

**COOPERATION ARRANGEMENT BETWEEN THE AUSTRALIAN  
COMPETITION AND CONSUMER COMMISSION, THE  
COMMERCE COMMISSION IN NEW ZEALAND AND HER  
MAJESTY'S SECRETARY OF STATE FOR TRADE AND  
INDUSTRY AND THE OFFICE OF FAIR TRADING IN THE  
UNITED KINGDOM REGARDING THE APPLICATION OF THEIR  
COMPETITION AND CONSUMER LAWS**

**BACKGROUND**

The Australian Competition and Consumer Commission, the Commerce Commission in New Zealand and Her Majesty's Secretary of State for Trade and Industry and the Office of Fair Trading (OFT) in the United Kingdom (hereinafter referred to as the "Participants") note that:

- (a) the Participants share the view that cooperation and coordination in the conduct of their enforcement activities may, in appropriate cases, result in a more effective resolution of the Participants' respective competition and consumer law issues than would be attained through independent action;
- (b) the Participants recognise that the methods of enforcement of the competition and consumer laws differ between each country, in particular as to the role played by local and/or regional enforcement authorities;
- (c) the Participants share the view that there is a need to ensure that appropriate local and/or regional enforcement authorities with whom information is shared under this Arrangement are made fully aware of the terms of this Arrangement and are encouraged to cooperate with the Participants in so far as they are permitted to do so by their respective national laws, enforcement policies and other important interests, consistent with the terms of this Arrangement; and
- (d) this Arrangement will not affect the existing operation of the "Co-operation and Co-ordination Agreement" between the Australian Trade Practices Commission and Commerce Commission in New Zealand dated July 1994.

The Participants have reached the following understandings.

**I. PURPOSE AND DEFINITIONS**

- 1. The purpose of this Arrangement is to promote cooperation and coordination among the Participants.
- 2. In this Arrangement, these terms will have the following definitions:
  - (a) "competition and consumer law(s)" means

- (i) for the Australian Competition and Consumer Commission, the *Trade Practices Act 1974* as amended, excluding Part X insofar as they relate to Part IV;
- (ii) for the Commerce Commission in New Zealand, the *Commerce Act 1986*, the *Fair Trading Act 1986* and the *Electricity Industry Reform Act 1998*;
- (iii) for Her Majesty's Secretary of State for Trade and Industry and the OFT all competition and consumer legislation, excluding product safety;

as well as any amendments thereto, and such other laws or regulations as the Participants may from time to time arrange in writing to be "competition and/or consumer laws" for the purposes of this Arrangement; and

- (b) "Enforcement activity" or "enforcement activities" means any investigation or proceeding conducted by a Participant in relation to the competition and consumer laws it administers and enforces; and
- (c) "Territory" or "territories" means the territory in which a Participant has jurisdiction.

## II. NOTIFICATION

1. Subject to Paragraph VII, a Participant will notify another Participant with respect to its enforcement activities which may affect the other Participant's interests in the application of its competition and consumer laws, including those that:
  - (a) involve any conduct or transaction that may be subject to penalties or other relief under the competition and consumer laws administered and enforced by the notifying Participant, other than mergers or acquisitions, carried out in whole or in part in the other Participant's territory, except where those activities are insubstantial; or
  - (b) involve mergers or acquisitions in which one or more of the parties to the transaction carries on a business activity in the other Participant's territory, or is under the control of a body which is incorporated or organized under the laws of the other Participant's territory; or
  - (c) involve remedies that expressly require or prohibit conduct in the other Participant's territory or are otherwise directed at conduct in that territory; or

- (d) involve the seeking of information located in the other Participant's territory, whether by personal visit by officials of a Participant or otherwise, except with respect to contacts with a person in the other Participant's territory where that person is not the subject of investigation and the contact seeks only a response on a voluntary basis.
- 2. Each Participant will endeavour to give notification pursuant to subparagraph II.1 as soon as practicable after it becomes evident that notifiable circumstances are present.
- 3. With respect to mergers and acquisitions, notifiable circumstances are present when:
  - (a) an application for authorisation or clearance is received by the Commerce Commission in New Zealand under Part 5 of the *Commerce Act 1986*;
  - (b) an application for authorisation is received by the Australian Competition and Consumer Commission under Part VII of the *Trade Practices Act 1974*;
  - (c) the OFT receives a notification in respect of a merger either proposed or completed from the parties, such notification being at the discretion of the parties.
- 4. Once a particular matter has been notified, subsequent notifications on that matter need not be made unless the notifying Participant becomes aware of new issues bearing on the interests of the other Participant in the application of its competition and consumer laws, or unless the notified Participant requests otherwise.
- 5. Notifications will include the nature of the activities under investigation and the competition and consumer law provisions concerned and will be sufficiently detailed to enable the notified Participant to make an initial evaluation of the effect of the activities on its interests in the application of its competition and consumer laws.
- 6. Each Participant will notify the others of amendments to its competition and consumer laws. In the case of the United Kingdom this will be Her Majesty's Secretary of State for Trade and Industry.

### **III. ENFORCEMENT COOPERATION AND COORDINATION**

- 1. It is in the Participants' common interest to co-operate and share information where appropriate and practicable.
- 2. Where Participants are pursuing enforcement activities with regard to the same or related matters, they will endeavour to coordinate

their enforcement activities to the extent compatible with the laws and important interests of the jurisdiction of the assisting Participant and where it is appropriate and practicable.

#### **IV. AVOIDANCE OF CONFLICTS**

1. To the extent compatible with their interests in the application of their competition and/or consumer laws, the Participants will endeavour to minimize any potentially adverse effects of one Participant's enforcement activities on the other Participants' interests in the application of their competition and consumer laws.
2. Where one Participant informs another Participant that specific enforcement activity by the second Participant may affect the first Participant's interests in the application of its competition and consumer laws, the second Participant will endeavour to provide:
  - (a) timely notice of significant developments relating to those interests; and
  - (b) an opportunity to provide input regarding any proposed penalty or remedy;

to the extent compatible with its interests in the application of its competition and/or consumer laws.

3. Any questions arising out of this Arrangement will be addressed in as timely and practicable a manner as circumstances permit.

#### **V. EXCHANGE OF INFORMATION**

1. It is in the Participants' common interest to share information which will facilitate the effective application of the competition and consumers laws respectively and promote better understanding of each Participant's enforcement policies and activities. To further their common interests, the Participants will, where appropriate, endeavour to exchange and provide information about:
  - (a) investigation and research conducted;
  - (b) speeches, research papers, journal articles, and other materials;
  - (c) compliance education programmes; and
  - (d) human resource development and management.

#### **VI. MEETINGS**

1. The Participants will meet periodically, as necessary, to:

- (a) exchange information on their enforcement efforts and priorities in relation to their competition and consumer laws;
- (b) exchange information on sectors of common interest;
- (c) discuss competition and consumer law changes under consideration;
- (d) discuss other matters of mutual interest relating to the application of their competition and consumer laws or the operation of this Arrangement;
- (e) discuss visits of staff, including staff exchange programs, as appropriate; and
- (f) consider the possibility of expanding the scope of or participation in this Arrangement.

## **VII. EXISTING LAWS AND CONFIDENTIALITY OF INFORMATION**

1. Nothing in this Arrangement will require a Participant to take any action, or to refrain from acting, in a manner inconsistent with its interests or existing law, or will require any change in the laws of Australia, New Zealand or the United Kingdom.
2. Notwithstanding any other provision in this Arrangement, no Participant is required to communicate information to any other Participant if such communication would be incompatible with its interests in the application of its competition and consumer laws. No information will be exchanged pursuant to this Arrangement which would not have been exchanged in the absence of this Arrangement.
3. Unless otherwise arranged by the Participants, notifications and information communicated pursuant to this Arrangement should be deemed to be confidential. The degree to which one Participant communicates information to another pursuant to this Arrangement may be subject to, and dependent upon, the acceptability of the assurances given by the other Participant with respect to confidentiality and with respect to the purposes for which the information will be used.
4. Unless otherwise arranged by the Participants, each Participant will, to the fullest extent possible, seek to maintain the confidentiality of any information communicated to it in confidence by another Participant. Each Participant will oppose, to the fullest extent possible, any request by a third party for communication of such

confidential information, unless the Participant providing the confidential information consents in writing to its communication.

5. In the case of the UK, where bodies other than the OFT can also apply/enforce legislation covered by this Arrangement, they may participate in this Arrangement subject to adherence with the confidentiality provisions. The OFT may, at the request of a UK sectoral or local regulator, forward to one or more of the other Participants any communication that the regulator wishes to make for the purposes of this Arrangement. Subject to the views of the providing Participant, Participants to the Arrangement may forward to a sectoral or local regulator communications made by another Participant, when the latter so requests or when a Participant considers that it is appropriate to do so.

#### **VIII. COMMUNICATIONS UNDER THIS ARRANGEMENT**

1. Communications under this Arrangement will be carried out by direct communication among the Participants. Each Participant will designate a communications authority, changes to which will be notified in writing to the other Participants.

2. The communications authorities are:

The CEO  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2602  
Australia

The Chair  
The Commerce Commission  
P O Box 2351  
Wellington  
New Zealand

The Chairman  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London, EC4Y 8JX  
United Kingdom

The Director  
Consumer and Competition Policy Directorate  
Department of Trade and Industry  
1 Victoria Street  
London SW1H 0ET  
United Kingdom.

**IX. ENTRY INTO EFFECT AND TERMINATION**

1. This Arrangement will come into effect when signed by all Participants.
2. This Arrangement will remain in effect until terminated by one or more of the Participants.
3. Any Participant may terminate the Arrangement, except subparagraphs VII.3 and 4, by providing 60 days written notice to the other Participant.
4. The Participants will endeavour periodically to review the operation of this Arrangement with a view to assessing ways in which it could be improved.
5. This Arrangement may be amended by a written arrangement between all the Participants.
6. Other competition and consumer authorities may join this Arrangement on terms to be decided between them and the Participants to the Arrangement at the time of the application to join. The Participants may develop, as they consider appropriate, procedures to deal with such new Participants.

**FOR THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

SIGNED at *Paris*, on the *16<sup>th</sup>* day of *October*, 2003.



GRAEME SAMUEL  
CHAIR

**FOR THE COMMERCE COMMISSION**

SIGNED at *Wellington*, on the *9<sup>th</sup>* day of *October*, 2003.



PAULA REBSTOCK  
ACTING CHAIR

**FOR HER MAJESTY'S SECRETARY OF STATE FOR TRADE AND  
INDUSTRY**

SIGNED at *Paris* , on the *16<sup>th</sup>* day of *October* , 2003.

*Jonathan Rees*

JONATHAN REES  
DIRECTOR OF CONSUMER AND COMPETITION POLICY

**FOR THE OFFICE OF FAIR TRADING**

SIGNED at *Paris* , on the *16<sup>th</sup>* day of *October* , 2003.

*John Vickers*

JOHN VICKERS  
CHAIRMAN



IN ATTENDANCE ON BEHALF OF THE COMMERCE  
COMMISSION

SIGNED at *Paris* , on the *16<sup>th</sup>* day of *October* , 2003.



ADRIAN MACEY  
NEW ZEALAND'S AMBASSADOR TO FRANCE

