



# New Zealand Law Society

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Australian Government-Productivity Commission  
Locked Bag 2  
Collins Street East  
Melbourne VIC 8003  
**AUSTRALIA**

By Email: [transtasman@pc.govt.au](mailto:transtasman@pc.govt.au)

**Attention: John Salerian, Assistant Commissioner**

Dear John

**Australian and New Zealand Competition and Consumer Protection Regimes – Draft Research Report Submission**

The Society's Commercial and Business Law Committee (the Committee) appreciates the opportunity to comment on the draft research report *Australia, New Zealand Competition and Consumer Protection Regimes*.

The Committee supports option 3 identified in table 1 of the Draft Report, and agrees with the Productivity Commission that the costs of the other options considered would likely exceed the net benefits at this time. The Committee is generally supportive of the findings and recommendations set out in the draft report.

The Committee has recently made a submission to the Competition Policy Team of the Regulatory and Competition Branch of the Ministry of Economic Development on Information Sharing by the NZ Commerce Commission, (NZCC). The Committee's key concerns raised in that submission relating to the sharing of information between the Australian Competition and Consumer Commission (ACCC) and the NZCC were as follows:

1. Where in the course of providing information to one competition regulator it is not reasonable for the provider to consider disclosure to another competition regulator, such extended disclosure should not be permitted;
2. Safeguards as to confidentiality of information provided, where appropriate, are critical; and

3. Where rules as to privilege and/or privacy are different as between Australia and New Zealand, regard must be had to the recipient country's laws before disclosing information to that country's competition regulator (e.g. certification by the requesting/receiving agency (or legal adviser).

These concerns are also relevant to the implementation of option 3 or any variation.

In the context of clearance and authorisation applications in respect of an Australasian or trans-Tasman market, the Committee considers the enhanced cooperation between the ACCC and the NZCC should also provide for:

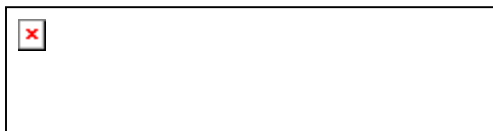
1. a joint notification procedure, whereby a single form of notification can be used for both Australia and New Zealand, at the option of the applicant; and
2. a joint investigation process coordinated by both the ACCC and the NZCC (e.g. joint interviews of market participants),

provided that each regulator retains the ability to determine independently the outcome of the application in its sole discretion. Ultimately the laws of each country need to be interpreted and applied in an unrestricted manner by a regulator appointed by, and for the benefit of, each nation.

In summary, the Committee agrees with the draft recommendations and would specifically raise the idea of a joint notification and investigatory process for clearances and/or authorisations, where both New Zealand and Australian markets are affected. The benefits of such an integrated approach would include the ability to apply a structured investigatory approach without duplication, sharing of resources and, to the extent appropriate, a joint approach to issues which will arise in the course of each regulator making its own independent determination.

The Committee hopes that these comments are of assistance. If further assistance is required please contact the Committee Secretary Sarah Barker, phone (04) 472 7873, email: [sarah.barker@lawyers.org.nz](mailto:sarah.barker@lawyers.org.nz).

Yours sincerely



**Simon McArley**  
Convener  
Commercial & Business Law Committee