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Submission on the Productivity Commission Draft Research Report on the Australia New Zealand Competition and Consumer Protection Regimes by the Advertising Standards Authority

Findings and Recommendations

1. The Advertising Standards Authority (ASA) supports the six draft findings and the four draft recommendations contained in the draft report.
2. The ASA agrees that the competition and consumer protection regimes are sufficiently similar that there are no great impediments to Australasian or Trans-Tasman business.
3. One of the weaknesses of the current legislation is that it results in a 'silo' approach with little encouragement for co-operation. There has in fact been co-operation by the ACCC and NZCC up to the limits of their legislative authority. This has been a matter of policy rather than legislation. Therefore the recommendation to exchange information subject to various safeguards is supported by the ASA. The recommendation reflects the gradual integration that has occurred and will continue into the future.

Advertising Regime

4. There appears to be a misunderstanding of the Consumer Protection advertising regimes which operate in Australia and New Zealand. Sections C and D set out the consumer protection regimes which operate in Australia and New Zealand. Insofar as Australia is concerned misleading advertising is subject to the regimes outlined in sections C and D. However, in New Zealand the regulation is also shared by the ASA regime. In terms of misleading advertising complaints the Advertising Standards Complaints Board deal with about 200 cases per annum for which a formal Decision is made and published. This would be greater in number than the NZCC, Securities Commission and other regulators combined.

It may have been assumed that the ASA regime is purely self-regulatory and therefore not a "Consumer Protection Regime" Although the ASA regime is self-regulatory it is recognised and authorised by statute to carry out this function. Section 8 of the Broadcasting Act 1989 states that all complaints about broadcasting advertisements are within the jurisdiction of the ASA. There has also been recognition by the Court of Appeal.

Therefore in terms of consumer protection the ASA regime is important to consumers, advertisers, agencies and the media. There is no equivalent regime in Australia and is left to the ACCC and State regulators as outlined in the draft report.

We therefore request that as the ASA regime is a consumer protection regime authorised by statute, that it be included in parts C and D of the final report.

We want to emphasise that these comments in now way detract from our support of the findings and recommendations.

Our Concerns

5. In our initial submission we outlined several concerns we had if there was Full Integration as outlined in options 1a and 1b in the draft report. However, these options are not recommended with a consequence that our concerns are met.

Furthermore, we believe the findings and recommendations are useful and pragmatic and will enhance the current law.

Therapeutic Goods Joint Agency

6. The upcoming Therapeutic Goods Joint Agency is a good model to study as it is a blend of both the Australian and New Zealand way of regulation. It is a good example of harmonisation which is not necessarily replication.

The Joint Agency will be the central regulator with offices in both Australia and New Zealand. It will be responsible for the registration of medicines, offences and enforcement. An Advertising Board will be established which regulates advertising. The Board will be a mix of Government, industry and consumers from both Australia and New Zealand. There will be a common advertising code (now agreed) which will have the force of law in both Australia and New Zealand. There will also be a legal requirement for all therapeutic advertisements to be prevetted. Complaints in Australia will be dealt with by a new co-regulatory regime and in New Zealand by the ASA self-regulatory regime.

Therefore, after 1 July 2005 there will be a common code with the force of law; prevetting in Australia by co-regulatory regime and in New Zealand by a self-regulatory regime; and complaints in Australia handled by a co-regulatory regime and in New Zealand by the ASA self-regulatory regime. Decisions of both regimes will have the force of law. In terms of expenditure the budgeted expenditure for the Australian co-regulatory complaints regime is ten times that of the New Zealand ASA self-regulatory regime.

The proof of the pudding will be in the eating and it will be interesting to study the new system as it evolves.

Glen Wiggs
Executive Director