OpenCountry

Open Country Dairy Ltd.
Unit L, Building 4, 195 Main Highway,
Ellerslie, Auckland, 1542, New Zealand.
T: +64 9 589 1372
F: +64 9 525 0347
E: info@opencountry.co.nz

2 November 2011

The Registrar
Commerce Commission
PO Box 2351
Wellington 6140

RE: Kotahi

1. We write in submission of the proposed Fonterra Co-operative Group authorisation application re. Kotahi Logistics on competition.

Overview

2. Open Country opposes the proposal on the grounds that its approval will lessen competition in freight and logistics services, increase costs for others who are unable or unwilling to join, and otherwise provide those participants in Kotahi an unfair and anticompetitive advantage over their competitors. We also doubt strongly that the perceived generic benefits of Project Kotahi to NZ inc. will eventuate, suggesting that such claims are easy and convenient to make but unlikely to be deliverable. The benefits bought by the cartel are benefits for its members not NZ Inc.

3. Technically, it is not Kotahi Logistics applying, but Fonterra;

4. From the day Fonterra was created in 2001 as a de facto successor to the NZ Dairy Board, Open Country has expressed repeated concerns about the size, power and special privileges the company is afforded by New Zealand policy makers. The Cooperative itself is a creature of statue - the product of a dispensation from New Zealand's competitive laws. With that privileged position they enjoy a virtual monopoly on the export of dairy products from New Zealand and such their current usage of containerised freight services dwarfs that of any other user providing them with artificial scale advantages against competition. Those advantages of scale are non -replicable by any other NZ competitor because anyone else is statue barred from ever realising that size or scale. The distortions in costs base that causes makes it extremely difficult for any competitor to "compete" against the monopoly incumbent who have that preferred position.

5. By reason of that privileged position they already have the current muscle afforded by that size and to deliver efficient freight costs. This proposal merely seeks to further enhance their already significant competitive advantage by creating an entity that will

OpenCountry

Open Country Dairy Ltd.
Unit L, Building 4, 195 Main Highway,
Ellerslie, Auckland, 1542, New Zealand.
T: +64 9 589 1372
F: +64 9 525 0347
E: info@opencountry.co.nz

further widen the gap between themselves and their few much smaller competitors. It is all about providing **further privilege and preference** against NZ competitors than it is about delivering "national benefits" to New Zealand.

6. It is not tenable for Open Country to consider soliciting our transport and freight arrangements with Kotahi Logistics/Fonterra for the following reasons:

    a. Confidentiality concerns related to customer/consignee specific information including, volumes, copies of commercial invoices, key contacts etc
    b. One could also safely presume that for these reasons no other Dairy & Meat processors would be able to join Kotahi either – again all designed to lessen competition;

Issues Considered

Which markets will likely be impacted by Kotahi?

7. Ocean freight:

    a. New Zealand is a small market for ocean carriers, who can relatively easily switch capacity away from New Zealand. Further these carriers are all foreign owned. These international carriers are agile entities and show no remorse when deciding where to call. Over the past three years we have experienced high levels of contestability in the ocean freight market. If Kotahi was to grow its business, which OCD is unable to join, rival suppliers of ocean freight and related services will have less independent customers available to them (i.e. demand will progressively be foreclosed or prices forced higher). Depending on the volumes that Kotahi Logistics is able to attract on an exclusive basis, this would drive up costs for the remaining companies, and would have the effect of lessening competition. The benefits Kothai seeks for its members will come at a direct costs to other NZ exporters who will immediately be in a position of disadvantage with comparatively higher freight rates and the risk of even less service providers calling on NZ pushing up costs further and reducing service levels. That further distorts the cost base and playing field between Fonterra and its competitors - one that is already heavily and anticompetively skewed.

    b. Cartels and monopolies as Kotahi is are not good for competition, the consumer or society. This freight cartel may well derive benefits for the select few who join but the cost of providing those benefits to cartel members will simply be borne

OpenCountry

Open Country Dairy Ltd.
Unit L, Building 4, 195 Main Highway,
Ellerslie, Auckland, 1542, New Zealand.
T: +64 9 589 1372
F: +64 9 525 0347
E: info@opencountry.co.nz

by competitors who will pay more for their freight or consumers with higher prices.

b. Shipping lines have expressed concerns to Open Country that they will not deal through brokers, Kotahi Logistics, as their preference is to work directly with the consignee. Open Country supports this view.

8. Ports/Larger Vessels:

a. The application suggests that Project Kotahi is likely to bring forward port investment and the use of larger, lower cost ships for New Zealand ocean carriage. This assumption is not supported with any credible evidence. It is convenient claim being one that suits the applicant rather than one supported by demonstrable and objective information. Ports will expand only if it is profitable for them to do so – monopolising their customer base and supporting the formation of freight cartels may well end in less not greater profitability in the port sector which will lead to disinvestment.

b. There is no material evidence to support the claim that a NZ absent a Kotahi will result in all future export freight hubbed through Australia.

In our view the proposal is self-serving - it is not in the interests of "New Zealand", it will lead to other exporters subsidising the freight costs of the cartel members and distort competitive markets. It also puts at risk the current service levels and freight runs that NZ enjoys which are so vital to New Zealand's exporting success. A major cartel, accounting for the volume proposed with Kotahi, could cause massive unanticipated disruption to those service levels as freight providers seek more attractive routes. It carries significant risk for all NZ exporters, members or not, and for those reasons we strongly oppose it.

Yours sincerely,

Steven Smith
Chief Executive Officer