

Direct dial: 03 363 9846
Email: roger.sutton@oriongroup.co.nz

by email

7 February 2006

Geoff Thorn
Secretariat
Commerce Commission
Wellington

**SURVEY OF INDUSTRY VIEWS ON AUSTRALIAN AND NEW ZEALAND
APPROACHES TO SECTOR-SPECIFIC REGULATION**

- 1 Thank you for the invitation to participate in the survey prepared by the Joint Australia/New Zealand Working Group on trans-Tasman Competition and Consumer Issues (the *working group*). The working group has asked:

Whether convergence in Australian and New Zealand approaches to sector specific regulation is critical to the development of trans-Tasman competition and the trans-Tasman economy, and our combined global competitiveness.

- 2 As identified in the survey, this question relates to the telecommunications, banking, gas and electricity sectors.

Australian Productivity Commission research report

- 3 Work carried out by the Australian Productivity Commission (the APC) broadly addresses the above question. We agree with the key findings of the APC research report as follows¹:

There has already been significant convergence of Australia's and New Zealand's competition and consumer protection regimes, particularly by international standards.

¹ Australian Government Productivity Commission, *Australia and New Zealand Competition and Consumer Protection Regimes Productivity Commission Research Report*, 16 December 2004, p XIV

- *Consequently, the regimes are not significantly impeding businesses operating in Australasian markets.*

Major changes to the two regimes are not warranted at this stage.

- *Full integration, requiring identical laws and procedures and a single institutional framework, would have high implementation and ongoing costs, change the operation of the existing national regimes and achieve only moderate benefits.*
- *Partial integration, involving retaining the two national regimes, but establishing a single system to handle certain matters having Australasian dimensions, also would be unlikely to achieve net benefits.*

However, the long-term objective of a single economic market for Australia and New Zealand would be assisted by a package of measures involving a transitional approach to integration of the two regimes.

This package would improve the effectiveness and efficiency of the regimes in dealing with present day competition and consumer protection matters having Australasian dimensions.

The transitional integration package, while retaining national sovereignty for each jurisdiction, would include:

- *retaining, but further harmonising, the two sets of laws in relation to competition and consumer protection policy*
- *making more formal the policy dialogue between the two Governments on competition policy*
- *providing scope for businesses to have certain approvals considered on a 'single track' (but with separate decisions)*
- *enhancing cooperation between the two regulatory institutions (the Australian*

Competition and Consumer Commission and the New Zealand Commerce Commission), including in relation to enforcement and research

- *providing for the investigative powers of the regulators to be used to assist the regulator in the other country*
- *enhancing the information sharing powers between regulators (safeguards should be included to ensure that confidential information shared between regulators can remain protected from disclosure)*
- *adding consideration of impediments to a single economic market to the scope of the proposed review of Australian consumer protection.*

Implementation of the recommendations would provide a framework in which the competition and consumer protection regimes of Australia and New Zealand evolve as:

- *the Australasian business environment integrates further*
- *the broader policy environment develops further as the two Governments make progress towards the goal of establishing a single economic market.*

- 4 These key findings contain a number of transitional recommendations in relation to the Australian Competition and Consumer Commission (the ACCC) and the New Zealand Commerce Commission (the NZCC). We believe these key recommendations are achievable goals.
- 5 We acknowledge that the APC research report covers a far broader spectrum of regulation than the sector specific areas included in the working group's survey. Our specific comments in relation to the narrower scope of the survey are outlined below.

Gas and electricity sectors differ from telecommunication and banking sectors

- 6 We note that the geographically separate natural monopoly nature of the gas and electricity sectors (which are subject to regulatory control in New Zealand) causes these sectors to differ from the telecommunication and banking sectors, which have greater cross border activity.
- 7 We consider that differences in trans-Tasman regulation for the gas and electricity sectors are less likely to hinder trans-Tasman competition and the trans-Tasman economy, and our combined global competitiveness, than would be the case for differences in the telecommunications and banking sectors.

Convergence should not be carried out purely for the sake of convergence

- 8 We consider that consistency, coherence and predictability in regulation are important. However we also consider that trans-Tasman regulation should only converge when it will benefit both countries; convergence should not be carried out purely for the sake of convergence.

Harmonise within New Zealand and within Australia

- 9 We recommend that before attempting to harmonise trans-Tasman regulation for the gas and electricity sectors, regulation in these sectors should first be harmonised in each of the separate countries. We note that the Australian Ministerial Council on Energy (the *MCE*) has created an expert panel that is charged with developing a common set of arrangements for economic regulation of electricity and gas in Australia. We **recommend** that the working group consider some co-ordination with the MCE on this issue.

Regulation based on principle and best global practice

- 10 Although we consider that differences between New Zealand and Australian regulation for the gas and electricity sectors are not a significant issue, we do consider it is essential that the regulation be based on consistent principles reflecting best global practice.
- 11 We also consider it important that regulators take notice of global learning. We **recommend** that both the ACCC and the NZCC should formally co-

operate and share information and learning relating to developing and implementing principles for best practice regulation.

- 12 Thank you for the opportunity to provide these comments. If you require any clarification, please contact Dennis Jones (Industry Developments Manager) DDI 03 363 9526 email dennis.jones@oriongroup.co.nz.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Sutton', with a long horizontal flourish extending to the right.

Roger Sutton
Chief Executive Officer