

## **SUBMISSION TO THE PRODUCTIVITY COMMISSION**

relating to the Australian and New Zealand Competition  
and Consumer Protection Regimes

from

**Fletcher Building Limited**

### **Background**

Fletcher Building Limited is a New Zealand headquartered company, listed on both the New Zealand and Australian stock exchanges. In New Zealand Fletcher Building is involved in building materials manufacture and distribution with operations in concrete, steel, plasterboard, laminates and panels, aluminium extrusion, and insulation. It also has interests in commercial and residential construction. In Australia Fletcher Building is involved in the manufacture and distribution of laminates and panels through its ownership of the Laminex Group, but has other businesses involved in the building materials manufacture, primarily insulation.

The company's Trans Tasman operations have altered in recent years through the divestment of its construction and aluminium extrusion operations in Australia, and through the acquisition of Laminex in 2002 and the Tasman Group in 2003. Both of the two acquisitions involved companies with operations in Australia and New Zealand.

### **Submissions sought**

Having met with the Commission and read its terms of reference, we understand that it is interested in receiving submissions on the extent in which the operation, administration and enforcement of the Australian and New Zealand consumer protection legislation, affects, impedes or fosters an integrated Trans Tasman business environment.

### **General comment**

Fletcher Building's experience with Trans Tasman business, in the form of day-to-day operations, and also in relation to the recent acquisition of two Trans Tasman businesses, has been that the difference between the Australian and New Zealand consumer protection regimes is not a significant hindrance.

Our businesses have found that the regulatory regimes are now virtually the same, particularly after the alignment of the merger test in [2001], and they remain largely unaffected by the subtle differences. While there was obviously a compliance cost involved in seeking advice in the two jurisdictions when acquiring the Laminex and

Tasman businesses, Fletcher Building did not find that any differences in the two regulatory regimes or processes was a significant hindrance.

### **Business practices**

As mentioned above, the two regimes are broadly the same in New Zealand and Australia. A matter that we have noted, however, is that in Australia there are more *per se* prohibitions in the form of exclusive dealing and secondary boycotts whereas in New Zealand such anti competitive conduct is considered to be captured by the general prohibitions in the legislation. If anything, these relatively minor differences mean that there might need to be different business models on either side of the Tasman, which could prevent the standardisation of distribution and supply agreements across Australian/New Zealand businesses. Experience in our particular businesses, however, is that this is not a particular concern for Fletcher Building.

### **Regulatory structure**

Fletcher Building would be concerned if there were a move toward a single Trans Tasman regulator of the competition and consumer protection laws.

The New Zealand market has its own specific characteristics, structures and market dynamics which have been built around existing laws and which are understood by the market and the regulators. If there were a move towards a single regulator, such that the Australian regulatory approach were to be adopted in relation to New Zealand, we would be concerned that such an approach might seek to apply an Australian model to the New Zealand market without having regard to its particular characteristics.

In this regard, we consider that it is important for the New Zealand market to be regulated by people who are familiar and experienced with it and who, on a day-to-day basis, are involved with New Zealand competition and consumer protection law issues. New Zealand has recently abolished appeals to the Privy Council based in part on the view that there is a need for those who sit on our highest Court to be people who understand and are involved with New Zealand society, culture, business, history and regulatory make-up when applying or interpreting the law. Fletcher Building's view is that the same policy should apply with respect to key regulators such as consumer and competition law enforcement agencies.

We note that any appeals from regulatory decisions would be dealt with by the New Zealand Courts (in relation to New Zealand market issues). It would therefore be

inconsistent if we were to have initial decisions made by a regulatory body based in Australia if appeals were to be dealt with by the New Zealand legal system.

### **Process**

Although it has not had a negative impact on us to date, Fletcher Building believes that an alignment of the merger/clearance process would be well received. We are aware of existing discussions around the introduction of a more formal clearance process in Australia which would not be unlike the model that the New Zealand Commerce Commission operates within. Our view is that the alignment of such processes has a potential advantage when considering the acquisition or divestment of Trans Tasman businesses as it provides greater certainty around timing, and security of decision.

**Fletcher Building Limited**

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