

*SUBMISSION TO: AUSTRALIAN PRODUCTIVITY COMMISSION*

*RE: AUSTRALIA NEW ZEALAND COMPETITION AND CONSUMER PROTECTION REGIMES – DRAFT REPORT*

- 1. Arguments, for example by the New Zealand Commerce Commission, were made in favour of a single regulatory body being established to consider applications which have a true Trans Tasman competition element by, in particular, Air New Zealand and Qantas. This, in my opinion, is a reaction to the regulatory “hoops” required in relation to the joint application for authorisation. (p 67 of the report). The issue of appeals is referred to here also.*
- 2. In the Air New Zealand/Qantas situation it was not the regulatory bodies per se that required a duplication of costs, but the appeals process where by both appellate bodies commenced their deliberations from different starting points. The fact that initially both regulatory bodies reached the same conclusions on the application, albeit using in places different reasoning, surely speaks to the efficacy of the current regulatory structures.*
- 3. Appeal rights involve sovereignty issues. Sovereignty issues are policy matters, informed, of course, by the views of those affected by decisions made. However it is clear that sovereignty issues cannot be dealt with by recommendations of the Productivity Commission – the scope is too broad. Nonetheless the final report needs, in my opinion, to clarify the matters which involve sovereignty issues – such issues are obviously, in the views of some parties, barriers to competition.*
- 4. Should any changes be contemplated, they should be in line with harmonisation, rather than combination of structures. New Zealand’s competition and consumer protection laws should parallel those of Australia, whilst still retaining the ability to reflect the particular characteristics, as noted by the draft Report.*
- 5. At the same time, where it is possible to utilise frameworks from other business areas, such as securities law, to minimise differences, that should be looked at. Powers granted to the Securities Commission and ASIC could be reflected in the relevant legislation for NZCC and ACCC; the recent discussion document on a proposal for the establishment of a trans-Tasman mutual recognition regime governing offers of securities and interests in managed investment schemes, could provide a basis for a similar scheme in terms of competition law, for example anti-competitive practices.*