

COOPERATION AGREEMENT BETWEEN THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION AND THE NEW ZEALAND COMMERCE COMMISSION

The Australian Competition and Consumer Commission and the New Zealand Commerce Commission (herein referred to as the "Parties") share the view that the sound and effective administration of the Parties' competition, consumer and regulatory functions are enhanced by cooperation and coordination between the Parties.

The Australian and New Zealand economies are highly integrated through considerable cross border trade of goods and services and movement of labour and capital. The Parties share a unique relationship, enhanced by the close collaboration under the Australia New Zealand Closer Economic Relations Trade Agreement, where there is a high level of convergence in terms of competition and consumer policy. This Agreement, and subsidiary Protocols, outline arrangements for facilitating and enhancing the existing level of cooperation and coordination between the Parties.

The Parties acknowledge the following international agreements, arrangements and recommendations:

- The *Mutual Assistance in Business Regulation and Mutual Assistance in Criminal Matters* legislation in Australia and New Zealand;
- The *Memorandum of Understanding Between the Government of Australia and the Government of New Zealand on Coordination of Business Law*;
- The following recommendations and guideline of the Council of the Organisation for Economic Co-operation and Development (OECD):
 - The 1995 *Recommendation Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade*;
 - The 1998 *Recommendation Concerning Effective Action Against Hard Core Cartels*;
 - The 2003 *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*; and
 - The 2005 *Recommendation Concerning Merger Review*;
- The 2003 Cooperation Arrangement between the ACCC, the NZCC and Her Majesty's Secretary of State for Trade & Industry and the Office of Fair Trading in the United Kingdom regarding the application of their competition and consumer laws;
- The 2002 Cooperation Arrangement between the ACCC, the NZCC and the Taiwan Fair Trade Commission regarding the application of their competition and fair trading laws; and

- The 2000 Cooperation Arrangement between the Commissioner of Competition (Canada), the ACCC and the NZCC regarding the application of their competition and consumer laws.

1.0 PURPOSE AND DEFINITIONS

- 1.1 The purpose of this Agreement is to promote and further facilitate ongoing cooperation and coordination among the Parties.
- 1.2 The Parties agree that it is in their common interest to share information, evidence and documentation that will facilitate:
- (a) effective enforcement and promotion of their respective competition, consumer and regulatory functions;
 - (b) coordination of investigations, prosecutions, framework development, adjudication decisions, and contributions to international fora;
 - (d) research and education activities;
 - (e) avoidance of unnecessary duplication;
 - (e) promotion of a better understanding by each of economic and legal conditions and theories relevant to their respective competition, consumer and regulatory functions; and
 - (f) the informing of each Party of developments in their respective countries and markets.
- 1.3 The Parties give their commitment to provide careful consideration to each other's important interests in the application of their competition, consumer and regulatory functions.
- 1.4 In this Agreement, these terms will have the following definitions:

Competition, consumer and regulatory functions – refers to functions conferred by,

- i. in the case of the Australia, the *Trade Practices Act 1974*, excluding Part X;
- ii. in the case of New Zealand the:
 - *Commerce Act 1986*,
 - *Fair Trading Act 1986*,
 - *Telecommunications Act 2001*,
 - *Electricity Industry Reform Act 1998*;
 - *Dairy Industry Restructuring Act 2001*, and
 - *Credit Contracts and Consumer Finance Act 2003*.

As well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a “competition, consumer and regulatory function” for the purposes of this Agreement.

2.0 SCOPE OF ASSISTANCE

- 2.1 This Agreement sets forth the general terms and conditions under which the Parties will coordinate and cooperate in activities involving their respective competition, consumer and regulatory functions.
- 2.2 Officials of the Parties shall use best efforts to exchange and provide appropriate information, including documents, speeches, research papers and guidelines, in relation to the administration or enforcement of their respective competition, consumer and regulatory functions. This includes but is not limited to information on investigations, research, compliance education programmes, amendments to relevant legislation and guidelines; contributions to international fora; and staffing and resource issues.
- 2.3 Nothing in this Agreement should prevent a Party from seeking assistance from or providing assistance to the other Party pursuant to other agreements, treaties, arrangements, or practices.
- 2.4 Nothing in this Agreement affects the right of a Party to seek evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing evidence to a Party.

3.0 PROTOCOLS

- 3.1 To facilitate and enhance closer cooperation the Parties shall execute a Protocol for each area the Parties agree to undertake joint co-operation under this Agreement where more detail is required. Each Protocol shall be subject to this Agreement.
- 3.2 The practices set out in the Protocols are intended to facilitate the effective and efficient performance of functions by the Parties; to promote fully informed decision making on the part of both Parties; and to lessen the possibility of differences between the Parties in the application of their competition, consumer and regulatory functions where these differences are not the result of statutory provisions or case law.
- 3.3 The Protocols in existence at the date this Agreement came into force are listed in Appendix 1. Appendix 1 may be updated by the Parties from time to time as new Protocols are agreed.

4.0 CONFIDENTIALITY

- 4.1 Unless otherwise agreed by the Parties, each Party should, to the fullest extent possible and consistent with its laws, use its best efforts to maintain the confidentiality of any information, evidence or documents (“confidential information”) communicated to it in confidence by the other Party under this Agreement.
- 4.2 The Parties will protect to the fullest extent possible confidential information provided in accordance with this Agreement, including in response to requests made to the Parties by third parties pursuant to the *Freedom of Information Act 1982* (Aust) and the *Official Information Act 1982* (NZ), subject to the requirements of the above mentioned Acts.
- 4.3 Each Party should use its best efforts to oppose, to the fullest extent possible consistent with its laws, any application by a third party (other than another domestic law enforcement agency) for disclosure of such confidential information.
- 4.4 Nothing in this Agreement should prevent disclosure to third parties (such as another domestic law enforcement agency) if such disclosure is consistent with that Party’s laws. Each Party should use its best efforts to notify the other Party at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible. Each Party should also use its best efforts to ensure that conditions are imposed on disclosure to such a third party that are consistent with this Agreement.
- 4.5 Each Party will endeavour to return the confidential information to the other Party if requested to do so; provided, however, that confidential information that has properly entered the public domain pursuant to this Agreement is not subject to this clause.

5.0 EXCHANGE OF STAFF

The Parties acknowledge the mutual benefits gained from exchanges of staff and agree to continue to exchange staff on a regular basis. The terms and conditions of the exchange will be outlined in a Cooperation Protocol for Staff Exchange.

6.0 CHANGES IN APPLICABLE FUNCTIONS

- 6.1 The Parties should use their best efforts to provide to each other prompt written notice of any changes to the Party's competition, consumer and regulatory functions.
- 6.2 In the event of a significant modification to a Party's competition, consumer and regulatory functions, the Parties should use their best efforts to consult promptly to determine whether this Agreement or subsidiary Protocols should be amended.

7.0 MEETINGS

- 7.1 Officials of the Parties shall meet annually, or as necessary, to:
- (a) review and discuss the cooperation, coordination and enforcement assistance undertaken between the Parties for each 12 month period;
 - (b) exchange information on their enforcement efforts and priorities in relation to their competition, consumer and regulatory functions;
 - (c) exchange information on economic sectors of common interest;
 - (d) discuss and coordinate contributions to international competition, consumer and regulatory fora;
 - (e) discuss reviews or amendments under consideration with respect to their competition, consumer or regulatory functions;
 - (f) discuss other matters of mutual interest relating to the application of their competition, consumer and regulatory functions or the operation of this Agreement, including the development of frameworks, guidelines or international developments in the application of economic theory; and
 - (g) discuss visits of officials, as appropriate.

8.0 JOINT MEETINGS OF COMMISSION

On an annual basis, or as otherwise agreed, there will be a meeting of Commissioners of the Parties to discuss cooperation and coordination efforts between the Parties.

9.0 COMMUNICATION UNDER THIS AGREEMENT

- 9.1 Communications under this Agreement will be carried out by direct communications between the Parties. Each party will designate a Communications Authority, changes to which will be notified in writing to the other Party. The Communications Authorities are:

Chief Executive Officer
Australian Competition and Consumer Commission
PO Box 3131
Civic ACT 2601
Australia

General Manager
New Zealand Commerce Commission
PO Box 2351
Wellington 6140
New Zealand

10.0 AVOIDANCE OF CONFLICT

- 10.1 It is in the Parties' common interest to minimise any potentially adverse effects of one Party's responsibilities on the other Party's interests in the application of their competition, consumer and regulatory functions.
- 10.2 Where one Party informs the other Party that a specific activity by the second Party may affect the first Party's interests in the application of its competition, consumer and regulatory functions, the second Party will endeavour to provide timely notice of significant developments relating to those interests and give the first Party an opportunity to provide a view on the impact of those developments on the first Party's interests.
- 10.3 This Agreement, whilst not affecting the existing tri-partite agreements that the Parties have respectively, with Taiwan, Canada and the United Kingdom, will supersede those agreements as between the Parties insofar as those agreements are inconsistent with or overlap this Agreement.
- 10.4 Any questions arising out of this Agreement will be addressed in a timely and practicable manner as circumstances permit.

11.0 ENTRY INTO FORCE AND TERMINATION

- 11.1 This Agreement will come into effect on the date of signature and will replace the Co-operation and Co-ordination Agreement between the Australian Trade Practices Commission and the New Zealand Commerce Commission dated July 1994.

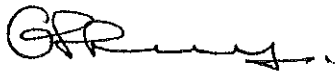
- 11.2 Assistance under this Agreement relates to the Parties' competition, consumer and regulatory activities or transactions which occur before as well as after this Agreement enters into force.
- 11.3 Each Party can terminate this Agreement with 30 days' written notice. However, prior to terminating this Agreement, each Party shall use its best efforts to consult with the other Party.
- 11.4 Confidential information will continue to be protected, as outlined in clauses 4.1 – 4.5, notwithstanding the termination of this Agreement.

12.0 REVIEW OF AGREEMENT

- 12.1 Officials of the Parties shall review the terms and operation of the Agreement from time to time as agreed by the Parties.
- 12.2 This Agreement may be amended by a written arrangement by the Parties.

FOR THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

SIGNED at *Wellington*, on the *31st* day of *July*, 2007.



GRAEME SAMUEL
CHAIR

FOR THE NEW ZEALAND COMMERCE COMMISSION

SIGNED at *Wellington*, on the *31st* day of *July*, 2007.



PAULA REBSTOCK
CHAIR

APPENDIX 1: Subsidiary Protocols

- Cooperation Protocol for Merger Review, July 2006