

**Co-operation Arrangement between the  
New Zealand Commerce Commission and the  
Australian Competition and Consumer Commission in relation to the  
provision of compulsorily-acquired information and investigative assistance**

April 2013

**CO-OPERATION ARRANGEMENT BETWEEN THE  
NEW ZEALAND COMMERCE COMMISSION AND THE  
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION IN RELATION TO  
THE PROVISION OF COMPULSORILY-ACQUIRED INFORMATION AND  
INVESTIGATIVE ASSISTANCE**

## **Participants**

**Australian Competition and Consumer Commission (ACCC)** an independent statutory authority established under section 6A of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974).

**Commerce Commission (NZCC)** an independent Crown entity established under section 8 of the Commerce Act 1986

together, **the Participants**

## **Purpose of this Arrangement**

1. The ACCC enforces the Competition and Consumer Act 2010 (CCA) and the Australian Consumer Law (Schedule 2 to the CCA) (ACL), which contains Australia's laws on competition, regulated markets, and fair trading and consumer protection, as set out in the ACL.
2. The NZCC is New Zealand's primary competition regulatory agency, with responsibility for enforcing statutes including the Commerce Act 1986, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003 and the Telecommunications Act 2001.
3. The Australian and New Zealand economies are highly integrated through considerable cross-border trade of goods and services, and the movement of labour and capital. The Participants share a unique relationship, enhanced by their government's close economic and trade relationship expressed in the Australia New Zealand Closer Economic Relations Trade Agreement. There is a high level of agreement on competition and consumer policy, and many of the laws in both countries are substantially the same.
4. The Participants agree that the mutual sharing of information and investigative assistance will increase the efficiency of their respective investigations and facilitate effective outcomes.
5. The provision of protected information from the ACCC to the NZCC is permitted subject to the provisions of section 155AAA of the CCA. The ACCC has provided protected information to the NZCC from time to time prior to this Arrangement coming into force. This Arrangement allows for the ACCC to continue to provide such protected information in accordance with section 155AAA.

6. Amendments made in 2012 to New Zealand's Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act and Telecommunications Act allow the NZCC to provide compulsorily-acquired information and investigative assistance to overseas regulators with whom a co-operation arrangement is in place (subject to the safeguards set out in those statutes). This Arrangement is intended to give effect to those amendments in relation to the provision of compulsory acquired information and/or investigative assistance to the ACCC.
7. Nothing in this Arrangement will affect the understandings of the Participants contained in existing treaties, agreements and arrangements (including with other overseas regulators), in particular:
  - 7.1 the *Mutual Assistance in Business Regulation and Mutual Assistance in Criminal Matters* legislation in Australia and New Zealand;
  - 7.2 the *Memorandum of Understanding Between the Government of Australia and the Government of New Zealand on Co-ordination of Business Law*;
  - 7.3 the 2007 Co-operation Agreement between the ACCC and the NZCC;
  - 7.4 the 2006 Co-operation Protocol for Merger Review between the ACCC and the NZCC;
  - 7.5 the 2003 Co-operation Arrangement between the ACCC, the NZCC, 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;
  - 7.6 the 2002 Co-operation Arrangement between the ACCC, the NZCC and the Taiwan Fair Trade Commission regarding the application of their competition and fair trading laws; and
  - 7.7 the 2002 Co-operation Arrangement between the Commission of Competition (Canada), the ACCC and the NZCC regarding the application of their competition and consumer laws.

## Definitions

8. In this Arrangement, these terms will have the following definitions:
  - 8.1 "competition and consumer law(s)" means:
    - 8.1.1 for the ACCC, the Competition and Consumer Act; and
    - 8.1.2 for the NZCC, the Commerce Act, the Fair Trading Act, the Credit Contract and Consumer Finance Act, and the Telecommunications Act;
 and includes amendments to and regulations made under these statutes;

- 8.2 “compulsorily-acquired information” means information that is not in the public domain, and which has been compulsorily acquired by the NZCC as a result of or in relation to the exercise by the NZCC of its search and notice powers under its competition and consumer laws and any power incidental to those powers;
- 8.3 “investigative assistance” includes the provision of assistance by way of the NZCC exercising any of its search and notice powers under or in relation to its competition and consumer law and any power express or implied that is incidental to those powers;
- 8.4 “protected information” has the same meaning as in section 155AAA of the CCA, and includes information that was given in confidence to the ACCC by a foreign government body, and relates to a matter arising under a provision of a law of a foreign country or of a part of a foreign country;
- 8.5 “request” means a request from the ACCC to the NZCC for the NZCC to provide compulsorily-acquired information or investigative assistance;
- 8.6 “search and notice powers” means any of the NZCC’s powers under:
- 8.6.1 sections 98, 98A and 98H of the Commerce Act (including as applied to the Credit Contracts and Consumer Finance Act and the Telecommunications Act); and
- 8.6.2 sections 47 and 47G of the Fair Trading Act.

### **Requests for information and/or assistance**

9. The ACCC may make a request under this Arrangement by notice in writing sent by post to the following address:
- The Chair  
Commerce Commission  
PO Box 2351  
Wellington 6140  
New Zealand
- or by email sent directly to the current Chair.
10. Any request under clause 9 will be accompanied by a statement:
- 10.1 confirming that the ACCC considers that the provision of the compulsorily-acquired information and/or investigative assistance will assist, or will be likely to assist, the ACCC in performing its functions or exercising its powers in relation to its competition and consumer laws; and
- 10.2 explaining why the ACCC considers that it could not more conveniently obtain the information or assistance from another source.

## Responding to requests

11. The NZCC will respond to any request in accordance with sections 99B to 99P of the Commerce Act or sections 48B to 48O of the Fair Trading Act (as appropriate) and with any policies, guidelines or practices promulgated by the NZCC in relation to the provision of compulsorily-acquired information and/or investigative assistance.
12. In responding to a request, the NZCC may impose conditions on the provision of such information or assistance, including as to:
  - 12.1 the confidentiality of information;
  - 12.2 the storage, use of, or access to anything provided;
  - 12.3 the copying, returning, or disposal of copies of anything provided; and
  - 12.4 the payment of costs reasonably incurred by the NZCC.
13. The NZCC will not provide any communication which:
  - 13.1 was intended to be confidential; and
  - 13.2 was made in connection with an attempt to settle or mediate a dispute between the parties to the communication; and
  - 13.3 is protected by a “without prejudice” form of privilege, without the consent of every other party who holds that privilege.
14. The NZCC will not provide copies of statements made by any person in answer to a question put by or before the NZCC that might tend to incriminate the person, unless the ACCC gives a written undertaking:
  - 14.1 that it will not use such statements as evidence in criminal proceedings against the person (other than in respect of the falsity of the person’s testimony) or in proceedings against the person for a pecuniary penalty; and
  - 14.2 that to the extent possible, the ACCC will ensure that such statements are not used by any other person, authority or agency as evidence in such proceedings.

## Protection and use of information

15. Where the NZCC provides the ACCC with compulsorily-acquired information in response to a request, the ACCC will:
  - 15.1 use the information only in accordance with any conditions imposed by the NZCC under clause 12.2 of this Arrangement and in accordance with section 155AAA of the CCA;

- 15.2 keep the information secure in accordance with the ACCC’s standard evidence handling procedures, and in accordance with any conditions imposed by the NZCC under clause 12.2 of this Arrangement; and
- 15.3 protect to the fullest extent possible confidential information provided in accordance with this Arrangement, including in response to requests made by third parties under the Freedom of Information Act 1982.
- 16. Where the NZCC provides any information or communication which is protected by privilege under New Zealand law:
  - 16.1 the NZCC is not to be regarded as having waived that privilege; and
  - 16.2 the ACCC will treat that information or communication as being subject to the analogous privilege under Australian law.

**Commencement, amendment and termination**

- 17. This Arrangement will come into effect when signed by both Participants and will remain in effect until terminated by either Participant (by giving 60 days written notice) or by mutual written consent.
- 18. All understandings created under the section entitled “Protection and use of information” will remain in effect despite any termination of this Arrangement.
- 19. The Participants will review the operation of this Arrangement within five years of it coming into force and periodically thereafter.
- 20. This Arrangement may be amended by the mutual written consent of the Participants.

Signed in duplicate both texts having equal validity

**For the Australian Competition and Consumer Commission**

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2013

Rod Sims  
Chair

**For the New Zealand Commerce Commission**

Signed at *Wellington* on the *19<sup>th</sup>* day of *April* 2013

*Mark Berry*  
Dr Mark Berry  
Chair

- 15.2 keep the information secure in accordance with the ACCC's standard evidence handling procedures, and in accordance with any conditions imposed by the NZCC under clause 12.2 of this Arrangement; and
- 15.3 protect to the fullest extent possible confidential information provided in accordance with this Arrangement, including in response to requests made by third parties under the Freedom of Information Act 1982.
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### **For the Australian Competition and Consumer Commission**

Signed at Sydney on the 19 day of April 2013



Rod Sims  
Chair

### **For the New Zealand Commerce Commission**

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2013

Dr Mark Berry  
Chair

