

SUBMISSIONS

of the

NEW ZEALAND RETAILERS ASSOCIATION

to the

AUSTRALIAN PRODUCTIVITY CENTRE

in respect of

**THE ISSUES PAPER RELATING TO A REVIEW OF AUSTRALIAN AND NEW ZEALAND
COMPETITION AND CONSUMER PROTECTION REGIMES**

August 2004

Introduction

These submissions are presented by the New Zealand Retailers Association.

Background

The Association is the largest trade association involved in the distribution industry in New Zealand. We represent an industry that has annual sales of NZ\$50b, and which employs some 325,000 people (17% of the workforce) in some 49,000 outlets spread throughout the country. Our membership includes the major supermarket and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators. We also service a number of trade groups of plumbing materials suppliers, metal fastener distributors, bicycle dealers, pet shops, jewellers and equestrian dealers.

Retail Involvement in the Trans-Tasman Market

The trans-Tasman market is a very important one for the retail industry in New Zealand, and our members import substantial quantities of merchandise from, as well as export merchandise to, Australia. Some members also buy centrally in particular instances for the Australasian market.

There is a very large number of Australian retailers who operate in New Zealand. Some of the major chain stores are Progressive Enterprises (owned by Foodlands), Kmart New Zealand (owned by Coles Myer), Harvey Norman and Dick Smith Electronics. Other companies operating here include a significant number of specialised Australian apparel chains such as Country Road, Just Jeans and Jeans West.

There are also a large number of New Zealand retailers operating in Australia. These range from the larger retailers such as The Warehouse, Michael Hill, Pascoes, Hannahs and Hallensteins to smaller niche operators such Keith Matheson and Kumfs Shoes.

Over the past two decades New Zealand consumers have benefited immensely from the general provisions of the CER Agreement with Australia. The abolition of import controls and tariff barriers under CER have resulted in a much broader range of merchandise being made available to consumers at more competitive prices. Very few issues of concern have been raised with us in recent years resulting from impediments in the current competition or consumer laws applying in each country. We nevertheless wish to take the opportunity to comment on a number of issues flowing from the consultation paper.

Competition Issues

The Association has, as stated, had very few cases involving competition law drawn to its attention that directly impact upon our membership. However, a possible area of concern here in future years could be the market dominance that is able to be exerted by the property owning mall operators such as Westfield over retail tenancies, particularly within major cities. We note that the Australian Trade Practices Act contains an unconscionable conduct clause, which enables problems such as this to be examined, whereas the New Zealand Commerce Act does not. We submit that this is an area that could legitimately be included within the current study.

A further area of study could be the differences between the current exemptions in the Australian Trade Practices Act and the New Zealand Commerce Act as far as anti-competitive practices

relating to the fixing of shipping rates are concerned. It is noted that the paper invites comments on any differences in the exemptions under Australian and New Zealand competition that hinder an integrated trans-Tasman business environment. We wish to draw to the Commission's attention the concerns of the major chain stores about the impact of the significant increases in freight rates notified in 2004 by all the main shipping companies serving the New Zealand market. Our major members are concerned that increases of that magnitude increase the landed cost of imported merchandise, particularly goods from Asia, and that such costs are inevitably passed onto consumers in higher prices.

It is noted that the Commission is currently mounting an inquiry into the current exemption under the Australian Trade Practices Act. We submit that this study could be usefully extended to embrace a study of the legal differences in the exemption for the fixing of freight rates.

Consumer Issues

The Association's prime exposure rests with the differences in consumer laws between the two countries, particularly the standards that relate to product safety and consumer information regimes that in New Zealand are generally promulgated as mandatory regulations pursuant to the Fair Trading Act.

We are aware that there are significant differences in the number and scope of the mandatory standards affecting different types of consumer goods in each country. Australia has over twenty such standards whereas New Zealand has only six. We also understand that there are differences in some product information standards. For example, country of origin labelling for apparel and footwear is a product information standard enforced by the Commerce Commission in New

Zealand whereas in Australia the regulatory controls are understood to only apply to imported merchandise and are enforced by the border control agency.

We believe that there is considerable value in working toward greater harmonisation of these regulatory standards and submit that this should be an area for study by the Commission. Such a study could usefully be extended to other regulatory standards such as gas appliances that are currently excluded from the provisions of the Mutual Recognition Agreement between the two jurisdictions.

We see the development of common standards across the two markets as a benefit to both retailers and consumers as it reduces costs and facilitates effective trans-Tasman trade. The joint Food Standards Code that is now well established between New Zealand and Australia is a positive example. We also understand that a joint therapeutics regime is likely to be established in the near future.

General Comment

Comment has been invited on whether a single entity responsible for administering and/or enforcing competition and consumer protection regimes in Australia and New Zealand is preferable to the current separate arrangements. While we see merit in working towards harmonisation of consumer standards to facilitate trans-Tasman trade, we consider that there are major barriers to extend this joint approach to enforcement protocols and see no need for the change to move to that level at this point in time.

Joint enforcement raises significant issues of sovereignty that are probably insurmountable considering the different political structures in New Zealand and Australia. We also see the importance of not considering a change like this in isolation from the administration of the other commercial enforcement protocols that apply in each country. There is a serious risk of inconsistency and confusion if change is considered in one area alone.

We also note that the enforcement of some consumer law in Australia, e.g. fair trading legislation is enshrined in state rather than Federal Government agencies. We are aware of issues arising in this regard from enforcement of the joint food standards and urge the review to consider this carefully to ensure that the separate issues of standard setting and enforcement are dealt with appropriately having regard to the different structures in place.

The model adopted for the joint food standards has worked. We commend this to the Commission as a model for consumer standards generally.

Conclusion

We have registered our interest in this inquiry and would like to participate in any round table meetings that the Commission may have in New Zealand as part of its review.

Contacts

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