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Competition Policy and Law in New Zealand – Presentation

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Competition Policy and Law in New Zealand - Presentation to the APEC Competition Policy and Law Group

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Overview

- Basic competition regulatory structure
- New Zealand Commerce Commission resources
- Competition enforcement activity
- Business mergers activity
- New development: Commerce (Cartels and Other Matters) Amendment Bill

Basic Competition Regulatory Structure

- New Zealand Commerce Commission (NZCC) is the principal competition authority
- NZ's competition legislation is the Commerce Act 1986
- The purpose of the Commerce Act is to promote competition in markets for the long-term benefit of consumers within NZ
- NZCC is an independent government entity responsible for enforcement of legislation
- The Ministry of Business, Innovation and Employment is the principal agency responsible for competition policy and law development

Resources of the NZCC

- This presentation only focussing on the competitive markets function of NZCC, i.e., restrictive trade practices (anti-competitive agreements and unilateral misuse of market power) and business mergers
- Approximately 20 full-time equivalent investigators working in these two areas, supported by legal and economics personnel as required
- Operating expenditure for competitive markets function for year ended 30 June 2013 was NZ\$10.4 million (US\$8.1 million)

Competitive Markets Function: Enforcement – Year to 30 June 2013

- 10 anti-competitive agreement cases and 3 unilateral conduct (use of market power) cases commenced
- Of note was an increase in the number of domestic cartel investigations (due to NZCC's Cartel Leniency Policy), but NZCC still has a strong focus on international cartels
- Significant litigation involving international cartels taken by NZCC
- E.g., NZCC completed settlement of Air Cargo price-fixing case which resulted in total penalties of NZ\$42.5 million (and NZ\$3.4 million costs awarded) – highest ever for a cartel case in NZ
- NZCC published new Enforcement Response Guidelines

Competitive Markets Function: Mergers – Year to 30 June 2013

- Number of business merger clearance applications to NZCC continued to be lower than in previous years
- This was due to the global financial downturn
- 10 applications received (7 “cleared” where mergers did not substantially lessen competition, 2 declined, and 1 was withdrawn)
- In addition, 2 mergers for which clearances were not sought were investigated by the NZCC
- NZCC published new Mergers and Acquisitions Guidelines

Commerce (Cartels and Other Matters) Amendment Bill

- Introduced into NZ Parliament in October 2011
- Will significantly amend the Commerce Act
- Proposes a new exemption regime for collaborative activities, an associated clearance regime, and the criminalisation of hard-core cartel activities
- Cartel conduct is currently prohibited only to extent there is an effect on price for goods or services
- But the Bill adopts wider OECD definition of cartel behaviour: price fixing, output restriction and market allocation
- Bill makes it clear that contracts, arrangements and understandings containing, or giving effect to, any of the specified forms of cartel conduct are prohibited



Commerce (Cartels and Other Matters) Amendment Bill (Continued...)

- But as a counterbalance to the more inclusive definition of cartel conduct, the Bill focuses on substance of collaborative conduct (rather than on form) by introducing a collaborative activity exemption
- This ensures that legitimate pro-competitive, efficiency-enhancing collaborations are not prohibited
- The proposed clearance regime enables NZCC to rule on whether a proposed collaborative arrangement raises competition concerns
- Proposed imposition of criminal sanctions for hard-core cartel offences is controversial, but the Bill sets high thresholds for “intent” and “beyond reasonable doubt” in order for criminal behaviour to be proven
- In addition to cartel behaviour, the Bill is seeking to have competition in international shipping regulated under the Commerce Act (instead of the Shipping Act 1987)

