence of the first paragraph should be amended to read: "In essence, if a good can be ***legally*** sold in New Zealand it can be ***legally*** sold in Australia ***and vice versa***.";
- the second paragraph should be replaced with the following:

> "The legislation implementing the TTMRA established five-year 'Special Exemption' programmes for certain existing regulations to allow for a managed transition under this Arrangement. Until differences are resolved, goods covered under these regulations remain subject to

> domestic product standards**.** Currently, only one Australian safety standard – for child car seat restraints – remains under the 'Special Exemption' programme. The TTMRA makes provision for any jurisdiction to apply for a temporary exemption where there may be differences in legislative approach."

65. The following sentence should be added to the last paragraph of the discussion on "Product liability and compensation claims" (refer page 128):

> "However, compensation for consequential loss can be sought under the CGA."

66. In relation to the discussion on page 128 about public enforcement, MCA notes that:

- the first sentence in the first paragraph should be amended to read "The ACCC and NZCC (and, in the case of product safety standards and product bans, the New Zealand Customs Service) have roles …";
- in the second paragraph, the phrase "In both countries, other government departments undertake …" implies that the NZCC is a government department. In fact, the NZCC is a government-funded, independent regulatory body.

67. In the second paragraph under the heading "Interpretation" on page 130, the final phrase "… as well as sales, leases and hire-purchases" would be more accurately expressed as "… as well as sales, leases, exchanges, hires and hire purchases".

68. For the sake of greater accuracy, the fourth bullet point on page 146 should read "the Ministry of Consumer Affairs is responsible for administering the general consumer protection law relevant to this study".

Annexure

This Annexure notes some minor typographical errors which might assist the Commission in finalising its report.

a. Page 10, fourth bullet point - the reference should be to the "New Zealand Retailers Association" rather than the "New Zealand Retailers Federation".

b. Page 15, first paragraph under the heading "Mutual recognition and uniform standards", line 8 - "goods" should be given a possessive apostrophe.

c. Page 55, final paragraph - "There is some doubt as how well…" should read "There is some doubt as to how well…".

d. Page 119, paragraph 2, line 5 - 'principle' should be replaced with 'principal'.

e. From section C.1 onwards - references to 'parts' of the Trade Practices Act should replace the lower case 'p' with the upper case 'P'.

f. Page 125, last full line of first paragraph under heading "Jurisdiction of courts" – reference should be to "ss43(2)(c)-(f)".

g. Page 126, line 3 of first full paragraph – the word "division" should be capitalised.

h. Page 127, final paragraph - the first sentence should be amended to read: "In New Zealand, compensation for injury is provided regardless of whether the manufacturer, consumer, or any other party is at fault."

i. Page 128, second paragraph, line 3 - remove the word "and".

j. Page 128, second paragraph, line 4 – "amount damages" should read "amount of damages".

k. Page 130, third paragraph under the heading "Interpretation", line two - "provision" should be "provisions".

l. Page 134, footnote 2, line 1 - "gives" should be replaced with "give".

m. Page 135, line 1 - "reveal" should be replaced with "reveals".

n. Page 135, line 2 of the paragraph under the heading "Extraterritorial application" - "engaged outside" should be replaced with "engaged in outside".

o. Page 135, first paragraph under the heading "Sanctions and remedies", line 2 - "do" should be replaced with "does".

p. Page 136, first paragraph under the heading "Enforcement", line 4 - "to the court" should be replaced by "to a court".

q. Page 147, third paragraph under the heading "Trans-Tasman cooperation" - "… regulator to whom …" should be changed to "… regulator with whom …".

r. Page 152, all references under the heading "E.1 State and Territory legislation" to a "part" of the TPA need to be amended by capitalising the "P".

s. Page 152, second line under heading "Consumer protection legislation" – the word "division" should be capitalised.

t. Page 153, first paragraph, line 1 – the word "division" should be capitalised.

u. Page 153, first paragraph, line 4 - "other parts of part V" should be changed to "other divisions of Part V".

v. Page 153, third paragraph, line 7 - "Australia" should be changed to "Australian".